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**Travelers Property Casualty, Petitioner vs. Workers Compensation Appeals Board,
Bruce Wright, Respondents**

Civil No. H021439--

Court of Appeal, Sixth Appellate District

65 Cal. Comp. Cases 884; 2000 Cal. Wrk. Comp. LEXIS 6410

June 19, 2000

PRIOR HISTORY: **[**1]** : W.C.A.B. Nos. SJO 0179558, SJO 0179560--Arbitrator Thomas Finn WCAB Panel: Commissioners Burton, Casey, Deputy Commissioner Dietrich (not participating)

DISPOSITION: : Petition for writ of review denied

CALIFORNIA COMPENSATION CASES HEADNOTES

Cumulative Trauma--Date of Injury--Multiple Periods of Cumulative Trauma Based on Need for Medical Treatment--WCAB found that applicant sustained two separate cumulative trauma injuries based on his need for medical treatment, even though applicant lost no time from work.[See generally *Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d §§ 24.03[7][a], 26.10[2].*]

CALIFORNIA COMPENSATION CASES SUMMARY

Applicant worked from 10/30/89 through 1/9/97 as an electrician for Defendant Becton Dickinson, Inc./Maxxim Medical Corporation, a medical glove manufacturing facility.

From 1989 through 6/30/95, Defendant was insured for workers' compensation purposes by Travelers Property Casualty (Travelers). From 7/1/95 through 1/9/97, Defendant was insured by CIGNA Property Casualty Company (CIGNA).

In 5/95, Applicant sought medical treatment from Dr. David Hunt for a hip condition. Dr. Hunt indicated that Applicant's hip condition was industrial and that he was a candidate for surgery. Applicant deferred the hip surgery **[**2]** and continued to work. He missed no time from work due to his industrial injury until he went off work on 1/9/97 to have the hip surgery.

Applicant filed Applications alleging a specific injury to the right hip on 5/11/95, and a CT injury from 10/30/89 through the present.

On 3/3/99, Stipulations and Award involving both injuries were reached between Applicant and CIGNA. Travelers was not a party to the Stipulations. Pursuant to the Stipulations, the dates of injury were 5/11/95 and CT through 1/7/97, and Applicant sustained 64 percent PD. CIGNA reserved its rights to contribution from Travelers.

The issue of contribution between the two insurance companies proceeded to arbitration. On 12/22/99, the arbitrator issued his F&A, in which he found that

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Applicant did not sustain a specific injury on 5/11/95. Rather, the arbitrator found two CT injuries. The first CT was from 10/30/89 through 5/95. He based this finding on the 5/95 opinion of Dr. Hunt that Applicant needed hip surgery.

The arbitrator found a second period of CT from 5/95 through Applicant's last day of work on 1/9/97. The arbitrator's finding with regard to the periods of CT was based upon Applicant's [*3] need for medical treatment rather than on whether Applicant sustained disability or missed work during his employment. The arbitrator also determined that the majority of damage to Applicant's hip was done during Travelers' period of coverage. In doing so, the arbitrator relied on the opinion of the AME, Dr. Charles Borgia.

Travelers filed a Petition for Reconsideration. According to the arbitrator's report and recommendation, Travelers essentially contended that it was error to find two separate dates of CT injury because Applicant never missed time from work or sustained disability in 1995 as required by *Labor Code* § 5412[Deering's], and further contended that it was error to base the findings of the dates of injury on the need for medical treatment which, without PD or TD, is not sufficient to establish a date of CT injury.

The arbitrator issued a report on reconsideration addressing whether CT cannot be divided into two separate periods unless an injured worker misses time from work or becomes temporarily totally disabled. The arbitrator cited *Labor Code* § 3208.1[Deering's], upon which his decision was based, as follows:

An injury may be either: (a) 'specific,' occurring [*4] as the result of one incident or exposure which causes disability or need for medical treatment or (b) 'cumulative,' occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need form medical treatment. The date of a cumulative injury shall be the date determined under *Section 5412*. (emphasis added).

The arbitrator further cited *American Bridge Co. v. W.C.A.B. (Lee) (1995) 60 Cal. Comp. Cases 869* (writ denied), a case which he found analogous to the instant case. In *American Bridge Co.*, the WCJ relied on *Labor Code* § 3208.1[Deering's] and found separate periods of CT even though the applicant lost no time from work and, therefore, was not disabled. The WCJ did point out that splitting periods of CT may not be appropriate if the need for medical treatment is minor. However, in the instant case, the arbitrator found that the hip surgery recommended and necessary in 1995 according to Applicant's treating physician, was a significant form of treatment.

The arbitrator stated as follows:

Certainly if the applicant chose to undergo this hip surgery in 1995 the Petitioner would have [*5] had sole responsibility for the costs of surgery, the attendant temporary disability, and any other benefits stemming from that surgical procedure. The Petitioner is frankly in a fortuitous position

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as it can share the responsibility for the hip surgery and the benefits that stem therefrom because the applicant chose to wait until 1997 to undergo the surgical procedure.

Is [sic] true, as Petitioner points out, that the applicant not only continued to work after 1995 but continued to suffer cumulative trauma. It is for that reason that a second period of cumulative trauma ending in 1997 has been found.

The WCAB panel adopted and incorporated the arbitrator's report and denied reconsideration. It cited *American Bridge Co.* in support of its decision.

Travelers filed a Petition for Writ of Review, essentially contending that the need for medical treatment alone is not sufficient to establish a DOI in a CT case pursuant to *Labor Code* § 5412[Deering's].

WRIT DENIED June 19, 2000.

COUNSEL: :For petitioner--Haworth, Bradshaw, Stallknecht & Barber, Inc., by Linda B. Williams

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For respondent CIGNA--Valencia & Wilberding, by Ronald Neach