



Los Angeles County Dep't of Parks & Recreation v. Workers' Compensation Appeals Board

2008 | Cited 0 times | California Court of Appeal | June 6, 2008

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

Petitioner, Los Angeles County Department of Parks & Recreation, contends that the Workers' Compensation Appeals Board (WCAB) lacked jurisdiction to award respondent, Merrell Lee Calvillo, a new period of temporary total disability indemnity that began more than five years from the date of injury. Petitioner alleges that prior stipulations to temporary total disability indemnity, the order to comply and payment resulted in an executed award, which required a petition for continuing jurisdiction within five years of the date of injury under the Labor Code.¹ Petitioner further contends that the WCAB's award of a new period of temporary total disability indemnity that began more than five years from the date of injury is precluded under *Nickelsberg v. Workers' Comp. Appeals Bd.* (1991) 54 Cal.3d 288 [following award WCAB lacked jurisdiction to award new period of temporary total disability indemnity where surgery causing disability and petition for continuing jurisdiction occurred more than five years from date of injury] and the Supreme Court's interpretation of the 1978 amendment to section 4656.

Because the stipulated issues were expressly reserved for trial, we conclude that the stipulations, order to comply and payment resulted in an interim and not an executed or formal award that required a petition for continuing jurisdiction under the Labor Code.²

However, the temporary total disability indemnity awarded by the WCAB is not a continuous period that began within five years of the date of injury as required by section 4656 and *Nickelsberg*. Therefore, the WCAB's decision is affirmed in part and reversed in part and the matter is remanded for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

Merrell Lee Calvillo, a cashier/clerk for the Los Angeles County Department of Parks & Recreation (County), injured her neck, back and right knee in a fall at work on September 24, 1997. The parties appeared at a conference before the workers' compensation administrative law judge (WCJ) on September 11, 1998, and entered into a stipulation as written into the minutes: "parties stipulate to earnings of \$396.16 per week resulting in a t.d. rate of \$264.10 per week. Defendants to pay any sums



Los Angeles County Dep't of Parks & Recreation v. Workers' Compensation Appeals Board

2008 | Cited 0 times | California Court of Appeal | June 6, 2008

outstanding, at aforementioned rate, retroactive to date, and surgery recommended by the treating doctor."³ The case was ordered off calendar by the WCJ.

Cervical disc surgery was performed by the treating physician on October 8, 1998. At a conference on March 9, 1999, the parties entered into a written "Stipulation re: benefits." The written stipulation provides, "The parties Stipulate that the applicant, Merrell Lee Calvillo, is to be paid temporary Disability benefits at the rate of \$264.10/week based upon average weekly earnings of \$396.16. Defendants are to pay any sums outstanding, at the rate of \$264.10, retroactive to date. Signed this 8th day of March, 1999." A printed provision between the writing and signatures below states, "Defendants claim credit for T.D. overpayments, i.e. weekly earnings contested. The issue of credit reserved for trial should defendants show good cause in regard to the previously agreed earnings rate." Under the signatures of counsel for Calvillo and the County, it is written, "Applicant reserves the right to litigate the issues of penalties, sanctions, costs and retroactive benefits." At the bottom of the stipulation is printed, "IT IS SO ORDERED. K. J. Keating, 3/9/99." The WCJ also ordered the matter off calendar.

On or about August 19, 1999, the parties entered into a compromise and release agreement for \$24,000, which settled penalty for unreasonable delay of temporary total disability indemnity to date under section 5814.⁴ The parties also stipulated that the future rate of temporary total disability indemnity would be \$343.43 per week.

In 2000, Calvillo began treatment with Keolanui Chun, M.D. Right knee surgery was performed by Michael Einbund, M.D., on February 13, 2001. In a report dated June 20, 2002, Dr. Chun declared Calvillo permanent and stationary with permanent work restrictions including a limitation to semi-sedentary work. The County apparently paid temporary total disability indemnity until June 20, 2002. From approximately August 2002 to April 2003, Calvillo completed vocational rehabilitation and received maintenance allowance at the maximum rate of \$246 per week.⁵

On October 11, 2005, Dr. Chun reported that Calvillo was temporarily totally disabled, and lumbar surgery was performed the next day. The County denied temporary total disability indemnity.

