



California Workers' Compensation Institute
1111 Broadway Suite 2350, Oakland, CA 94607 • Tel: (510) 251-9470 • Fax: (510) 251-9485
www.cwci.org

July 15, 2008

VIA E-MAIL

Mr. Keven Star, Court Administrator
Ms. Maureen Gray, Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

**RE: Comments on Proposed Rules of the Court Administrator Implementing
the Electronic Adjudication Management System**
Title 8, CCR Sections 10210 et seq.

Disability Evaluation Unit (DEU)
Title 8, CCR Sections 10150 – 10168

Retraining and Return to Work Unit (RRTW)
Title 8, CCR Sections 10116 -10133.58

Dear Mr. Star and Ms. Gray:

These recommended modifications and comments regarding the proposed regulations are presented on behalf of the members of the California Workers' Compensation Institute (CWCI). Recommended modifications are indicated by underline and ~~strikethrough~~.

Introduction

The members of California Workers' Compensation Institute support the promise of the Electronic Adjudication Management System (EAMS). EAMS represents a necessary and overdue modernization of the judicial function of the Workers' Compensation Appeals Board. EAMS carries the promise of speed, efficiency, and a more effective use of the resources of the trial judges and the appeals board. By using technology to manage the procedural demands of the system, the human resources – the judges, attorneys, Board staff, and claims administrators – can focus more closely on the WCAB's primary responsibility: the efficient and fair resolution of disputes in order to deliver the appropriate benefits to injured workers in a timely manner.

To accomplish fair and efficient adjudication, the Board's primary concern must be the development of its evidentiary record. All documents necessary to fully and fairly adjudicate the entitlement to compensation must be filed, served on the parties, and available for the judge's review in determining an award of benefits.

In order to avoid exalting form over substance, the procedural regulations creating the information flow for EAMS must ensure that the documents essential to the proper adjudication of a dispute are a part of the Board's evidentiary file – one way or another. The regulations must ensure that no procedural, technical, or system related issue impedes the dispute resolution process at the appeals board.

Changes are proposed in these regulations and forms that go beyond the stated purpose of implementing the initial phases of EAMS to allow the DWC to store claim data electronically. CWCI believes that the proposed regulations should be limited to those required to implement this initial phase. The additional resources needed for external users to implement EAMS are considerable, and adapting to EAMS is a major undertaking. Now is not the time for non-essential changes, particularly regulations that will add additional cost and burdens to EAMS for both external and internal users. CWCI therefore strongly recommends that the Division eliminate all substantive changes that are not essential to EAMS implementation.

To ensure a more orderly transition, the Institute recommends that the court administrator continue to test the functionality of the system in the current environment, including the participation of volunteers, and that EAMS not "go live" until the implementation regulations are finalized in October.

Economic Impact to the Workers' Compensation Community

Recommendation

It appears that the court administrator has conducted no analysis of the potential economic impact of the implementation of EAMS for the regulated community. The court administrator must consider the financial impact of these regulations on the regulated community and should validate both the cost of EAMS to the state and the implementation costs for the workers' compensation system participants. These costs, then need to be balanced against the anticipated benefits that the appeals board foresees for electronic adjudication management.

Discussion

In the Initial Statement of Reasons, the court administrator states that the implementation of EAMS is "merely a change of authority from the Appeals Board to the Court Administrator" and that there will be no financial impact on the regulated community. But the economic impact of the implementation of EAMS is clear and is significant.

The messages coming from the EAMS advisory group for the past several months have often focused on the economic impact on the workers' compensation community. The California Applicants' Attorneys Association has advised the court administrator that many of their members do not have the necessary technology or

background to function within either the OCR or the electronic document filing environment. Some highly automated applicants' attorneys will find that their system-generated forms do not work with EAMS and cannot be used. Lien claimants have complained that the loss of the EDEX database will similarly impair their ability to be efficient and effective.

Claims administrators are beginning to understand that the technological advantages of their automated systems will be diminished by the incompatibility with EAMS. Claims administrators who have been functioning in the workers' compensation system for many years often have multiple "legacy systems" that will not be compatible with EAMS, so that even requiring the use of new OCR forms will become burdensome, time consuming, and costly. Many will have to add manual systems to their automated system to meet the demands of the EAMS procedures. Many system participants have invested in large mailing operations that have automated the sorting and packaging vast quantities of mail for distribution to the local Boards. The filing procedures alone (section 10232) will virtually eliminate the use of such automation or require a comprehensive and costly reprogramming of these systems. Simply requiring the use of manila envelopes will triple the cost of packaging mail to the Board.

