

KEGEL, TOBIN & TRUCE
INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/CLIENTS

FROM: JOE TRUCE

DATE: July 7, 2004

RE: PETITIONS FOR WRIT OF REVIEW

As we all know, most Petitions for Writ of Review, even those with undeniable merit, are summarily denied by the Appellate Courts of this state.

However, in the case of Gary Bristow v. Workers' Compensation Appeals Board 62 CCC 1, the Court of Appeal has reminded us that the Board always has a legal obligation to comply with Labor Code §5908.5 which states in relevant part as follows:

"Any decision of the Appeals Board granting or denying a Petition for Reconsideration or affirming, rescinding, altering, or amending the original Findings, Order, decision or Award following reconsideration...shall state the evidence relied upon and specify in detail the reasons for the decision..."

In the case at bench, the petitioner contended that the refusal of the Workers' Compensation Judge (WCJ) to allow an evidentiary hearing on the WCJ's denial of the applicant's Petition to Reopen and denial of his Petition for Cumulative Injuries constituted a denial of due process.

In recommending that the applicant's Petition for Reconsideration be denied, the WCJ according to the court did not give any adequate explanation as to the applicant's contention that his due process rights were violated.

In granting the Petition for Writ of Review and remanding the case back to the Board, the court stated in relevant part as follows:

"The purpose of this requirement is to facilitate meaningful judicial review of Board decisions by affording the reviewing court detailed information about the basis for the Board's action and to help the Board avoid careless or arbitrary action by requiring it to carefully consider the facts and to render a reasoned analysis in support of any decision it may reach..."

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Therefore, in any case in which we are considering a Petition for Writ of Review, we certainly want to consider the Board's denial of our Petition for Reconsideration in light of Labor Code §5908.5.¹


WJT:dab

¹The Court of Appeal also reversed the Board on the same issue (failure to comply with Labor Code §5908.5) in the case of Nita S. Calvillo v. WCAB 62 CCC 3.