

3-15-2003

Legal Summaries

Tina Serebrakian

Ryan Yahne

Follow this and additional works at: <http://digitalcommons.pepperdine.edu/naalj>



Part of the [Administrative Law Commons](#), and the [Jurisprudence Commons](#)

Recommended Citation

Tina Serebrakian and Ryan Yahne, *Legal Summaries*, 23 J. Nat'l Ass'n Admin. L. Judges. (2003)
available at <http://digitalcommons.pepperdine.edu/naalj/vol23/iss1/9>

This Legal Summary is brought to you for free and open access by the School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Journal of the National Association of Administrative Law Judiciary by an authorized administrator of Pepperdine Digital Commons. For more information, please contact Kevin.Miller3@pepperdine.edu.

**Pepperdine University School of Law
Legal Summaries***

Table of Cases

CALIFORNIA STATE COURT

CMPB Friends, Inc. v. Alcoholic Beverage Control Bd., 122
Cal. Rptr. 2d 914 (2002) 253

Dep't of Alcoholic Beverage Control v. Alcoholic Beverage
Control Appeals Bd., 940 Cal. App. 4th 880 (2002) 254

COLORADO STATE COURT

Morgan v. Colorado Dep't of Health Care Policy and Fin., 56
P.3d 1136 (Colo. Ct. App. 2002) 255

INDIANA STATE COURT

Worman Enter., Inc. v. Boone County Solid Waste Mgmt.
Dist., 779 N.E.2d 565 (Ind. Ct. App. 2002) 257

NEW JERSEY STATE COURT

Lindquist v. Jersey City Fire Dep't, 814 A.2d 1069 (N.J. 2003)... 258

NORTH CAROLINA STATE COURT

Jordan v. Civil Serv. Bd., 570 S.E.2d 912 (N.C. Ct. App. 2002) .. 259

Kea v. Dep't of Health & Human Servs., 570 S.E.2d 919 (N.C.
Ct. App. 2002)..... 261

* Prepared by the Legal Summaries Editors of the Journal of the National Association of Administrative Law Judges at Pepperdine University School of Law. The Legal Summaries are selected case briefs of recent court decisions on issues involving administrative law.

TABLE OF CASES (CONT.)**PENNSYLVANIA STATE COURT**

Bucks County Children & Youth Soc. Servs Agency v. Dep't of
Pub. Welfare, 808 A.2d 990 (Pa. Commw. Ct. 2002) 262

Cardiac Sci., Inc. v. Dep't of Gen. Servs., 808 A.2d 1029 (Pa.
Commw. Ct. 2002)..... 263

UTAH STATE COURT

Speirs v. S. Utah Univ., 60 P.3d 42 (Utah Ct. App. 2002) 265

CALIFORNIA STATE COURT

CMPB Friends, Inc. v. Alcoholic Beverage Control Bd., 122 Cal. Rptr. 2d 914 (2002).

LAW: Liquor licensees bear an affirmative duty to ensure that minors are not permitted to enter and remain on their premises.

FACTS: Royal Room is a bar, which is licensed and serves alcoholic beverages. On June 15, 2000, Celeste Jimenez, a twenty-year old woman entered the Royal Room with friends and sat at a table. At the time, there were forty to sixty patrons at the bar and only one waitress. After ten minutes the waitress came to Ms. Jimenez's table and asked to see age identification. According to the waitress' assertions, Ms. Jimenez presented the waitress with the identification of Melissa Guzman, a person almost eight years older than her and thirty pounds heavier. Ms. Jimenez explained that she had recently lost weight, and the waitress accepted the identification and asked for her drink order. Ms. Jimenez began drinking beer from a pitcher at a nearby table. Approximately thirty minutes later two department investigators appeared, approached Ms. Jimenez, and asked her to step outside. They asked her age and she replied that she was twenty years old. The investigators found her real identification as well as the fake identification card she had used. The investigators cited Ms. Jimenez as a minor and filed an accusation against Royal Room for violating § 25665, which prohibits a licensee from permitting a minor to enter and remain on its premises without lawful business. The Alcoholic Beverage Control Appeals Board suspended the establishment's license for ten days. On appeal, the instant court reversed and remanded.

