WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

VINCE PHILLIPS (Deceased); **TINA PHILLIPS, individually, and as Guardian ad Litem and Trustee for COLE PHILLIPS and JAKOB PHILLIPS,** ***Applicants,*** **vs.** **SACRAMENTO MUNICIPAL UTILITIES DISTRICT,** **Permissibly self-insured,** ***Defendant.***	**Case No. RDG 57899** **OPINION AND DECISION AFTER RECONSIDERATION (En Banc)**

The issue presented in this case involves the rate at which death benefits are payable to a decedent's dependents. Because of the significant legal issue presented, and in order to secure uniformity of decision, the Chairman of the Appeals Board, pursuant to a majority vote of the Board, reassigned this case to the Appeals Board as a whole for an *en banc* decision. We granted reconsideration in order to allow sufficient opportunity to study the factual and legal issues presented. We sought amicus curiae briefs in order to ensure that all points of view were considered. For the reasons expressed below, we conclude that the decision of the workers' compensation referee (WCR) applying Labor Code section 4661.5 to the death benefit indemnity rate should be affirmed.

The decedent, Vince Phillips, was employed as a tree trimmer by the Sacramento Municipal Utilities District. On June 30, 1993,

he died as a result of being electrocuted in the course of his employment. On November 30, 1993, based on the stipulations of the parties, a WCR awarded applicants, the decedent's dependents, death benefits of $277,824.96 payable at the rate of $336 per week. On January 23, 1997, another WCR issued a corrected award which awarded applicants death benefits of $115,000 payable at various rates up to $441.40 per week, consistent with Labor Code section 4661.5, and thereafter benefits pursuant to Labor Code section 4703.5 payable at the rate of $441.40 per week until decedent's younger child reached the age of 18. Defendant filed a timely petition for reconsideration contending that Labor Code section 4661.5 is inapplicable to death benefits and to benefits under section 4703.5. Defendant contends that benefits should have been awarded at the rate of $336, rather than $441.40, per week.

The issue is before us because of legislative changes in 1990, which created a new type of workers' compensation death benefits. Originally, there was only one type of death benefit — a fixed amount which was determined by the date of the injury, the number of decedent's dependents, and the extent of their dependency. In this case, the fixed amount under Labor Code section 4702(a)(1) is $115,000, payable in installments. In addition to this amount, for injuries occurring in 1990 and thereafter, Labor Code section 4703.5 provides for the continuation of death benefit payments, after the fixed death benefit amount has been paid, until the youngest dependent child reaches the age of 18. This is generally referred to as the

special minors' death benefit. The issue in this case is the weekly rate at which the fixed death benefit and the special minors' death benefit are to be paid.

THE PLAIN LANGUAGE OF LABOR CODE SECTIONS 4702(b), 4703.5 AND 4661.5 REQUIRES THAT RATES OF DEATH BENEFITS BE INCREASED

The statutes which establish the weekly rates for the fixed death benefit and the special minors' death benefit are similar, but

not identical. For the fixed death benefit, Labor Code section 4702(b) provides that

> "The death benefit in all cases shall be paid in installments in the same manner and amounts as temporary total disability indemnity would have to be made to the employee, unless the appeals board otherwise orders. However, no payment shall be made at a weekly rate of less than two hundred twenty-four dollars ($224)."

With regard to the special minors' death benefit, Labor Code section 4703.5 provides, in part, that

> ". . . payment of death benefits shall continue until the youngest child attains age 18 in the same manner and amount as temporary total disability indemnity would have been paid to the employee, except that no payment shall be made at a weekly rate of less than two hundred twenty-four dollars ($224)."

Thus, the rate of payment of both the fixed death benefit and the special minors' death benefit is determined by the temporary disability indemnity rate.

Pursuant to Labor Code section 4653, the temporary disability indemnity rate is two-thirds of a worker's "average weekly earnings." But Labor Code section 4453 limits "average weekly earnings" to a maximum amount which depends on the date of injury.

In this case, the parties stipulated that the decedent's earnings were $662.80 per week. Two-thirds of that amount is $441.87. In 1993, the maximum temporary disability rate was $336 per week so the proper rate to pay death benefits initially in this case was $336 per week. However, Labor Code section 4661.5 provides that

> "Notwithstanding any other provision of this division, when any temporary total disability indemnity payment is made two years or more from the date of injury, the amount of this payment shall be computed in accordance with the temporary disability indemnity average weekly earnings amount specified in Section 4453 in effect on the date each temporary total disability payment is made unless computing the payment on this basis produces a lower payment because of a reduction in the minimum average weekly earnings applicable under Section 4453."

