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WORKERS' COMPENSATION NEWSLETTER

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VOLUME 21, NO. 1 FEBRUARY 2017

D.A.R.E.[1] TO SAY NO TO MEDICAL MARIJUANA?

By Uzair Saleem, Oakland

Introduction

Just say no to Drugs. That's what we were taught growing up. And that's what some are still saying. But should they? The national legalization of medical marijuana reminds me of global warming. People still seem conflicted about the topic. Friends are resisting it. Hollywood celebrities are endorsing it. The President of the United States has said it's a hoax. But let's face it - in 2017, like the undeniable reality of the rising ocean levels, **medical marijuana is happening**.

But the million dollar question - wait, scratch that - the billion dollar question for insurance carriers remains unanswered: can an insurance company become liable for expenses associated with medical marijuana use?

In two words: *Not yet.*

As of today there are still obstacles that prevent medical marijuana from becoming common-place in the workers' compensation system. But don't blink. It's coming at us faster than self-driving cars taking over our freeways!

Possession Of Marijuana Is Still A Federal Crime

But I thought it was already legal everywhere.

Despite the fact that 28 states (more than half the country!) plus the District of Columbia have legalized the use of medical marijuana for certain medical conditions, including chronic pain, possession of marijuana is still a federal crime.

Even though state legislations across the country have legalized it, at the federal level it's still illegal. In situations where state and federal laws clash, there is the supremacy clause, an article in the Constitution. Let's make it simple. Federal law trumps state law. As long as possession of marijuana is illegal at the federal level, insurance carriers will generally be shielded from liability.

[1] *Drug Abuse Resistance Education (D.A.R.E.)*

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SUPPLEMENTAL LEARNING: THE SJDB VOUCHER SYSTEM EXPLAINED

By Mark Turner, Sacramento

In January of 2013, the Workers' Compensation community grappled with the impacts of SB 863, a bill that has had sweeping effects on many facets of day to day legal practice. From stark changes to the treatment process with utilization review and IMR, to the elimination of psych and sleep permanent disability as compensable consequences, the legal community has evolved, challenged, and slowly but surely implemented these changes over time. However, one area of SB 863 that has largely flown under the radar, both in terms of developing jurisprudence at the appellate level and the day-to-day case management level, is the new Supplemental Job Displacement Voucher (SJDV) system established in Labor Code Section 4658.7.

Interest in the voucher has grown considerably in the last few years, as applicant's attorneys have been making a concerted effort to focus on this previously "untapped" benefit. Like most workers' compensation laws, the devil is in the details, and where common sense might dictate a certain result, the strictures of the law would dictate another, the neglect of which could result in delay of benefits and penalties. This article's focus will be to point out the basic requirements of Labor Code Section 4658.7 as well as the recent pertinent case law, in an effort to better understand the law's finer points, how the law has changed, and ultimately limit exposure.

The Basics

The most important tool of the savvy practitioner is often times the most overlooked. In many cases, common practice develops out of habit and repetition; an honest mistake made repeatedly can have devastating impacts in the long term. This is why cracking open a copy of the Labor Code and reading the plain text of a statute is vitally important to developing correct practice and procedure, especially when it concerns provision of benefits.

Labor Code Section 4658.7(b), which is applicable only to injuries occurring after January 1, 2013, states, in pertinent part, that unless "an offer of regular, modified, or alternative work" has been made by the employer, the applicant "**shall** be entitled to a supplemental job displacement benefit" if "the injury causes **permanent disability**." The employer has 60 days from the first report from either the PTP, AME, or a QME finding the applicant permanent and stationary for all conditions and that the injury has caused permanent disability. This is a stark change from the pre-SB 863 system codified in Labor Code Sections 4658.5 and 4658.6—which apply only to dates of injury between January 1, 2004 and January 1, 2013— where the applicant could not obtain the SJDB voucher until an award of permanent disability.

