



MESSELE V. WCAB (CALIFORNIA INS. CO.) (2011 – en banc) 76 Cal. Comp. Cases 956, 39 CWCR 235, Cal.Wrk.Comp.LEXIS 144

Provided by Nancy J. Tholen of the Fresno Office

The WCAB issued an en banc decision holding that a request for a QME panel is untimely if it is sent before the 10 days given for the parties to settle on an agreed medical evaluator has expired. Unless personally served, the 10-day period for seeking agreement on an AME under Labor Code section 4062(b) is extended by five calendar days if the recipient is within California (per 8 CCR 10507). The time period for seeking agreement on an AME begins the day after the first written proposal and includes the last day. Therefore, a panel QME request may only be made on the 16th day or later than the initial AME proposal. For example, if an AME proposal is mailed to an attorney in California on November 1, 2011, the parties may not request a panel QME until November 17, 2011.

Parties would be wise to notice footnote 11 of the decision “[a]lthough Labor Code section 4062.2(b) may not explicitly require “service” of the AME proposal, the wise practitioner will avoid any doubt as to when the first proposal was “made” by including proof of service. (See Cal.CodeRegs., tit. 8 sec. 10505.)” Adhering to the WCAB recommendation about the AME proposal letter will help speed the review process and reduce disputes that need to be resolved.

The Medical Unit promptly issued a notice after this decision that it would only issue panels that comply with the holding in this case. In reviewing Panel requests it currently has on file, if a panel request is found by the Medical Unit to have been filed prematurely, the unit will send a letter to the parties indicating their request will not be filled because it was filed prematurely pursuant to this case.