The parties proceeded to trial and the issues included jurisdiction to award continuing temporary total disability indemnity from October 11, 2005, and penalty for unreasonable delay under section 5814. On August 21, 2006, the WCJ awarded temporary total disability indemnity "beginning October 11, 2005 to the present and continuing" at the stipulated rate of \$343.43 per week. The WCJ also awarded a 25 percent increase under section 5814,⁶ and attorney's fees under section 5814.5.⁷

In the opinion on decision, the WCJ explained that jurisdiction existed because the March 9, 1999, order was enforcement of the September 11, 1998, stipulation to average weekly earnings, which yields the higher indemnity rate. Thus, there was no award of retroactive benefits, and a petition for continuing jurisdiction was not required under section 5410.⁸ Section 4656 does not preclude the



Los Angeles County Dep't of Parks & Recreation v. Workers' Compensation Appeals Board

2008 | Cited 0 times | California Court of Appeal | June 6, 2008

temporary total disability indemnity awarded because the date of injury was between January 1, 1979, and April 19, 2004, and the parties stipulated that Calvillo was not temporarily partially disabled.⁹ In addition, the failure to pay the temporary total disability indemnity was unreasonable because the issue of jurisdiction was an after the fact excuse and there was no legal doubt of liability.¹⁰

The County petitioned the WCAB for reconsideration and contended that the March 9, 1999, order transformed the March 8, 1999, stipulation into a formal award under *Huston v. Workers' Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856 [payment of stipulation to temporary total disability indemnity transformed executory agreement into executed contract and enforcement same as formal findings and award], which required a petition for continuing jurisdiction under section 5410 or sections 5803 and 5804.¹¹ The County also contended that section 4656 and *Nickelsberg* require continuous temporary total disability indemnity that begins within five years of the date of injury, and thus, there was genuine legal doubt of liability under section 5814 and *Kerley*. Further, attorney's fees are not owed because Calvillo pursued a new period of temporary total disability indemnity and not enforcement of an award under section 5814.5.

In the report on reconsideration, the WCJ added that everything from the September 11, 1998, stipulation to the March 9, 1999, order was enforcement of the stipulation to average weekly earnings because the County continued to pay at the wrong weekly rate. Earnings are between the employer and employee and not a benefit of workers' compensation that is subject to section 5804 or new and further disability under section 5410. There also was no need for an award because temporary total disability indemnity was being paid. Moreover, penalty may be awarded where substantial evidence does not support reasonable doubt of the law or legal effect of documents. However, the award of attorney's fees under section 5814.5 should be vacated as contended by the County.

The WCAB affirmed the WCJ's decision except for limiting the penalty under section 5814, subdivision (a), and deleting attorney's fee under section 5814.5.¹² The WCAB explained that the stipulations to earnings and the indemnity rate were awards, but the dates or period of temporary total disability were not adjudicated and there was no award of temporary total disability indemnity. Where there is no award of benefits within five years of the date of injury, a petition for continuing jurisdiction is not required under section 5804 or 5410. The WCAB has original jurisdiction to award temporary total disability indemnity more than five years from the date of injury under *State of California v. Ind. Acc. Com.* (1962) 198 Cal.App.2d 818, 827, 833-834,¹³ and *Unigard Insurance Co. v. Workers' Comp. Appeals Bd.* (1994) 59 Cal.Comp.Cases 966.¹⁴ *Nickelsberg*, *Hartsuiker v. Workers' Comp. Appeals Bd.* (1993) 12 Cal.App.4th 209,¹⁵ and *Beck v. Workers' Comp. Appeals Bd.* (2000) 65 Cal.Comp.Cases 845¹⁶ are distinguishable because benefits were awarded in those cases within five years of the date of injury. Because there was no award of benefits within five years of the date of injury in this case, there was no genuine legal doubt of liability and penalty for unreasonable delay is warranted under section 5814 and *Kerley*, supra.