The employer also had only 30 days to issue an offer of modified or alternative work from the last provision of temporary disability benefits, but the applicant had **60** days from the end of temporary disability benefits to return to work. The SJDB voucher system prior to SB 863 was a confusing mess; the differing timelines for offer and return to work, combined with the sometimes staggered reporting of PTP's and QME's led to the voucher generally being overlooked.

In the current statute, an employer must make an offer of regular or modified work whether the applicant has received temporary disability or not. Again, the only requirement is the presence of permanent disability. The law, to its credit, fixes the prior confusion of the voucher and provides clear and unambiguous criteria for its issuance. That is not to say that it is without its flaws.

The Changes

The changes implemented by SB 863 intended to provide the voucher to the applicant at the earliest feasible date in a case. Before to SB 863, many practitioners will recall that the voucher was almost a forgotten benefit; many times the applicant's temporary disability benefits would have ended months, or even years before the issuance of a PD award. By then, the applicant might have retired or been terminated for cause.

SJDB VOUCHER SYSTEM Cont.

Applicant's attorneys may have missed it as a potential issue, choosing instead to opt for total resolution via C&R.

SB 863 revamped the voucher to issue before a PD award, and it strictly forbids settling an applicant's entitlement to the voucher at all. Indeed, WCABs in a vast majority of cases will disallow settlements where the applicant's entitlement to the voucher is being resolved (except under very limited circumstances). In turn, applicant attorneys have begun to get wise to the benefits of the new voucher system, which include $500 no strings attached and up to $1,000 toward a laptop among others.

In addition to the benefits above, perhaps the biggest reason for the renewed interest in the voucher by applicant's attorneys is the access the voucher provides to a $5,000 one-time lump-sum payment with no strings attached from a state fund designed for exactly that purpose. It is unclear whether this information was widely known, as it is not contained in the labor code section governing the issuance of the voucher. This fund exists outside the workers' compensation system and is an added boon to an applicant who might otherwise have a low permanent disability award but prohibitive work restrictions.

The Problem

Since its implementation, the expediency of the new voucher system has butted heads with in-practice realities of workers' compensation law. Because the new system requires only the presence of permanent disability for voucher eligibility, what happens when the applicant returns to work of his own volition but no formal, written offer is made? What if applicant's attorney objects to the first report finding the applicant is permanent and stationary for all conditions? What if the applicant is terminated for cause or retires before the first report finding permanent disability? What about in cases where fraud is suspected; is the voucher still owed? The answer to all these questions would presumably be yes, relying purely on the language of the statute. Gone are the ambiguities of the previous system. Gone, too, is the ability to sweep all the vagaries of whether the voucher is owed under the rug by settling the entitlement in a C&R, or including dollar value equivalent of the voucher to a settlement.

Unfortunately, there are few concrete answers to the questions of whether the applicant is entitled to the voucher in the situations above. In many cases, it is simply not worth it to litigate that entitlement, as the main reason applicants want the vouchers in the first place is for the additional $5,000, which does not come directly from the coffers of employers or insurance carriers. A good rule of thumb is to **always** issue an offer of modified work, or, in the cases where an applicant has been terminated for cause, draft a letter to the applicant indicating work **would have** been available had the applicant not been terminated for cause. There is no guarantee that such a letter will suffice to satisfy the requirements of the law, but until there is more clarification on the issue, there could be no potential harm of doing so. If an offer of work is not made within 60 days of the very first report finding the applicant is permanent and stationary and has permanent disability, penalties for delay of benefits could begin to accrue. Sending an offer of work, or even a proposed offer of work, could potentially cover the necessary bases and prevent unreasonable delay.

