

## In *McLaughlin v. Active Disposal*, Appellate Court Once Again Upholds Workers' Compensation Judge's Decision

The recent decision of the Appellate Court in the matter of *McLaughlin v. Active Disposal* is another example of how the Appellate Court will uphold the lower court's decision when that decision is based on credible evidence.

In *McLaughlin*, the employee's counsel appealed two decisions entered April 1, 2015, which dismissed the employee's two applications for review and modifications as well as his request for Second Injury Fund benefits.

The employee suffered an admitted work injury to his leg in 1999 and received an award of disability that same year. In 2000, he suffered another work injury to his lower back and neck, and also received an award for disability in 2000. A third injury was suffered in 2005, to his arm, and he re-opened his two prior claims alleging an increase in his disabilities. In 2008, he filed an Application for Joinder of the Second Injury Fund alleging that he was totally and permanently disabled from the accumulation of injuries. After testimony from the employee and the expert physician witnesses for both parties, the Workers' Compensation Judge (WCJ) determined that the employee failed to meet his burden of proof and dismissed not only the Second Injury Fund application, but both re-opened claims. The employee was given an award of disability for the 2005 injury which was not contested. This appeal was taken with regards to the dismissals.

The Appellate Court affirmed the lower court's decision holding that it must look to see if the "findings made could be reasonably reached based on sufficient credible evidence present in the record" and if so, the Court would not upset the decision of the WCJ. In this matter, the Appellate Court found sufficient evidence in the record to support the conclusion that the employee failed to establish that he was entitled to Second Injury Fund benefits. The lower court found that he was disabled from uncontrolled diabetes and not a work-related issue. The employee could not establish any increase in health issues due to his earlier disabilities.

**Comment:** It has long been known that the Appellate Court will not overturn a WCJ decision when the decision is based on credible evidence found in the record of the lower court proceedings. The WCJ is in the best position to evaluate the evidence and credibility of the witnesses. The Court continues to follow this rule. Defense counsel should take all steps to ensure any credible evidence that supports the employer's position has been made part of the record so it can be considered with all other evidence when the Court is being asked to make the final decision on issues including compensability, jurisdiction, employment status and permanency.

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