

INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/ALL OFFICES/CLIENTS

FROM: W. Joseph Truce

DATE: October 11, 2002

RE: PRESUMPTION OF COMPENSABILITY PURSUANT TO
LABOR CODE §5402 DOES NOT APPLY WHEN THE
APPLICANT ALLEGES ADDITIONAL BODY PARTS
RELATED TO AN ADMITTED INDUSTRIAL INJURY

Quite frequently we will receive a call from a client wanting to know if a new 90 day period commences to run pursuant to Labor Code §5402 simply because the applicant has alleged additional body parts to a claim that was originally accepted as industrial.

The answer is “no” pursuant to a panel decision of the Board in Michael Clark v. Workers' Compensation Appeals Board, Golden Rain Foundation, AIG Claims 66 CCC 269.

The typical example in this scenario involves an admitted industrial injury to the applicant's low back for which benefits have been provided. The applicant's attorney then files an amended Application for Adjudication of Claim alleging additional body parts such as headaches, psychiatric injury or neck. In Clark (supra) the Board found as follows:

“WCAB found that Labor Code §5402 presumption of compensability was not triggered by filing of amended Claim Form alleging injury to additional body parts as compensable consequence of original injury; defendants knowledge of additional injured body parts or of amendment to Claim Form did not trigger new 90 day period within which to deny liability; defendants initial acceptance of injury listed on amended Claim Form and payment of benefits did not mandate application of Labor Code §5402 presumption, when liability was ultimately denied after 90 day period”

In so finding, the Board “focused” on the language in Labor Code §5402, which refers to the injury, not to which part of the body has been alleged to have been injured. The WCAB pointed out that several Board decisions have held that knowledge of additional injuries or the amendment of the claim to add additional claims of additional parts of the body does not require defendant to respond within 90 days pursuant to Labor Code §5402. C. Wildermuth v. WCAB (1995) 60 CCC 666 (writ denied); Burmaster v. WCAB (1997) 62 CCC 792 (writ denied).

Inter-Office Memo to All Attorneys & Clients

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In Wildermuth (supra) the issue of the obligation of the employer and/or claims administrator to give the injured worker a Claim Form when new body parts were alleged to have been injured as a result of the initial injury was discussed. However, the Board in Wildermuth held as follows:

“...Labor Code §5401 does not require the employer to provide additional Claim Forms each time a medical report identifies another symptom or injured body part...”

WJT:dab