

Case Law Update 2026

By Ryan Alves, Esq. & Zane Uribarri, Esq.
Law Offices of Bradford & Barthel, LLP



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



Meet our Team

Ryan Alves, Esq.
Equity Partner
Managing Attorney
ralves@bradfordbarthel.com



Zane Uribarri, Esq.
Partner
B&B Ontario
zuribarri@bradfordbarthel.com



Tahmeena I. Ahmed, Esq.
Executive Managing Partner
tahmed@bradfordbarthel.com



Tammy Welty
Director, Training & Communications
B&B Sacramento
twelty@bradfordbarthel.com



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



Certificates

Sent via email

PowerPoint & Video

<https://bradfordbarthel.com/training/>

Blog Articles

bradfordbarthel.blogspot.com/

Next Live Webinar – 7/14/26

The Crazy World of Psych Reports
w/ Don Barthel & Zane Uribarri



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



NEW PODCAST!!!



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



Refer A Rating

B&B AMA Analysis & Rating Department

Rating referrals: ratings@bradfordbarthel.com

Phone: [\(916\) 569-0790](tel:(916)569-0790)

Rating specialists make certain AMA Guides is properly applied and ensure our clients pay only the permanent disability owed.



Alex Sadek
Rating Specialist
asadek@bradfordbarthel.com



David Roman
Rating Specialist
droman@bradfordbarthel.com



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



JOIN OUR TEAM

We are HIRING!



Positions Available:

- ❖ Workers' Compensation Defense Attorneys
- ❖ Hearing Representatives

Apply today at:

<https://bradfordbarthel.isolvedhire.com/jobs/>




Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



What we will cover today

- The next big decision: LC 5909 and the 60 days
- 2nd DCA: The Rodriguez Decision
- Gandy Decision
- DiFusco
- France, Dennis and more!

Agenda!




Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



7

The next big decision: Mayor

- ✓ *Mayor v. WCAB* (Ross Valley Sanitation District) currently pending at the state Supreme Court. Case No: S287261
- ✓ Oral Args were on June 2
- ✓ Issue: Did the WCAB have the authority to act on a petition for recon more than 60 days after it was filed?



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



8

The next big decision: Mayor

Factual history in Mayor:

- Trial judge awards PTD
- Defendant files a recon within 30 days of the decision
- WCAB didn't receive it until after 60 days had passed, grants recon anyways (LC 5909 at the time had 60-day requirement)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



9

The next big decision: Mayor

1st District Court of Appeal in August 2024:

- WCAB exceeded its jurisdiction by granting recon outside of the 60-day timeline found in LC 5909
- Appealed to state Supreme Court, review granted
- Oral arguments happened on June 2
- Has a sister case, the 6th DCA case in Chan (next)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



10

Sidenote on LC 5909

- During this case, state lawmakers amended LC 5909 to clarify that the 60-day countdown now begins when the case file is transmitted to the WCAB. (This version is the law now.)
- When the Mayor case happened and def filed their recon, that version of LC 5909 said the 60 days starts from the date the recon was filed (as opposed to date it was transmitted)



Mayor's sister case:

6th DCA: Zenith v. WCAB (Chan)

- ✓ Holding: WCAB cannot wait more than 60 days to act on a petition for reconsideration. No jurisdiction to do that per LC 5909.
- ✓ Published decision.



6th DCA: Zenith v. WCAB (Chan)

FACTS

- ✓ Chan, the applicant, is working in ingredient prep for a restaurant.
- ✓ Coworker says something negative about Chan's ingredient prep
- ✓ Huge fight ensues, leaving Chan with a broken eye socket and other injuries



6th DCA: Zenith v. WCAB (Chan)

FACTS

- ✓ At trial, witness testimony is contradictory. Chan says he didn't use a weapon, yell, or throw anything
- ✓ Coworker testifies Chan reacted by insulting coworker's mother, threw a container at coworker, picked up a knife and came at him.
- ✓ Other workers intervene and try to hold them back, but Chan strikes coworker in the head, and coworker hits him back in self-defense