The County petitioned for writ of review and contends that the stipulations to temporary total



Los Angeles County Dep't of Parks & Recreation v. Workers' Compensation Appeals Board

2008 | Cited 0 times | California Court of Appeal | June 6, 2008

disability indemnity followed by the March 9, 1999, order and payment constituted an executed award under *Huston and Cowell L. & C. Co. v. Industrial Acc. Com.* (1930) 211 Cal. 154.¹⁷ The WCAB lacked jurisdiction to award the same benefit that began more than five years from the date of injury without a petition for continuing jurisdiction under section 5410 and sections 5803 and 5804. Even if the WCAB retained original jurisdiction, a new period of temporary total disability indemnity more than five years from the date of injury may not be awarded under section 4656, *Nickelsberg, Hartsuiker and Beck*. Moreover, genuine legal doubt of liability existed and there was no unreasonable delay or refusal of benefits under section 5814 or *Kerley*.

Calvillo did not file an answer to the petition for writ of review.

DISCUSSION

I. Standard of Review

A. Factual Findings

A decision by the WCAB that is based on factual findings which are substantial evidence is generally affirmed by the reviewing court. (*Western Growers Ins. Co. v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 227, 233.) However, the reviewing court is authorized to reject factual findings that are erroneous, unreasonable, illogical, improbable, or inequitable when viewed in light of the entire record and the overall statutory scheme. (*Ibid.*; *Bracken v. Workers' Comp. Appeals Bd.* (1989) 214 Cal.App.3d 246, 254.)

B. Statutory Interpretation

Interpretation of governing statutes or application of the law to undisputed facts is decided de novo by the reviewing court, even though the WCAB's interpretation is entitled to great weight unless clearly erroneous. (*Boehm & Associates v. Workers' Comp. Appeals Bd.* (1999) 76 Cal.App.4th 513, 515-516; *Ralphs Grocery Co. v. Workers' Comp. Appeals Bd.* (1995) 38 Cal.App.4th 820, 828.) The Legislature's intent should be determined and given effect when interpreting and applying statutes. (*DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 387-388; *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230.) The Legislature's intent is normally determined from the plain meaning of the statutory language, unless the language or intent is uncertain or ambiguous. (*DuBois* at pp. 387-388; *Moyer* at p. 230.) Interpretation of the statutory language should be consistent with the purpose of the statute and the statutory framework as a whole. (*DuBois* at pp. 387-388, 393.) Where statutory language or the Legislature's intent is uncertain or ambiguous, rules of construction, legislative history or historical use may aid in determining the meaning or intent. (*Id.* at pp. 387-388, 393.)

C. WCAB's Original and Continuing Jurisdiction Generally, once there is an order, decision, or



Los Angeles County Dep't of Parks & Recreation v. Workers' Compensation Appeals Board

