

INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/ALL OFFICES & CLIENTS

FROM: W. JOSEPH TRUCE

DATE: November 14, 2001

RE: QME EXAMINATIONS MADE DURING THE WINDOW
PERIOD IN LABOR CODE §4062

Labor Code §4062 provides that after a party objects to the medical determinations being made by the treating physician the parties must seek agreement as to an Agreed Medical Examiner and if no agreement is reached within 10 days the parties can proceed to select their own respective QMEs.

Ever since the enactment of Labor Code §4062 no one has been certain as to whether or not a party going through the Labor Code §4062 AME/QME window can select and/or send out an appointment letter for a QME before expiration of the 10 day period.

This question has now been answered in the affirmative by a three-member panel of the Appeals Board in the case of *Rivas v. Zurich American Insurance Company*, 29 CWCR 253 (enclosed).

In this case the Board rejected a Decision by the workers' compensation judge that excluded the report of the Qualified Medical Examiner because the appointment for the examination was made before the end of the period provided in Labor Code §4062 for the parties to seek agreement as to an AME.

In this case the applicant's attorney objected to the medical determinations being made by the treating physician and suggested names of three AMEs. At the same time the applicant's attorney made an appointment for the applicant to be seen by Dr. Ronald Perelman- a QME in orthopedics.

In excluding the Dr. Perelman report the WCJ ruled that the Perelman report "was inadmissible because Labor Code §4062 requires a good-faith effort to agree on an AME before 'setting up' a QME evaluation."

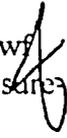
In reversing the Decision of the WCJ the Board held as follows:

"The plain language of Labor Code §4062(e) . . . excludes medical reports obtained before the expiration of the 10 day period. Section 4062(a) requires the parties to seek agreement within the statutory period and explicitly states that 'evaluations obtained prior to the period to reach agreement shall not be

admissible'."

Therefore the Board held that it is permissible to schedule a QME evaluation during the 10 day period in which the parties are attempting to reach agreement on an AME and the prohibition of Labor Code §4062 means that a QME appointment may not take place during the 10 day period.

WJT:wj

Enclosure  Rivas v. Zurich American Insurance Company