

**Dear Subscriber,**

**Governor Signs Legislation Extending Temporary Disability Timeframes and More.**

Governor Schwarzenegger signed into law several new bills making adjustments to workers' compensation law over the past weekend.

AB 338 extends the period within which injured workers may collect temporary disability benefits to five years for those injured on or after January 1, 2008. Though an injured may still only collect 104 weeks of temporary disability payments, AB 338 allows for the 104 weeks of temporary disability to be collected within five years from the dates of injury, extending the time in which temporary disability benefits may be collected. Previously, under SB 899 an injured worker was allowed to collect up to 104 weeks of temporary disability, but had to do so within two years of the date of his or her injury. This Bill is an amendment to Labor Code Section 4656, adding Section 4656(c)(2).

AB 1073 removes the 'hard cap' of 24 chiropractic and physical therapy visits for postoperative care in cases where the injured worker is recovering from surgery. This bill, however, vests the Division of Workers' Compensation with the power to create and apply guidelines for post surgical chiropractic care. This Bill amends Labor Code Section 4604.5 by adding Section 4604.5(d)(3).

AB 1269 allows for an increase of payment to burn centers for inpatient care of industrially injured burn patients. This Bill is a change to Labor Code Section 5307.1.

**Injuries to be Rated Separately and Statute of Limitations Bars Claim of Firefighter**

In County of San Bernardino v. WCAB (Schroeder), the

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Fourth District Court of Appeal, in an unpublished decision, held that as the County had followed all proper procedures and the cumulative trauma claim had been filed after one year from the date of injury, the claim was barred by the statute of limitations. The Court further held that the WCAB had erred in finding all body parts should be rated together for a single disability rating as there were multiple permanent and stationary dates from multiple dates of injury and all injuries did not arise out of the same or a shared date of injury.

In Schroeder, the applicant was a firefighter who claimed injury on a cumulative trauma basis through his last date of employment, November 7, 1999, to his back, neck, and left knee. The application for this claim was filed in May of 2002. The applicant also had several specific injury claims that had been filed throughout his career with a specific left knee injury resolving by way of stipulated award at six-percent permanent disability on February 23, 2001. The applicant thereafter filed a petition to re-open the stipulated award.

The matter proceeded to trial with award issuing finding that the claim was not barred by the statute of limitations defense relating to the cumulative trauma and that all claims should be rated with a single permanent disability finding.

The finding and award of the WCAB was ultimately appealed to the Fourth District Court of Appeal. In reversing the WCAB's decision and finding the applicant's cumulative trauma claim barred by the statute of limitations, the Court noted that the County had followed all proper procedures including providing benefits for the applicant's admitted specific injuries. Further, the Court found no evidence that the employer knew or should have known of the applicant's cumulative trauma claim. Finally, the applicant never provided an explanation for the delay in filing the cumulative trauma injury.

Insofar as combining the permanent disability for the applicant's multiple injuries, the Court relied upon Parker v. WCAB, (1992) 9 Cal.App.4th 1636, holding that these injuries did not arise from a common event and did not all become permanent and stationary simultaneously, nor were the injuries all related to the same body part, thus preventing them from being combined for permanent disability rating purposes.

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**Workers' Compensation Judge Must Prepare a Summary of Evidence on All Cases Submitted**

In *Sharareh v. WCAB* (2007), the Court of Appeal, First District, held in an unpublished opinion that a WCJ must prepare a written summary of evidence in every case submitted for decision.

In this case, the applicant was shot in the throat allegedly while working as an undercover police informant. The claim was denied as not occurring in the course and scope of employment and ultimately submitted for arbitration.

After the matter was submitted, the arbitrator issued a finding that the injury was not industrial. In doing so, the arbitrator failed to prepare a written summary of evidence as required under Labor Code Section 5313. A petition for reconsideration was filed and the matter was upheld by the WCAB.

Upon being appealed to the First District Court of Appeal, the Court held that the arbitrator, as would a WCJ, must prepare a written summary of evidence relied upon and ordered the matter returned to the arbitrator for the preparation of a summary of evidence and an opinion consistent with other opinions of the Court.

### **WCAB Allows Interpreter Lien for Medical Treatment Appointments**

The WCAB, in *Perez v. SCIF (A's Match Dyeing)*(2007), in an opinion not designated as a significant panel opinion and not en banc, issued an opinion an order granting reconsideration and decision after reconsideration allowing the lien of an interpreter, in full, for services rendered in conjunction with medical treatment appointments.

In reaching their decision, the WCAB disagreed with the defendant's position that there is no provision in the Labor Code allowing for such reimbursements. Defendant further argued that in any other medical treatment scenario (as in private health insurance, bodily injury cases etc...), the injured party seeks out services from a physician who has staff equipped to assist with language needs and the insurance companies are not liable for providing such services. The WCAB was also unconvinced with this position.

The WCAB noted that effective communication is necessary between an applicant and their physician to ensure proper care. Moreover, the WCAB noted that all 'services, reasonably required to cure or relieve the injured worker from the effects of his or her injury', must be provided.

It is unknown at this time whether an appeal from this determination will be filed by the defendant in this matter.

Again, we thank you for your interest in FS&K Work Comp News and look forward to keeping you informed on the Workers' Compensation issues that most affect you.

Sincerely,

**The FSK Newsletter Team**

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(Chief Legal Editor)

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