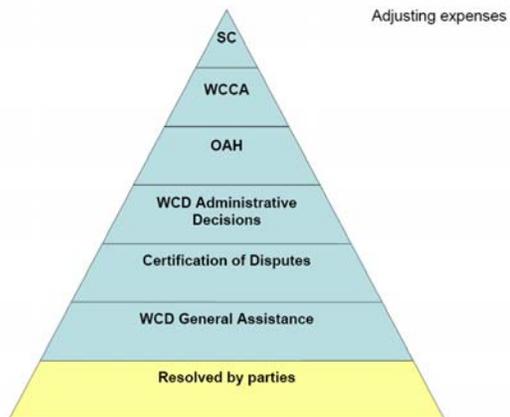
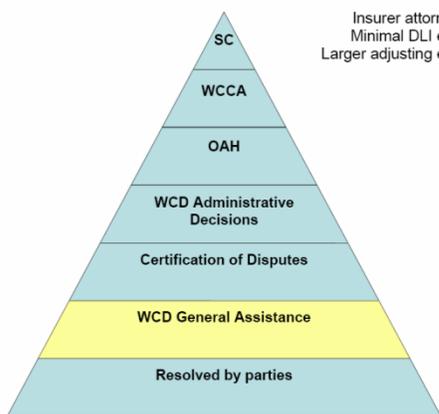


An Overview of the Dispute Resolution Process in the Minnesota Workers' Compensation System

9-12-14



Insurer attorney fees?
Minimal DLI expenses
Larger adjusting expenses

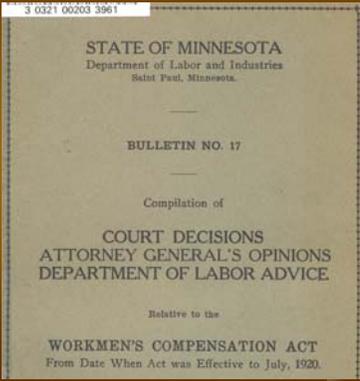


Statutory Authority

- Minn. Stat. 176.261

The department must make efforts to settle problems of employees and employers by contacting third parties, including attorneys, insurers, and health care providers, on behalf of employers and employees and using the department's persuasion to settle issues quickly and cooperatively. The obligation to make efforts to settle problems exists whether or not a formal claim has been filed with the department.

Historical Development



XII. DEPARTMENT OF LABOR FUNCTIONS

As the relation of the Department of Labor and Industries to the administration of the compensation act is somewhat unusual and differs from the plans in effect in other states, we are presenting here a discussion of it.

Under section 24-A the Department of Labor has four points of contact with the administration of the Workmen's Compensation Law.

First, to advise an employer or an employe or his dependent of his or their rights under the act.

Second, to assist in adjusting differences between the employe or his dependent and the employer.

Third, to act as representative in court, of one of the parties to a compensation proceeding.

Fourth, to observe in detail the operation of the act throughout the state.

It will be noted that with the exception of the third point of contact the department is at no time acting in a partisan capacity. It is a branch of the state government intrusted with the task of supervising the operation of a law in such manner that equity is done. Even when one of its employes is acting as "friend of the court" in a compensation claimant he does so rather as "friend of the court" than as an ordinary attorney. The department will use every means at its disposal to see that the facts are discovered and that justice is done a compensation claimant. On the other hand it is not only its privilege, but its positive duty, to reject and refuse to further any claims which it becomes convinced have no merit. The feature of the work upon which the department wishes to lay the greatest stress is the informal adjustment of differences. Through its power to summon witnesses and take testimony under oath the department is in a position to get at the facts in any case and propose a basis of settlement. If employes and employers availed themselves more frequently of the department's service in this respect much more could be saved in litigation expense and ill feeling. In practice we find that the department can bring about an adjustment far more readily in the early stages of a controversy than if it receives a case after it has been hawked around among various attorneys and meddling friends of the claimant and the employer thoroughly embittered by the claims made on him.

In general, court actions will be brought only after the department has tried to adjust the case and the employer or insurer has refused to accept adjustment or the proffered basis of settlement. When an adjustment is negotiated and the claimant refuses to accept the basis of settlement the department proposes, no obligation to bring a court action will be admitted.

