Significant Decision

Labor Code § 5814 as amended by Senate Bill 899 Applies to All Claims Not Reduced to Final Judgment as of June 1, 2004.

Green v. Workers' Comp. Appeals Bd.
(Filed 3/30/2005)
Second Appellate District, Div. Eight, Civil No. B171921
2005 Cal. App. LEXIS 504

Significance: This is the second published appellate-level case interpreting last year's blockbuster reform legislation, Senate Bill 899. This time, the reform at issue was Labor Code § 5814 which was newly amended effective June 1, 2004. Once again, the Court of Appeal ruled that the changes wrought by SB 899 are applicable to *all* claims in the pipeline that have not been reduced to a final judgment as of the effective date of those changes.

Facts: James Green claimed various work injuries from 1987 to May 30, 2000 while employed as a police officer for the City of Compton (City). One AME reported in December of 2001 that Green's orthopedic injuries were industrial. Another AME reported in July of 2002 that Green had also suffered an industrial psychiatric injury. Following the AME reports, the City began paying compensation.

Nevertheless, Green sought increased compensation under former § 5814 for unreasonable delay of benefits. At a conference held March 4, 2003, Green and the City agreed to a stipulated award which was approved by the WCJ. The parties stipulated to injury, 58% PD, and medical care.

The City continued to pay compensation but Green alleged additional unreasonable delay. Ultimately, the WCJ awarded a single 10% penalty under former § 5814 against TD, PD, medical treatment, and VR benefits. The WCJ explained that the City failed to provide benefits as required by the AME opinions and the parties' stipulated award.

Green sought reconsideration from the WCAB arguing, among other things, that the AME reports and the parties' stipulated award were separate legally significant events under *Christian v. Workers' Comp. Appeals Bd.* (1997) 15 Cal. 4th 505 (*Christian*), thus requiring separate penalties under former § 5814. The WCJ's report, however, explained that the City's unreasonable delay, whether under the AME reports or the parties' stipulation, was a single continuous act under *Christian*. On November 3, 2003, the WCAB adopted the WCJ's report and denied Green reconsideration.

Holding and Rationale: Unhappy with just one penalty, Green petitioned the Court of Appeal for a writ of review. But while Green's writ petition was pending, SB 899 became law. So the Court of Appeal asked for additional briefing on the question whether new § 5814 applied to Green's case. Ultimately, the court granted Green's petition and held that, as of June 1, 2004,

former § 5814 became inoperative and was eventually repealed on January 1, 2005. Thus, new § 5814 applied to all pending claims like Green's not reduced to a final judgment by June 1, 2004, regardless of the date of injury, the date the unreasonable delay occurred, or the date the penalty petition was filed.

The reason for this holding lies in the wholly statutory nature of worker's compensation benefits. Here is a representative quote from the court, with the footnote citations omitted: "When new legislation repeals statutory rights, the rights normally end with repeal unless vested pursuant to contract or common law. In workers' compensation, where rights are purely statutory and not based on common law, repeal ends the right, absent a savings clause. Rights end during litigation if statutory repeal occurs before final judgment; by definition there is no final judgment if an appeal is pending. There is no injustice if statutory rights end before final judgment because parties act and litigate in contemplation of possible repeal."

Moreover, the court explained, new § 5814 plainly expresses the Legislature's intent that it apply to all pending claims. Subdivision (h) states explicitly that the new section applies to *all* injuries, not just to *some* injuries or those injuries where other events occur after the operative date of new § 5814. The argument that new § 5814 applies only where unreasonable delay or refusal occurs *after* June 1, 2004, "has no foundation in the statute, and neither legislative history nor other authority supports such a construction."

The court agreed with Green, however, that the AME reports and the parties' stipulated award were legally distinct events and may support multiple penalties. The court found no indication that the Legislature intended to eliminate multiple penalties so long as the events are "separate and distinct" under *Christian*.

Comment: Oral argument in *Green* occurred on December 17, 2004 along with a State Fund case: *State Comp. Ins. Fund v. WCAB [Singleton]* 2005 Cal. App. Unpub. LEXIS 3033. The main issue was the same in both cases and both did not need to be published. Moreover, the *Singleton* case presented a second issue on the merits of whether unreasonable delay had occurred at all. And, obviously, this second issue was peculiar to the facts of the *Singleton* case. Therefore, *Singleton* remains unpublished; but, it was another solid win for State Fund, California employers, and the side of Goodness and Light.

Neither *Green* nor *Singleton* are final decisions yet. That does not happen for 30 days following the filing of the opinion. And the forces of Darkness are ever restless. According to the appellate courts online case information system, a petition for rehearing was filed in *Green* on 4/14/2005. So far, nothing has been filed on the *Singleton* case, but it would not be surprising.