6th DCA: Zenith v. WCAB (Chan)

TRIAL COURT RULING

- ✓ Trial judge weighs all the testimony and deems Chan “the initial aggressor,” meaning his injuries are not industrial because he started the fight.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



15

6th DCA: Zenith v. WCAB (Chan)

PROCEDURAL HISTORY:

- ✓ AA loses at trial
- ✓ Files petition for reconsideration in Nov. 2022 that's timely
- ✓ WCAB does not receive notice of it until 1/17/23 for unknown reasons (lost it??)
- ✓ On 3/3/23, WCAB “grants reconsideration” but says “we’ll need more time to study that”



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



16

6th DCA: Zenith v. WCAB (Chan)

PROCEDURAL HISTORY (cont'd)

- ✓ After grant and study, WCAB issues a decision on 11/1/24 reversing in favor of the applicant.
- ✓ WCAB: Zenith failed to prove that Chan was the initial aggressor. Zenith loses.
- ✓ Zenith petitions for writ at 6th DCA.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



17

6th DCA: Zenith v. WCAB (Chan)

At the 6th DCA:

- ✓ WCAB argues: its decision was timely because of equitable tolling. In other words, the deadline was “tolled” because the parties were not at fault for the WCAB’s failure to issue an order granting reconsideration in a timely manner (within 60 days).



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



18

6th DCA: Zenith v. WCAB (Chan)

6th DCA rules:

- ✓ Equitable tolling does not apply. That requires 1) timely notice, 2) lack of prejudice to the opposing party, and 3) reasonable and good faith conduct.
- ✓ 6th DCA says that even if there was timely notice and lack of prejudice, the WCAB did not show reasonable and good faith conduct in its late decision.
- ✓ Defendant wins!



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



19

6th DCA: Zenith v. WCAB (Chan)

Practical takeaway:

- ✓ When you file a petition for reconsideration, and there's been no decision after 30-40 days, you can ask the WCAB for a status update.
- ✓ Our Appeals Dept has the email address and phone # for the Recon Unit. They generally do the outreach for us attorneys, as the Recon Unit is used to dealing with them.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



20

The next big case after that



- ✓ **The Rodriguez decision:** Argued by Bradford and Barthel's appellate specialist Louis Larres at the 2nd District Court of Appeal, yours truly was the trial attorney
- ✓ Published decision – at the time (see next few slides) 11/10/25
- ✓ Applies to cases with *Patterson* issues
- ✓ *Patterson* doctrine: an end-run around UR and IMR (undermines the 2004 Legislature's intent behind UR/IMR)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



21

Rodriguez Decision: Appeals

- AA petitioned the CA Supreme Court for review
- CA Supreme Court granted review
- Anticipate oral arguments occurring in Fall 2026
- Timeline for decision: Late 2026, possibly early 2027



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



22

Rodriguez Decision: Appeals



- 2nd DCA decision is still citable, just have to note pending review.
- Groups have filed amicus briefs on both sides of this case including:
 - Defense: CWCI, County of Los Angeles
 - App: CAAA, WCAB



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



23

Rodriguez Decision: Appeals



What does CA Supreme Court review mean?

- 2nd DCA's decision is technically citable and controls at this time, but must be noted that state Supreme Court is reviewing it
- State Supremes can
 1. agree with the 2nd DCA and affirm
 2. disagree and side with the WCAB and uphold the Patterson doctrine, or
 3. agree on some parts, disagree on others, and issue its own unique ruling.