Historical Development

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ADR Services

- M. S. 176.261 requires DLI to make efforts to settle problems ... quickly and cooperatively
- DLI provides a variety of services:
 - Hotline; Walk-ins; Correspondence
 - Certification/Resolution of Disputes
 - Arbitration (Medical & Rehabilitation)
 - Mediation

Page 6-1

Our goals

- (1) Serve all parties, all stake holders in the WC system, fairly & impartially
- (2) Identify issues
- (3) Provide accurate and timely advice on the applicable laws, options to the caller
- (4) Provide appropriate referrals to other information sources
- (5) Encourage return calls, as needed

HOTLINE

- 8-4:30 Monday through Friday
- 1-800-342-5354; 651-284-5032
- Expertise of those answering
- Calls from: employees, employers, insurers, attorneys, ORCs, health care providers, insurance brokers, insurance agents
- TOPICS: vary extensively
- GOAL: Be neutral, yet helpful. Give advice on options, explain rights under the WC laws

HOTLINE

- 2014 -averaged 300 contacts per week (hotline calls, walk-ins and log letters) - majority are hotline calls.
- 14 mediator/arbitrators (aka dispute resolution specialists)
- Some insurers and employers assume the hotline is **only** for employees.
- It is for EVERYONE involved in workers' compensation claims.

EMPLOYEE QUESTIONS



QUESTIONS FROM EMPLOYEES

- How do I get my employer to file a WC claim?
- Look-ups, identify carrier (policy #, phone #)
- Call employer and explain process & no admission of liability just because First Report is filed, penalties for not filing

- If complaint is without merit, explain
- EXAMPLES:
 - (1) Where is my pain & suffering check?
 - (2) I used to make \$600/week, the WC is only paying me \$400. Where do I get the rest of my money?

Common Employee Question

- WHY IS THE WORKERS' COMPENSATION SYSTEM SO SKEWED IN FAVOR OF EMPLOYEES?

Questions from Adjusters



ADJUSTER QUESTIONS

- How do I calculate PPD?
- How do I pay PPD for multiple injuries from the same event? (apply the A+B formula for multiple injuries)
- If I paid benefits in another State, do I get credit in MN for those payments?
- How do I get a doctor to fill out the Healthcare Provider form? (without charge)

Adjuster questions

- How can I obtain medical records from a health care provider quickly and am I required to give them to the employee?
- Minn. Stat. 176.138 the provider has 7 days to send the medical records to you, but only those existing records directly related to this WC injury
- "Written medical data that exists at the time the request is made shall be provided by the collector or possessor within seven working days of receiving the request. Nonwritten medical data may be provided, but is not required to be provided, by the collector or possessor."

176.138 continued

- *In all cases of a request for the data or discussion with a medical provider about the data, except when it is the employee who is making the request, the employee shall be sent written notification of the request by the party requesting the data at the same time the request is made or a written confirmation of the discussion.*

Common Adjuster Question

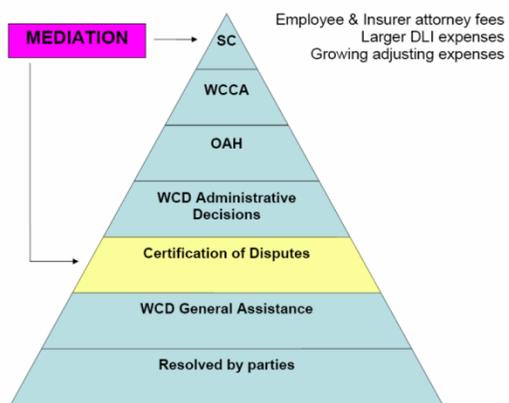
- WHY IS THE WORKERS' COMPENSATION SYSTEM SO SKEWED IN FAVOR OF EMPLOYEES?

