

PRESS RELEASE

The Sixth District Court of Appeal issued on May 27, 2020, certified for publication, its decision on County of Santa Clara v WCAB. This is an extremely favorable decision for the defense. Applicant suffered a specific left knee injury due to a fall and later a compensable consequence right knee injury. Both the WCJ and the Board applied *Hikida* and applicant was received an unapportioned award of 48% related to her bilateral knee disability following two total knee replacements authorized by the defendant.

The AME reporting in the case who wrote six reports and was deposed twice, opined there should be 50% nonindustrial apportionment of applicant's bilateral knee PD based on extensive and well documented degenerative arthritis in both knees confirmed by X-rays and MRI's close in time to applicant's specific injury. The parties agreed the AME's opinion on apportionment constituted substantial evidence of nonindustrial apportionment but AA argued *Hikida* precluded any nonindustrial apportionment. The WCJ felt constrained to follow *Hikida*. Defendant filed a Petition for Reconsideration arguing that the WCJ erroneously applied the holding in *Hikida* to the facts of the case. The WCAB denied reconsideration except to amend a clerical error. Defendant filed a writ.

In short the Court of Appeal interpreted and applied *Hikida* very narrowly indicating that apportionment was required in this cases based on the AME's opinion on apportionment that constituted un rebutted substantial medical evidence. More importantly the Court of Appeal held that "*Hikida* precludes apportionment only where the industrial medical treatment is the sole cause of the permanent disability." In the instant case the medical treatment in the form of the two knee replacements was not the sole and exclusive cause of the applicant's bilateral knee PD. There were multiple contributing causal factors of applicant's knee disability both industrial (the specific injury and resulting surgeries) and non-industrial in terms of the preexisting severe bilateral degenerative disease in both knees. "In this case, there was un rebutted substantial medical evidence that Justice's permanent disability was caused, in part, by extensive preexisting knee pathology. Apportionment was therefore required."

For a copy of the decision, click here: <https://cases.justia.com/california/court-of-appeal/2020-h046562.pdf?ts=1590616877>