Beginning July 1, 1995, the maximum temporary disability rate was increased to $448 per week. Relying on Labor Code section 4461.5, the WCR awarded death benefits at rates of up to $441.40 per week.

The plain language of sections 4702(b) and 4703.5 requires that death benefits be paid in the same manner and amount as temporary disability benefits would have been paid to the employee. Therefore, when the temporary disability rate is increased pursuant to section 4661.5, the death benefit rate must similarly be increased. The words of sections 4702(b) and 4703.5 leave no room for any other interpretation. "It is an established principle of statutory interpretation that where the words of a statute are clear and unambiguous, its plain language should be followed." *Midas Recovery Services, Inc.* v. *Workers' Comp. Appeals Bd.* (1997) 55 Cal.App.4th 1321, 62 Cal.Comp.Cases 763.

THE APPLICATION OF LABOR CODE SECTION 4661.5 TO DEATH BENEFITS IS JUSTIFIED BY CASE LAW AND THE LABOR CODE

In its petition for reconsideration defendant argues that section 4661.5 refers only to payment of temporary total disability indemnity and that the Appeals Board has previously refused to apply that section to other species of benefits, citing *Duncan* v. *The Singer Company* (1978) 43 Cal.Comp.Cases 467. In that case, the Appeals Board, *en banc*, held that benefits for total permanent disability, although subject to the same maximum rate as temporary disability benefits, is a separate species of benefits to which Labor Code section 4661.5 does not apply. In reaching this conclusion, the Appeals Board noted that Labor Code section 4659(b) provided that the indemnity rate for permanent total disability was to be determined under Labor Code section 4453. Labor Code section 4453 provided that temporary disability indemnity and permanent total disability indemnity were to be calculated based upon the same earnings formula. Thus, although they are different species of compensation, they are initially to be paid at the same rate under section 4453. However, Labor Code section 4661.5, which provides for the increase in benefits, refers only to temporary total disability indemnity. Therefore, by its terms Labor Code section 4661.5 is not applicable to permanent total disability indemnity. The Appeals Board noted that if the Legislature intended for "permanent total disability indemnity" to come within the scope of section 4661.5, that term could have been included within the section's language.

Following a similar analysis, in the present case the application of section 4661.5 to death benefits is justified and consistent with the above rationale. Labor Code sections 4702(b)

and 4703.5 specifically provide that death benefits are to be paid at the same rate that temporary disability benefits would have been paid to the injured worker. The manner of payment and the temporary disability rate are governed by Labor Code sections 4453, 4650(d) and 4653 as well as section 4661.5. Those sections specify the manner and amount that temporary disability indemnity is to be paid. Accordingly, and using a similar analysis as used in *Duncan*, *supra*, because the statutes specifically require that death benefits are to be paid in the same manner and amount as temporary disability indemnity, the provisions of not only sections 4453, 4650(d) and 4653, but also the provisions of Labor Code section 4661.5 are applicable and result in the increase in the indemnity rate. We see no basis for applying only the provisions of the first three sections and not the provisions of Labor Code section 4661.5, nor has such a distinguishing basis been provided. Moreover, the Legislature could have amended Labor Code sections 4702(b) and 4703.5 to make death benefits payable in the same manner and amount as permanent total disability and thus, make the provisions of section 4661.5 inapplicable pursuant to the rationale of *Duncan*, but it did not do so. Or the Legislature could have amended those sections to specifically exclude the application of the provisions of section 4661.5. No such amendments have been made. Therefore, while death benefits and temporary disability benefits may be a different species, those benefits under the provisions of the Labor Code are to be paid in the same manner and amount.

LABOR CODE SECTION 4661.5 IS A STATUTORY EXCEPTION TO LABOR CODE SECTION 4453.5

The dissent argues that the death benefits payable in this case should not be increased pursuant to section 4661.5 because Labor Code section 4453.5 provides that

> "Benefits payable on account of an injury shall not be affected by a subsequent statutory change in amounts of indemnity payable under this division, and shall be continued as authorized, and in the amounts provided for, by the law in effect at the time the injury giving rise to the right to such benefits occurred."