2008 | Cited 0 times | California Court of Appeal | June 6, 2008

award of compensation the WCAB lacks continuing jurisdiction beyond five years from the date of injury to order, decide or award further compensation, unless a petition is filed within five years of the date of injury for new and further disability under section 5410 or good cause under sections 5803 and 5804. (*Barnes v. Workers' Comp. Appeals Bd.* (2000) 23 Cal.4th 679, 686-687 [no jurisdiction to terminate lifetime medical award based on petition filed more than five years from date of injury]; *Nickelsberg*, supra, 54 Cal.3d at pp. 297, 300-302; *Bland v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 324, 329 [timely petition to reopen for permanent disability based on increased disability and continuous treatment within five years of date of injury provided jurisdiction for temporary total disability indemnity more than five years after the date of injury]; *Sarabi v. Workers' Comp. Appeals Bd.* (2007) 151 Cal.App.4th 920, 925 [petition to reopen award and medical reports indicating surgery and additional disability provided jurisdiction to award temporary total disability indemnity from when payment ceased more than five years from date of injury].) Where there is no previous order, decision, or award of compensation, the WCAB may order, decide, or award compensation more than five years from date of injury based on its original jurisdiction. (*General Foundry Service v. Workers' Comp. Appeals Bd.* (1986) 42 Cal.3d 331, 337 [WCAB may reserve jurisdiction to award permanent disability indemnity more than five years from date of injury in cases of insidious and progressive occupational disease]; *State of California*, supra, 198 Cal.App.2d at p. 827; *Lockheed Aircraft Corp. v. Industrial Acc. Com.* (1960) 183 Cal.App.2d 361, 364-366 [initial application for benefits provided jurisdiction to decide permanent disability and lifetime medical care more than five years from date of injury where undecided by findings and award].)

The WCAB also has continuing jurisdiction under section 5803 to enforce previous orders, decisions, or awards. (*Barnes*, supra, 23 Cal.4th at pp. 687-688.) "The WCAB's authority under section 5803 to enforce its awards, including ancillary proceedings involving commutation, penalty assessment and the like, is not to be confused with its limited jurisdiction to alter prior awards by benefit augmentation at a later date. The latter action is subject to the provisions of sections 5410 and 5804." (*Nickelsberg*, supra, 54 Cal.3d at p. 297.)

II. The Stipulations and March 9, 1999, Order Is Not a Formal Award Which Required a Petition for Continuing Jurisdiction Under Section 5410 or Sections 5803 and 5804

We must determine whether the stipulations and March 9, 1999, order constitute an award of temporary total disability indemnity, which could not be altered or augmented by the August 21, 2006, award without a petition for continuing jurisdiction under section 5410 or sections 5803 and 5804.

A. Huston Is Not Determinative

The County contends that payment pursuant to the stipulations and March 9, 1999, order resulted in an executed award of temporary total disability indemnity under *Huston*, supra. The WCJ found that the stipulations and March 9, 1999, enforcement order were limited to the correct rate of average



Los Angeles County Dep't of Parks & Recreation v. Workers' Compensation Appeals Board

2008 | Cited 0 times | California Court of Appeal | June 6, 2008

weekly earnings and indemnity under section 5803, which is not an award of temporary total disability indemnity subject to sections 5410 and 5804. The County argues that stipulations and March 9, 1999, order included payment of temporary total disability indemnity at the stipulated rate.

There is some support in the record for the WCJ's findings. As pointed out by the WCJ, the conferences, stipulations and orders were primarily concerned with the correct rate of average weekly earnings and indemnity because temporary total disability indemnity was being provided and there was no need to order or award payment of the benefit. The mixture of handwriting, printing, signatures and dates also make it difficult to determine exactly what was stipulated or ordered. Nevertheless, it is sufficiently clear that the stipulations and March 9, 1999, order provided for payment of the difference between the temporary total disability indemnity paid and the stipulated rate.

The WCAB also determined that the stipulations and March 9, 1999, order were not an award of temporary total disability indemnity because the dates or period of benefits were not adjudicated as in *Huston*, supra. The County argues that retroactive and continuing temporary total disability indemnity was awarded, and the dates were not specified in *Huston*. While payment of outstanding sums retroactive to date is expressly provided, continuing benefits or the beginning and ending dates are not. Nor was a petition to terminate temporary total disability indemnity included in the stipulation or filed as in *Huston*, supra.¹⁸

B. The Stipulations and March 9, 1999, Order Were Interim Pending Trial and an Award That Determined the Stipulated Issues

There is also a more significant term that distinguishes the stipulations and March 9, 1999, order from the stipulation and enforcement order in *Huston*. The issues of contested average weekly earnings and credit for temporary total disability indemnity overpayment were expressly reserved for trial. In effect, the stipulations and March 9, 1999, order were only temporary or interim resolutions pending determination of the stipulated issues and an award after trial. Thus, the stipulations were not actually enforced until the award of August 21, 2006, and the March 9, 1999, order was not an executed award after payment or a formal findings and award under *Huston*.¹⁹ Therefore, a petition for continuing jurisdiction under sections 5410 and 5804 was not required, and the WCAB retained its original jurisdiction more than five years from the date of injury.

