

INTER-OFFICE MEMORANDUM

TO: ATTORNEYS & CLIENTS

FROM: W. Joseph Truce

DATE: November 21, 2006

RE: George and the Labor Code Section 4060 Panel QME's

FROM THE LOBBY BAR AT THE HYATT:

As I was enjoying my first martini of the evening George the Bartender was humming the refrain from the song: "I'm in the money." When I inquired into the source of his good humor George told me that his attorney has just told him that he has hit the jackpot with his latest Workers Compensation claim. George told me that his attorney had filed a claim for his pulmonary condition due to second hand smoke in the bar. When I pointed out to George that he was the only one that smoked in the bar and, in fact, was a chain smoker he acknowledged that his claim was extremely questionable but that his attorney told him that the Hyatt's insurance company had already denied George's claim as George did not timely sign medical authorizations sent to him by the carrier. According to George his attorney had sent him to Dr. Ratbar, internal specialist and Dr. Ratbar, who became the treating doctor, found the claim to be compensable with a high impairment rating. George told me that his attorney told him that the trial would be like "shooting fish in a barrel" as the carrier now could not obtain any rebuttal medial evidence.

Unfortunately, George's attorney is correct. The Administrative Director's Office has taken the position that once the defendant denies a claim they are no longer entitled to a panel QME pursuant to L.C. 4060. When specifically asked this question acting administrative director, Carrie Nevans, replied as follows:

"What you are asking is whether we will issue a panel to the carrier when compensability has been denied by the carrier, the answer is no. We would not issue a panel if the defense asked for one after denying the case. There is no reason to issue a panel for the defense as they have already made a decision to deny the claim and that decision may not be disputed. However, if the injured worker asks for a panel after compensability has been denied, we will issue the panel..."

My first reaction to this statement was: "This is unfair"--then I remembered that this was Workers Comp.

Do we have a remedy? The answer is yes as a decision by the Administrative Director or the DWC Medical Unit, like an administrative decision of the Rehabilitation Unit can be appealed

directly to the WCAB. However the position of the AD would appear to be consistent with L.C. 4060(c) which states: "If a medical evaluation is required to determine compensability at any time after the filing of the claim form,...a medical evaluation to determine compensability shall be obtained only by the procedures provided in Section 4062.2..."

Maybe the AD is correct and the AOE-COE evaluations that we have been obtaining for years before L.C. 4662.2 and the panel QME procedures (after the claim was denied) were actually inadmissible as these reports did not comply with L.C. 4060 which became effective on 1/1/94. The inconsistency in the AD's position is that the applicant can obtain a L.C. 4060 evaluation after our denial but we cannot. On the other hand maybe this position is not inconsistent and George's attorney wrongly assumed that the reports of Dr. Ratbar are admissible simply because Dr. Ratbar calls himself the applicants primary treating doctor. After all, how can Dr. Ratbar qualify as the PTP pursuant to AD 9785 if the claim has been denied. A strict reading of L.C. 4060 would seem to indicate that the only medical evidence on the issue of compensability must come from a panel QME and if we assume that Dr. Ratbar's report is not admissible then to prove his case and obtain medical evidence George would have to request a L.C. 4060 panel QME. This is one way of looking at L.C. 4060 cases which we have denied before obtaining our L.C. 4060 panel QME.--Make mine a double George and Happy Thanksgiving to everyone.---joe truce