Despite the unambiguous wording of the law, the law does not address entitlement to the voucher where the case in chief is denied. Before the major reforms of SB 899 in 2004, parties could settle vocational rehabilitation (VR) benefits in denied cases only with a "*Thomas* Finding." After SB 899, parties could still settle the SJDV entitlement, but the *Thomas* finding was not necessary. Prior to SB 899, *Thomas* language would accompany a C&R noting that a good faith dispute exists as to an applicant's entitlement to VR benefits, which if resolved against the applicant would result in a complete bar to benefits. As *Thomas* findings have gone by the wayside, the *Thomas* language has nevertheless persisted in settlement agreements for years to demonstrate good faith disputes concerning factual or legal arguments to preserve a denial in the face of liens or future disputes. However, as mentioned above, SB 863 has strictly forbidden settling an applicant's entitlement

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ABOVE AND BELOW THE 100% PERMANENT DISABILITY THRESHOLD

By Martha Ballesteros, Anaheim

Basic arithmetic teaches us that 100% is a whole, the max, or in other words, all that can be found in a unit. This past year, however, the Worker's Compensation Appeals Board (Board) explained how it is possible for a person to sustain more than a 100% permanent disability (PD). At the same time, in another case, the Board reiterates the standard of evidence, i.e. substantial evidence, needed to support an impairment rating. If the evidence presented to support a total disability award does not rise to the level of substantial evidence, the disability falls short of 100%.

Above The 100% Threshold: How Can This Be?

In the panel decision *Matlock vs. State of California, Department of Transportation* (ADJ7762783, ADJ7752630, Sacramento District Office), the Board laid out how an applicant can sustain 100% permanent disability (PD) in one claim and 51% PD in another even though it affects the same body part.

Initially, at the trial level the Workers' Compensation Judge (WCJ) found that the applicant sustained an industrial injury to his low back, neck, headaches and **left shoulder** on July 14, 2004 with the resulting PD at 78%. The WCJ also found that the applicant sustained a subsequent industrial injury on August 5, 2005 resulting in an additional disability finding of 51% PD for his **right shoulder**.

The applicant appealed this finding arguing that the WCJ erred in concluding that he was not entitled to an award of 100% PD for the 2004 injury. He argued that the functional limitations from the 2005 right shoulder injury are not a major factor in his overall disability but that he was unable to work due to his 2004 injury.

In the Report and Recommendation on Petition for Reconsideration (Report), the WCJ concurred with the applicant's argument and recommended a finding of 100% for the 2004 injury. The Board agreed, adopting and incorporating the Report as the decision of the Board. The matter was returned to the trial level for a new final award.

Of course the effect of that new final award of 100% PD for the 2004 injury with 51% PD for the 2005 injury led to the applicant receiving two awards that when considered together exceeded the 100% threshold, i.e. 151% PD. But how can someone be more than 100% disabled?

The defendants had the same question leading them to file a Petition for Reconsideration on the issue. Can the applicant be more than 100% permanently disabled pursuant to Labor Code Section 4664(c)(1)? That section provides in part that "the accumulation of all permanent disability awards issued for **one region of the body** shall not exceed 100% over the employee's lifetime…." Essentially, an injured worker is not entitled to multiple awards for impairment to the same region of the body if those multiple PD awards exceed 100% PD. Further,

100% PERMANENT DISABILITY THRESHOLD CONT.

under Section 4664(c)(1)(E) the "upper extremities, including **the shoulders**", are considered one region of the body.

In this case, the applicant sustained two separate injuries, one to each shoulder. Under Section 4664(c)(1)(E), that is two awards for one region of the body. The defendants argued that the award to the right shoulder in the August 25, 2005 injury should not have been allowed because the Board already found that the applicant's July 14, 2004 injury caused 100% PD to the left shoulder. Allowing both awards, the defendants argued, results in a finding of more than 100% PD to one body part, the upper extremities, which is contrary to Section 4664.

Much to the disappointment of employers and carriers all over, the Board explained that even though the left shoulder was a part of the 100% PD award, the PD assigned solely to the left shoulder can be separated out and combined with the PD of the right shoulder to show that it does not exceed 100% for that body region. Just because Section 4664(c)(1) defines the shoulders as one region of the body does not mean the applicant is prevented from receiving two separate awards for that same region of the body. In this case, when the percentage of PD assigned solely to the left shoulder is combined with the 51% PD assigned to the right shoulder, the disability did not exceed 100% PD. With that explanation, the Board denied the defendant's Petition for Reconsideration.