ANALYSIS: The court reasoned that there is no set time period in which a violation occurs. According to the court, ten minutes does not necessarily constitute an unreasonable amount of time within which to demand proof of age. Such a determination is question of fact to be decided in each case. The court found that this case is therefore different than the *Ballesteros v. Alcoholic Beverage Control Appeals Bd.*, 234 Cal. App. 2d 694, because the ten minute increment is not the deciding factor. Rather, the deciding factor is whether or not the minor was permitted to stay

on the premises. In the instant case the minor was asked her age within ten minutes but presented fake identification.

HOLDING: Reversed and remanded. Department's finding that a ten minute period of time passed before petitioner checked the identification of the minor, without more, does not compel the conclusion that the petitioner violated § 25665.

IMPACT: The instant court made an analytical decision. Although the standard of review requires that the court may not exercise its independent judgment on the evidence, and must accept findings of fact made by the Department as conclusive, this court pushes the threshold somewhat, by rendering a decision based on different analytical standards.

Dep't of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd., 940 Cal. App. 4th 880 (2002).

LAW: The Court of Appeal will not presume that state-employed professional ALJ's cannot or do not bring a constitutional level of impartiality to the cases they hear, even if one side is the agency that directly employs them.

FACTS: The real party in interest, Renee Vicary ("Vicary"), is the proprietor of Angels Sports Bar, a topless entertainment establishment. The bar is licensed to serve alcoholic beverages. The California Code of Regulations, (Title IV, § 143.3) prohibits the exposure of breast or buttock unless the dancer is on a raised stage at least six feet from patrons. During a supervising investigation of the establishment by the Department of Alcoholic Beverage Control ("Department"), the investigators found that the Code was violated seven times. The Administrative Law Judge ("ALJ") sustained all counts of the accusation and a license suspension of thirty days was imposed. Vicary appealed, and the case was heard by the Alcoholic Beverage Control Appeals Board ("Board"). The Board reversed the decision of the ALJ on the basis that the rule could not constitutionally be applied to the arguably "expressive" conduct of the dancers. The Department sought judicial review from the instant court.

ANALYSIS: The court reasoned that pursuant to legislative history, the ALJ can be appointed or equivalently hired by the director. It has been consistently recognized that the fact that the agency or entity holding the hearing also pays the adjudicator does not automatically require disqualification. The court reasoned that there was no suspicion of bias in this case. Substantively, the court reasoned that the Board erred in understanding the state's power to impose regulations directed at the undesirable secondary effects of certain types of entertainment and the establishments offering them. The state, through the department, has not prohibited dancers from performing with erotic expression. They are simply forbidden to do so in establishments that serve alcohol, and the constitution is not thereby offended.

HOLDING: The court of appeal held that 1) the statute allowing the Department to hire and use its own ALJ's appointed by the director sufficiently authorized the Department to hire and use its own ALJ's and did not deprive proprietor of due process, and 2) the regulation did not unconstitutionally limit expressive conduct of the entertainers. Pursuant to the writ of review, the decision of the Board was annulled and remanded.

IMPACT: This allows great deference for the administrative law system. However, it is possible that there may be subconscious bias that may be overlooked.

COLORADO STATE COURT

Morgan v. Colorado Dep't of Health Care Policy and Fin., 56 P.3d 1136 (Colo. Ct. App. 2002).

LAW: An administrative agency's determination may be reversed only if the court finds the agency acted in an arbitrary and capricious manner, made a determination that is unsupported by the evidence in the record, erroneously interpreted the law, or exceeded its constitutional or statutory authority.

FACTS: Plaintiff, Morgan, applied for Home and Community Based Services for the Elderly, Blind, and Disabled ("HCBS") in 1998. To be eligible for these benefits the applicant must have a functional impairment sufficiently severe to require the "level of

care” available in a nursing home. “Level of care” determinations are made by the Colorado Foundation for Medical Care, a peer review organization (“PRO”) operating under contract with the state. First, the PRO case manager makes an initial assessment. Second, a program coordinator scores the applicant using a point system. Under the system, a point score of twenty or more automatically qualifies the applicant for benefits. Otherwise, the application is referred to a physician advisor for review. Plaintiff originally received a point score of thirteen. Accordingly, the physician advisor determined her ineligible. Several reconsiderations were granted, all of which determined her ineligible. The case was referred to an Administrative Law Judge (“ALJ”), who also determined her ineligible. Then, a final agency review once again affirmed. Plaintiff filed an action in the district court, which affirmed the decision, and an appeal was filed with the instant court, which also affirmed.

ANALYSIS: After reviewing the evidence, the court found that the agency rendered decision was not pursuant to any arbitrary or capricious actions, was supported by evidence in the record, and the law was not erroneously interpreted or excessive of constitutional or statutory authority.

