

INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/ALL OFFICES/CLIENTS
FROM: W. JOSEPH TRUCE
DATE: August 15, 2001
RE: Application Alleging Serious and Willful Misconduct

An Application alleging serious misconduct on behalf of the employer must not only be filed but it must be concurrently served on the employer.

The Board has once again reaffirmed that pleadings (such as an Application alleging serious and willful misconduct on the employer) must not only be filed on a timely basis with the Appeals Board, but it must also be concurrently served on the employer.

Over the years, the Board has dismissed various legal pleadings filed by applicants' attorneys at the Board **but not served** on the employer and/or defendant. The Board reaffirmed its position in the enclosed case of Joseph Fisher v. Workers' Compensation Appeals Board, Les Hunsucker (March 2001) 66 CCC 517.

In Fisher v. WCAB, the applicant filed his S&W Application with the Board on February 26, 1999 but did not serve the defendant employer until May 10, 2000. The workers' compensation judge dismissed the applicant's S&W Petition on the grounds that it was not timely served on the employer and therefore did not comply with Labor Code §5407 which requires the timely commencement of S&W proceedings.

The WCJ in his report on the applicant's Petition for reconsideration cited Board Rule 10500 and 10514 indicating that these rules make it clear that "... **service of an Application has to be made on all adverse parties. By naming the employer as a liable party, applicant has made perfectly clear that the employer is an adverse party at the very least from that moment forward, entitled to service of the Application and any other communication relating to the case made against him . . .**"

The decision of the WCJ was affirmed by the Board and the Court of Appeal denied the applicant's Petition for Writ of Review on March 21, 2001.

Enclosure - Joseph Fisher v. Workers' Compensation Appeals Board, Les Hunsucker
(March 2001) 66 CCC 517

WJT/v