

Significant Decision

Notification of an industrial injury under Labor Code § 5400 is not a claim for workers' compensation benefits.

Honeywell v. WCAB [Wagner](2005)
California Supreme Court
S113201
Feb. 10, 2005
__ Cal.4th __ [2005 Cal. Lexis 1604]

Significance: The 90-day period within which to deny a claim commences with *the filing of a claim form* unless evidence of egregious, intentional employer misconduct can be established, which is more than the mere failure of the employer to provide a claim form in a timely manner. Employers found to have engaged in such misconduct generally will be estopped from denying the period began before the filing date.

Facts: Applicant complained of work stress in July, 1998 and entered a psychiatric hospital the following October. His wife immediately notified the employer of his hospitalization, asserted work stress was the cause, and asked for disability forms. Although the employer sent unemployment forms, no DWC-1 claim form was provided. Ultimately a claim form was received by the carrier on January 15, 1999. The carrier denied the claim on March 31, 1999, 75 days later.

The matter was submitted to a WCJ who held that 1) the employer breached its duty to provide the claim form in a timely manner, 2) the claim was not denied within 90 days of the breach, and, therefore, 3) the injury was presumed compensable under Labor Code § 5402.

In an en banc opinion, the Board held the Labor Code § 5402's 90-day period to file a claim form begins either when the employee files a claim form, or when the employer becomes "reasonably certain" that an injury has been suffered or is being claimed and breaches the duty to provide a claim form. On remand, the WCJ held that the employer was reasonably certain as of October 16, 1998; since the claim was not denied as of January 15, 1999, it was presumed compensable. A Board panel denied the employer's second petition for reconsideration.

The Court of Appeal granted the employer's petition for writ of review, and annulled the Board's decision. The court characterized the Board's insertion of the "reasonably certain" language as changing the statute. The court, however, acknowledged that egregious employer misconduct may work an estoppel on the

employer to achieve the statutory goal of timely action by the employer, but a mere negligent failure to provide a timely claim for is not sufficient.

The Supreme Court granted the Board's petition for review.

Holding: The judgement of the Court of Appeal was affirmed. Further, the Supreme Court determined the statutory scheme for notifying and claiming benefits for a work related injury is initiated in the following manner:

- (1) the employee bears the initial burden of notifying the employer of an injury, unless such notice is unnecessary because the employer already knows of the injury or claimed injury from other sources.
- (2) The employer then bears the burden of informing the worker of his or her possible compensation rights and providing a claim form, but
- (3) it is up to the *employee* whether and when to initiate a claim for compensation by filing the prescribed form with the employer. Only when the form has been filed is
- (4) the employer (or its insurer) put to the additional burden of promptly investigating the claim and determining whether to contest liability, an investigation that must be completed within 90 days. (*Honeywell v. Workers' Compensation Appeals Board [Wagner]* (2005) S113201 Supreme Court of California 2005 Cal. Lexis 1604, at p 11.) ((Italics original.)

Hence, the Court held Labor Code § 5402's 90-day period for denial of liability begins to run from the date the employee files a claim form, "not from the date the employer receives notice or knowledge of the injury or claimed injury." (*Id.*, at p 17.)

However, the employer generally will be estopped from denying the period began before the filing date if:

- (1) the employer, knowing the employee had suffered or was asserting an industrial injury, refused to provide a claim form, or misrepresented the availability of or the need for the employee to file a claim form;
- (2) the employee was actually misled into believing that no claim form was available or necessary and failed to file one for that reason; and
- (3) because of this reliance, the employee suffered some loss of benefits or setback as to the claim. (*Id.*, at p 21.)

Note: A Supreme Court decision is final 30 days after filing unless the Court orders otherwise. (Cal. Rules of Ct., rule 29.4(b).)