We realize that section 5702²⁰ provides that stipulations may not be binding in workers' compensation and the WCAB may decide the stipulated issues based on the evidence. (*Huston*, supra, 95 Cal.App.3d at p. 865.) However, payment pursuant to the stipulation or order to comply ordinarily raises the order to the level of a formal findings and award. (*Huston*, supra, 95 Cal.App.3d at pp. 865-867.) In such a case, good cause must be shown to be released from the stipulation or order. (*Huston*, supra, 95 Cal.App.3d at pp. 865-866.) Payment in this case, although with delays that led to the compromise and release agreement and higher stipulated rate, was subject to reimbursement,



Los Angeles County Dep't of Parks & Recreation v. Workers' Compensation Appeals Board

2008 | Cited 0 times | California Court of Appeal | June 6, 2008

even without a showing of good cause,²¹ because the issues of average weekly earnings and credit for overpayment of temporary total disability indemnity were reserved for trial. Consequently, the stipulations and March 9, 1999, order did not rise to the level of a formal findings and award under Huston.

C. Voluntary Payment of Temporary Total Disability Indemnity Did Not Constitute an Award Requiring a Petition for Continuing Jurisdiction Under Section 5410 or Sections 5803 and 5804

Alternatively, the County contends for review that the voluntary payment of temporary total disability indemnity constituted an award under Cowell, supra, which required a petition for continuing jurisdiction under section 5410 or sections 5803 and 5804. However, Cowell concerned the statute of limitations, and the Supreme Court explained that when compensation such as temporary total disability indemnity is voluntarily paid, proceedings may be initially instituted by filing for new and further disability within the time limit prescribed by statute. (Cowell, supra, 211 Cal. at pp. 160-161. See also Standard Rectifier Corp. v. Workmen's Comp. App. Bd. (1966) 65 Cal.2d 287, 290-291; Youngblood v. Workers' Comp. Appeals Bd. (1989) 216 Cal.App.3d 764, 770-771.) It is undisputed that Calvillo's claim was instituted timely.

III. The WCAB's Award Of Temporary Total Disability Indemnity Is Precluded Under Section 4656 And Nickelsberg

The County also contends that the temporary total disability indemnity awarded by the WCAB was not a continuous period that began within five years of the date of injury as required by section 4656, Nickelsberg, supra, and Hartsuiker, supra. The WCJ indicated that the 1978 amendment of section 4656 applied because the date of injury was between January 1, 1979, and April 19, 2004, and the limitation of "240 compensable weeks within a period of five years from the date of injury" did not apply since the parties stipulated that there was no temporary partial disability.

A. Temporary Total Disability Indemnity More Than Five Years From the Date of Injury Must Be a Continuous Period that Begins Within Five Years of the Date of Injury Under Section 4656, Nickelsberg and Hartsuiker

The WCJ applied the 1978 amendment of section 4656 as though limits on awards of temporary total disability indemnity were removed, which authorized awarding the new period of temporary total disability indemnity that began more than five years from the date of injury. However, such an interpretation of the 1978 amendment to section 4656 was rejected by the Supreme Court in Nickelsberg and the Court of Appeal in Hartsuiker.