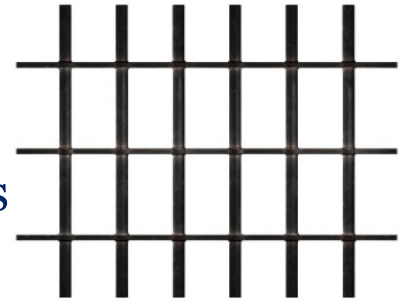
Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



24

The Patterson Doctrine

The *Patterson* problem: bars carriers from sending a RFA to UR when



- ✓ they've already authorized that treatment in the past and
- ✓ there hasn't been a change in condition since then



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



25

The Patterson Doctrine

The *Patterson* problem: Proving a change in condition was nebulous

- ✓ Never defined “change in condition”
- ✓ PTPs have no incentive to stop recommending care
- ✓ Some judges said no QMEs citing *Sandhagen*, others



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



26

Rodriguez: Trial Level



- 2020 trial: AA files for an expedited hearing, arguing that client couldn't send a RFA for home care to utilization review
- AA argued the *Patterson* doctrine: there hasn't been a change in condition since then



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



27

Rodriguez: Trial Level



Def argued:

- a) timely UR denial
- b) there has been a change in condition, citing PTP reports saying applicant too reliant on home health aide. Also cites home health aide was recommended to prevent seizures, yet applicant's anti-seizure meds had worked for years, had no more seizures.

Judge ruled for AA, there isn't a change in condition and defendant barred from sending RFA to UR



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



28

Rodriguez: WCAB Level

- ✓ Def files petition for recon in 2020
- ✓ WCAB issues grant and study decision, ie “grants reconsideration” but needs more time to review
- ✓ In 2024, WCAB orders parties to mediation to try to settle the case
- ✓ Parties do not settle
- ✓ WCAB affirms in Jan 2025



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



29

Rodriguez: 2nd DCA

- ✓ 2nd DCA grants review after determining petition for reconsideration was timely
- ✓ Oral arguments in October 2025
- ✓ Holding: Medical treatment disputes must go through UR and IMR processes
- ✓ Holding: Cannot have “*extra-statutory proceedings*” at the WCAB over a “*change in condition*” because that’s not mentioned by the statutes



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



30

Rodriguez: We Always Knew an Appeal Was Likely



- ✓ We anticipated AA would file a petition for review with the California Supreme Court
- ✓ This AA's practice is predicated on abusing the *Patterson* doctrine
- ✓ This and other AAs loves getting:
 - Home care and expensive stuff to drive up FMC for defendants



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



31

Rodriguez Decision: Appeals



One factor that could come into play ...

- ✓ Grant and study was used on the *Rodriguez* case (remember the 5 yrs that passed between my recon and the decision?)
- ✓ Not sure if the CA Supreme Court will undo *Rodriguez* because they disapprove of the grant and study process
- ✓ (We had nothing to do with the grant and study, that was the WCAB who injected that into the case. So it would be unfortunate to lose due to something we have no control over.)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



32

Rodriguez Decision: Appeals



If we did lose due to grant and study, could still attack Patterson case law by using a “run it back” strategy:

- Find an accepted case where some care was already authorized
- Take that care and send a more recent RFA to UR, and allow AA to argue the *Patterson* doctrine.
- Appeal back up to the 2nd DCA, because we already know they don't like the *Patterson* doctrine
- Only happens if Supremes rule against us on *Rodriguez* on a technicality



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



33

Rodriguez: If it stands



Assuming the decision stands:

- ✓ Defs no longer “punished” for authorizing care, because they don't have to fear authorizing it forever
- ✓ Fewer expedited hearings at the WCAB on this issue
- ✓ Could lower costs, but that depends on UR
- ✓ UR still has doctors across the spectrum – I see plenty of PTPs writing URs



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



34

Case Law Update: Gandy

- 4th District Court of Appeal
- 10/7/25
- Published decision
- Said WCAB lacked jurisdiction over Wayne Gandy's claim



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



35

Case Law Update: Gandy

- New legislation that could tweak the statutes at play in the Gandy decision
- SB 795 – headed to Assembly Insurance Committee (possibly in August?)
- Will have to wait and see if the committee changes the language in the bill (they do that often enough it's worth waiting to see what they do to that bill)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



36

Case Law Update: Gandy



- Factual history:
- Gandy: drafted by the Los Angeles Rams in 1994
- Plays for Rams from 1994-1998 (they move to St. Louis in 1995)
- Plays rest of career for Steelers (99-02), Saints (03-05), and Falcons (06-08)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



