

## SELF ASSESSMENT TEST

1. If an injured worker is determined to be a Qualified Injured Worker, vocational rehabilitation maintenance allowance should begin from the date of the request for vocational rehabilitation services, even if there is no prima facie evidence that the injured worker was entitled to QIW status at the time of the request?

True  False

2. An insurance carrier is estopped to deny coverage when the representation of coverage is relied upon by the applicant and the WCJ in issuing a decision?

True  False

3. An order of the Appeals Board returning a matter to the trial level for further hearing is a final appealable order?

True  False

4. A WCJ does not have the discretion to appoint an independent medical examiner.

True  False

5. An expert opinion based on surmise, speculation, conjecture, or guess is insufficient to support an Appeals Board determination.

True  False

6. A supplemental petition for reconsideration must be filed within 25 days of the WCAB order being challenged.

True  False

7. When an applicant establishes both exposure to a known carcinogen and the manifestation or development of cancer, the cancer is presumed to be an industrial injury. The burden then shifts to the defendant to rebut the presumption (1) by evidence establishing the primary site of the cancer, or (2) by evidence establishing that there is no reasonable link between the carcinogen and the cancer. The defendant must prove that no reasonable link exists, it does not rebut the presumption by merely showing that there is not evidence demonstrating a reasonable link.

True  False

8. An employer is not required to create light-duty positions for purposes of accommodating a disabled employee unable to perform the essential functions of the position for which he or she was hired, and the employee who has created such a temporary assignment has no duty to transform that accommodation into a permanent position once it is informed the employee's disability has become permanent?

True  False

9. When an employee is injured during voluntary, off-duty participation in a recreational, social, or athletic activity, the injury is not covered by workers' compensation, unless the activity was a reasonable expectancy of, or was expressly or impliedly required by, the employment?

True  False

10. In applying the reasonable expectancy test, the first issue is whether the employee subjectively believed that participation in the activity

was expected by the employee, a question of fact. The second issue is whether the employee's belief is objectively reasonable, a question of law?

True  False

11. The voluntary nature of the employee's participation in the off-duty activity is a critical factor in determining employer liability?

True  False

12. The failure to post the required notice mentioned in Labor Code 3600(a)(9), while not a waiver of that subsection, affects whether participation in an activity is voluntary to the extent the failure to post the notice will make the employer's action in encouraging an activity appear more coercive?

True  False

13. It is correct as a matter of law that the existence of a direct benefit to the employer for an off duty athletic activity could be used to circumvent the express terms of Labor Code §3600(a)(9)?

True  False

14. The statutory repeal rule applies because the Legislature by SB 899 repealed the purely statutory right to a particular formula for calculating penalties for unreasonable delay or refusal to pay compensation?

True  False

15. The repeal of a statutory right or remedy triggers the application of rules distinct from the traditional law regarding the prospective or retroactive application of a statute?

True  False

16. Labor Code §5814, as enacted by SB899 and operative June 1, 2004, applies to unreasonable delays or refusals to pay compensation that occur prior to the operative date where the finding of unreasonable delay is made on or after June 1, 2004?

True  False

17. In the context of collateral estoppel, due process requires that the party to be estopped must have had an identity or community of interest with, and adequate representation by, the losing party in the first action as well as that the circumstances must have been such that the party to be estopped should reasonably have expected to be bound by the prior adjudication.

True  False

18. The fact that plaintiff was represented by the same counsel as were the plaintiffs in the prior actions would suffice to extend the doctrine of privity to his case, and the doctrine of collateral estoppel would apply?

True  False

19. Representation of different plaintiffs in different cases by the same attorneys is a factor that justifies imposition of collateral estoppel to preclude litigation of an issue by appellant as a non-party to the prior actions?

True  False

20. The new apportionment provisions of SB 899 apply to all cases pending and not yet final at the time of its April 19, 2004, effective date?

True  False

## CERTIFICATION

- This self-study activity has been approved for Minimum Continuing Legal Education credit by the State Bar of California in the amount of one hour.
- The State Bar of California certified that this activity conforms to the standards for approved education activities prescribed by the Rules and Regulations of the State Bar of California governing Minimum Continuing Legal Education (MCLE).

### How to receive 1 hour of MCLE credit:

- After reading this issue of the *Appeals Board Reporter*, answer the test questions. Each question has only one answer. You may photocopy the answer sheet, but the answer sheet should not be reduced or enlarged.
- Mail the form and \$25 processing fee to:

**Providence Publications  
P.O. Box 2610  
Granite Bay, CA 95746**

- Make your check payable to Providence Publications. (If you are an *Appeals Board Reporter* subscriber, you do not have to submit the \$25.00 processing fee for the first four self assessment tests each year.)
- Correct answers and a Continuing Legal Education certificate will be mailed to you within four weeks.
- Make sure you retain the CLE certificate for compliance with State Bar MCLE bi-annual certification.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Lawfirm/Organization

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State/Zip Code

\_\_\_\_\_  
State Bar Number