This demonstrates how a finding of 100% permanent disability does not preclude additional awards. A subsequent or additional award of permanent disability is allowed as long as one region of the body does not exceed the 100% permanent disability limit over an employee's lifetime.

Keeping It Below the Threshold

In contrast, another case examines evidence that was successfully used to maintain impairment ratings below the 100% threshold. In the panel decision A*guilera vs. Collins Chiropractic Group* (ADJ865311, Los Angeles District Office), the Board explained how three AME reports rose to the level of substantial medical evidence to support a PD award of less than 100%. In doing so, the Board rejected the opinions of a vocational expert and consulting physician who found the applicant 100% permanently totally disabled.

The applicant sustained industrial injuries to her gastrointestinal system, irritable bowel syndrome, hypertension, cervical spine, lumbar spine, shoulders, elbows, wrists, hands, knees, psyche, fibromyalgia, and affective spectrum disorder. The parties proceeded to three AMEs, Dr. Majcher in Internal Medicine, Dr. Freeman in Psychiatry, and Dr. Fedder in Orthopedics. She was also evaluated by Mr. Enrique Vega, a vocational rehabilitation specialist.

Dr. Fedder, orthopedic AME, found an orthopedic industrial injury with no apportionment.

Dr. Freeman, psychiatric AME, concluded that the applicant sustained an industrial injury and apportioned 15% of her impairment to non-industrial factors. He diagnosed her with Depressive Disorder, not otherwise specified, with Anxiety and a Pain Disorder Associated with both Psychological Factors and a General Medical Condition.

Dr. Majcher, internal AME, diagnosed the applicant with affective spectrum disorder, diabetes, hypertension, irritable bowel syndrome, and gastroesophageal reflux. He concluded that 10% of her hypertension impairment was due to non-industrial factors. Dr. Majcher referred the applicant to consulting rheumatologist, Dr. Bluestone.

Dr. Bluestone evaluated the applicant and diagnosed her with post-traumatic fibromyalgia leading to a chronic widespread pain syndrome that caused an affective spectrum disorder. He went on to state that affective spectrum disorder is often referred to as a "pain disorder associated with psychiatric factors and general medical condition." Dr. Bluestone opined that the applicant was permanent and totally disabled using *Almaraz/Guzman* to access Chapter 18 of the AMA Guides to describe the impact of her injury on her activities of daily living. Dr. Majcher subsequently reviewed and ultimately adopted all of Dr. Bluestone's opinions in his own report.

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MEDICAL MARIJUANA

(CONTINUED FROM PAGE 1)

So, How Could This Change?

The Drug Enforcement Administration still classifies marijuana as a Schedule I drug, defined by the Federal Controlled Substance Act of 1970.

What does Schedule I classification mean?

Drugs are categorized into different schedule classifications: I, II, III and IV respectively according to key characteristics. A Schedule I drug has no recognized safe medical use and a strong potential of abuse. Heroin, LSD, and Ecstasy are all Schedule I drugs.

The main difference between Schedule I drugs, such as the ones listed above and Schedule II drugs such as oxycodone and hydrocodone, is their accepted medicinal use. Cough syrup and Ambien are examples of Schedule III and IV drugs.

The Schedule I classification of medical marijuana is easily the biggest roadblock facing its integration into workers' compensation.

> *"Only the Food and Drug Administration can determine whether marijuana has an accepted medical use, according to the DEA, and so far, it hasn't. Because marijuana is a Schedule I drug, doctors can only "recommend" it to patients, not write prescriptions for it that they can fill at a drugstore."*
>
> – (Rubin, Rita. *"Many States Have Legalized Medical Marijuana, So Why Does DEA Still Say It Has No Therapeutic Use?" Forbes. Forbes Magazine*, 18 Nov. 2016. Web.)