HOLDING: The instant court affirmed the decision holding that 1) the department properly evaluated claimant when determining her ineligibility; 2) the use of unpublished criteria to evaluate claimant did not violate the Administrative Procedure Act, the delegation doctrine, or due process; and 3) claimant’s eligibility was properly determined by a physician, even though the HCBS physician advisor did not personally examine the claimant.

IMPACT: This case sets a stringent policy on eligibility for health care benefits. The trend pursuant to this case would be to provide great deference to the department as opposed to the individuals who bring a claim.

INDIANA STATE COURT

Worman Enter., Inc. v. Boone County Solid Waste Mgmt. Dist.,
779 N.E.2d 565 (Ind. Ct. App. 2002).

LAW: The receipt of ex parte evidence by an administrative authority may be prejudicial error if the following three-prong test is answered in the affirmative: 1) did the administrative authority exercise a function of an adjudicatory nature; 2) did the administrative authority fail to make known and available the ex parte evidence to the affected party and allow that party the opportunity to rebut the evidence; 3) did the administrative authority base its findings or decision on that ex parte evidence.

FACTS: The plaintiff, Worman Enterprises, Inc. (“Worman”), has operated a long term clean fill processing and organic recycling facility in Boone County since 1984. On September 9, 1998, the defendant, Boone County Solid Waste Management District (“District”), adopted resolution 98-3 which set forth certain requirements for permitting and operation a solid waste facility and clean fill site. The District brought suit against Worman, alleging that Worman is operating an unpermitted clean fill site over which the district has permitting authority. On October 8, 1998, the parties filed a settlement agreement wherein the District agreed to dismiss the lawsuit and Worman agreed to file for a permit. However, a condition stated that if the permit was not issued to Worman, or issued with unacceptable conditions, the agreement would have no effect. On July 28, 1999, Worman submitted an application for a permit. In October 2000, the permit was issued; however, on November 13, 2000, Worman filed a verified complaint for a declaratory judgment alleging that certain terms contained in the permit were unlawfully imposed and the District did not have the authority to issue the permit. The trial court granted a summary judgment motion, dismissing the complaint, and Worman appealed. The instant court reversed and remanded to the trial court for further proceedings.

ANALYSIS: The court reasoned that the Indiana Home Rule Act specifically dictates that a local governmental unit does not

have the power to regulate conduct that is regulated by a state agency, except as expressly granted by statute. However, the District does not fall under the strict definition of a unit; therefore the Home Rule Act is inapplicable. The District falls under the municipal corporation definition, which follows the traditional rule, which is limited to the powers expressly granted by the General Assembly. Therefore, the District would have the power to adopt a permit system if it was necessary for the reduction, management, and disposal of waste.

HOLDING: The court found as a matter of law that the District does have the authority to issue permits like the one it issued to Worman Enterprises. However, there was an issue of material fact as to whether the receipt of ex parte evidence during the permit application process was prejudicial error. Therefore, the court reversed and remanded to determine whether the receipt of ex parte communications during the application process resulted in the prejudicial error, as well as to consider Worman's challenges to permit provisions.

IMPACT: The court created a bright line test, which is efficient in ex parte evidence cases.

NEW JERSEY STATE COURT

Lindquist v. Jersey City Fire Dep't, 814 A.2d 1069 (N.J. 2003).

LAW: Courts generally give substantial deference to administrative determinations. In workers' compensation cases, the scope of appellate review is limited to whether the findings made could reasonably have been reached on sufficient, credible evidence present in the record, considering the proofs as a whole, with due regard to the opportunity of the one who heard the witnesses to judge of their credibility. Deference is given unless the factual findings and legal determinations made by the Judge of Compensation are manifestly unsupported by, or inconsistent with, competent, relevant and reasonably credible evidence as to offend the interest of justice.

FACTS: Plaintiff, Lindquist, has been a firefighter for over twenty-three years, from 1972 until January 1995. He retired in

1995, mainly due to a buy out for health considerations. He suffered from heart palpitations, shortness of breath, and weakness. Although through the course of his employment he was provided a mask to limit his exposure to harmful fumes, he claimed he was still exposed to the fumes when he had to take the mask off for orders, to clean out the mask, or when condensation developed in the mask. After serious exposure to fires, he claims that his employment caused or contributed to his development of pulmonary emphysema within the meaning of the occupational disease provisions of the Workers' Compensation Act. The case was heard by the Judge of Compensation, who concluded that Lindquist's condition was due, in material degree, to occupational exposure to toxic smoke. The judge awarded Lindquist disability of thirty percent for emphysema. However, the appellate division reversed. The instant court reversed and reinstated the original opinion.

