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Medical Unit revises panel rules pending Appeals Board decision on Messele

Following a Workers' Compensation Appeals Board (WCAB) announcement Nov. 4 regarding its en banc decision in [*Messele v. Pitco Foods Inc.*](#), the Medical Unit will only consider prospective agreed medical evaluator (AME) and qualified medical evaluator (QME) panel requests from Sept. 26 onward. Effective immediately, the Medical Unit will not consider retroactive panel requests pending, or to panels that have already issued.

This is a revision of an Oct. 27 newsline [announcement](#) regarding Medical Unit policy following the *Messele v. Pitco Foods Inc.* decision on Sept. 26.

That decision concerned the timeline for selecting an AME and requesting a panel QME. The applicant had contended that the defendant was improperly allowed five calendar days beyond the 10-day time period provided in Labor Code section 4062.2(b) for the parties to agree on an AME, during which time period the parties may not request a panel QME from the Medical Unit.

The Appeals Board held that when the first written AME proposal is "made" by mail or by any method other than personal service, the period for seeking agreement on an AME is extended five calendar days if the physical address of the party being served with the first written proposal is within California; the time period starts with the day after the date of the first written proposal and includes the last day.

As a result of *Messele v. Pitco Foods Inc.*, the Medical Unit set forth a timeline for selecting an agreed medical evaluator and requesting a QME. "In reviewing panel requests currently 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 *Messele v. Pitco Foods*." The newsline went on to say how panel requests would be handled and offered practice pointers.

In response, the Appeals Board on Nov. 4 issued an order granting reconsideration on its own motion, along with a notice of intention to modify the Sept. 26 opinion to apply that decision prospectively from Sept. 26, 2011.

On Nov. 22, 2011, the Appeals Board issued its Opinion and Decision after Reconsideration clarifying that the Sept. 26, 2011 decision is to be applied prospectively from that date.

Accordingly, the Medical Unit will only review panel requests filed after Sept. 26, 2011 for compliance with the Messele timeframes.

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