

Dear Subscriber,

Case Law Update:

CIGA Entitled to Full Reimbursement for Joint and Several Benefits

In *CIGA v. WCAB (SCIF/Hernandez)*[cite pending], an opinion certified for publication, the Second District Court of Appeal held that where separate injuries combine to create the need for joint and several benefits and one of the insurers has entered into liquidation and the other remains solvent, California Insurance Guarantee Association (CIGA) is entitled to complete reimbursement for the joint and several benefits that CIGA has paid.

In this case, the applicant sustained a specific injury during the coverage of an insurance carrier that later entered into liquidation and fell under the auspices of CIGA. Following the specific injury, the applicant sustained a cumulative trauma injury with liability admitted by State Compensation Insurance Fund (SCIF).

Following resolution of the applicant's claim, CIGA sought reimbursement from SCIF for the entirety of monies expended by CIGA towards joint and several benefits including temporary disability and vocational rehabilitation maintenance allowance.

Ultimately, the Second District Court of Appeal ruled in favor of CIGA reasoning that CIGA is not an insurer and, pursuant to Insurance Code Section 1063.1, where other insurance is available CIGA is not liable for benefits. The Court further reasoned that because the benefits in question are joint and several, and liability was shared with SCIF, CIGA was entitled to full reimbursement for amounts expended relating to these benefits.

Court Rule on Several Rating Schedule Cases

In several cases decided this month, the Courts of Appeal and WCAB have ruled on the proper application of the 1997

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Permanent Disability Rating Schedule versus the 2005 American Medical Association based Rating Schedule.

In an opinion certified for publication, ***Chang v. WCAB***, [cite pending], the Third District Court of Appeal rejected an argument set forth by the applicant seeking an interpretation of Labor Code Section 4660 applying the 1997 rating schedule to all injuries occurring before January 1, 2005. In rejecting this argument, the Court of Appeal noted that the argument set forth by the applicant had previously been rejected by the WCAB. The Court further reasoned that the exceptions to application of the 2005 rating schedule exist to ensure that the medical-legal process is not interrupted once begun and reiterated language from the prior WCAB case of *Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783 wherein it was held that there was no inconsistency or incongruity found within the language of Labor Code Section 4660 requiring a different result.

In an opinion certified for publication, ***Energetic Painting and Drywall Inc. v. WCAB***, [cite pending] the Court of Appeal, Third District, held that the 2005 Permanent Disability Rating Schedule applies to cases where temporary disability began prior to 2005, but the last payment was not made until after January 1, 2005. In so holding, the Court looked to the clear language of Labor Code Section 4660(d) allowing for application of the 1997 permanent disability rating schedule where an employer was required to send notice pursuant to Labor Code Section 4061 (together with the last payment of temporary disability). In discussing this section, the Court noted that the clear language of Labor Code Section 4061 requires the notice to be sent with the last payment of temporary disability and rejected the applicant's argument that because the duty to send the notice at some future date is triggered by the first payment of temporary disability, the exception should apply where temporary disability began prior to January 1, 2005.

See also ***San Francisco Marriot v. WCAB (Yamat)*** (unpublished) where the First District Court of Appeal held in accord with *Energetic Painting and Drywall, Inc. v. WCAB*, finding that the exception set forth in Labor Code Section 4660(d) did not apply unless the final payment of temporary disability was due prior to January 1, 2005.

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