It goes without saying that the workers' compensation system is replete with strict deadlines that are enforced with audits and financial penalties. Claims administrators have been able to manage these deadlines because they have used technology to the utmost. EAMS will eliminate many of the advantages of automation and shift the burden and cost of the WCAB's paperless environment to the workers' compensation community.

It is clear from the discussions to date that any solution to the problem of system compatibility, between EAMS and other claims and litigation management systems, will be expensive. Some will buy hardware to access the EAMS forms, fill them out manually, and mail them in. Others will have to reprogram their system, if they can, to fit the EAMS environment in order to regain the level of automated efficiency they have today. Some will have to add manual systems that will reduce the efficiency of the entire benefit delivery process. All of this work will be done in an environment of increasing loss adjustment expense and declining premium.

The advisory group has expressed that EAMS implementation will be a costly endeavor. The demands of the proposed regulations will simultaneously be technologically impossible for some and will eliminate important technological efficiencies for others. The regulator must consider the cost of EAMS implementation to the regulated community.

System Backup

Recommendation -- Retention of Paper Documents

The Institute recommends that all paper documents scanned into the system be maintained in a temporary file for 30-days, until the system is fully tested, functioning, and accessible to the workers' compensation community.

Discussion

There are indications in the proposed regulations that the Board will not retain the documents filed once they have been scanned into the system (Section 10216). The failure to maintain a parallel paper system, at least for the implementation phase, could make documents irretrievable, taint the Board's evidentiary record, and adversely affect the delivery of benefits.

Recommendation -- System Unavailability

The technological backup for EAMS should be defined in the regulations and any alternate procedures for adjudication during any system failure should be stated in greater detail.

Discussion

While section 10225 makes some provision for extended unavailability, including temporary paper files and Board service by mail, the issues raised by the potential failure of the system are more extensive and far-reaching and should be addressed in the regulations. From a technological standpoint, the EAMS backup system should be described in some detail. To the extent that new procedures would apply, those procedures should be stated in the regulations, even if that only meant that the community would resort to paper files reconstructed by the case participants.

Recommendation -- Disaster Recovery Plan

The workers' compensation community should be advised of the Board's disaster recovery plan.

Discussion

While it may not be necessary to include the Board's disaster recovery plan in these regulations, that essential information should be available to the workers' compensation community, if for no other reason than their own preparedness.

The EAMS Case Number

Recommendation

The WCAB case number is the current fingerprint identifying all of the case participants, related cases, lien claimants, and evidentiary material. In the transition to EAMS the system should provide some computer runs to crosswalk the old to the new case number. Or the system should limit the new case number usage to new cases after a specific date. The system should recognize current case numbers and be able to match these to the new EAMS case number.

Discussion

While the implementation phase will be the most difficult, the elimination of the traditional Board case number and the addition of the EAMS Integrated Case Number will lead to some unforeseen consequences that could create significant disruption. Any current participant in the workers' compensation system who has a case management system will find it costly and a considerable technical challenge to convert to the EAMS identification system. First, the new numbering system is 50 digits – well beyond the field capacity of most case management systems that are geared to the current Board file number.

Secondly, the regulations are still unclear how this new number is obtained and communicated. Would the claims administrator be required to go into EAMS and extract the converted WCAB case using their log-on and password? Once the number is obtained, it is very likely that it will not be compatible with the structure of the current case management system, which may in itself require the filer to resort to a manual system. This would be an operational nightmare, which would actually retard the effectiveness of the workers' compensation community to help meet the Board's goal of internal efficiency.

Document Confirmation

Recommendation

As part of the document completion phase, the system should automatically provide a confirmation of the records successfully filed. Any records rejected by the appeals board, for whatever reason, should be returned to the filing party with an explanation of the failure. If a party or lien claimant consistently fails to follow the document filing procedures, the Board has adequate means to correct this conduct.

Discussion

In a number of proposed regulations (sections 10210(k), (l), & (m)), the court administrator is establishing a new procedure for filing documents in EAMS and advises that the paper documents successfully loaded into the new system will or may be destroyed. In some cases, incomplete documents will be reviewed and discarded, sometimes with notice to the parties, sometimes with notice if the filer has included a SASE (section 10228(c)), and sometimes, it is implied, without notice to the parties. Without confirmation that a document has been successfully loaded into the system, the filing party will not know what documents have become a part of the evidentiary record. Rejection without notice to the filing party will only add to the confusion and potentially taint the Board's evidentiary record.