This argument overlooks the fact that section 4661.5 begins with the words "Notwithstanding any other provision of this division . . ." Section 4453.5 was enacted in 1972. Section 4661.5, as originally enacted in 1974, began with the phrase "Notwithstanding any other provision of this chapter . . ." The word "chapter" was later changed to "division." Section 4453.5 is in the same division as section 4661.5. Thus, both the Court of Appeals and the Appeals Board have previously concluded that section 4661.5 creates an exception to section 4453.5. See *Jimenez* v. *Workers' Comp. Appeals Bd.* (1991) 1 Cal.App.4th 61, 56 Cal.Comp.Cases 682; *Diaz* v. *Borchers Bros., Inc.* (1978) 43 Cal.Comp.Cases 800. We therefore conclude that section 4453.5 is inapplicable to increases in benefits pursuant to section 4661.5.

The dissent argues that the law in effect at the time of the injury governs all rights and liabilities arising from the injury, citing *Harrison* v. *Workmen's Compensation Appeals Board* (1974) 44 Cal.App.3d 197, 39 Cal.Comp.Cases 867, and *Aetna Casualty & Surety Co.* v. *Industrial Acc. Comm.* (1947) 30 Cal.2d 388, 12 Cal.Comp.Cases 123. Both of these cases were decided before

section 4661.5 was enacted and before the leading case of *Hofmeister* v. *Workers' Comp. Appeals Bd.*, (1984) 156 Cal.App.3d 848 at 852, 49 Cal.Comp.Cases 438, was decided. In *Hofmeister*, the Court held that, pursuant to section 4661.5, temporary disability benefits paid more than two years after the date of injury were payable at the rate in effect on the date of the payment rather than the rate in effect on the date of injury. And while it is true that the law in effect at the time of an injury normally governs the rights and liabilities arising out of the injury, section 4661.5, which was in effect on the date of the injury in this case, provides a specific statutory exception to that general principle.

THE WCR DID NOT ABUSE HIS DISCRETION

The dissent also argues that the WCR exceeded the limits of his discretion by increasing the weekly death benefit rate beyond the maximum temporary disability indemnity rate of $336 per week in effect at the time of injury, citing *L. P. Price Mercantile Co.* v. *Industrial Acc. Comm.*[1] (1957) 49 Cal.2d 13, 22 Cal.Comp.Cases 170. However, this argument assumes that section 4661.5 does not increase the rate at which death benefits are paid, and it relies

[1]In *L. P. Price Mercantile Co.* v. *Industrial Acc. Comm.*, the Court was interpreting the portion of section 4702 which was the predecessor to the clause "unless the appeals board otherwise orders", which now appears in section 4702(b). The Court held that that language gave the Appeals Board discretion to increase the rate of payment of death benefits to an amount equal to the maximum temporary disability rate, despite the fact that the decedent's earnings would support only the minimum rate. Because section 4661.5 is applicable to death benefit payments made more than two years after the date of injury, the Appeals Board has discretion to increase the weekly rate at which the fixed death benefit is paid to the then-current maximum temporary disability rate. However, we note that such an increase in the rate will accelerate the payment of the fixed death benefit and could increase the employer's liability for the special minor's death benefit, so such increases should be allowed only in limited circumstances after careful consideration. This issue is not presented by this case.

on a case which was decided before section 4661.5 was enacted. For the reasons explained above, we have concluded that section 4661.5 is applicable to death benefits. Thus, the WCR could not have abused his discretion by following the law.

The dissent further argues that the WCR abused his discretion by awarding benefits at a rate other than the rate to which the parties stipulated. But it is well-settled that the stipulations of the parties are not binding on the Appeals Board and may be rejected where notice and opportunity to be heard are given. Labor Code section 5702; *Robinson* v. *Workers' Comp. Appeals Bd.* (1987) 194 Cal.App.3d 784, 52 Cal.Comp.Cases 419; *Turner Gas Company* v. *Workmen's Comp. Appeals Bd.* (1975) 47 Cal.App.3d 286, 40 Cal.Comp.Cases 253. The parties and the community at large have had ample opportunity to present their arguments. In this case, where the underlying facts and applicable law are not in dispute, there is good cause to issue an award of benefits payable at the correct rate.

We note that there is apparently a clerical error in the WCR's findings and award. The WCR awarded death benefits payable at the rate of $441.40 per week, but his report refers to a rate of $441.87 per week, which is the correct rate based upon decedent's earnings. We will therefore correct that clerical error.

For the foregoing reasons, as the Decision After Reconsideration of the Workers' Compensation Appeals Board,

IT IS ORDERED that paragraphs 5 and 6 of the findings dated January 22, 1997, be CORRECTED by substituting $441.87 for $441.40.

