

Contra Costa County v. WCAB (Dahl), (2015) 80 CCC 1119.

Ms. Dahl's rebuttal to the scheduled rating included no evidence that her industrial injuries rendered her incapable of rehabilitation. Rather, her rebuttal consisted solely of a vocational expert's opinion that his method of determining Dahl's diminished future earning capacity produced a higher rating than the rating from the Schedule.

Ms. Dahl's expert did not explain how Ms. Dahl's work injury prevented her from participating in vocational rehabilitation. In fact, Ms. Dahl's vocational expert concluded that she was a good candidate for vocational rehabilitation. However, her expert thought that information was irrelevant. The Court rejected Ms. Dahl's expert's attempt to compare the earnings loss of similarly situated employees with the group identified in the Schedule. It should be an individualized assessment of whether industrial factors preclude the employee's rehabilitation.

This 1st District Court was also skeptical of the WCAB's opinion that an Ogilvie opinion may result in a rating less than 100%, but this was not an issue presented to the Court at this time.