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## Supreme Court Issues Opinion in Sandhagen

On Thursday, July 3, 2008, the Supreme Court issued an anxiously awaited Opinion in the matter of *State Compensation Insurance Fund (SCIF) vs. Workers' Compensation Appeals Board (WCAB) (Sandhagen) (2008)* [Cite Pending]. In their Opinion, the California State Supreme Court held that when considering requests for medical treatment, employers are not permitted to use the Agreed Medical Examiner (AME)/Panel Qualified Medical Examiner (QME) process under *Labor Code §4062* to dispute medical treatment requests by the employee. The Court held that an employer is bound to use the *Labor Code §4610* Utilization Review process in considering requests for medical treatment.

In *Sandhagen*, the applicant sustained injury to his neck, back, left elbow and left wrist on an industrial basis when he was struck by a car while performing his usual occupation.

Ultimately, a Magnetic Resonance Image (MRI) was recommended by way of a report dated May 24, 2004 by the applicant's treating physician. After the expiration of 14 days, on June 11, 2004, when there was no communication of the Utilization Review Determination, an Expedited Hearing was requested. Twenty-eight days following the MRI authorization request, a Utilization Review denial was forwarded.

At the time of the Expedited Hearing, the Judge ordered the MRI to be authorized. The Judge's Determination was subject of a Petition for Reconsideration. The WCAB vacated the Trial decision finding that even if the Utilization Review finding was untimely, *Labor Code §4062* could still be utilized as a dispute mechanism. This WCAB ruling was affirmed by the Court of Appeal.

After considering the facts of the case and the apparent

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legislative intent, the California State Supreme Court held that only *Labor Code §4610* (Utilization Review) could be used to govern medical treatment issues, the Supreme Court noted that *Labor Code §4062* (AME/QME process) provides that it applies to disputes relating to medical issues that are not subject to *Labor Code §4610*. As *Labor Code §4610* specifically governs the appropriateness of a given request for medical treatment, the California State Supreme Court found that medical treatment authorizations were excluded from the provisions of *Labor Code §4062*. In further support of their decision, the California State Supreme Court conducted a thorough review of the legislative history leading to the implementation of the Utilization Review provisions at question. The Court opined that the trend in the legislative history clearly demonstrated the Legislature's intent for medical treatment to be governed via Utilization Review and not the "lengthy and cumbersome process" previously in place.

In a dissent from the majority opinion, Justice Kennard agreed with the result set forth by the majority of the Justices, though wrote separately to clarify his opinion on the process. Justice Kennard opined that the process involves the employer first proceeding with the Utilization Review under *Labor Code §4610* and, then, if the employee disagrees with the conclusion, the employee may initiate a dispute under *Labor Code §4062*.

### Editor's Note:

*This California State Supreme Court Opinion would appear to require, first, that Labor Code §4610 Utilization Review be timely initiated and completed. In the event a modification delay or denial of treatment is provided via Utilization Review, the applicant can then timely object under Labor Code §4062, therein initiating the AME/QME process.*

*Previously, the defendant could use Utilization Review pursuant to Labor Code §4610, the AME/QME process pursuant to Labor Code §4062, both of these, or authorize treatment. With this holding, it now appears that the defendant is limited to Utilization Review to initiate the process.*

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## Five Year Limit on Temporary Disability Upheld

In Los Angeles County Department of Parks and Recreation

*vs. WCAB (Calvillo) (2008) [Cite Pending]*, the Second District Court of Appeal, in an unpublished decision, held that a new period of temporary total disability, occurring beyond five years from the date of injury, was not compensable unless it was a continuous period spanning across the time of five years from the date of injury.

The applicant sustained an admitted injury on September 24, 1997. Following this date of injury, at least two written stipulations were entered into relating to retroactive temporary disability and penalty issues as well as the weekly rate of payment. Moreover, following these stipulations, the parties entered into a Compromise and Release (C&R) settling all penalty relating to alleged unreasonable delay and further stipulating to a future weekly rate in the event of any future periods of temporary total disability.

The applicant was found Permanent and Stationary (P&S) on June 20, 2002. Finally, following all of the above, on October 11, 2005, the applicant was found to be Temporarily Totally Disabled (TTD) with a recommendation for surgery. The applicant's temporary total disability was denied by the county.

After Trial on the issue of temporary total disability, the Trial Judge found the applicant was entitled to temporary total disability from October 11, 2005 through the date of the Order and continuing. The defendant claimed that this was outside of five years from the applicant's date of injury and, as such, the applicant was not entitled to a new period of temporary disability as the WCAB lacked jurisdiction.

The defendant further contended that pursuant to the holdings in *Nickelsberg*, a new period of temporary disability commencing after the five years of date of injury was also barred.

On the Petition for Reconsideration, the decision of the Trial Judge was upheld with two unrelated exceptions (the amount of penalty and attorney fees).

On Appeal to the Second District Court of Appeal, the defendant set forth their contentions as described above.

The Second District Court of Appeal held, as is relevant, that in order for temporary total disability to be paid more than five years from the date of injury, the period must be a continuing period beginning within five years of the date of injury under the *Nickelsberg* and *Hartsuiker* cases as well as *Labor Code §4656*. As a result of this holding, and because the new period of temporary total disability began after five years from the date of injury, the Court found that the defendant was not liable for payment of temporary total

disability during this time period.

In sum, the Second District Court of Appeal, in this unpublished Opinion, held that unless temporary total disability begins within the five year period from the date of injury and extends across the five year point from the date of injury, the defendant is not liable for payment of a new period of temporary disability, even where the case has not been finally resolved by way of a Stipulated Award.

**Editor's Note:**

*Of course, the above matter applies to dates of injury prior to April 19, 2004 where the five year limit on temporary disability was in effect.*

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**

Jason C. Hilfrink

(Chief Legal Editor)

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