A reclassification of marijuana to Schedule II or lower would lead to government experimentation by way of clinical trials in thousands of peoples. These tests would help determine the benefits and risks of medical marijuana use; and if favorable, would conclude in FDA approval.

While experts already value the marijuana pharmaceutical industry at a modest $35 billion+ market, imagine what would happen if the FDA were to approve of medicinal marijuana. It seems that due to the combination of financial incentives along with the changing public sentiment, the use of medical marijuana in workers' compensation is inevitable.

Why Does This Matter So Much?

Given the recent historical data, it doesn't really seem like a question of if, but when. The legalization of marijuana is such a complicated problem for employers. Just think about all the different areas it will impact: workers' compensation, employment law issues, hiring practices involving drug screening, employment policies and rules regarding drug-free workplace environments, and many many other areas of insurance coverage.

But We Don't Need To Worry About It In California, Right?

Not yet. To date, there have been a handful of split and conflicting decisions at different California Workers'

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MEDICAL MARIJUANA Cont.

Compensation Appeals Boards, none of which have decided the issue in a definitive way.

But you don't have to look too far to see what's happening in the neighborhood.

A little over two years ago, on January 13, 2015, the New Mexico Court of Appeals reversed the decision of a Workers' Compensation Judge (WCJ) that found that payment for medical marijuana did not qualify as "reasonable and necessary medical care", as the Injured Worker tested positive prior to the treating doctor authorizing use. In the case of *Maez v. Riley Industrial*, 33, 154 (N.M. Ct. App. 2015), the Court of Appeals found that the "compassionate use" law allows for the use of medical marijuana to be treated as a "functional equivalent of a prescription," that it was in fact "reasonable and necessary medical care," and ruled it must be paid for by the New Mexico workers' compensation system.

But wait. Read this. The New Mexico Court of Appeals affirmed (supported) the WCJ's decision to order payment for medical marijuana in *Vialpando v. Ben's Automotive Services and Redwood Fire Casualty*, No. 32,920 (N.M. Ct. of Appeals 5/19/14), which is widely considered to be the first workers' compensation case that required benefits to be paid for medical marijuana treatment.

Is This Really A Bad Thing?

> *"...prescription opiates are as addictive as heroin...you take a few pills, you can be addicted for life. You take a few too many and you can die."*
>
> (Clement, Scott. *"One-third of long-term users say they're hooked on prescription opioids."* The Washington Post. N.p., 9 Dec. 2016. Web.)

Opioid abuse — prescription painkillers — is the main cause of rising death rates among middle-aged white Americans. It's also a strong contributing factor for why we now have the first overall decline in U.S. life expectancy in more than two decades. (*Clement 1*)

In 2014, U.S. doctors wrote 240 million prescriptions for opiates, enough for every adult to have their own bottle of pills. The CDC estimated that about 2.1 million Americans are addicted to legal narcotics. (*Clement 1*)

One-third of Americans who have taken prescription opioids for at least two months say they became addicted to, or physically dependent on, the powerful painkillers, according to a new Washington Post-Kaiser Family Foundation survey. (*Clement 1*)

According to the Washington Post, *"Virtually all long-term users surveyed said that they were introduced to the drugs by a doctor's prescription, not by friends or through illicit means."* (*Clement 1*)

It's really no secret that the overuse of prescription pain medication in workers' compensation and its associated complications begs a solution.

Is medical marijuana that solution?

It remains to be seen.

Whether or not medical marijuana will provide a safer alternative treatment for claimants while also being a more cost-effective treatment plan for insurance companies is still up in the air.

The case law and the studies regarding this rapidly growing industry are still evolving A change of this magnitude does not happen overnight, and there is much to be done at the federal level before it reaches the trenches of workers' compensation. Nonetheless, if there is anything to take away from this is that this movement is not "going up in smoke" (pun intended) any time soon. For that reason, we will continue monitoring this issue for the latest legal trends and report them to you as they affect workers' compensation. ⌘

SJDB VOUCHER SYSTEM

(CONTINUED FROM PAGE 3)

to the SJDB voucher for post 1/1/13 claims without any exceptions. What, then, should be done with SJDB benefits in denied cases which are settled via C&R?