Prior to the 1978 amendment of section 4656, an award of temporary total disability indemnity could not extend beyond five years from the date of injury. (Bland, supra, 3 Cal.3d at p. 328, fn. 1; Liberty Mut. Ins. Co. v. Industrial Acc. Com. (1964) 231 Cal.App.2d 501, 505.) With removal of the "240-week



Los Angeles County Dep't of Parks & Recreation v. Workers' Compensation Appeals Board

2008 | Cited 0 times | California Court of Appeal | June 6, 2008

limitation on aggregate total disability within a 5-year postinjury period for injuries occurring on or after January 1, 1979," (Nickelsberg, supra, 54 Cal.3d at pp. 292-293) the question before the Supreme Court in Nickelsberg was whether temporary total disability indemnity caused by surgery more than five years from the date of injury could be awarded based on section 4656 as amended or enforcement of a prior award for future medical care under section 5803. The Supreme Court determined that statements in the legislative history and the plain statutory language "suggest that the amendment to section 4656 was intended to permit an applicant to receive temporary total disability for as long as he or she is continuously disabled without an arbitrary cutoff date. These statements, however, do not suggest the Legislature intended to permit an applicant, based on an award of future medical benefits, to be able to invoke the WCAB's jurisdiction to award temporary total disability benefits whenever he or she requires medical treatment for a previous injury." (Nickelsberg, supra, 54 Cal.3d at p. 296.)

Therefore, the Supreme Court in Nickelsberg interpreted the 1978 amendment to section 4656 as authorizing temporary total disability indemnity to extend beyond five years from the date of injury only when the period of temporary total disability indemnity commences within five years from the date of injury and is continuous. This interpretation of the 1978 amendment to section 4656 by the Supreme Court in Nickelsberg was confirmed by the Court of Appeal in Hartsuiker. (Hartsuiker, supra, 12 Cal.App.4th at p. 219.)

B. The Interpretation of the 1978 Amendment to Section 4656 in Nickelsberg and Hartsuiker Was Based On the Legislative History, Plain Language of the Statute and Statutory Scheme

The WCAB distinguished Nickelsberg and Hartsuiker as involving awards within five years of the date of injury, which required a timely petition for continuing jurisdiction under section 5410 or sections 5803 and 5804. We recognize that generally such petitions must be based on new and further disability or good cause that arises within five years of the date of injury without a break in jurisdiction (Bland, supra, 3 Cal.3d at pp. 329-333; Sarabi, supra, 151 Cal.App.4th at pp. 926-928), and jurisdiction may not be reserved in anticipation of new and further disability or good cause more than five years from the date of injury. (Hartsuiker, supra, 12 Cal.App.4th at p. 219; Ruffin v. Olson Glass Co. (1987) 52 Cal.Comp.Cases 335.)

However, that was not the reasoning for the interpretation of the 1978 amendment to section 4656 by the Supreme Court in Nickelsberg or the Court of Appeal in Hartsuiker. The 1978 amendment to section 4656 was addressed separately as a basis for awarding temporary total disability indemnity more than five years from the date of injury, apart from continuing jurisdiction under section 5410 or sections 5803 and 5804. (Nickelsberg, supra, 54 Cal.3d at pp. 300-302; Hartsuiker, supra, 12 Cal.App.4th at pp. 213-219.) The interpretation of the 1978 amendment to section 4656 was mainly based on the legislative history and language of the statute, with consideration of the time and jurisdictional limitations under the statutory scheme. Accordingly, the interpretation of the 1978 amendment to section 4656 in Nickelsberg and Hartsuiker is controlling, and the WCAB's award of



Los Angeles County Dep't of Parks & Recreation v. Workers' Compensation Appeals Board

2008 | Cited 0 times | California Court of Appeal | June 6, 2008

the new period of temporary total disability indemnity more than five years from the date of injury is reversed.

IV. The Award of Penalty Under Section 5814 Is Also Reversed Since we have concluded that the award of temporary total disability indemnity is reversed, the penalty for unreasonable delay or refusal of the temporary total disability indemnity under section 5814 is also reversed.