WCD General Assistance

- Answer questions
- Quickly resolve simple disputes
- Costs
 - larger adjusting expenses
 - minimal DLI expenses
 - possible insurer attorney fees

Our goals

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- (2) Identify issues
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- (5) Encourage return calls, as needed



CERTIFICATION OF DISPUTES

Helping you get it resolved

Certification of Disputes

- Medical and rehab issues
- Required before a conference is scheduled
- No attorney fees can be charged, if not certified **(unless pending litigation)**
- 1995 Legislative Amendment 176.081 subd 1(c)
- Must be a legitimate dispute
- Increasing costs
 - adjusting expenses
 - DLI expenses
 - employee and insurer attorney fees

Authority to Certify Disputes

- Minn. Stat. 176.081 subdivision 1 (c)
- ...a fee may not be charged after June 1, 1996, for services with respect to a medical or rehabilitation issue performed before the employee has consulted with the department and the department certifies that there is a dispute and that it has tried to resolve the dispute.

Minn. Stat. 176.081 subd 1 (c)

- In no case shall fees be calculated on the basis of any undisputed portion of compensation awards.
- Allowable fees under this chapter shall be based solely upon genuinely disputed claims or portions of claims, including disputes related to the payment of rehabilitation benefits or to other aspects of a rehabilitation plan.
- The existence of a dispute is dependent upon a disagreement after the employer or insurer has had adequate time and information to take a position on liability.

PROMPTLY RETURN CALLS FROM DLI

- Embrace our calls
- This is an opportunity to resolve a dispute, before attorneys fees attach or increase—
Statute compels this effort
- Our messages generally will contain:
 - (1) Name of file, employee and employer
 - (2) Claim number
 - (3) Issue in dispute
 - (4) Deadline to return call (or dispute will be certified)

PROMPTLY RETURN PHONE CALLS

- Return our calls within the deadline, we can grant extensions if appropriate to make your decision or obtain necessary documents
- If we don't hear back in time then it will be certified which might expose you to unnecessary attorney fees and litigation costs.

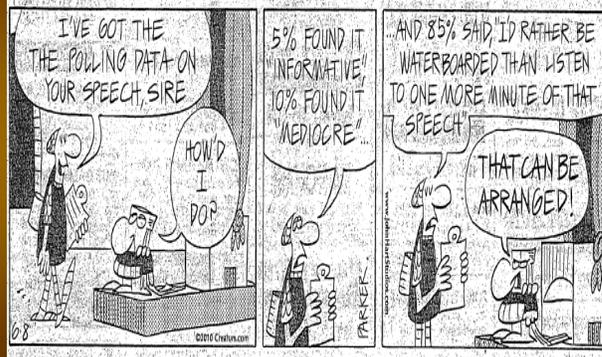


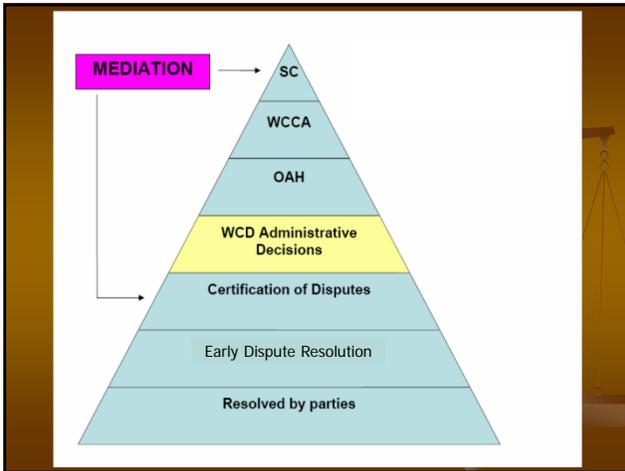
CERTIFICATION

- View this as an opportunity to resolve a dispute
- Engage in the process
- If unable to resolve, matter proceeds to administrative conference



Wizard of Id By Parker and Hart





ADMINISTRATIVE CONFERENCES

- We do not give up on settlement: we will continue to try to aid the parties in resolving the conflict, coming to a resolution of their own design
- If that does not work, then we hear the arguments of all parties, and issue a Decision and Order

An icon depicting a wooden gavel resting on a set of scales of justice, symbolizing legal proceedings or a decision.