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IT IS FURTHER ORDERED that the Findings & Order and Corrected Award dated January 22, 1997 be AFFIRMED as corrected.

WORKERS' COMPENSATION APPEALS BOARD

/s/ Arlene N. Heath
Arlene N. Heath, Commissioner

/s/ Richard Gannon
Richard Gannon, Commissioner

/s/ Colleen Casey
Colleen Casey, Commissioner

/s/ Dennis J. Hannigan
Dennis J. Hanningan, Deputy Commissioner

WE DISSENT

/s/ Jane S. Wiegand
Jane S. Wiegand, Commissioner

/s/ Robert Ruggles
Robert Ruggles, Commissioner

/s/ Douglas M. Moore, Jr.
Douglas M. Moore, Jr., Chairman

DATED AND FILED IN SAN FRANCISCO, CALIFORNIA

APRIL 8, 1998

SERVICE BY MAIL ON SAID DATE TO ALL PARTIES LISTED ON THE OFFICIAL ADDRESS RECORD EXCEPT LIEN CLAIMANTS

DISSENTING OPINION

We dissent.

BASIC POSITION

By its terms, Labor Code section 4661.5 applies only to temporary total disability indemnity payments, and not to death benefits. Labor Code sections 4702(b) and 4703.5 provide for payment of death benefits in the same manner and amount that temporary disability indemnity would have been paid to the injured worker. Thus, death benefits must be paid: (1) every two weeks in accordance with Labor Code section 4650(c) and (2) at the rate of two-thirds of the worker's average weekly earnings pursuant to Labor Code section 4653, subject to the limitations

in Labor Code section 4453.5 -- benefit payments are not affected by subsequent statutory change in amounts and the amounts provided for shall be continued at the statutory rate in effect at the time the injury occurred.

DEATH BENEFITS AND TEMPORARY DISABILITY INDEMNITY ARE DIFFERENT SPECIES OF BENEFITS

Death benefits are a different species of benefits; they are unlike temporary disability indemnity and they serve a different purpose. Temporary disability indemnity is the basic benefit payable to a worker who is temporarily disabled due to an industrial injury;[2] it serves as a substitute for wages lost by the employee during the time he or she is incapacitated from working. *Ritchie* v. *Workers' Comp. Appeals Bd.* (1994) 24 Cal.App.4th 1174 at 1179, 59 Cal.Comp.Cases 243. Death benefits are intended to relieve "an employee's dependents of the financial consequences of his or her death in the course of employment." *Zenith Insurance Company* v. *Workers' Comp. Appeals Bd.* (1981) 124 Cal.App.3d 176, 46 Cal.Comp.Cases 1126, 1133.

In *Duncan* v. *The Singer Company* (1978) 43 Cal.Comp.Cases 467, the applicant was totally and permanently disabled. He asserted that his permanent disability benefits payable more than two years after the date of injury should be increased pursuant

[2]An employee who is considered temporarily totally disabled (unable to work for any wages during the period of healing) is entitled to temporary total disability indemnity which is at the rate of two-thirds of the average weekly earnings during the period of such disability (Lab. Code § 4653). A worker who can return to limited kinds of work before the healing period is over is entitled to temporary partial disability indemnity which is two-thirds of the weekly loss in wages during the period of such disability (Lab. Code §4654).

to Labor Code section 4661.5. The Appeals Board, *en banc*, held that, although temporary total disability and permanent total disability benefits are paid at the temporary total disability rate, they are different species of benefits and that section 4661.5 is not applicable to permanent total disability benefits.

As in *Duncan*, death benefits are a different species of benefits than temporary disability, therefore section 4661.5, which refers only to temporary total disability payments, is inapplicable to death benefits.

Just as the majority argues that "if the legislature intended for 'permanent total disability indemnity' to come within the scope of section 4661.5, that term could have been included within the section's language", we would hasten to point out that inclusion of death benefits within the scope of section 4661.5 must be accomplished by an appropriate legislative amendment to that section.

THE LAW IN EFFECT AT THE TIME OF THE INJURY GOVERNS ALL RIGHTS AND LIABILITIES ARISING FROM THE INJURY

In workers compensation cases, it is elemental that the law in effect at the time of injury is the law governing all rights and liabilities arising out of the injury. *Harrison* v. *Workers' Comp. Appeals Bd*. (1974) 44 Cal.App.3d 197, 202 fn. 5, 39 Cal.Comp.Cases 867.