In no event should the appeals board, on purely technical or procedural grounds, reject a document intended for inclusion in the evidentiary record and discard it without notice to the parties and an opportunity to correct the defect.

Technical Comments

Section 10210(o) – Electronic Signature

While this definition may suffice for the Board's purposes, it might be appropriate to cite the Uniform Electronic Transactions Act, as well.

Section 10211 – Compliance with Rules of the Court Administrator Recommendation

Delete this section.

Discussion

The proposed regulation attempts to broaden the scope of sanctions permissible under Labor Code section 5813 and CCR section 10561. While section 5813 specifically includes workers' compensation judges and the appeals board, it does not allow the court administrator to impose sanctions. The proposed regulation should be deleted as it adds nothing to the standards that the WCAB already enforces and for which there is a body of case law defining the conduct at issue.

Authority: Labor Code section 5307(c) states:

The court administrator shall adopt reasonable, proper, and uniform rules for district office procedure regarding trial level proceedings of the workers' compensation appeals board. These rules shall include, but not be limited to, all of the following:

- (1) Rules regarding conferences, hearings, continuances, and other matters deemed reasonable and necessary to expeditiously resolve disputes.
- (2) The kind and character of forms to be used at all trial level proceedings.

Section 5307 provides that the court administrator has authority over district offices and has the authority to adopt rules for those offices in regards to trial level proceedings of the WCAB. The WCAB retains all judicial powers. The court administrator has not been added to section 5813.

Government Code section 11349(b) states that "authority" means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation. In making the determination whether the regulator has properly exercised his authority under the statute, the courts consider whether the regulation, exceeds the scope of the enabling statute, alters or enlarges the terms of the statute, is consistent and not in conflict with the statute, and is reasonably necessary to effectuate purpose of the statute. If the meaning of statute is clear and the regulations are in conflict with the plain meaning, the regulations are void. Association for Retarded Citizens v. Dept. of Developmental Services (1985) 211 CR 758, 38 Cal.3d 384;

A regulation is not valid unless it is within the scope of the authority conferred and is reasonably necessary to effectuate the purpose of the statute. ALRB v. Superior Court (1976) 16 Cal.3d 392; Yamaha Corp. of America v. State Bd. of Equalization (1998) 19 Cal.4th 1.

While the statute governing the role of the court administrator does not provide the authority to impose sanctions for the failure of case participants to follow the uniform procedural rules adopted by the court administrator, the WCALJs and the WCAB certainly retain that authority under section 5307. The proposed regulation is not supported by statutory authority, is unnecessary, and is redundant.

Section 10217(b) – Official Address Record Recommendation

(b) Every attorney, every party, every lien claimant, and every representative of any party or lien claimant having an interest in an active case pending before the district office or appeals board shall advise the district office and all parties of any change of mailing address, as well as any change of telephone numbers, fax numbers or electronic mail addresses, where provided or required, ~~by furnishing the current information within five business days of any change.~~

Discussion

The 5-day timeframe is arbitrary and unnecessary. The Board has sanctions in place to deal with failures that impede the function of the WCAB.

Section 10225 – Extended System Unavailability

Discussion

The procedures described in section 10225 raise some of the issues regarding a potential system failure but the procedures do not address the likelihood that an extended system failure would shut the local Boards down. Allowing the parties to obtain date stamped, conforming copies of the documents to be filed and scanning them after the system becomes operative again may be a useful interim solution.

If the Board routinely scans all documents and destroys the paper copies, as the proposed regulations provide in several areas, then no previously filed documents will be available when the system fails for any period of time. The Board and the court administrator must consider a more detailed backup system or disaster recovery plan in order to ensure the continued delivery of benefits. (See: Comments above.) That plan should be in place well before the “go live” date and should be communicated to the workers’ compensation community in detail, so that all workers’ compensation system participants understand and can prepare for what will be required in this circumstance.

Section 10228(c) -- Place of Filing Documents

Recommendation

Delete this section.

Discussion

This regulation is redundant because the Board already has adequate authority to enforce its rules, when the failure to follow procedural requirements is determined to be disruptive. The proposed regulation is unworkable because no party will include a SASE with an erroneously directed document and cannot afford to do so with every

document. The consequence of failing to follow the dictates of section 10228 is that a necessary document is eliminated from the Board's evidentiary record without notice to the parties.

The proposed rule is unnecessary because a positive feature of an electronic litigation management system is that the documents can be scanned into the system from any location and, once scanned, be attached to the proper file by the system. Rather than eliminating documents from the Board evidentiary record, the Board should include the document and notify the case participant of the need to file documents at the district office with proper venue.

