

## Workers' Compensation & Discrimination

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The case of *Gelson's Markets v. Workers' Compensation Appeals Board and Paul Fowler* reviews a decision of the Workers' Compensation Appeals Board ("Board"). The *Labor Code* penalizes an employer who discriminates "in any manner" against an employee who has filed a workers' compensation claim.

Gelson's Markets, Inc. ("Gelson's"), the employer in this matter, petitioned the court seeking an annulment of a Workers' Compensation Appeals Board decision, an award which found Gelson's liable for discrimination against an injured employee, Paul Fowler ("Fowler"), in an industrial accident. This decision was made by the Board because Gelson's did not accept a physician's release to allow Fowler to return to work in that Gelson's did not believe the release was an appropriate medical release with clear information on Fowler's medical condition. The release stated a partial return to work. Fowler wanted to return full time. Gelson's contacted the physician for clarification on the release and the physician stated that he did not feel Fowler was ready to return to work but that Fowler felt he was able to return to work.

A few days after Gelson's denied Fowler's request to return to work, Gelson's received another release from the physician. This second release

stated that Fowler felt he could return to work, but did not state that the doctor felt he was medically ready to return. Gelson's again denied Fowler's return to work.

The court stated that it reviewed the Board's legal decision de novo (from the beginning). It is for the court to decide whether the facts found by the Board constitute a violation of the Code.

Gelson's claimed that the Board erroneously applied liability for discrimination in that Fowler presented no evidence of bad treatment by Gelson's.

Labor Code Section 123a states, "... it is the declared policy of this state that there should not be discrimination against workers' who are injured in the course and scope of their employment." However, the employee would have to establish lost wages and benefits caused by the employer's discrimination. The employee need only show that an action was taken by the employer to the injured workers' detriment.

The court held that here, Fowler made no showing that Gelson's treated him differently from any non-industrial injured employees. That is, Fowler did not show that Gelson's would have returned any other injured employee to work whose physician provided the same releases. Therefore, Gelson's did not discriminate against Fowler by not returning him to work. The award of the Board was annulled.

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