37

Case Law Update: Gandy



Procedural history:

- ✓ Trial judge: WCAB lacked jurisdiction due to LC 3600.5
- ✓ WCAB: Reverses, says WCAB does have jurisdiction due to athletes who ever signed a contract in California or with a California team



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



38

Case Law Update: Gandy

4th DCA says:

- ✓ Contract aside, Gandy's facts did not satisfy LC 3600.5
- ✓ LC 3600.5(c) bars cumulative trauma (CT) claims where:
 - The athlete was hired outside of California (the Atlanta Falcons hired him outside of CA)
 - The athlete performed less than 20% of their duty days in California (Gandy played less than 20% of his duty days in CA)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



39

Case Law Update: Gandy

4th DCA says:

- ✓ LC 3600.5(d) says WCAB has jurisdiction over cumulative trauma (CT) claims where:
 - Completes two or more seasons for a California team, or have at least 20% of his duty days in California (Gandy played one season for a CA team, and less than 20% of duty days in CA)
 - And to have worked for less than seven seasons for non-California teams (Gandy played more than 7 seasons for non-CA teams)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



40

Case Law Update: Gandy



Question: Can WCAB roll it back onto prior teams?

- ✓ My take: No. WCAB lacks jurisdiction based on how I read this decision.
- ✓ Why? It's one long CT, even if he did play for multiple teams. Think of the CT as "the whole enchilada."
- ✓ There's no jurisdiction for the whole enchilada.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



41

2025 En banc: DiFusco v. WCAB

- In *DiFusco*, the commissioners affirmed the two en banc decisions in *Coldiron v. Compuware Corp*, 67 Cal.Comp.Case 1466 and 67 Cal.Comp.Case 289 as binding authority.
- In those cases, WCAB ruled that a 3rd party admin must disclose:
 - Identity of their client
 - If the client is an insurance carrier, the administrator must disclose whether the policy is a high self-insured retention policy, a large deductible policy, or any other provision that could impact payment of compensation.
 - Failure to disclose these could lead to potential sanctions.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



42

DiFusco cont'd...



➤ WCAB also noted that CCR 10390 says:

Any party who appears at a hearing or files a pleading must:

- a. Set forth the party's full legal name on the record of proceedings, pleading, document or lien;
- b. File a notice of representation if a party is represented and the attorney or non-attorney representative has not previously filed a notice of representation or an Application for Adjudication of Claim; and
- c. Identify the insurer and/or employer as the party or parties and not identify a third-party administrator as a party. The third-party administrator shall be included on the official address record and case caption if identified as such.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



43

WCAB in DiFusco said ...

➤ WCAB said says that these rules still apply, and help the parties.

“These disclosure requirements serve to protect all parties. Knowing the identity of each defendant assists applicants in determining whether to resolve their cases and thus ensures a smoother adjudication process. **Defendants are required by the Labor Code to pay all compensation that is due. If a dispute arises about who is responsible to pay compensation, an identified defendant may nevertheless be held liable, and sanctions may be imposed until such time as another responsible party is identified. Thus, it serves a defendant’s interest to comply with these disclosure requirements, to ensure that they are not held liable for payments that should not be their responsibility, nor sanctioned for conduct for which they were not responsible.**”



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



44

Simple Suggestion on DiFusco



- ✓ Create a form letter with this information
- ✓ Send it out with the initial claims packet that is provided to applicants and AAs

Why do this? It would ensure that the parties have this info on hand. AA can't claim you never gave it to them, and it also informs your DA too.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



45

WCAB En Banc: Perez v. Chicago Dogs

The takeaway from this one is:

- ✓ an oral, on-the-record request to present remote witness testimony at the start of a hearing may satisfy procedural requirements, particularly where the denial of testimony would impair a party's constitutional right to due process.
- ✓ WCAB Rule 10817(a) states that remote testimony generally requires a written petition showing good cause, filed before the hearing. But in *Chicago Dogs*, court said that this rule cannot override a party's right to a fair hearing when material evidence is at stake.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



46

Chicago Dogs cont'd ...