REHABILITATION AND MEDICAL DISPUTES

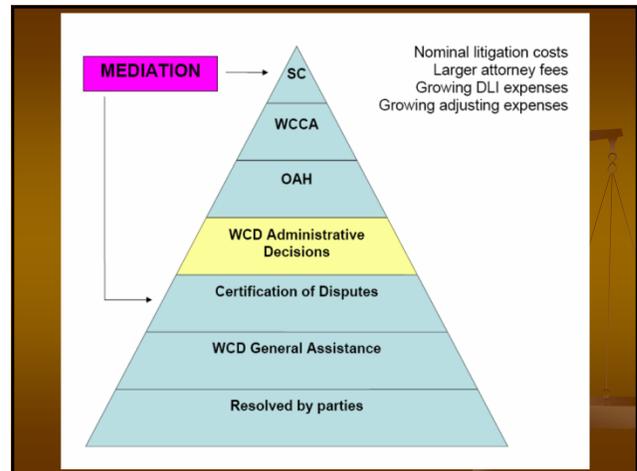
<p>DLI</p> <ul style="list-style-type: none"> ■ Where admitted injury or consequential injury ■ Where medical dispute is <\$7500 (can be >\$7500 where dispute is excessive charge/fee schedule issue) ■ All rehabilitation disputes on admitted injuries come to DLI first. 	<p>OAH</p> <ul style="list-style-type: none"> ■ All primary denial of liability disputes proceed by claim petition
--	--

A faint background image of a pair of scales of justice is visible behind the text.

INDEMNITY BENEFITS

- **ALL** wage loss and permanent partial disability disputes are handled at Office of Administrative Hearings-whether the injury is admitted, denied or the nature and extent of the injury is disputed.

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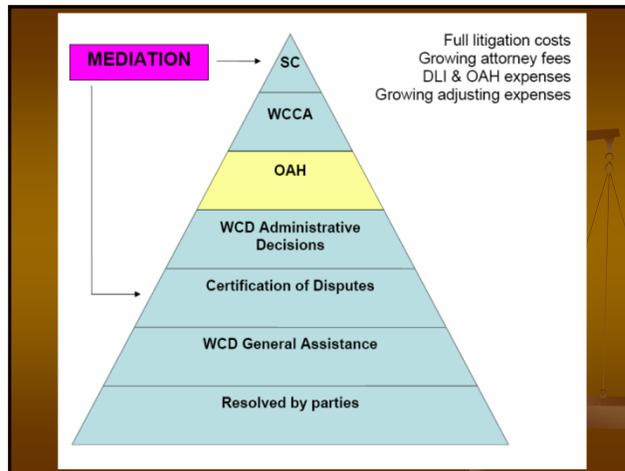


- ### WCD Administrative Decisions
- Mediator conducts informal conference
 - Designed to ease burden on litigation system
 - If not resolved, D & O issued
 - Appealed by request for formal hearing

- ### 2013 Rehab law change
- **176.106 Subd. 3. Conference.**
 - The matter shall be scheduled for an administrative conference within 60 days after receipt of the request for a conference, except that an administrative conference on a rehabilitation issue under section 176.102 **must be held within 21 days**, unless...

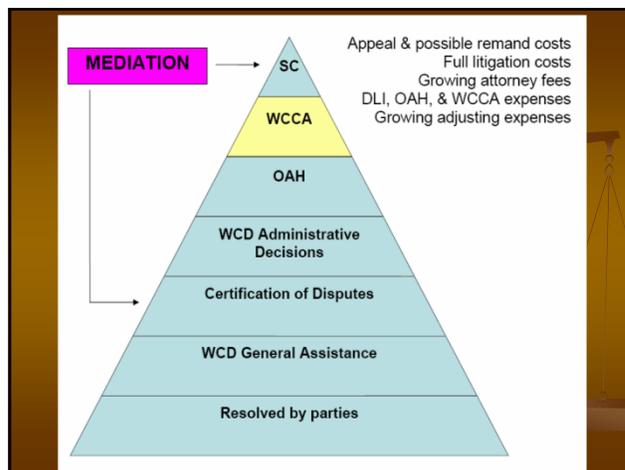
2013 Rehabilitation law

- unless the issue involves only fees for rehabilitation services that have already been provided or there is good cause for holding the conference later than 21 days. If there is a rehabilitation plan in effect, the qualified rehabilitation consultant must continue to provide reasonable services under the plan until the date the conference was initially scheduled to be held.



