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## FINDING OF FACTS MUST BE SUPPORTED WITH PROPER DOCUMENTATION

In 2003, Mary Bray filed an application for disability insurance benefits, claiming that she had been disabled since 2001. Her claim was denied. She therefore requested a hearing before an Administrative Law Judge (ALJ). The ALJ determined that Bray worked as a medical assistant for approximately 8 years ending in 2001, but could not hold a full-time job for 6 months after 2001. Therefore, Bray had not engaged in "substantial gainful activity." The ALJ also found that Bray's testimony regarding her medical symptoms was "not entirely credible" because it was inconsistent with evidence in her medical records and records of her daily activities.

Based on the testimony of a vocational expert, the ALJ found that Bray was not disabled and that she could perform a range of light work. This decision was sent to Judge A. Wallace Tashima who stated that the ruling requires an Administrative Law Judge to make written findings of fact in relation to the issue of an applicant's skill and transferability. The findings must be supported with proper documentation. In addition, acquired work skills must be identified and specific occupations to which skills are transferable may be listed. Further, specific findings on transferable skills are necessary even where the ALJ relies on the testimony of a vocational expert.

Here, the ALJ made no findings on the transferability of Bray's acquired skills. The decision failed to explain the basis for the finding that Bray had skilled work experience. The case was sent down and the judge stated that the ALJ must make specific findings on Bray's transferable skills.

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In January 2009, one of our long-time associates, Catherine Ripolone Finamore decided to leave the firm. The long drive finally got to her. We wish her luck.

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We would like to welcome Milene C. Apanian to Abdulaziz, Grossbart & Rudman. As an accomplished construction attorney, Milene will fit in very well at our firm.

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## EMPLOYERS GET SOME HELP WITH MEAL AND REST BREAKS



The San Diego California Court of Appeal provided some guidance to employers dealing primarily with meal and rest periods. The Court stated:

"...(1) while employers cannot impede, discourage or dissuade employees from taking rest periods, they need only provide, not ensure, rest periods are taken; (2) employers need only authorize and permit rest periods every four hours or major fraction thereof and they need not, where impracticable, be in the middle of each work period; (3) employers are not required to provide a meal period for every five consecutive hours worked; (4) while employers cannot impede, discourage or dissuade employees from taking meal periods, they need only provide them and not ensure they are taken; and (5) while employers cannot coerce, require or compel employees to work off the clock, they can only be held liable for employees working off the clock if they knew or should have known they were doing so."

The decision has come down in favor of the employer.



### Lawyers On A Jury

A trial had been scheduled in a small town, but the court clerk had forgotten to call in a jury panel. Rather than adjourning what he thought was an exceptionally simple case, the judge ordered his bailiff to go through the courthouse and round up enough people to form a jury. The bailiff returned with a group of lawyers.

The prosecutor felt that it would be an interesting experiment to try a case before a jury of lawyers, and the defense counsel had no objection, so a jury was impaneled. And the trial went very quickly -- after only an hour of testimony, and very short closing arguments, both sides rested. The jury was then instructed by the judge, and was sent back to the jury room to deliberate.

After nearly six hours, the trial court was concerned that the jury had not returned with a verdict. The case had in fact turned out to be every bit as simple as he had expected, and it seemed to him that they should have been back in minutes. He sent the bailiff to the jury room, to see if they needed anything.

The bailiff returned, and the judge asked, "Are they close to reaching a verdict?" The bailiff shook his head, and replied, "Your honor, they're still doing nomination speeches for the position of foreman."

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A recent California Appellate Decision confirmed that if there was no agreement as to when a contract would terminate, the contract could be terminated at will by either party. This is based on the California Uniform Commercial Code.

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Not surprisingly, a united Van Lines study indicates more residents are leaving California for other states. This is not at all surprising considering the ineptness of our Legislature.

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## WORKERS COMPENSATION DISABILITY RATING SCHEDULE

The California Appeals Court recently decided a case in favor of an employer. In this case, the employer and Zurich North American Insurance Company were successful on an appeal to the California 3<sup>rd</sup> District Court of Appeals. The decision was that the workers compensation judge made a mistake when he applied a 1997 schedule for rating a back and neck injury suffered by an employee in July 2004. Instead, the Appeals Court found that reform legislation adopted in 2004, called for using a rating schedule crafted in 2005. This superceded the 1997 schedule.

The issue in this case was when the employee's injury and his temporary disability benefits began and ended.

The Court sent the case back to the California Workers Compensation Appeals Board for reconsideration of the workers compensation judge's action. The instructions called for recalculating the employee's permanent disability rating under the 2005 schedule rather than the 1995 schedule.

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***We also want to announce that our California Construction Law book is now available. It has been updated for 2009. As a matter of fact, our book was out on the streets before the Contractors' State License Board's book.***

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