In *Aetna Casualty & Surety Co.* v. *Industrial Acc. Comm.* (1947) 30 Cal.2d 388, 12 Cal.Comp.Cases 123, the Supreme Court stated:

> "Since the industrial injury is the basis for any compensation award, the law in force at the time of the injury is to be taken as the measure of the injured person's right of recovery." (at page 392).

In *Aetna*, a case closely on point with the issues in the present case, the Supreme Court considered whether a new statute, increasing workers' compensation benefits, could be applied to awards made after the effective date of the statute even though the awards pertained to injuries suffered before the new legislation had been enacted. The Supreme Court concluded that "a statute changing the measure or method of computing compensation for disability or death is not given retrospective effect when applied to disability or death resulting from an injury sustained before the effective date of the statute" and accordingly held that the employee was not entitled to the increased benefits when his injury pre-dated the effective date of the amendment:

> "The prior industrial injury was not a mere antecedent fact relating to the permanent disability ensuing there from; on the contrary, it was the basis of the right to be compensated for such disability. . . Since the industrial injury is the basis of any compensation award, the law in effect at the time of the injury is to be taken as the measure of the injured person's recovery" (at page 392).

The rate used by the WCR in this case was not the proper rate since the increased rate was not in effect on the date of injury.

LABOR CODE §4453.5 PRECLUDES INCREASES IN BENEFITS BASED ON STATUTORY CHANGES ENACTED <u>AFTER</u> THE DATE OF INJURY

The holding in the *Aetna* case was codified in 1973 as Labor Code section 4453.5 which provides:

> "Benefits payable on account of an injury shall not be affected by a subsequent statutory change in amounts of indemnity payable under this division, and shall be continued as authorized, and in the amounts provided for, by the law in effect at the time the injury giving rise to the right to such benefits occurred."

In this case, the injury occurred on June 30, 1993. At that time the maximum temporary total disability rate was $336 per week. The amendment to section 4653 which increased the maximum temporary total disability rate to $448 per week beginning July 1, 1995, did not become effective until July 16, 1993, after the date of injury. Because section 4453.5 precludes increases in benefits based upon statutory changes enacted <u>after</u> the date of injury, the WCR's award which increased the weekly payment rate of death benefits to an amount greater than $336 per week was improper.

One might argue that sections 4453.5 and 4661.5 are inconsistent. Section 4453.5 forbids subsequent statutory benefit increases from affecting the amount of benefits to which an injured worker or his dependents are entitled, while section 4661.5 requires that any payment of temporary total disability indemnity made more than two years after injury shall be paid at the rate in effect at the time of the payment. This perceived contradiction can be easily resolved: In accordance with section 4661.5 an injured worker is entitled to increased benefits based on earnings at the time of the injury, <u>provided</u> that the

increases were statutorily enacted and on the books at the time of the injury as required by section 4453.5.

THERE WAS AN ABUSE OF DISCRETION IN SETTING THE RATE OF PAYMENT IN EXCESS OF THE MAXIMUM TEMPORARY TOTAL DISABILITY RATE IN EFFECT AT THE TIME OF INJURY

The WCR has discretion to set the rate of payment of death benefits pursuant to Labor Code section 4702, but that discretion is limited to rates between the minimum and maximum temporary total disability rates in effect at the time of injury.. *L. P. Price Mercantile Co.* v. *Industrial Acc. Comm.* (1957) 49 Cal.2d 13, 22 Cal.Comp.Cases 170; *State Compensation Insurance Fund* v. *Workers' Comp. Appeals Bd. (Gonzalez)* (1992) 57 Cal.Comp.Cases 761, 762 (writ denied). The amount of the death benefit is based on the number of dependents and the extent of their dependency as determined at the time of the injury. *Granell* v*. Industrial Acc. Comm.* (1944) 25 Cal.2d 209, 9 Cal.Comp.Cases 301.

In this case, by setting a rate of payment which exceeded the maximum temporary total disability rate at the time of injury, the WCR abused his discretion.

