



Significant Decision

No. 18-03

March 6, 2018

COUNTY OF SAN DIEGO V. WCAB (PIKE)

IN THE COURT OF APPEAL, FOURTH DISTRICT
(D072648)

FILED: MARCH 6, 2018

For post-1/1/2008 injuries, Labor Code §4656(c)(2) prohibits an award of temporary disability indemnity for periods of disability occurring more than five years from the date of injury, even where the case has been timely reopened and the TD started within 5 years from DOI.

Significance: In a case of first impression, the Court of Appeal held that the WCAB does not have the authority to award benefits that are expressly prohibited by the plain language of §4656(c)(2), and that neither temporary disability indemnity nor salary continuation benefits under §4850 may be awarded for any periods of disability beyond five years from the original date of injury.

Facts: A deputy sheriff for the County of San Diego sustained injury on 7/31/2010, and settled the case by Stipulated Award for 12% in May 2011. At the time of the settlement, applicant had not received the full 104 weeks of temporary disability indemnity. He timely filed a petition to reopen his claim in May 2015, seeking both salary continuation benefits under §4850 and TTD benefits under §4653. The County paid salary continuation and TTD benefits only through 7/31/2015, representing the period ending five years from the original DOI. Applicant sought additional benefits through August 2016.

After trial, the WCJ found that he had continuing jurisdiction to award TTD benefits beyond five years from the DOI because applicant had timely filed a petition to reopen and the disability had commenced prior to the expiration of five years from the DOI. Defendant filed for reconsideration, and a split decision from the WCAB upheld the WCJ's award; dissenting Commissioner Razo concluded that the statutory language could only be interpreted to preclude an award of indemnity benefits beyond 7/31/2015. The County filed for a writ of review, which was granted.

Holding: Under §4656(c)(2), applicable to injuries on or after 1/1/2008, the WCAB is authorized to award a maximum of 104 weeks of temporary disability, but the WCAB is limited to awarding payments for periods of disability occurring within five years of the injury. Because salary continuation payments under §4850 constitute "aggregate disability payments," these benefits are also limited to five years from the DOI.

Discussion: For injuries on or after 1/1/2008, Labor Code section 4656(c)(2) states that temporary disability indemnity "shall not extend for more than 104 compensable weeks *within a period of five years from the date of injury.*" (Italics added)

The Court of Appeal reviewed the legislative history of §4656(c)(2), and concluded that the statute “clearly states that, for injuries occurring on or after January 1, 2008, temporary disability benefits may not be awarded for periods of disability occurring more than five years from the date of a worker’s injury.” The decision quotes extensively from the Legislative Counsel’s Digest and the Assembly Floor Analysis, both of which were provided to the court as part of CWCI’s amicus brief.

Pointing out that there is no prior appellate authority construing §4656(c)(2), the Court of Appeal also reviewed relevant and analogous case law (*Radesky*, *Sarabi*, and *Nickelsberg*) to support the finding that the relevant statutory language does provide that all periods of temporary disability for which payments are made must occur within five years from the date of the injury. At the same time, the decision completely discounted lower-level case law relied upon by the WCAB (none of which actually involved §4656(c)(2)).

In his effort to support the award of additional benefits, applicant and CAAA (acting as amicus) relied upon extensive arguments regarding the WCAB’s “jurisdiction” to award the benefits in question. The Court of Appeal completely discounted these arguments, pointing out that “jurisdiction” refers only to the power of a court to hear and determine a matter; in this case, the Court explained, the actual “substantive law” defining applicant’s legal entitlement to benefits was a separate and distinct concept. “Even assuming that the Board had *jurisdiction* under section 5410 to rule on Pike’s petition to reopen, the Board had no power to award benefits in direct contravention of the express substantive limitation on the award of temporary disability benefits....”

All in all, the decision in this case was not a close call. The Legislature could hardly have been more clear in its drafting of the statutory language, although neither the WCJ nor the WCAB seemed to pay much attention. In his trial decision, the WCJ opined: “Had the Legislature intended [to limit entitlement to temporary disability indemnity], they could have easily provided that no temporary disability indemnity shall be payable more than five years subsequent to an industrial injury.” As the Court of Appeal painstakingly explained in its decision finding the WCAB’s decision to be “clearly erroneous,” that is *precisely* what the Legislature did.

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