

Significant Decision

Court of Appeal Annuls WCAB's En Banc Decision in Scheftner.

Rio Linda Union School District v. Workers' Comp. Appeals Bd. [Scheftner]

(Filed 7/26/2005)

Third Appellate District, Civil No. C048298

2005 Cal. Wrk. Comp. LEXIS 148

Significance: Stick a fork in it—it's done. Since SB 899's enactment, the Courts of Appeal have confronted the question: to which cases do SB 899's new apportionment rules apply? And, through both published and unpublished decisions, the First, Second, and Fifth Districts have come to the same conclusion: SB 899's new apportionment rules apply to *all* claims not reduced to a final judgment as of SB 899's effective date, April 19, 2004. Still, neither of these courts had jurisdiction over the WCAB's En Banc decision in *Scheftner*. That belonged to the Third District in Sacramento. In *Scheftner*, the WCAB had held that SB 899's new apportionment rules are not applicable to claims where orders closing discovery or submitting the case for decision issued *before* April 19, 2004. Thus, *Scheftner* remained a wild card. Would the Third District throw a monkey-wrench into the works by disagreeing with its sister courts? Are you kidding? In the strongest opinion yet issued, the Third District annulled the WCAB's *Scheftner* decision and concluded, with its sister courts, that SB 899's new apportionment rules apply to all claims not reduced to a final judgment as of April 19, 2004.

Background: Janelle Scheftner, a third grade school teacher for Rio Linda Union Elementary School, had an industrial slip and fall from which she injured her shoulder and low back. Scheftner had a history of prior back problems. Her claim went to trial on February 18, 2004 and was submitted for decision March 2, 2004. On April 23, 2004, Scheftner was awarded 34 percent permanent disability. According to the WCJ, SB 899's new apportionment rules were not applicable to Scheftner's claim because it was tried and submitted for decision *before* SB 899 became effective. The WCAB granted the school district's petition for reconsideration and assigned the matter to the Commissioners as a whole, given the importance of the question presented. Over a strongly worded dissent, a majority of five Commissioners proceeded to carve out a subset of claims to which SB 899's new apportionment rules would never apply: claims where discovery was ordered closed (even by operation of law) or where an order submitting for decision had issued before April 19, 2004.

The WCAB majority based its ruling on a strained reading of Section 47 of SB 899. Section 47 is a "plus section" of SB 899. A "plus section" is a provision of a bill that is not intended to be a substantive part of the code section or general law that the bill enacts, but to express the Legislature's view on some aspect of the operation or effect of the bill. Section 47 states: "The amendment, addition, or repeal of, any provision of law made by this act shall apply prospectively from the date of enactment of this act, regardless of the date of injury, unless otherwise specified, *but shall not constitute good cause to reopen or rescind, alter, or amend any existing order, decision, or award of the Workers' Compensation Appeals Board.*" (Italics added for emphasis.) According to the WCAB majority, orders closing discovery and submitting for

decision were “existing” orders that could not be “reopened” on the basis of SB 899’s new apportionment provisions.

Holding and Rationale: The Court of Appeal disagreed, of course. It explained that repeal of a statutory right triggers the application of rules distinct from the traditional law regarding the prospective or retroactive application of a statute. The unconditional repeal of a special remedial statute without a saving clause stops all pending actions where the repeal finds them. If final relief has not been granted before the repeal goes into effect it cannot be granted afterwards, even if a judgment has been entered and the cause is pending on appeal. The reviewing court must dispose of the case under the law in force when its decision is rendered.

This rule is applicable to Scheftner’s case. Given the wholly statutory nature of our workers’ compensation system, Scheftner’s specific right to compensation for any industrial injury resulting in permanent disability because of “the acceleration, aggravation, or “lighting up” of a prior nondisabling disease” under former § 4663 was a purely statutory right. SB 899 “repealed” former section 4663. In its place, the Legislature substituted a new statutory right to compensation for the percentage of permanent disability *directly caused* by an industrial injury. Thus, the WCAB was obligated to apply new § 4663 to Scheftner’s case since it had not been reduced to a final judgment as of SB 899’s effective date.

According to the court, the language in Section 47 italicized above essentially tracks the language establishing the WCAB’s continuing jurisdiction under Labor Code §§ 5803, 5804. Interim orders such as orders of submission and orders closing discovery are not the type of orders to which section 47 refers. The language chosen by the Legislature, read as a complete phrase, indicates the Legislature did not want the changes of law made by SB 899 to be the basis for reopening cases otherwise concluded under the workers’ compensation procedures for decision, reconsideration, and judicial review. Thus, the court held the repeal of former § 4663 was effective immediately on April 19, 2004, and new §§ 4663 and 4664 are applicable to any cases still pending, except those that are finally concluded subject only to the WCAB’s continuing jurisdiction under §§ 5803 and 5804.

Comment: The court’s opinion punctures some of CAAA’s over-inflated arguments in support of the WCAB’s *Scheftner* decision. For example, CAAA argued that alternate interpretations from that provided by the WCAB’s decision may render the application of SB 899 *unconstitutional* because article XIV, § 4 of the California Constitution guarantees that injured workers will be adequately compensated for their injuries, and requires that the workers’ compensation system “accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character. . . .” The court’s response: “We are not prepared to say the change in apportionment law denies workers ‘adequate’ compensation or fails to ‘accomplish substantial justice’ when the new law still requires the employer to pay compensation ‘for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment.’”

The court also explained that it was not allowed to second-guess the Legislature’s policy decision that the current workers’ compensation crisis necessitated changing the apportionment

laws or the Legislature's judgment that applying the new apportionment laws to most pending cases offsets the concomitant cost burden and delay in those cases. "It is for the Legislature, not the courts, to pass upon the social wisdom of such an enactment." We could not have said it better ourselves.

Of course, it will not be a surprise if Ms. Scheftner were to seek review before the California Supreme Court. (Why stop now?) The Court of Appeal's decision becomes final 30 days from filing and review before the Supreme Court must be sought within 10 days after that. But it is doubtful that the Supreme Court would intervene at this point. Several different appellate districts have all reached the same conclusion: SB 899's new apportionment rules apply to all claims not reduced to a final judgment as of April 19, 2004. Thus, there is no conflict between districts that the Supreme Court must resolve and the issue would appear to be fairly well-settled. Time to move on.