

KEGEL, TOBIN & TRUCE
INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/CLIENTS
FROM: JOE TRUCE
DATE: March 18, 2004
RE: **DISABILITY EVALUATION UNIT'S RATERS ARE NOT TRIERS OF FACT BUT ARE SIMPLY EXPERT WITNESSES**

In the case of Raymond Perez v. Workers' Compensation Appeals Board, U.S. Foods¹ the Board once again affirmed that rating specialists are not "triers of fact" but are simply expert witnesses.

The questionable "rating" occurred at the Anaheim office of the Appeals Board.

Following Trial, the workers' compensation judge framed formal permanent disability rating instructions which described the applicant's job duties and advised as to the subjective and objective factors of disability and also indicated that there were no work restrictions.

The rating specialist assigned a 60% standard rating to the judge's rating instructions, which increased to 73% after adjustment for age and occupation.²

The defendant then filed a Petition for Reconsideration challenging the 73% permanent disability rating and the Board granted reconsideration, and referred the case for a consultative permanent disability rating to the supervisor of the Disability Evaluation Unit for Northern California.

The new state rater assigned a different occupational group number to the applicant's occupation (350) and found that the judge's rating instructions actually took a 40% standard rating.

However, on cross-examination the rating specialist changed her opinion and the rating came down to a 25% standard rating, which rated out at 34% after adjustment for age and occupation.

The Board then adopted the "expert opinion" of the new state rating specialist and a decision was issued finding permanent disability at 34%.

¹The Perez case is attached and is reported in the Appeals Board Reporter in its January 23, 2004 edition.

²Three guesses as to the identity of the rating specialist and the first two don't count.

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Applicant's Petition for Writ of Review was denied.

The Board actually filed an Answer to the Applicant's Petition for Writ of Review pointing out that "it is the WCAB that is the ultimate arbiter of an injured employee's permanent disability rating...The raters of the DEU are not the triers of fact; rather they are merely expert witnesses who offer their opinions regarding the appropriate rating of the factors of permanent disability framed by the WCAB..."

WIT:dab
Enclosure - Perez