

KEGEL, TOBIN & TRUCE

INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/ALL OFFICES/ALL CLIENTS

FROM: W. JOSEPH TRUCE

DATE: July 17, 2001

RE: TIME LIMIT FOR OBTAINING A LABOR CODE §4061 QME
EXAMINATION

Many of our clients still believe that Labor Code §4061 contains a written requirement that a Labor Code §4061 QME cannot be obtained until there has been a written objection to the report of the treating physician.

Although Labor Code §4062 requires such an objection within specified time limits (20 days for a litigated case) there is no such requirement in Labor Code §4061.

Despite this a panel of the Board in the case of Strawn v. Golden Eagle Insurance Company 28 CWCR 105 (enclosed) has found that a party still has a duty to act expeditiously in obtaining a Labor Code §4061 QME.

In the Strawn case the Board noted that Labor Code §4061 "is triggered by the last payment of temporary disability indemnity and a lack of agreement with the PTPs, PD evaluation..." Therefore the Board inferred from this that "the parties would have a reasonable period of time within which to object to a report and seek resolution of the dispute..."

The Board concluded as follows:

"We believe the WCJ properly excluded the defendant's QME report based upon the WCJ's determination that the defendant's four month delay in objecting to the opinion of the treating physician on applicant's permanent

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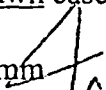
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stationary status and permanent disability rating was untimely. In the absence of a persuasive explanation for the four month delay, the WCJ was justified in concluding the defendant's subsequently obtained report was inadmissible..."

Clearly in light of the Board's decision in Strawn v. Golden Eagle Insurance Company we should obtain our Labor Code §4062 QME examination immediately after the permanent and stationary report from the applicant's treating doctor. If we wait too long (the Board said four months was too long in the Strawn case) our report may not be admissible. However the converse is also true, i.e., when we have the treating doctor and the treating doctor's P&S report predates the applicant's QME exam by four months we can claim that the applicant's report is inadmissible under the authority of the Strawn case.

WJT:gmm

A handwritten signature in black ink, appearing to be 'A' with a horizontal stroke, positioned over the typed name 'WJT:gmm'.