ANALYSIS: In workers' compensation cases, scientific theory of causation that has not yet reached general acceptance maybe found to be sufficiently reliable if it is based on sound, adequately founded scientific methodology, involving data and information of the type reasonably relied on by experts in the scientific field. In New Jersey, it is sufficient to prove that the exposure to risk or danger in the workplace was in fact a contributing cause of the injury.

HOLDING: Appellate division decision was reversed. Judgment of Division of Workers' Compensation was reinstated.

IMPACT: This leaves Plaintiffs with the possibility of winning their case without direct proof of injury. This case relaxes the stringent evidentiary requirements of the past.

NORTH CAROLINA STATE COURT

Jordan v. Civil Serv. Bd., 570 S.E.2d 912 (N.C. Ct. App. 2002).

LAW: A court of appeals role in reviewing a lower (superior) court's review of an administrative board's decision is to determine whether the trial court exercised the proper scope of

review and to decide whether the trial court correctly applied this scope of review.

FACTS: Plaintiff Shannon Jordan, a former police officer, opened fire on a driver who failed to stop at a police checkpoint, fatally wounding the driver. Due to this behavior and violation of departmental rules and procedures governing the use of deadly force, Defendant Civil Service Board terminated Jordan's employment. Jordan appealed the decision by the Board to the superior court, which affirmed its order. Jordan then appealed the trial court's decision to the court of appeals.

ANALYSIS: First, the court looked at whether the trial court used the proper scope of review. Plaintiff, in his brief to the trial court, presented legal arguments premised upon errors of law committed by the board, which required the trial court to conduct a de novo review of the decision. The court concluded that the trial court did in fact use a de novo standard of review.

Next, the court examined whether the trial court applied the standard properly. The court found that, under the circumstances, the trial court properly came to its own conclusions of law and fact in finding that Plaintiff Jordan used excessive force in firing upon the driver at the checkpoint. Further, the court found no evidence that the trial court erred in finding that Jordan used unreasonable force and was properly terminated for doing so.

Finally, the court addressed Plaintiff's final argument that he was denied his right to an impartial hearing because the Chairperson of the Board was simultaneously employed as an investigator and as the victim's lawyer. The court found that there was no evidence of bias or impartiality and the Board acted properly in allowing such a situation.

HOLDING: The court held that: (1) the proper standard of review was applied, (2) the standard of review was applied properly in this situation, and (3) there was no evidence of due process of equal protection violations. The decision was affirmed.

IMPACT: It seems that the de novo standard used by both the trial court and the court of appeals is dependant on whether the

petitioner argues for it. Because of this, the court may be usurping some authority from administrative agencies since the de novo standard gives the reviewing court wide latitude in reviewing decisions.

Kea v. Dep't of Health & Human Servs., 570 S.E.2d 919 (N.C. Ct. App. 2002).

LAW: A court of appeals role in reviewing a lower (superior) court's review of an administrative board's decision is to determine whether the trial court exercised the proper scope of review and to review whether the trial court correctly applied this scope of review.

FACTS: Petitioner Kea was terminated from his employment at the O'Berry Center, a State facility for the mentally retarded, for unacceptable personal conduct involving a female subordinate employee, Veronica Ham. Kea was found to have: (1) treated Ham in a special and preferential way when he supervised her by giving her better hours and other special treatment, (2) sexually harassing Ham by repeatedly asking her to lunch and dinner and making sexual advances, and (3) by retaliating against Ham when she refused his advances by transferring her to another department. Also, Petitioner was found to have disobeyed a direct order by discussing the fact that he was being investigated on these charges with other employees. Petitioner's termination was reviewed by an ALJ, who found that, based on the findings, Respondent had just cause in terminating Petitioner. The State Personnel Commission adopted the ALJ's decision. Petitioner appealed this decision to the State Superior Court, which reversed the Commission's decision based on its finding that Petitioner was not afforded his constitutionally guaranteed due process due to lack of notice and oral and written warnings. The Respondent appealed to the court of appeals.