Beltran And Settling The Voucher

In *Beltran v. Structural Steel Fabricators*, the carrier denied the applicant's case based on a good faith factual dispute. The case settled via Compromise and Release, and the parties included language in the C&R indicating the parties' intent to settle the SJDB voucher using *Thomas*-esque language. The WCAB disallowed the parties to settle the voucher citing Labor Code Section 4658.7(g). A WCAB panel overturned the ruling of the lower court, finding that the parties could settle the voucher using *Thomas* language, provided there was indeed a good faith dispute as to the applicant's entitlement to the voucher. Despite the strict prohibition on settling the voucher, the WCAB panel analogized that the new system of benefits was like the old, pre-SB 899 vocational rehabilitation system, in that they could only be settled if there was a good faith dispute, which if resolved against the applicant, would result in a complete denial of benefits. Where an applicant's case is denied, and a good faith dispute exists as to the applicant's entitlement to benefits, it stands to reason that his or her entitlement to the voucher would also be disputed due to the voucher being tied to the presence of permanent disability. Where an applicant's entitlement to permanent disability is disputed, so too should his or her entitlement to the voucher.

While *Beltran* is not binding authority, many judges at the WCAB level feel that the arguments contained therein are persuasive, and have indicated they will follow its holding if a good faith dispute indeed exists and can be demonstrated with specific facts or legal arguments. As such, a good rule of thumb would be to always at least attempt to settle the voucher where a good faith dispute exists as to an applicant's entitlement to workers' compensation benefits as a whole.

Conclusion

The scant ambiguities of the law will no doubt be litigated in the future, and hopefully a bit more guidance will emerge as the jurisprudence begins to coalesce, just as it has done for the previous iterations of the voucher system. Until such time as there is clear case law, best practices would be to either issue an offer (or proposed offer where an applicant has been terminated for cause or business decision) or if the applicant's restrictions cannot be accommodated, simply issue the voucher as soon as possible after the receipt of a permanent and stationary report finding permanent disability. ⌘

100% PERMANENT DISABILITY THRESHOLD

(CONTINUED FROM PAGE 5)

Mr. Vega, the vocational rehabilitation specialist, evaluated the applicant and addressed her future earning capacity and inability to return to the open labor market. In doing so, he reviewed the reports of all the specialists, and concluded that she was permanently and totally disabled.

The parties proceeded to trial wherein the applicant testified to difficulties performing activities of daily living, experiencing pain throughout her entire body, and having a sensitivity to touch. The WCJ observed the applicant while she gave testimony. He noted that while the applicant moved on the stand, she moved "in a slow but deliberate manner."

The WCJ requested a formal rating and gave the parties the opportunity to cross-examine the Disability Evaluation Unit (DEU) rater. Pursuant to the WCJ's instructions, the rater determined, based on the AME reports, that the applicant was 87% permanently disabled. Neither party chose to cross-examine the rater. The applicant nonetheless requested that permanent dis-

100% PERMANENT DISABILITY THRESHOLD CONT.

ability be determined based on Dr. Bluestone's findings of 100% permanent disability, which were adopted by Dr. Majcher.

The WCJ issued a Findings and Award finding the applicant 100% permanently totally disabled either under Labor Code Section 4662(a) which creates a presumption of permanent total disability when an injury results in practically total paralysis, or Labor Code Section 4662(b) which allows a determination of permanent total disability in accordance with the fact.

