



NEW CASE BRIEF
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JOSH PENDERGRASS V DUGGAN PLUMBING AND SCIF
(WCAB SAL No. 011868; 72 CCC ___; EN BANC DECISION 4/6/2007)

**COMMENCEMENT OF TTD PRIOR TO 1/1/2005 IN AND OF ITSELF
DOES NOT MANDATE USE OF THE OLD PD SCHEDULE**

In an new *en banc* decision, the Appeals Board reversed its holding in Pendergrass I, decided three months earlier. Recall that the *en banc* decision in Pendergrass I held that under L.C. 4660(d) the first payment of TTD gives rise to a duty to issue a L.C. 4061 notice thereby triggering the old PDS schedule if the first TD payment is made before 1/1/2005. This decision was a 4-3 vote. The case came before the Appeals Board again when SCIF filed its own Petition for Reconsideration as an aggrieved party. In the meantime, Commissioner Rabine's seat was filled by Commissioner Moresi. The prior dissent position has now become the majority view.

The new decision stated that the obligation to provide the L.C. 4061 notice was triggered by the **last** payment of TTD, not the commencement of TTD. The majority found no language in the statute that justified the "duty" analysis. The opinion pointed out that the Legislature, in enacting SB 899, intended to provide relief at the "earliest possible time" and therefore the changes in the permanent disability schedule were intended to bring "as many cases as possible under the umbrella of the new law". The dissent in reiterating their previous arguments, commented that the Appeals Board should not interpret hastily drafted legislation to afford relief to businesses at the expense of the injured workers. However, it would seem that SB 899 was clearly intended to accomplish exactly that purpose.

This decision has now finished its life at the Appeals Board. Whether it will continue with vigor in the Court of Appeals is yet to be seen. Pending appellate review, it is a controlling decision that must be followed by all WCJ's.