Section 10232(a)(6) – Document Form and Size Recommendation

Delete this subdivision.

Discussion

There is no definition of a "single document," which has a 25-page restriction. Because of the complexity of the litigation environment these purely technical requirements cannot be allowed to affect the Board's evidentiary record. The recently issued proposed chronic pain guideline for the medical treatment utilization schedule is 997 pages long – most of this is supporting medical literature. In a dispute over the appropriate use of pain management, it is not inconceivable that the records supporting either party's position would be extensive. The rules governing form must be flexible enough to permit the full development of the Board evidentiary record and seeking the Board permission to file evidence, merely because it is extensive, adds an unwarranted layer of bureaucracy that could further delay the proceedings.

Sections 10229, 10232, 10233, 10236, and 10273

Discussion

These sections refer to Title 8, section 10603 but there is no such regulation currently in place.

Section 10235(b) – Improperly Filed Documents

Recommendation

(b) Documents improperly submitted pursuant to this section shall not be accepted for filing or deemed filed and shall ~~not be acknowledged and may be discarded~~ returned to the filing party.

Discussion

This proposed regulation allows the Board to discard improperly filed documents without notice to the parties. These documents are considered by the party filing them to be integral to the case and a necessary part of the evidentiary record. To discard them without notice to the filing party is to invite error in the record. Because

the filing of these documents is so important, there should also be a confirmation statement to advise the parties that documents submitted to the Board have been appropriately filed in the case.

In the interim, before the workers' compensation community has electronic access to the system, it is improper for the Board to simply refuse to accept or discard material deemed important to one of the parties without notice. It may be more appropriate to return improperly filed materials and sanction the errant party.

Section 10252(b) and (c) – Expedited Hearing Calendar

Recommendation

(b) An expedited hearing may be set upon request where injury to any part or parts of the body is accepted as compensable by the employer and the issues include medical treatment or temporary disability ~~for a disputed body part or parts.~~

~~(c) A workers' compensation administrative law judge assigned to a case involving a disputed body part or parts may redesignate the expedited hearing as a mandatory settlement conference, receive a pretrial conference statement pursuant to Labor Code section 5502, subd. (e) (3), close discovery, and schedule the case for trial on the issues presented, if the workers' compensation administrative law judge determines, in consultation with the presiding workers' compensation administrative law judge, that the case is not appropriate for expedited determination.~~

Discussion

The proposed regulation permits the assertion of a disputed injury, on which temporary disability may or may not be based, at an expedited hearing. Subdivision (c) allows the judge to try the issue or conduct an MSC and close discovery. This regulation is based on Labor Code section 5502, which does not allow for the inclusion of disputed injuries or conditions in an expedited hearing. The court administrator has no authority to expand section 5502 to permit a trial on disputed injuries or additional claims. (See: Discussion of the court administrator's authority under section 10211 above.)

Permitting the applicant to request an expedited hearing on an accepted injury and then raise a dispute injury issue at trial has due process implementations, as well. Even the close of discovery at the time of the expedited hearing may affect the defendant's ability to fairly adjudicate the newly asserted issues.

Section 10270 – Access to the Electronic Case File

Recommendation

Access to the basic case data to allow the proper identification of the injured worker and other relevant information must be expanded.

Discussion

The section delineates the access provided to parties and the public, but the procedure for viewing the EAMS case file electronically is not stated. The community is aware that the system has certain limitation and that each individual attempting to

view an electronic file must have a “log-on” and password. The proposed regulations must address the necessary logistics and limitations to provide a greater understanding of what will be required of the users and how they can accomplish their obligations under the strict timeframes stated in the statutes and regulations.

Currently, the court administrator has advised that each case participant will be provided with one log-on and password for each office location and that this access will be limited to that one user. Access to the system at the local Board will be limited to a single computer. This limited access creates a serious bottleneck, not just in the initial phase of implementation, but for the foreseeable future.

Section 10280(d)(1)(A) – Walk-Through Documents Recommendation

The Institute recommends that with regard to case opening documents and petitions presented at a walk-through conference, all action necessary to finalize a case resolution be taken by the assigned judge on the day the documents are presented and that the scanning, case number assignment, and other procedural requirements be completed by the Board staff the next day and communicated to the parties with the approval of the case resolution.

Discussion

The proposed regulations establish a 2-day process, required by the technical demands of the system, for resolving a dispute when there has been no case number assigned previously. The prompt and appropriate resolution of disputes is the Board’s paramount concern and the technical requirements of the system must be a secondary consideration.