The defendants appealed. The Board Panel reviewing the case on reconsideration advised they would give great weight to the reports of the AMEs under the principles set forth in *Powers v. Workers Compensation Board of Appeals*, (1986) 179 Cal.App.3d 775. The Board noted that the AMEs used precise charts, tables, and rationale from the AMA Guides. With that in mind, the Board disagreed with the finding of presumed permanent and total disability. None of the AMEs found the applicant practically totally paralyzed but rather, to the contrary. The Board even noted the WCJ's observation of the applicant moving while giving testimony. Giving greater weight to the AME reports and opinions, the Board agreed with the 87% DEU rating after combining the reports of the AMEs and taking apportionment into consideration.

In its decision, the Board noted that some of the "additional" factors Dr. Bluestone used to reach his conclusions had already been identified by other AMEs. The Affective Spectrum Disorder not diagnosed, which is also described as "pain disorder associated with psychiatric factors and general medical condition" was considered in Dr. Freeman's report. Also, Dr. Bluestone found that Applicant's musculoskeletal pain and neuroparesthia, and rheumatologic injury related to the Applicant's "Chronic Widespread Pain," but did not produce additional disability.

In discussing the report from the vocational rehabilitation specialist, the Board noted that Mr. Vega failed to take into account the apportionment findings in Dr. Freeman's and Dr. Majcher's report when making his determination on the applicant's future earning capacity. Mr. Vega failed to reconcile how the apportionment to non-industrial factors contributed to the Applicant's inability to return to the open market in light of the industrial injury. Given the strong use of the AMA Guides by the AMEs, and Mr. Vega's failure to address apportionment in his report, the Board concluded that Mr. Vega's report did not constitute substantial evidence.

The dissenting opinion on the Board Panel noted that Dr. Majcher adopted all of Dr. Bluestone's findings and that therefore, in essence, Dr. Majcher reached the same conclusion. Additionally, Mr. Vega took into consideration the AME's finding of apportionment because he reviewed all of the reports and still concluded that the applicant was 100% permanently disabled. However, this was not enough to convince the majority. The matter was remanded to the trial level for the WCJ to issue an award consistent with the majority's decision.

Obviously, this was a victory for defendants in this case. The vocational reports of the applicant's expert did not constitute substantial evidence simply because the expert did not even mention apportionment in his report and analysis. Further, the Board gave great weight to the opinions of the AMEs, dismissing the seemingly redundant opinion of Dr. Bluestone. It is important to note, though, that the Board indicated it afforded the AMEs greater weight because the AMEs were chosen by both parties. While this worked out for defendants in this case, obviously using that same reasoning could lead to an unfavorable result for defendants in other cases depending on who serves as the AME.

100% - It's Not So Simple Math

In the end, math has not failed us; separate out the ratable body parts to confirm whether one region of the body remains either at or under the 100% threshold. That is how we keep from exceeding the limit of one unit a la *Matlock*. As for supporting your position like *Aguilera*, it all still comes down to what constitutes substantial evidence. Take care to refute redundancies in the medical record and confirm that your experts are reviewing and considering all aspects of the evidence, including apportionment in vocational rehabilitation analysis. ⌘

UPCOMING CONFERENCES

2017 RIMS Annual Conference
Risk Management Society
April 23-26, 2017
Pennsylvania Convention Center

California Workers' Compensation Defense Attorney's Association
2017 Summer Conference
June 1-4, 2017
The Red Rock Resort & Spa
Las Vegas, NV

SAVE THE DATE!
2017 CAJPA Annual Fall Conference & Training Seminar
California Association of Joint Powers Authorities
September 12-15, 2017
Visit the CAJPA website for further details: http://www.cajpa.org/

NEW PARTNERS

We are pleased to announce that effective 1/1/17, two LFLM attorneys are joining the ranks of partnership:

- **Natalie Cordellos** of the San Francisco office, practicing California workers' compensation defense.
- **Erin Walker** of the Oakland office, practicing California workers' compensation defense.

Both Natalie and Erin demonstrate the high level of client service, teamwork, and commitment that are the core of our partnership. Congratulations Natalie and Erin!

To see all LFLM Partners and Associate Attorneys visit our LFLM Attorneys page. You can learn more about our firm at www.lflm.com

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