

[Litigant Is Not Entitled To Attorney Fees Where Insurer Disputes Request For Medical Treatment](#)

Posted on May 18, 2009 by [David J. McMahon](#)

In *Smith v. Workers' Compensation Appeals Board*, 2009 DJDAR 6715, May 11, 2009, the California Supreme Court decided a case concerning the contours of [Labor Code §4607](#). That statute provides:

“Where a party to a proceeding institutes proceedings to terminate an award made by the appeals board to an applicant for continuing medical treatment and is unsuccessful in such proceedings, the appeals board may determine the amount of attorney’s fees reasonably incurred by the applicant in resisting the proceeding to terminate the medical treatment, and may assess such reasonable attorney’s fees as a cost upon the party instituting the proceedings to terminate the award of the appeals board.”

The Plaintiffs in the case sustained injuries while working for their respective employers. The Plaintiffs were awarded partial permanent disability and future medical treatment. After some passage of time, the Plaintiffs requested additional treatment. The [State Compensation Insurance Fund](#) (SCIF), the Plaintiffs’ employers’ insurance carrier, declined the demand for further treatment. The Plaintiffs instituted proceedings to obtain the treatment. The workers’ compensation judge found that treatment remained medically necessary and authorized the requested medical procedures. The Plaintiffs then moved for attorney fees under Labor Code Section 4607. The workers’ compensation judge denied the requests, asserting that SCIF did not institute proceedings to terminate the Plaintiffs’ awards for medical treatment. The Court of Appeal reversed the determination below.

The [California Supreme Court](#) reversed the appellate court. The Court stated that Section 4607 authorizes an award of attorney fees to an employee who has successfully defended against his employer’s attempt to terminate an award for medical treatment. The employee is entitled to attorney fees only if the employer challenged the continuing necessity for the original award. Attorney fee awards are not proper where the employer or insurer has denied a request for specific treatment. Here, each plaintiff made specific requests for treatment. SCIF disputed the specific requests and did not attack the plaintiffs’ initial awards of future treatment. The Court concluded that Section 4607 did not authorize an award of attorney fees to the Plaintiffs.