ANALYSIS: Respondent's first argument was that the Superior Court applied the wrong standard of review, which in this case was de novo. The court disagreed, stating that when Petitioner appealed to the Superior Court he alleged that the record did not support several of the Commission's conclusions of law. The court determined that these types of arguments are subject to de

novo review. Accordingly, the court found that the superior court applied the correct standard of review but did not agree with the superior court's findings that Petitioner was denied due process of law. The record showed that Petitioner was not entitled to oral or written warnings because he violated known and written work rules. Further, the court found that Petitioner was given sufficient notice, based on the record.

Finally, the court found that Petitioner's argument—that he was deprived of an impartial and unbiased decision maker—lacked merit. There was no evidence that Frank Ferrell, the man assigned as both investigator and adjudicator, had any disqualifying personal bias that affected his decision-making ability.

HOLDING: The court found that although the trial court used the proper standard of review, there was substantial evidence to support the Commission's ruling that Petitioner's due process rights were not violated. The trial court's decision was reversed, thereby reinstating the Commission's order.

IMPACT: As stated in *Jordan*, above, this holding shows that de novo review gives the reviewing court great liberty in scrutinizing the trial court's decision.

PENNSYLVANIA STATE COURT

Bucks County Children & Youth Soc. Servs. Agency v. Dep't of Pub. Welfare, 808 A.2d 990 (Pa. Commw. Ct. 2002).

LAW: In cases of alleged child abuse, the Children and Youth Services ("CYS") Agency has the burden of establishing by substantial evidence that a report of child abuse is accurate. In cases where the decision of the CYS is appealed, the attorney examiner assigned is the ultimate finder of fact.

FACTS: Petitioner CYS appeals an order from the Department of Public Welfare ("the Department") to expunge the name of a suspected child molester, R.J., from the ChildLine Registry, a service that lists the names of child molesters. A nineteen-year-old female, M.K.B., brought the original action and alleged that R.J., her softball coach for a number of years, had sexually

abused her over a five-year period. CYS found for M.K.B., and R.J. appealed the decision, which was then heard by an attorney examiner. The attorney examiner heard testimony from both M.K.B. and the CYS caseworker assigned to the file, who merely reiterated the testimony she received from M.K.B. There was no other substantial evidence to corroborate M.K.B.'s accusations. The attorney examiner determined that CYS had not met its burden and ordered R.J.'s name to be expunged from the ChildLine Registry. CYS appealed the decision.

ANALYSIS: According to the governing law, the court found that CYS significantly failed to meet the burden of proof in its case against R.J. Not only was there no evidence to corroborate M.K.B.'s accusations against R.J., but the details from M.K.B. about the incidents were sketchy and vague. The details came in the form of flashbacks when M.K.B. underwent memory therapy due to an unrelated car accident, thus lending even more to their unreliability.

HOLDING: The court found in favor of the Department and ordered the removal of R.J.'s name from the registry.

IMPACT: Although the facts in this case seem to indicate that CYS fell far below the proper burden of proof in child abuse cases, there is a danger that the burden is too high in the first place. Many times in cases like these, there is only going to be one witness, the victim, and future victims may have their rights limited due to the precedent set in this case.

Cardiac Sci., Inc. v. Dep't of Gen. Servs., 808 A.2d 1029 (Pa. Commw. Ct. 2002).

LAW: Courts will not review the action of governmental bodies of administrative tribunals involving acts of discretion without a showing of bad faith, fraud, capricious action or abuse of power.

FACTS: Petitioner Cardiac Science, Inc. ("Cardiac Science") petitioned for a review of the decision by the Department of General Services ("DGS") which denied challenging Cardiac Science's bid protest of DGS's award of a contract for the purchase of a shipment of automatic external defibrillators to

another bidder. The problem arose when Cardiac Science included a term in their bid proposal a term stating that delivery shall be F.O.B. place of shipment, which places the risk of shipment on the seller until the shipment is in possession of the carrier. DGS required the bids to include F.O.B. destination, which places the risk on the seller until the shipment reached its destination. DGS alerted Cardiac Science of the mistake, to which Cardiac responded by sending a new backdated bid that had the correct terms. However, DGS rejected Cardiac Science's bid as being non-responsive and awarded the bid to the next lowest bidder.