Stipulated Findings and Award – Form -- 10214

Recommendation

Delete the material on page 5 relating to the inclusion of multiple companion cases.

Discussion

Page 5 requires the inclusion of specific information regarding up to 4 companion cases, which suggests that the stipulated findings and award can combine multiple specific injuries or specific and cumulative injuries in the same award. Labor Code section 3208.2 requires all questions of fact and law to be separately determined with respect to each injury, “including, but not limited to, the apportionment between such injuries of liability for disability benefits, the cost of medical treatment, and any death benefit”. A stipulated findings and award form must, therefore, be prepared for each separate injury, whether specific or cumulative and cannot combine the factual circumstances underlying any separate injury. (See: Discussion of the court administrator’s authority under section 10211 above.)

Rehabilitation, Retraining and Return to Work Regulations

Section 10116.2 – Incomplete Filings

Recommendation

Delete “Sections 4636, 4637, 4638 and 4645, Labor Code; and *Godinez v. Buffets, Inc.* (2004) 69 Cal. Comp. Cases 1311” from the References in this and all other sections of the regulations.

Discussion

Sections 4636, 4637, 4638 and 4645, Labor Code; and *Godinez v. Buffets, Inc.* (2004) 69 Cal. Comp. Cases 1311 are non-existent or obsolete.

Section 10116.3 – Reproduction of Forms, Notices

Recommendation

Delete “and Article 2.6 of Chapter 2, Part 2 of Division 4 of the Labor Code (commencing with section 4635), including the pamphlet entitled “Help In Returning To Work-94” (Section 10133.2).”

Discussion

Article 2.6 no longer exists and there is no longer statutory authority for the pamphlet.

Section 10116.7 – Jurisdiction where the issue of injury has not been resolved

Recommendation

(b) Any requests for provision of retraining or return to work services and for intervention/dispute resolution require confirmation ~~by the employee or his/her representative~~ that liability for the injury has been accepted.

Discussion

It is not clear what is intended. If an employee or representative must provide confirmation, the proposed regulations do not state how that is to be done. Since it is not clear what “retraining or return to work services” are, a definition is needed for the term.

Section 10116.8(r) – Definitions

Recommendation

Change all references to the treating physician to the primary treating physician.

Discussion

References to the medical legal evaluators in the workers' compensation system should be uniform. These are primary treating physicians, AMEs or QMEs.

Section 10117(b)(3) – Offer of Work

Recommendation

(3) The employer shall use form DWC-AD 10133.53 (Section 10133.53) to offer modified or alternative work, or form DWC-AD 10118 (Section 10118) to offer regular

work and shall file the forms with the Retraining and Return to Work Unit immediately after serving the form on the employee. The claims administrator may serve the offer of work on behalf of the employer.

~~(A) The DWC-AD 10133.53 (Section 10133.53) or form DWC-AD 10118 (Section 10118) filed with the Retraining and Return to Work Unit by the claims administrator shall contain a proof of service on the employee.~~

~~(B) The employee, or their representative, within the time specified in the form DWC-AD 10133.53 (Section 10133.53) to offer modified or alternative work or form DWC-AD 10118 (Section 101018) shall file the completed form as paper document under section 10232.~~

Discussion

The language should be deleted because there is no statutory authority requiring the filing of work offer forms and proof of service on the employee with the Retraining and Return to Work Unit and it is unnecessary to send work offers to the Retraining and Return to Work Unit unless specific issues arise, in which case they can be supplied at that time. If information on the forms is desired for research purposes, WCIS regulations already require that any new or change in return to work and release to return to work information be submitted to WCIS within 15 business days. Having a second, paper trail is unnecessary and duplicative. Government Code section 11349(f) requires that a regulation not serve the same purpose as a state or federal statute or another regulation.

Here and elsewhere in the regulations and forms, changes are proposed that go beyond the stated purpose of implementing the initial phases of EAMS, which will allow the DWC to store claim data electronically. CWCI believes that the proposed regulations should be limited to those required to implement this initial phase. The additional resources needed for external users to implement EAMS are considerable, and adapting to EAMS is a major undertaking. Now is not the time for non-essential changes, particularly regulations that will add additional cost and burdens to EAMS for both external and internal users. CWCI therefore strongly recommends that the Division eliminate all changes that are not essential to EAMS implementation.

Section 10119(h) – Return to Work Program Recommendation

CWCI recommends adding an address here and on the form so that the employer knows where to send its request, reports, other documentation, and receipts.