In addition, it was improper to increase the rate at which death benefits were to be paid after the parties stipulated to payment at $336 per week. "Stipulations are designed to expedite trials and hearings and their use in workers' compensation cases should be encouraged." *Robinson* v. *Workers' Comp. Appeals Bd.* (1987) 194 Cal.App.3d 784, 52 Cal.Comp.Cases 419. In *Brannen* v. *Workers' Comp. Appeals Bd.* (1996) 46 Cal.App.4th 377, 61 Cal.Comp.Cases 554, the Court stated that

> "... an award based [on] an executed stipulation may be reopened and rescinded if the stipulation 'has been 'entered into through inadvertence, excusable neglect, fraud, mistake of fact or law, where the facts stipulated have changed or there has been a change in the underlying conditions that could not have been anticipated, or where special circumstances exist rendering it unjust to enforce the stipulation.'" [Citation omitted.] On the other hand, "'[w]hen there is no mistake but merely a lack of full knowledge of the facts, which ... is due to the failure of a party to exercise due diligence to ascertain them, there is no proper ground for relief.'"

In *Brannen*, the Court held that the Appeals Board erred in rescinding the original award and disregarding the stipulation of the parties. In the present case, there is no basis for rescinding the original award, which was based on the stipulation of the parties to the payment rate of $336 per week. The record does not show any inadvertence, excusable neglect, fraud, mistake, change in circumstances, or special circumstances. Therefore, the WCR erred in rescinding the award and issuing a new award of death benefits at a rate of payment other than the rate to which the parties stipulated.

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PRACTICAL RAMIFICATIONS APPLYING LABOR CODE 4661.5 TO SPECIAL MINOR'S DEATH BENEFITS

We would note that the effect of the majority opinion in applying Labor Code 4661.5 to the special minor's death benefit (continuation death benefit payments from the time the fixed death benefit is paid in full until the dependent child reaches 18) would, in the last analysis, result in the same type of open-

ended situation recognized in *Duncan* which would make it impossible for insurance carriers to properly estimate liability for insurance premium purposes. We would also point out that this also inhibits an employer/insurance carrier from quantifying reserves. As pointed out by one of the amicus briefs, there is the additional possible ramification of discouraging settlements due to either party's inability to determine how much a future total temporary disability payment rate might be when attempting to develop a total settlement figure.

There is one last practical ramification of the application of section 4661.5 to the payment of death benefits. The majority seems to overlook that the very purpose of 4661.5 (to take into account the effect of inflation) has already been considered when the Legislature periodically raised the death benefit to keep pace
with inflation.[3] Over the same period of time, the Legislature has

[3] The statutory amount of the death benefit for three total dependents (regardless of the number of partial dependents) (Labor Code section 4702(a)(1)) was increased by the Legislature:

Death From Injury On or After			
1/1/84	1/1/91	7/1/94	7/1/96
$95,000	$115,000	$150,000	$160,000

raised the basis for the temporary total disability payment rate (two-thirds of the injured worker's "average weekly earnings").[4]

If one compares the increases of these two benefits, one realizes that the Legislature has made comparable adjustments for inflation in both benefits:

Injuries after	Average Weekly Earnings	Death Benefits
1/1/91	20.8%	17.4%
7/1/94	17.4%	23.3%
7/1/96	9.1%	6.3%

Therefore, the practical effect of the majority's decision is to compound this legislative recognition of inflation by increasing the death benefit after two years.

CONCLUSION

The fixed amount of the death benefit was established by the Legislature without regard to the decedent's earnings. The fact that the Legislature specified that the death benefits were to be paid "in the same manner and amount as temporary total disability payments" simply indicates that the Legislature "intended full death benefits to be made available promptly so that they may

[4] The temporary total disability is two-thirds of the average weekly earnings (Labor Code section 4453(a)) with the maximum earnings having been ratcheted up over the years.

Average Weekly Earnings		Injuries occurring on or after
Minimum	Maximum	
189	504	1/1/91
189	609	1/1/94
189	672	1/1/95
189	735	1/1/96

serve as a substitute for lost support." *Zenith Insurance Company v. Workers' Comp. Appeals Bd.* (1981) 124 Cal.App.3d 176, 187, 46 Cal.Comp.Cases 1126, 1134.

For all of the foregoing reasons, the findings and award should be amended to provide for payment of death benefits under both Labor Code section 4702(b) and section 4703.5 at the rate of $336 per week.

/s/ Jane S. Wiegand
Jane S. Wiegand, Commissioner

/s/ Robert Ruggles
Robert Ruggles, Commissioner

/s/ Douglas M. Moore, Jr.
Douglas M. Moore, Jr., Chairman

DATED AND FILED IN SAN FRANCISCO, CALIFORNIA

APRIL 8, 1998

SERVICE BY MAIL ON SAID DATE TO ALL PARTIES LISTED ON THE OFFICIAL ADDRESS RECORD EXCEPT LIEN CLAIMANTS

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