

The best way to win a case is to present better evidence than the other side does. Basic, but true.

- I) Have a plan! Do your discovery, but before you start, find out what your case is about. Standard, cookie cutter scattershot discovery sometimes works, but is sometimes disastrous. What is your theory for success? What are the elements you have to prove or disprove? Let the needs of your case dictate your discovery plan. This means you have to know what the needs of the case ARE before you form a plan to get it.
 - (a) Applicant has Burden of Proof, but... Defendant has a duty to investigate. Rule 10109 says Defendant MUST carry out a good faith investigation, and can be sanctioned for failure to do so. Galindo vs American Medical Response, 2017 Cal Wrk Comp PD Lexis 88
 - (b) Applicant has Burden of Proof, but... Medical issues must be resolved by substantial medical evidence, and can't be resolved without it. The WCAB must develop the record if there isn't any. McDuffie v LA County Metro Transit, 67 CCC 138 (en banc, 2002).
 - (c) The Board must develop the record, but...this only applies where there is NO substantial medical evidence on a given disputed point. A poor but still substantial report does not allow development, much less require it. Lots of bad medical reports are still substantial, so never bet on a judge agreeing with you on substantial evidence. Judges are fundamentally evil and think they are entitled to form their own opinions.

- II) Once you know what you need, go get it. The parties to a Comp case have absurdly free access to subpoena powers to get earnings data, employment records, medical evidence and all the other data you might need to execute your plan. Use the tools you have to get what you need, don't piecemeal your discovery. Be aggressive, your opponent will take the initiative if you don't.
 - (a) The temptation to wait until you get one thing before you get the next thing (let's not investigate earnings until we get solid data on employment) is a trap. While you wait, your opponent is busy getting evidence you might wish you could rebut at the expedited hearing.
 - (b) It is perfectly permissible to seek to rebut a PQME or AME with reports from a PTP or secondary treater. Claiming otherwise to block requests are fashionable just now, but are unsupported by the Code or case law. Feel free to get rebuttal from the PTP. Your opponent will. Attempts to block such discovery may well be sanctionable as the PTP is required to comment on all issues (Sec 4061 et seq) and PTP reports are nearly always admissible.

- III) Don't be afraid to cooperate with the other side where you can. Many times, both sides need the same evidence. Cooperation saves time and money, and builds confidence when it comes time to settle.

Along the same lines, help out the trial judge by showing up at the MSC prepare to identify all your exhibits with specificity. The rules require you to do this, so you might as well get brownie points for doing it right. Do NOT simply list an entire phonebook's worth of subpoenaed records as one exhibit; cull what you need and only what you need. Do not list a large stack of PTP reports and list the dates as 'various'. This practice violates Policy and Procedure Manual se. 1.40, and more importantly, annoys the trial judge. Do not identify witnesses as 'PMK' or 'TBA from the HR Dept'. Witnesses have to be identified by name

(see, for example, Labor Connection v WCAB (Leinert) 66 CCC399 (writ den., 2001); if you are not ready to do this, don't file a DOR.

- IV) Who the QME is matters more than what their specialty is. Very often, the parties act as if the only thing to think about in selecting the QME is which specialty will give you the PD report you want. The rules prevent parties from selecting an inappropriate specialty, but your job is to get the MOST appropriate specialty. This can only be done through cooperation, in most cases. Get to a specialist who will move your plan forward by writing a high-quality report that moves your plan forward. Chiro vs Ortho is a fight that rarely benefits either side. There are conservative DC's and PMR doctors out there, and there are liberal orthopedists.
- V) AME's are dangerous...unless you've done your homework and know the doctors. Learn who the doctors are and what their peculiarities are, and an AME may be your best approach.
- VI) Want to settle your case on favorable terms? Prepare for trial!