Vocational Rehabilitation Regulations

Section 10123 – Vocational Rehabilitation Reporting Requirements Recommendation

~~(a) The insurer shall advise the employer of a potential refund as described in Labor Code section 4638 no later than the required date of the initial notice of potential eligibility.~~

(b) The claims administrator shall retain a true copy of all vocational rehabilitation notices sent to the employee and shall provide the Rehabilitation Unit unit with a copy upon request.

Authority cited: Sections 133, 139.5 and 5307.3, Labor Code.

Reference: Sections 139.5, ~~4636, 4637, 4638 and 4645, Labor Code; *Godinez v. Buffets, Inc.* (2004) 69 Cal. Comp. Cases 1311.~~

Discussion

Section (a) must be removed because Labor Code section 4638 no longer exists. Also see comment on Section 10116.2. If Section (a) is deleted, (b) can be removed or renumbered and it may be appropriate to specify the name of the unit.

Delete “Sections 4636, 4637, 4638 and 4645, Labor Code; and *Godinez v. Buffets, Inc.* (2004) 69 Cal. Comp. Cases 1311” from the References in this and all other sections of the regulations as they are non-existent or obsolete.

Section 10127 – Dispute Resolution

Recommendation

Add the address of the Rehabilitation Unit.

Discussion

The address of the Rehabilitation Unit needs to be added to ensure the form is sent to the correct address.

Supplemental Job Displacement Regulations

Section 10133.56(c) – Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher

Recommendation

(c) When the requirements under subdivision (b) have been met, and the employee has not settled his or her potential entitlement to the voucher, the claims administrator shall provide a nontransferable voucher for education-related retraining or skill enhancement or both to the employee within 25 calendar days from the issuance of the permanent partial disability award by the workers' compensation administrative law judge or the appeals board.

Discussion

The voucher is not due if it potential eligibility has been settled.

Section 10133.56(c)(1), (c)(2) and (d) – Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher

Recommendation

Delete the language requiring voucher form DWC-AD 10133.57, and proof of service form, to be filed with the Retraining and Return to Work Unit simultaneously with the employee.

~~(1) The employer shall file the form DWC-AD 10133.57 with the Retraining and Return to Work Unit simultaneously with serving the employee. The claims administrator may serve the offer of work on behalf of the employer.~~

~~(2) After the service of the form on the employee, the employer shall file a completed proof of service with the Retraining and Return to Work Unit.~~

~~(d) The voucher shall be issued to the employee allowing direct reimbursement to the employee upon the employee's presentation to the claims administrator of documentation and receipts or as a direct payment to the provider of the education related training or skill enhancement and/or to the VRTWC. The employer, or its representative, shall file the completed form DWC-AD 10133.57 with the Retraining and Return to Work Unit pursuant to section 10232.~~

Discussion

There is no statutory requirement and it is not necessary to send voucher form DWC-AD 10133.57, and the proof of service form to the Retraining and Return to Work Unit unless a dispute arises. If a dispute arises, copies and any proof of service can be supplied at that time. See comments on Section 10117(b)(3).

Section 10133.56(g) – Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher Recommendation

~~(g) The voucher shall certify that the school is approved and if outside of California, approval is required similarly to the Bureau for Private Postsecondary (BPPVE) by one of the Regional Associations of Schools and Colleges authorized by the United States Department of Education.~~

Discussion

The reference to the Bureau of Postsecondary and Vocational Education should be deleted as the Bureau no longer exists, and replaced with the language that is consistent with the language in Section 10133.58(c).

Forms

Document Separator Sheet – DWC-CA form 10232.2

CWCI thanks the Division for changing the title of the form from “EAMS Patchcode” to “document separator sheet” and for defining the options for the “document type” and other fields on the form. CWCI suggests integrating the document types and document titles by unit into a single easy to reference list in a uniform format. An “other” category is necessary in each Unit’s list of document types and document titles. Should the form include a field for the case number?

Cover Sheet – DWC- CA 10232.1

Since DWC-CA form 10232.12 is referenced in Section 10210 of the draft regulations as the “document cover sheet,” CWCI recommends changing the title of the form from “Cover Sheet” to “document cover sheet.” A party should be required to submit

only the pages in this document that are sufficient to describe the case in chief and any companion cases. Consider adding a note at the bottom of each page to instruct the user to submit additional pages of form as appropriate.

