

Los Angeles Times, California Insurance Guarantee Association, and its servicing facility, Intercare Insurance Services, for Reliance Insurance Company, in liquidation, Petitioners vs. Workers' Compensation Appeals Board, Kurt Herbinger, Respondents
Civil No. B179171--

70 Cal. Comp. Cases 504, 2005 Cal. Wrk. Comp. LEXIS 46
Court of Appeal, Second Appellate District, Division Three

February 25, 2005

Prior History: W.C.A.B. No. ANA 0298733--WCJ Norman F. Delaterre (ANA);
WCAB Panel: Commissioners O'Brien, Caplane, Murray (concurring, but not signing)

Editorial Information: Disposition

Disposition: Petition for writ of review denied

Counsel:

For petitioners--Knights & Summer, by Gregory Knights, Charles M. Smith
For respondent WCAB--Neil P. Sullivan, Deputy Commissioner and Assistant Secretary

Medical Treatment--WCAB held American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines did not apply to applicant's medical treatment because these guidelines were for acute medical treatment, four to six weeks after injury, applicant's injury occurred 9/27/90, and applicant needed medical treatment for chronic pain, years after his injury, not for acute conditions that occurred immediately following injury. [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d ÅÅ§ 5.02[1], 5.03[4], 5.05[3][a], 22.01[1].]

As to Defendant's contention that home health care of the type provided by Applicant's spouse was unwarranted and unreasonable since it was not specifically recommended by the ACOEM Guidelines, the WCJ stated that those guidelines related to acute medical treatment within the first few days to the first four to six weeks following the injury, that Applicant's injury had occurred 14 years prior to the hearing, that Applicant sought treatment for chronic pain, not acute care, and that the ACOEM Guidelines were accordingly inapplicable.

According to the WCAB, the ACOEM guidelines had no relevance at all to Applicant's wife's services prior to 1/1/2004, and the presumption of correctness of the guidelines did not apply to any services prior to 3/22/2004.

WRIT DENIED February 25, 2005. {509}