

The Conco Companies et al. v. Workers' Compensation Appeals Board  
Case: A158412, 1st District, Division 1

Disposition date  
(YYYY-MM-DD): 2019-11-20

Disposition description: Petition  
summarily denied  
by order

Disposition status  
as of 2019-11-20: Final

Notes:

BY THE COURT: The petition for writ of review is denied. Petitioner did not raise the issue presented in the petition at trial and first raised the issue in its petition for reconsideration. It has therefore forfeited the argument. (*City of Anaheim v. Workers' Comp. Appeals Bd. (Evans)* (2005) 70 Cal.Comp.Cases 237, 238 [workers' compensation litigants are not entitled to reconsideration on the basis of issues that could have been presented for decision at trial]; 2 Borah, et al., *Cal. Workers' Compensation Practice* (4th ed. 2019) § 21:19 ["[F]ailure to raise an issue at a mandatory settlement conference or at trial may preclude raising that issue for the first time on reconsideration."]; see *Gould v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1059, 1072 [where employer did not object at hearing to physician's failure to provide statutorily required written explanation for fees in excess of schedule, request for fees not barred by physician's failure to comply with statute].) Even if petitioner had not forfeited the argument, it is meritless in any event. (Lab. Code, §§ 5703, subd. (j) [governing form of vocational expert reports], 5307.7, subd. (a) [requiring agency to adopt a fee schedule for "services provided by vocational experts, including, but not limited to, vocational evaluations and expert testimony determined to be reasonable, actual, and necessary by the appeals board."]; see *Hennessey v. Compass Group* (2019) 84 Cal.Comp.Cases 756 [explaining that based on § 5307.7 and Cal. Code Regs., tit. 8, § 10606.5, "it is clear that vocational expert evidence is admissible and may be considered by the Appeals Board."].)