CWCI recommends replacing the four proposed fields with a single “date of injury” field. Check boxes have been added to indicate specific and cumulative injury in this and many other forms. Only the single date of injury that is currently in use is necessary. The dates of cumulative injury may be at issue. The proposed from and to dates are unnecessary and will be a source of confusion and additional dispute. In addition, this creates a new field, not part of most claim systems, that will be costly to add, and that is no value to injured employees. These proposed changes are not necessary for EAMS implementation and CWCI believes that the proposed regulations should be limited to those required to implement this initial phase. See discussion under Section 10117(b)(3).

Notice of Offer of Regular Work – DWC-AD 10018

CWCI recommends as follows:

- Restore the original wording and content on the form and only make changes that are necessary to implement the OCR version of EAMS. See discussion under Section 10117(b)(3).
- Check boxes have been added to this and some other forms to indicate whether the claims administrator type is insurance company, third party administrator, or employer. Since this is not necessary information that would facilitate EAMS implementation, and would not even facilitate the return to work process, CWCI recommends its removal. See discussion under Section 10117(b)(3).
- To improve clarity, CWCI recommends modifying language on the first page as follows:

“Based on the opinion of: ☐Primary Treating Physician ☐QME ☐AME

_____ (Name of Physician), ~~you~~ are able to return to your usual occupation or the position you held at the time of your injury or

~~(Choose only one)~~

~~a specific injury on _____~~
MM/DD/YYYY

~~a cumulative trauma injury which began on _____ and ended on _____.”~~

- Combine the injury types listing only “Date of Injury.” See discussion under the Cover Sheet form.
- Restore original “Date Offer Received” in lieu of “Date Received” on page 3 to clarify that the date received refers to the offer of work.
- Identify the employee not as an “injured worker” but as an “injured employee” here and elsewhere on the forms and in the regulations. The term “employee” is preferable because only employees of employers are entitled to workers’ compensation benefits.

- The final note states that disputes are to be resolved by the WCAB, which is another reason why this form should be filed with the Board when necessary and not filed with Retraining and Return to Work Unit. The form relates to matters that will be enforced exclusively by the Board, including the permanent disability rate and the amount and payment of the SJDB.

Request for Reimbursement for Accommodation Expenses – DWC-AD 10120

CWCI recommends as follows:

- Add a field for the case number at the top of the form.
- Restore the “Date of Injury” field that was replaced by a “Date of Birth” field. It is important that there is evidence of a workers compensation claim to establish the employers’ eligibility for reimbursement.
- An STD-204 form is required if it is the first time the applying employer has done business with the State. Consider adding information on how employers can obtain the STD-204.

Notice of Offer of Modified or Alternative Work – DWC-AD 10133.53

CWCI recommends as follows:

- Eliminate the check boxes designating the claims administrator type as this information is not necessary to facilitate the OCR version of EAMS or the return to work process.
- Delete the field following “is offering you” on page 1, or clarify its use.
- Add a field for the case number.
- Delete the field for date of birth, as it is unnecessary information.
- Combine the injury types listing only “Date of Injury.” See discussion under the Cover Sheet form.
- Move the “Date offer received” field into the section to be completed by the employee on page 3.

Supplemental Job Displacement Nontransferable Training Voucher Form – DWC-AD 10133.57

CWCI recommends as follows:

- Restore “For injuries occurring on or after 1/1/04” at the top of the form to clarify eligibility. It is necessary so that voucher forms are issued only to employees with dates of injury on or after 1/1/04.
- To eliminate language duplication, modify the second to last paragraph on the form as follows:

In order to initiate your training or return to work counseling present the voucher to the school or the vocational and return to work counselor of your choice, ~~chosen from the list developed by the Division of Workers’ Compensation’s Administrative Director, in order to initiate your training and return to work counseling.~~

Request for Dispute Resolution before Administrative Director – DWC-AD 10133.55

CWCI recommends as follows:

- Change the name of this form from “Request for Dispute Resolution before Administrative Director” to “Request for SJDB Voucher Dispute Resolution” in order to clarify that the purpose of the form is to request dispute resolution regarding SJDB vouchers only.
- Restore the prompt “Has PPD been stipulated” to the current “Has PPD been stipulated,issued/approved.”
- Combine the injury types listing only “Date of Injury.” See discussion under the Cover Sheet form.
- Delete the check boxes for insured, self-insured, legally uninsured, or uninsured, since this information unnecessary to EAMS implementation and voucher dispute resolution.
- With regard to the disputed issues list:
 - Delete Item 2 -- The WCAB has the sole jurisdiction to resolve disputes regarding the amount of the voucher.
 - Delete Item 4 – The Division has no statutory authority over the fees of professionals for the preparing a job description or analysis.
 - Delete Item 5 – At issue is the employee’s entitlement to the voucher (i.e., item 1), not the job and its duties. The ability to perform the job offered is not within the jurisdiction of the DWC.
 - Item 6 -- “employer” should be changed to “employee.”
- Add a DWC mailing address to the form so that users know where to mail the form.