Cardiac Science filed a bid protest to the Deputy Secretary of DGS. Cardiac Science did not request a hearing, but instead included its legal arguments in a letter, stating that the accidental inclusion of the wrong shipment term was not material and was not grounds for the bid to be dismissed as non-responsive. The Deputy Secretary determined that Cardiac Science's bid protest lacked merit and refused to reverse the award of the contract to the other bidder. Cardiac Science appealed this decision to the commonwealth court, arguing that the misplaced shipping term should be disregarded because it was not intended to be part of the bid package and that the bid was otherwise complete. Further, Cardiac Science argued that their representative, who was contacted by DGS, informed DGS of the mistake and resubmitted a corrected bid, thereby curing the mistake. Finally, Cardiac Science argued that the inclusion of the incorrect term was nonmaterial and should have been considered a waiveable technical defect.

ANALYSIS: The court quoted the Pennsylvania Commonwealth Procurement Code, which stated that the contract in question should be awarded to the person who submitted a bid that conforms in all material respects to the invitation for bids. It is up to DGS, the court states, to determine whether the bid in question does in fact conform to the invitation for bids. Here, the court shows that DGS made very clear the type of shipment term that was to be included in the bid, and that Cardiac Science clearly included a term contrary to the correct one. Further, the court argues that the inclusion of the wrong term was not as immaterial as Cardiac Science suggested, but in any case, the decision on materiality is left to the discretion of DGS. Cardiac

Science offered other legal arguments claiming its right to due process was violated because it was not offered a hearing, but the court dismissed them since Cardiac Science did not request a hearing. Without any evidence of abuse of discretion, the court must affirm the decision.

HOLDING: The court affirmed the decision by DGS, since it found no evidence of abuse of discretion, fraud, bad faith, or abuse of power.

IMPACT: This decision tends to give the administrative body, in this case the Department of General Services, wide latitude in discretionary decisions. One can argue that such a seemingly simple mistake, like a wrong phrase placed in a bid offered, can have dire effects that are not proportional to the mistake.

UTAH STATE COURT

Speirs v. S. Utah Univ., 60 P.3d 42 (Utah Ct. App. 2002).

LAW: Even when a medical panel is convened, the Administrative Law Judge (“ALJ”)/ Labor Commission is always the ultimate finder of fact.

FACTS: Petitioner Linda Speirs sustained injury to her nose, right ankle and left knee while waitressing on the Southern Utah University campus. Initially, she received workers’ compensation benefits, but her employer later denied those benefits. Petitioner appealed to the Utah Labor Commission, asking for permanent partial disability benefits and future medical costs. The ALJ assigned to the case convened a medical panel to render a medical opinion, based on the fact that there were conflicting medical opinions as to the extent of Petitioner’s injuries thus far. The panel conducted an independent medical exam of Petitioner and offered their medical opinion that Petitioner suffered a four percent permanent physical impairment due to her injuries and should be awarded accordingly.

The ALJ found, based on the opinion given by the medical panel and other evidence in the record, that Petitioner suffered no permanent partial impairment from her injuries except the four percent whole body impairment attributable to her

ankle injury, and awarded Petitioner \$915.16 in disability compensation. Petitioner appealed to the Commission, based on the argument that the medical panel had usurped the ALJ's authority and that the medical panel was biased. The Commission affirmed and Petitioner appealed to the State Court of Appeals.

ANALYSIS: Petitioner argued that the medical panel usurped the authority of the ALJ and the Commission by rendering a medical opinion which was used in the ALJ's findings. The court stated that the Commission has discretion to determine the facts and apply the law to the facts in all cases coming before it. Further, the Commission's decision shall be upheld unless the determination exceeds the bounds of reasonableness and rationality. The court stated that in order to award compensation, the Commission must make findings of fact and draw conclusions of law. In difficult cases, the opinions of a medical panel may be of assistance in determining whether to award compensation based on the panel's medical expertise. In rendering an opinion, the panel should be allowed to perform tests and examinations that it deems necessary and desirable to render its opinion. The court noted that while assistance from a medical panel is appropriate, the ALJ/Commission is always the ultimate fact finder. Here, the ALJ reviewed not only the panel's opinion, but also the earlier conflicting reports before making his determination on compensation. The court stated that it is clear from the record that the ALJ examined the record as a whole before making a determination and the ALJ's findings were reasonable based on the evidence.

HOLDING: While an ALJ may not abdicate his responsibility entirely to a medical panel, he may seek assistance from one and rely on its medical opinion in rendering a decision.

IMPACT: This case may be walking the fine line that is drawn between using a medical opinion in a determination and delegating decision making authority entirely to a nonjudicial party. The danger lies in the varying medical opinions that can be offered to reach a final decision, and it is up to the courts to keep the boundaries firm.