

Nevada

Workers' Compensation Law Blog

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Terrible New Decision for Injured Workers on PPD Ratings

December 1, 2011 by Virginia Hunt

Just before Thanksgiving, the Nevada Supreme Court published a turkey of a decision that robs injured workers of disability award money. In [Public Agency Compensation Trust v. Blake](#), 127 Nev. Adv. Op. 77 (2011), the court invalidated a long-standing DIR regulation that addressed how rating doctors are to account for a prior PPD award for a re injured body part where the prior rating was done under a different edition of the AMA Guides to Evaluation of Permanent Impairment.

Nevada law currently requires that rating doctors use the 5th edition of the AMA Guides, even though the AMA has published a 6th edition. This law was championed by advocates and lawyers for injured workers, as the 5th edition generally results in a higher rating for many spinal injuries than other editions of the AMA Guides.

Blake had four work injuries to his back in the 1980's and 1990's, and was awarded a 14% permanent partial disability award (PPD) at his last prior rating in 1995 under the 2nd edition of AMA Guides. (The law in 1995 required rating doctors to use the 2nd edition.) Blake had a fifth back injury at work in 2004. He was rated again in 2004 when the 5th edition of the AMA Guides was required in Nevada. The rating doctor properly followed the DIR regulation that told the rating doctor to subtract the earlier awarded 14%. The employer appealed, arguing that the regulation wasn't fair to employers, because the current 5th edition of the AMA Guides would rate the old injury at a greater percentage. The justices agreed, and held that Blake's total impairment should be reduced by what the old injury would rate under the 5th edition.

This decision is wrong in my opinion, because Blake had his award reduced by a percentage of impairment he never actually received. He was paid in the past based on 14% impairment. (The payment amount is determined by using the percentage of impairment, the injured worker's average monthly wage, and the injured worker's age when he is rated.) The court said that instead of subtracting 14% from Blake's current total impairment of 40%, it would allow the

insurer to subtract subtract a 23% for the old back injuries by re-rating the old injuries under the 5th edition. The net result to Blake was that he lost 9% impairment under this decision. As the court's decision does not tell us Blake's age and how much money he was earning when he was injured, we can only guess how much money the 9% was in his case. For some injured workers, a 9% loss could mean a loss of up to \$45,000.

The court reasoned that the law provides that the employer should only pay for any impairment related to the current injury. The court had to invalidate a regulation that had been on Nevada's books for years, and used by DIR and rating doctors when faced with multiple ratings done under different editions of the AMA Guides. Blake, unfortunately, will never be compensated more for his old injury by this re-rating of his old injuries under the current edition of the AMA Guides. Only the employer and insurer can use a current edition of the AMA Guides by reducing an injured worker's net impairment percentage following a recent injury.

The ink wasn't dry on this decision when DIR wrote in its [Winter newsletter](#) that it will no longer enforce the invalidated regulation when it reviews all impairment evaluations. DIR only reviews about 10% of the approximately 450 impairment evaluations that are done each month on a statewide basis. This is a confidential review, and claimants should not rely on DIR to correct any rating errors. Instead, injured employees must appeal the insurer's offer based on the incorrect rating and obtain a second PPD evaluation with a physician assigned from the rotating list. As the appeals process takes time, and a second rating costs \$683 currently, first ask an experienced workers' compensation attorney whether the first rating looks wrong. Insurers are often quick to apportion (subtract from) an injured worker's PPD if there has been a prior injury or rating. You can be sure that employers and insurers will slash many more PPD awards now that the Nevada Supreme Court has provided encouragement by this unfavorable decision.

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