DISPOSITION

The WCAB's finding that the stipulations and order to comply was not a formal award requiring a petition for continuing jurisdiction under the Labor Code is affirmed. The WCAB's award of temporary total disability indemnity that began more than five years from the date of injury and of increased compensation for unreasonable delay of payment is reversed. The matter is remanded to the WCAB for further proceedings consistent with this opinion.

We concur: TURNER, P. J., MOSK, J.

1. All further references to statute are to the Labor Code unless otherwise stated.

2. "Section 4656 was amended in 1978. (Sen. Bill No. 1851 (1977-1978 Reg. Sess.) Stats. 1978, ch. 937, § 1, p. 2913.) The 1978 amendment removed the 240-week limitation on aggregate temporary total disability within a 5-year postinjury period for injuries occurring on or after January 1, 1979. The statute now provides that '[a]ggregate disability payments for a single injury occurring prior to January 1, 1979, causing temporary disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury. [¶] Aggregate disability payments for a single injury occurring on or after January 1, 1979, causing temporary partial disability shall not extend for more than 240 compensable weeks within a period of five years from the date of injury.' (§ 4656, italics added.)" (Nickelsberg, supra, 54 Cal.3d at pp. 292-293.)

3. The term "t.d." refers to temporary total disability, and the weekly rate of indemnity paid is generally two-thirds of average weekly earnings. (§ 4653.) The record indicates that payments of temporary total disability indemnity had ranged from \$229.60 to \$233.05 per week.

4. Former section 5814 provided in part: "When payment of compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the full amount of the order, decision or award shall be increased by 10 percent."

5. See section 139.5.

6. Section 5814, subdivision (a) states: "When payment of compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the amount of the payment unreasonably delayed or refused shall be increased up to 25 percent or up to ten thousand dollars (\$10,000), whichever is less. In any proceeding under this section,



Los Angeles County Dep't of Parks & Recreation v. Workers' Compensation Appeals Board

2008 | Cited 0 times | California Court of Appeal | June 6, 2008

the appeals board shall use its discretion to accomplish a fair balance and substantial justice between the parties."

Section 5814, subdivision (h) provides: "This section shall apply to all injuries, without regard to whether the injury occurs before, on, or after the operative date of this section." Section 5814, subdivision (i) provides: "This section shall become operative on June 1, 2004."

7. Section 5814.5 states: "When the payment of compensation has been unreasonably delayed or refused subsequent to the issuance of an award by an employer that has secured the payment of compensation pursuant to Section 3700, the appeals board shall, in addition to increasing the order, decision, or award pursuant to Section 5814, award reasonable attorneys' fees incurred in enforcing the payment of compensation awarded."

8. Section 5410 provides in part: "Nothing in this chapter shall bar the right of any injured worker to institute proceedings for the collection of compensation, including vocational rehabilitation services, within five years after the date of the injury upon the ground that the original injury has caused new and further disability . . . The jurisdiction of the appeals board in these cases shall be a continuing jurisdiction within this period. This section does not extend the limitation provided in Section 5407."

9. Section 4656 was amended by Senate Bill 899 on April 19, 2004, and provided in part: "(a) Aggregate disability payments for a single injury occurring prior to January 1, 1979, causing temporary disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury. [¶] (b) Aggregate disability payments for a single injury occurring on or after January 1, 1979, and prior to the effective date of subdivision (c), causing temporary partial disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury. [¶] (c)(1) Aggregate disability payments for a single injury occurring on or after the effective date of this subdivision, causing temporary disability shall not extend for more than 104 compensable weeks within a period of two years from the date of commencement of temporary disability payment." Section 4656 was further amended on January 1, 2008. Among the changes, the date "April 19, 2004" replaced the words "the effective date of subdivision (c)" in subdivision (b) and the words "the effective date of this subdivision" in subdivision (c)(1).

