



California Workers' Compensation Institute

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October 29, 2015

Significant Decision 15-07

BATTEN V WCAB

**COURT OF APPEAL, SECOND APPELLATE DISTRICT,
DIVISION SIX
B260916**

FILED: OCTOBER 28, 2015

Medical reports obtained privately at the injured worker's expense under section 4064(d) are barred by section 4061(i) and are therefore inadmissible.

SIGNIFICANCE: In recent years, injured workers have used medical reports obtained at their expense and asserted that these reports are admissible as evidence relating to benefit issues in dispute. In this published decision, the Court of Appeal has determined that these outside opinions are inadmissible, as they are specifically barred from evidence by section 4061(i).

FACTS: The injured worker filed a claim for a number of orthopedic injuries and also claimed that a psychiatric injury was caused by these physical injuries. The agreed panel QME stated that 47% of her psychiatric condition was work-related. The injured worker obtained an opinion from a psychiatric specialist under section 4064 and that physician found that 51% of her injury was due to her work-related injuries. The WCJ admitted the opinion of the outside physician into evidence and found it persuasive. The WCJ ruled that the psychiatric injury was compensable.

On reconsideration, the Board found that section 4064(d) provides that "medical-legal evaluations obtained outside the procedures of sections 4060, 4061, 4062, 4062.1, and 4062[.2] are not admissible," so the psychiatric injury was not compensable.

HOLDING: The report of a "consulting physician" or "attending physicians" that relates only to medical care is not admissible for any other purpose.

DISCUSSION: The Board noted that section 4605 is contained in Article 2, which is titled "Medical and Hospital Treatment" and concluded that the term "consulting physician" means "a doctor who is consulted for the purposes of discussing proper medical treatment, not one who is consulted for determining medical-legal issues in rebuttal to a panel QME." The court agreed with this interpretation, concluding that "when an employee consults with a doctor at their own expense, in the course of seeking medical treatment, the resulting report is admissible" but inadmissible for determining medical legal issues.

The court reasoned that section 4061(i) permits the admission of an evaluation prepared by a treating physician, but neither that section nor section 4605 permits the admission of a report by an expert who is retained solely for the purpose of rebutting the opinion of an AME or QME opinion.