Takeaway:

- ✓ Don't tell your ER witnesses to fly in from out of state for Day 1 of trial.
- ✓ Do: tell the judge on Day 1 of trial that "my ER witness lives far away and/or out of state. Can they testify remotely?"
- ✓ If a bunch of ER witnesses from far away, file a petition ahead of time to have them testify remotely.
- ✓ (Alternatively – change venue to where ER and applicant are, if in another part of CA)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



47

Chicago Dogs cont'd ...



Say what?

- ✓ At trial – making a verbal request for remote testimony from a key witness satisfies procedural requirements about witness testimony
- ✓ I recently did this for an employer witness who lives out of state. The judge said "Good question! I'll grant it and note it on the Minutes. It's good to *bring have that noted on the record* in case something happens later, and I am no longer the judge assigned to the case." Saves my witness a flight and a lot of time!



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



48

4th DCA: Travelers Indemnity v. WCAB (Zeber)

- Focuses on DOI
- ✓ Question: What was the DOI for the applicant's CT claim?
- ✓ Why? Well if DOI was before 1/1/90, then codefs might not be subject to mandatory arbitration. If after 1/1/90, WCAB could order codef to mandatory arbitration.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



49

4th DCA: Travelers Indemnity v. WCAB (Zeber)

FACTS:

- ✓ George Zeber played for the Yankees, and his last year for them was in 1978.
- ✓ Trial court: His DOI ended in 2017 b/c that's when he first learned he could file a claim in California.
- ✓ Appellate court: Not so fast ...



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



50

4th DCA: Travelers Indemnity v. WCAB (Zeber)

4th DCA said:

- ✓ Labor Code 5412 defines DOI as: a) disability and b) knowledge that disability is caused by work. Doesn't say anything about knowing one can file a claim in CA or not.
- ✓ "Knowledge that one can file a workers' compensation claim is different from knowledge that a disability was caused by a present or prior employment," the court said. "Thus, we cannot rely on the WCJ's implied finding of a 'date of injury' to support the WCAB's order."
- ✓ Reversed and remanded for further proceedings.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



51

4th DCA: Travelers Indemnity v. WCAB (Zeber): What it means ...

- ✓ The distinction sounds confusing, but frankly it is useful because:
 - The 4th DCA appears to not disturb the principle that the statute of limitations will be tolled until the date an applicant first learns about their rights to file a workers' compensation claim.
 - That being said, just because a statute of limitations is tolled, that doesn't mean that end date of a cumulative trauma gets changed to the tolling date. Instead, LC 5412 controls how one determines the date of injury.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



52

4th DCA: Travelers Indemnity v. WCAB (Zeber): What it means ...

- ✓ So if you're fighting with another codef about when the CT date of injury was, just focus on LC 5412 and figure out:
 - When was there a concurrence of disability and knowledge that the injury was work-related?



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



53

LADWP v. WCAB (France)

- Unpublished decision from 4th DCA (not citable)
- Why include it in today's if not citable? Still useful to know
- Michael Burns, a partner, has a blog about this:

<https://bradfordbarthel.com/2026/05/26/appellate-review-of-the-trial-record-limitations-and-obligations/>



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



54

LADWP v. WCAB (France)

BACKGROUND:

- Case in chief settled, but LC 132a allegation remains and goes to trial
- Trial judge rules no discrimination after hearing testimony from multiple witnesses, found that applicant was terminated for legit reasons (poor performance)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



55

LADWP v. WCAB (France)

BACKGROUND:

- AA recons
- On recon, WCAB reverses and rules in favor of applicant, saying that its independent review of the entire record showed ER did not prove that good cause existed for app's termination, cites various instances of applicant testimony



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



56

LADWP v. WCAB (France)

The 4th DCA says whoa, not so fast:

- WCAB ignored relevant evidence and mischaracterized the record on appeal
- WCAB could not completely ignore the employer witnesses testimony. It could question their credibility, but not completely ignore evidence that rebutted applicant's claims



