

# INTER-OFFICE MEMORANDUM

**TO:** ALL ATTORNEYS/ALL OFFICES/CLIENTS  
**FROM:** Joe Truce  
**DATE:** May 8, 2002  
**RE:** **ADMISSIBILITY OF OSHA SAFETY VIOLATION IN S&W CASES**

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In the case of **Steven Boswell v. WCAB, Travelers Insurance Company (Writ Denied)** a panel of the Appeals Board found that the terms Serious & Willful have a different meaning in the workers' compensation context than in the enforcement of a Cal-OSHA citation for violation of safety orders.

In the **Boswell** case the applicant proceeded to trial on the Serious & Willful issue and introduced a copy of a decision of an Administrative Law Judge of the Occupational Safety and Health Appeals Board. The ALJ found a serious violation of the General Industrial Safety Order Section 3241.

However, the WCJ denied the applicant's claim of Serious & Willful Misconduct on the part of the employer and on reconsideration the Board pointed out that "the terms Serious & Willful have different meaning in workers' compensation issues than they do in the enforcement of a Cal-OSHA citation for violation of safety orders. In the OSHA context the violation of a safety order requires only a finding that the employer could have known of the dangerous condition with exercise of reasonable diligence. In the workers' compensation context, the WCJ must find that the employer's failure to correct the condition constituted reckless disregard for probable consequences . . . "

Although the OSHA violation was admissible in the **Boswell** case I would think that on the basis of the panel's decision in **Boswell** we can even claim that OSHA violations are inadmissible as they are not relevant in S&W cases.<sup>1</sup>

WJT:wjt  
Enclosure Appeals Board Reporter 4/5/02- **Boswell** case

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<sup>1</sup> A summary of the case of **Steven Boswell v. WCAB, Travelers Insurance Company** which appeared in the Appeals Board Reporter in the April 5, 2002 edition (attached).