

KEGEL, TOBIN & TRUCE

INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/ALL OFFICES
FROM: JOE TRUCE
DATE: December 14, 2000
RE: JURISDICTION OF APPEALS BOARD OVER TEMPORARY
DISABILITY

Some years ago Workers' Compensation Judges (mostly at the Van Nuys Appeals Board) would specifically retain jurisdiction over awarding further temporary disability - when they approved a Stipulated Findings and Award.

The Judge that insisted on doing this in Van Nuys was Judge Clay Robbins (who is no longer on the Board). Judge Robbins theorized that if he approved a Stipulated Findings and Award and the five year continuing jurisdiction of the Board from the date of injury ran, the applicant would be no longer eligible to collect temporary disability - more than five years from the date of injury. Judge Robbins attempted to do this on the now famous case of Nickelsburg v. Workers' Compensation Appeals Board 56 CCC.


In Nickelsburg (which is our firm's case), the Supreme Court eventually held that the Board may not retain continuing jurisdiction to award temporary total disability and the only way the Board could have jurisdiction to award temporary disability more than five years from the date of injury was if a timely Petition to Reopen were filed (that is filed within the five years from the date of injury).

I am enclosing a case called Joani Beck (Hambrick) v. WCAB 65 CCC 845 which somewhat expands this doctrine. Apparently the applicant's attorney in this case, Greg Dehm (those of you that remember the old self-insured Western Waste cases will remember that Greg Dehm was an adjuster for ComCo on Western Waste) filed a Petition to Reopen just before the five years ran when the applicant had received a prior Findings and Award.

In a writ denied case the Board held (and the court confirmed) that the Petition to

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Reopen was only a subterfuge to give the Board continuing jurisdiction over temporary disability, as the temporary disability actually occurred more than five years from the date of injury.


WJT/dab

Attach - Joani Beck (Hambrick) case