Vocational Rehabilitation Plan – (Voc. Rehab.) § 10133.13 – RU-102

Check boxes have been added to this form to indicate whether the employee representative is “Law Firm/Attorney” or “Non-Attorney Representative.” Since this information is not necessary for EAMS OCR implementation or for a Vocational Rehabilitation Plan, CWCI recommends removing the boxes.

Request for Dispute Resolution – (Voc. Rehab.) § 10133.14 – RU-103

CWCI recommends changing the name of this form from “Request for Dispute Resolution” to “Request for Vocational Rehabilitation Dispute Resolution” to clarify that the form is to request dispute resolution regarding Vocational Rehabilitation only, and to avoid confusion with Form DWC – AD 10133.55 which is also headed “Request for Dispute Resolution.”

Employee’s Disability Questionnaire – DWC-AD form 100

CWCI recommends changing “Address 1” to “Address” and deleting the “Address 2” and “International Address” fields as only one street address field is necessary.

CWCI also recommends reverting to a single field for “Claim Number” and removing fields for Claim Numbers 1 through 5 as only one is necessary.

Request for Summary Rating Determination of Qualified Medical Evaluator Report – DWC-AD form 101

CWCI recommends:

- Changing “Address 1” to “Address” and deleting the “Address 2” and “International Address” fields as only one street address field is necessary.
- Reverting to a single field for “Claim Number” and removing fields for Claim Numbers 1 through 5 as only one is necessary.
- Adding a mailing address so that the physician knows where to mail the form.
- Replacing the prompt for “WCAB Case No.” with “Case Number” to conform to EAMS.

Request for Summary Rating Determination of Primary Treating Physician’s Report – DWC-AD form 102

CWCI recommends:

- Changing “Address 1” to “Address” and deleting the “Address 2” and “International Address” fields as only one street address field is necessary.
- Reverting to a single field for “Claim Number” and removing fields for Claim Numbers 1 through 5 as only one is necessary.
- Adding a mailing address so that the physician knows where to mail the form.
- Replacing the prompt for “WCAB Case No.” with “Case Number” to conform to EAMS.

Request for Reconsideration of Summary Rating – DWC-AD form 103

CWCI recommends:

- Changing “Address 1” to “Address” and deleting the “Address 2” and “International Address” fields as only one street address field is necessary.
- Reverting to a single field for “Claim Number” and removing fields for Claim Numbers 1 through 5 as only one is necessary.
- Revising the language in the second paragraph of the box as follows:
A request for reconsideration may be granted if it is shown that the Agreed Medical Evaluator (AME), Qualified Medical Evaluator (QME) or Primary Treating Physician (PTP) has failed to address all issues, failed to completely address issues, failed to follow the ~~procedures~~ regulations promulgated by the DWC Medical Unit, or if the rating was incorrectly calculated.
- Revising the prompt language on page 2 as follows:
 - ~~QME/TP~~ AME/QME/PTP...
 - ~~Medical Unit procedures~~ DWC regulations not followed by ~~QME/TP~~ AME/QME/PTP.
- Updating the mailing address for the form if necessary so that the physician does not mail it to the incorrect address.
- Deleting “(Instructions on Reverse)” and “on the reverse side” since the reverse side is not appropriate for EAMS forms.
- Repealing the existing form.

Request for Consultative Rating – DWC-AD form 104

CWCI recommends:

- Reverting to a single field for “Case Number” and “Date of injury,” removing fields for Case Numbers 1 through 5 and Dates of injury 1 through 5, as only one of each is necessary.
- Adding a mailing address to the form.
- Repealing the existing form.

Thank you for considering these comments. Please contact us for further clarification or if we can be of any other assistance.

Sincerely,

Brenda Ramirez
Claims & Medical Director

Michael McClain
General Counsel & Vice President

BR:MMc/pm

cc: Joseph M. Miller, Chairman, Workers' Compensation Appeals Board
Destie Overpeck, DWC Counsel
CWCI Medical Care Committee
CWCI Claims Committee
CWCI Legal Committee
CWCI Regular Members
CWCI Associate Members