

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

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

**RE:           GEORGE AND THE BOGUS PETITION TO REOPEN**

**FROM THE LOBBY BAR AT THE HYATT:**

After a hard day denying benefits I finally arrived at the Hyatt Bar at 8:00 p.m. and noted that George the Bartender's attorney, Ron Summers, was a little better for drink!

George the Bartender explained to me that Ron had just lost another lucrative part of his business by virtue of the writ denied decision as the Board in *James Duran vs. Workers' Compensation Appeals Board*, Brighton Gardens, Santa Rosa [9 WCAB Rptr. 10,095].

Although Ron was not his usual articulate self after six cocktails I managed to pinpoint the source of his depression at the Board's decision in *Duran*.

Ron told me that after the significant decrease in his income due to the shock waves (as he put it) following SB899 he sought to recoup some of his lost financial empire by instituting his "five year diary system." In answer to my quizzical look Ron advised that he had a secretary go over all of his closed files and for those that had not been settled by way of Compromise and Release but by Findings and Award Ron instituted a system in which **Petitions to Reopen** would automatically be filed with the Board just before the five year continuing jurisdiction of the Board expired.

Ron explained that he and Dr. Nickelsberg reasoned that everyone who had an industrial injury certainly experienced "**new and further disability**" subsequent to either the Findings and Award or a Stipulated Findings and Award. Subsequent to the filing of a Petition for New and Further Disability, Dr. Nickelsberg would again examine the applicant with a corresponding finding that the applicant's disability had increased.

Ron explained that this was a "**brilliant and foolproof plan**" as all of his cases were cases prior to January 1, 2005 and any claim of new and further disability would be under the old permanent disability schedule despite the Board's unfortunate decisions in *Pendergrass* and *Baglione*.

Ron groaned that even though the *Duran* decision was only a writ denied decision the Board relied on its previous en banc decision in *Ruffin vs. Olson Glass Company Incorporated* (1987) 52 Cal. Comp. Cases 335 and *Hartsuiker vs. Workers' Compensation Appeals Board* (1993) 12 Cal. App. 4<sup>th</sup> 209 for the proposition that "...the five year limitation period of section 5410 bars any claim for 'new and further'...disability arising more than five years from date of injury, regardless of whether a petition to reopen was timely filed."<sup>1</sup>

---

<sup>1</sup> The Board's en banc decision in *Ruffin* is binding on all Workers' Compensation Judges and all panels of the Board.

**RE: GEORGE AND THE BOGUS PETITION TO REOPEN**

July 16, 2007

Page 2

**DISCLAIMER:** In George's attorney's mythical case the intention was to file a Petition for New and Further Disability just before the five year continuing jurisdiction of the Board expired pursuant to Labor Code L.C. 5803 and 5804. The en banc decision by the Board in *Ruffin* was designed to prohibit just such a strategy as was employed by George's attorney which certainly is a device to foster further workers' compensation litigation without the corresponding disability. The Courts will not countenance a Petition to Reopen for New and Further Disability without the requisite showing that the applicant is presently disabled or will become disabled in the immediate future. **Anyone wishing a copy of the Board's decision in *Duran* or the Board's en banc decision in *Ruffin* should make the request by e-mail.**

Make mine a double, George.

Joe Truce