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



57

LADWP v. WCAB (France)

Takeaway:

- WCAB cannot ignore factual evidence, but rather address conflicts of the evidence in its decisions
- If you have a case on recon, and WCAB seems to be ignoring a whole bunch of factual evidence, then you can raise that on appeal
- Appellate courts prefer avoiding factual disputes, but one cannot ignore evidence either



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



58

En banc WCAB: Anthony Dennis

- Fact pattern:
 - Applicant injured while working as an inmate. Parties settled via stipulated award. Defendant sent offer of work, even though applicant was no longer in prison.
- ✓ Issue: Defendant liable for voucher?
- ✓ Answer: Yes.
- Takeaways:
 - Offer of work must be “bona fide” in order to avoid voucher liability.
 - WCAB is proper venue to decide if voucher owed.
 - When in doubt? Grant the voucher. Looks good later if audited.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



59

6th DCA: Justice published decision

- *County of Santa Clara v. Justice*, 5/27/20 6th DCA
- ✓ Appellate court stated defendant is able to apportion to preexisting nonindustrial arthritis after applicant had a slip and fall that caused knee injuries.
- ✓ Applicant required two total knee replacements, but bulk of cause was due to nonindustrial arthritis.
- ✓ Trial judge and WCAB used *Hikida* to deny apportionment, but 6th DCA reversed them.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



60

6th DCA: Justice decision

- Takeaways from this decision:
- ✓ If applicant has a significant preexisting nonindustrial condition that is later aggravated by a work injury and creates a larger PD award, then Justice decision can be used to argue for apportionment of PD to nonindustrial factors.
- ✓ Here, applicant's total knee replacement wasn't caused by the slip and fall – but by the years of nonindustrial arthritis.
- ✓ Apportionment warranted.



En banc WCAB: Colamonico

Ashley Colamonico v. Secure Transportation 11/14/19

- Takeaways:
- ✓ Copy service LCs must establish that:
 - There is a contested claim
 - Services were incurred for proving/disproving contested claim
 - Expenses were reasonable and necessary
- ✓ Defendant's failure to issue EOR does not constitute a waiver of objections. Still, we recommend issuing EORs or some kind of objection to copy service liens.



En banc WCAB: Kris Wilson

- ✓ The WCAB explained how psyche PD secondary to orthopedic trauma can be compensable due to an injury being “catastrophic” in *Wilson v. State Cal Fire*, 84 Cal. Comp. Cases 393, 2019 Cal. Wrk. Comp. LEXIS 29 (W.C.A.B. May 10, 2019).
- ✓ SB 863 normally bars psyche PD secondary to orthopedic trauma.
- ✓ Exception: If it’s catastrophic!



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



63

En banc WCAB: Kris Wilson



- ✓ Applicant was a firefighter who got smoke inhalation. Looked minor at first, required hospitalization shortly after.
- ✓ Month long hospital stay, involuntary coma, near death experience.
- ✓ Waking up while intubated, causing panic attacks/nightmares later.
- ✓ Renal failure and liver problems.
- ✓ Can’t return to work as a firefighter, too strenuous, too many restrictions on ADLs.
- ✓ AMEs/QMEs in 4+ specialties



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



64

En banc WCAB: Kris Wilson

- Takeaway: Catastrophic injuries are not your standard, run-of-the-mill case, and that the applicant:
 - ✓ was unconscious for a few weeks in the ICU and almost died from his injuries;
 - ✓ has numerous restrictions on his activities daily living, ranging from vision, memory, sleep, orthopedic limitations, and breathing issues;
 - ✓ cannot return to his work as a firefighter.

- Board won't consider when deciding "catastrophic":
 - ❖ impact on earnings,
 - ❖ there is no "magic number" of PD makes it catastrophic.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



65

Ryan Alves, Esq.
Equity Partner
Managing Attorney
ralves@bradfordbarthel.com

Zane Uribarri, Esq.
Partner
B&B Ontario
zuribarri@bradfordbarthel.com



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



66