10. "[T]he only satisfactory excuse for delay in payment of disability benefits, whether prior to or subsequent to an award, is genuine doubt from a medical or legal standpoint as to liability for benefits, and that the burden is on the employer or his carrier to present substantial evidence on which a finding of such doubt may be based." (Kerley v. Workmen's Comp. App. Bd. (1971) 4 Cal.3d 223, 230.)

11. Section 5803 provides: "The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of this division, and the decisions and orders of the rehabilitation unit established under Section 139.5. At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor. [¶] This power includes the right to review, grant or regrant, diminish, increase, or terminate, within the limits prescribed by this division, any compensation awarded, upon the grounds that the disability of the person in whose favor the award was made has either recurred, increased, diminished, or terminated." Section 5804 further states in part: "No award of compensation shall be rescinded, altered, or amended after five years from the date of the injury except upon a petition by a party in interest filed within such five years and any counterpetition seeking other relief filed by the adverse party



Los Angeles County Dep't of Parks & Recreation v. Workers' Compensation Appeals Board

2008 | Cited 0 times | California Court of Appeal | June 6, 2008

within 30 days of the original petition raising issues in addition to those raised by such original petition."

12. The WCAB initially affirmed the WCJ's decision, with the exception of clerical error. The County petitioned this court for writ of review, and the WCAB requested that the decision be vacated and the matter remanded to issue a new decision, which was granted.

13. In State of California, the injured worker filed for benefits more than five years from the date of injury but within one year of voluntary benefits provided by the employer. The Court of Appeal concluded that there was original jurisdiction to award temporary total disability indemnity more than five years from the date of injury under section 5405, and a petition for continuing jurisdiction was not required under section 5410.

14. In Unigard, the WCAB determined it had jurisdiction to award temporary total disability indemnity more than five years from date of injury where there had been no prior award of benefits.

15. The Court of Appeal in Hartsuiker concluded that the WCAB could not reserve jurisdiction to award additional temporary total disability indemnity due to potential surgery more than five years from date of injury under sections 5410, 5803, 5804 and 4656.

16. In Beck, the injured worker filed a petition for new and further disability within five years of the date of injury. The WCAB found no continuing jurisdiction where the need for surgery and temporary disability arose more than five years from date of injury, even though treatment was continuous.

17. "[I]f the injured employee receives compensation for temporary disability by the voluntary payment thereof by the employer, instead of through a compulsory award by the Industrial Accident Commission, and thereafter his disability becomes permanent, he may at any time within 245 weeks from the date of his original injury institute proceedings before the Commission for compensation on the grounds that the original injury has caused a new and further disability." (Cowell, supra, 211 Cal. at pp. 160-161.)

18. See Cal. Code of Reg., title 8, section 10462, which states: "A petition to terminate liability for continuing temporary disability indemnity under a findings and award, decision or order of the Appeals Board or a workers' compensation judge shall be filed within 10 days of the termination of payment of the payments or other compensation. Failure to file such a petition within 10 days may affect the right to credit for an overpayment of temporary disability indemnity."

19. "To give enforcement to the stipulation it must be treated as if it were a formal findings and award issued by the appeals board." (Huston, supra, 95 Cal.App.3d at p. 867.)

20. Section 5702 states: "The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the appeals board. [¶] The appeals board may thereupon make its findings and award based upon such stipulation, or may set the matter down for hearing and take further testimony or make the further investigation necessary to enable it to determine the matter in controversy."



Los Angeles County Dep't of Parks & Recreation v. Workers' Compensation Appeals Board

2008 | Cited 0 times | California Court of Appeal | June 6, 2008

21. Good cause includes inadvertence, excusable neglect, fraud, mistake of fact or law, where stipulated facts have changed or there has been a change in the underlying conditions that could not have been anticipated, or where special circumstances exist rendering unjust to enforce the stipulation. Good cause is not a lack of full knowledge of the facts, which is due to the failure of a party to exercise due diligence to ascertain them. (Huston, supra, 95 Cal.App.3d at pp. 865-866.)

