

## ANOTHER INSTALLMENT IN THE *GEORGE THE BARTENDER* SERIES

For other installments of the George the Bartender series, please visit our web site at <http://www.kttlaw.us/memos.html>

**RE:           GEORGE THE BARTENDER AND THE CREDIT PROVISIONS OF  
LABOR CODE §4909**

### FROM THE LOBBY BAR AT THE HYATT:

The victory party for George's attorney, Ron Summers, was in full swing when I arrived at the bar after a hard day of denying benefits.

George and his attorney, Ron Summers, had smiles from ear to ear and when Ron bought my first Beefeater's Martini straight up with two olives I felt it only right to inquire as to the reason for the celebration.

Ron explained that his victories had been sparse since the enactment of SB899 and any victory, no matter how small, was a cause for celebration.

Ron told me that the insurance carrier in George the Bartender's carpal tunnel syndrome case had over-advanced permanent disability in the amount of \$5,000.00 and the carrier had filed a Petition Requesting Credit against George's Award of medical treatment or for that matter credit against any further permanent disability benefits should George file a Petition to Reopen for New and Further Disability.

With some enthusiasm and a slap on the back Ron advised me that the Board had ruled in his favor and cited with approval a writ denied case entitled ACT One Personnel Services vs. Workers' Compensation Appeals Board (Rebecca Dinney)<sup>1</sup>.

In the *Dinney* case the Board held that they “. . . may allow a credit for any payment, allowance or benefit paid by an employer to an injured worker when it was not then due and payment or when there was a dispute or question concerning the right to compensation. Equitable principles should be applied favoring allowance of a credit if the credit is small and does not cause a significant interruption of benefits. Allowance for credit or overpayment of one benefit against a second benefit can be disruptive and in some cases totally destructive of the purpose of the second benefit.” (See Maples v. Workers' Compensation Appeals Board (1980) 111 Cal.App 3<sup>rd</sup> 827.)

Ron went on to note gleefully that as in the *Dinney* case the Board did not allow the insurance carrier in George's carpal tunnel syndrome case a credit for the overpayment of permanent disability as against George's Award of future medical treatment.

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<sup>1</sup> This case is summarized in the Appeals Board reporter: 9WCAB Rptr. 10,113.

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Ron told me that even though the defendant's credit against George's Award of future medical was denied, the board allowed defendant's credit should George file a Petition to Reopen alleging New and Further Disability benefits.

**DISCLAIMER:** The above mythical case involving George and his mythical attorney points out a common issue faced by employers and insurance carriers. Pursuant to Labor Code §4909 the legislature wanted to encourage the providing of benefits in a close case so this statute provides that the providing of benefits is not an admission of liability. On the other hand Labor Code §4909 gives the Board discretion in allowing credit for an overpayment of one benefit as against another benefit. Generally, the Board and the courts have allowed a credit when the overpayment of the benefit was caused and/or contributed to by the actions of the applicant. However, in those cases in which the applicant is an innocent party with respect to a mistaken overpayment of benefits, the Courts traditionally reason that the injured employee should not be burdened by a credit against a benefit such as medical treatment on the rationale of "who better is to bear the cost, i.e. the injured employee or the insurance carrier." **Caution: As Labor Code §4909 gives the Board discretion allowing the defendant to take credit for the overpayment of one benefit as against another benefit (such as an overpayment of temporary disability as against permanent disability) the Board has previously penalized defendants for unilaterally taking said credit as opposed to filing the appropriate petition with the Board. Anyone desiring a copy of the *Dinney* case should make the request by e-mail.**

Make mine a double, George.

Joe Truce