

Introduced by Senator Battin

February 21, 2003

An act to add Section 5705.1 to the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 714, as introduced, Battin. Workers' compensation: apportionment.

Existing law establishes a workers' compensation system to compensate an employee for injuries sustained in the course of his or her employment. Under this system, the Workers' Compensation Appeals Board has jurisdiction to determine these claims, including determinations regarding apportionment of injury.

This bill would provide that in denying apportionment, the appeals board may not, in determining permanent disability, rely on any medical report that fails to fully address the issue of apportionment and fails to set forth the basis for the medical opinion, on any medical report that fails to apportion a previous injury or illness that has been the subject of a prior claim for damages, or on any medical report that fails to provide a discussion of the medical processes by which a previously asserted injury or illness resolved without affecting bodily function. This bill would also provide that if an applicant has received a prior award of permanent disability, it shall be conclusively presumed that the prior permanent disability exists at the time of any subsequent industrial injury. This bill would also prohibit the payment of permanent disability and death benefits unless the industrial injury has contributed at least 10% to the cause of the death or disability when compared to all causes of injury in total.

Existing law specifies which party must bear the burden of proof in various aspects of workers' compensation proceedings.

This bill would provide that the burden of proof for apportionment regarding permanent disability, as specified, shall rest on the defendant and would specify the standard of proof.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5705.1 is added to the Labor Code, to
2 read:

3 5705.1. (a) The burden of proof for the apportionment
4 regarding permanent disability under Sections 4663, 4750, and
5 4750.5 shall rest upon the defendant. In accordance with Section
6 3202.5, the defendant shall demonstrate by a preponderance of the
7 evidence, and by reasonable medical probability, that absent the
8 industrial injury, the injured worker had lost, as a consequence of
9 a preexisting injury or illness, some capacity to perform the
10 activity affected by the injury.

11 (b) Notwithstanding any other provision of this code relating
12 to workers' compensation benefits, including Section 4062.9, in
13 denying apportionment the appeals board may not, in determining
14 permanent disability, rely on any medical report that fails to fully
15 address the issue of apportionment and fails to set forth the basis
16 of the medical opinion. In denying apportionment, the appeals
17 board may not rely on any medical report that fails to apportion a
18 previous injury or illness that has been the subject of a prior claim
19 for damages or that fails to provide a discussion of the medical
20 processes by which a previously asserted injury or illness resolved
21 without affecting bodily function.

22 (c) If the applicant has received a prior award of permanent
23 disability, it shall be conclusively presumed that the prior
24 permanent disability exists at the time of any subsequent industrial
25 injury.

26 (d) Permanent disability or death benefits shall not be payable
27 unless the industrial injury has contributed at least 10 percent to the



- 1 cause of the disability or death when compared to all causes of
- 2 injury in total.

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