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In *Contra Costa County v WCAB (Dahl)* (2015),¹ the First District Court of Appeal held that in order to rebut the Schedule's rating under an *Ogilvie/LeBoeuf* method, injured workers must show that they are not amenable to vocational rehabilitation.

"The first step in any *LeBoeuf* analysis is to determine whether a work-related injury precludes the claimant from taking advantage of vocational rehabilitation and participating in the labor force. This necessarily requires an individualized approach." (page 12.)

Dahl suggests that only cases where the applicant is alleging 100% disability will fall under an *Ogilvie/LeBoeuf* approach: "We are skeptical of the WCAB's conclusion that an employee may invoke the second *Ogilvie* rebuttal method where the inability to rehabilitate results in less than a 100-percent permanent disability." The Court's footnote on this point indicates in pertinent part:

"... a partial impairment rule would allow for rebuttal in a wide swath of cases. Many injured employees cannot return to the precise position they held before their injury or to an equally remunerative one. *Ogilvie* does not appear to contemplate rebuttal of the scheduled rating in this circumstance, since the Schedule's formula for determining diminished future earning capacity takes into account such limitations." (page 14, emphasis added.)

Under *Dahl*, the inability to benefit from rehabilitation must be due only to the effects of the injury: "...*Ogilvie* holds claimant must show that they are not amenable to rehabilitation due to their industrial injury, not due to extraneous factors, such as the cessation of certain state-sponsored rehabilitation benefits."

The Court realizes that effect of the decision is to narrow cases where a rebuttal is available: "*Ogilvie* signaled that it would be a *rare case* in which an applicant or employer could rebut a scheduled rating." (page 11.)

After *Dahl*, an attempted *Ogilvie/LeBoeuf* rebuttal will fail unless it can be shown: 1) the applicant is permanently and totally disabled (i.e., 100%); 2) the applicant cannot benefit at all from any vocational retraining or skills-enhancement; 3) the cause of the inability to benefit from rehabilitation is solely due to the work injury.

¹ <http://www.courts.ca.gov/opinions/documents/A141046.PDF>