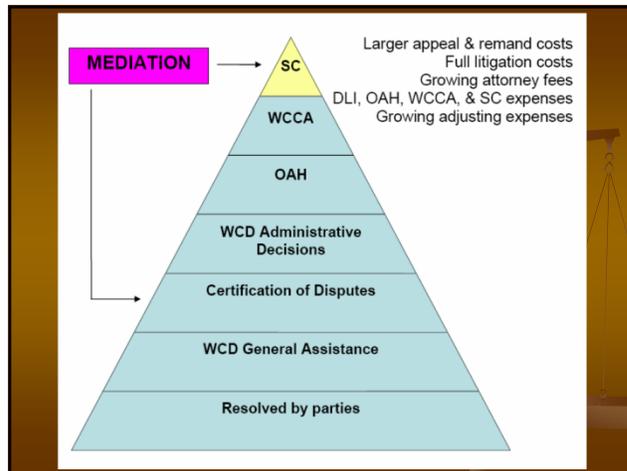
OAH

- Formal litigation
 - primary denial
 - discontinuance of wage loss benefits
 - medical dispute exceeding \$7,500.00 (see above)
 - appeal of D & O - *de novo* hearing
 - consolidated matters
- Costs
 - growing adjusting expenses
 - DLI and/or OAH expenses
 - growing attorney fees
 - full litigation costs



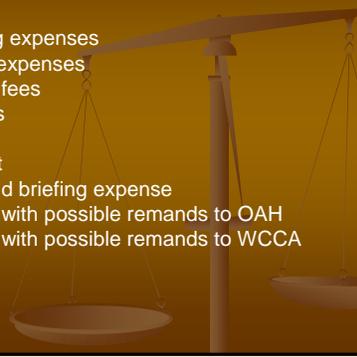
WCCA

- Costs
 - growing adjusting expenses
 - DLI and/or OAH expenses
 - growing attorney fees
 - full litigation costs
 - filing fees
 - hearing transcript
 - legal research and briefing expense
 - costs associated with possible remands to OAH

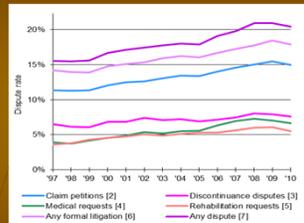
SC

- Costs
 - growing adjusting expenses
 - DLI and/or OAH expenses
 - growing attorney fees
 - full litigation costs
 - filing fees
 - hearing transcript
 - legal research and briefing expense
 - costs associated with possible remands to OAH
 - costs associated with possible remands to WCCA and/or OAH




Workers' Compensation Dispute Trends 1997 through 2010

- Overall Dispute rate increased 32% from 1997
- Leading the way were the rates of Medical Disputes (up 71%) and vocational rehabilitation disputes (up 52%).



Incidence of Disputes, injury years 1997-2010
Source: DLI Workers' Compensation System Report, 2012

Workers' Compensation Dispute Trends 1997-2012

- Adjusting for average wage growth, medical benefits per insured claim rose 91% from 1997-2011 (the most recent year available) while indemnity benefits rose 41%. All of the increase for indemnity benefits occurred by 2003.
- Relative to total payroll, indemnity benefits were down 22% between 1997 and 2012, while medical benefits were down 8%. The trends in benefits relative to payroll are the net result of a falling claim rate and higher benefits per claim.

DLI's Mediation Program

- Facilitated settlement negotiation
- Mediation is voluntary
 - parties must agree to mediate
 - parties may choose their mediator
- Flexible format
 - tailored to fit parties' needs
 - at DLI or outstate
 - finalized w/mediation award or stipulation

When to use Mediation

- To avoid delay in resolving a case
- Employee's condition has stabilized
- To manage "litigation risk"
- Parties are having trouble getting started
- Parties have unrealistic expectations
- Parties are emotionally ready to settle

Preparing for Mediation

- Assess likely outcomes
 - potential recovery/exposure and likelihood
- Identify your goals
- Adjust your attitude
 - be committed to the success of mediation
 - let the mediator help you educate your client
 - keep an open mind
- Optional: prepare settlement summary

Top 10 Questions

1. How do I schedule a mediation?
2. May the parties select the actual mediator?
3. How long must I wait for a mediation session to occur?
4. Where will the mediation be conducted?
5. How long will the mediation take?

Top 10 Questions

6. Will an interpreter be provided, if necessary?
7. Do I need an attorney?
8. What have I got to gain or lose using mediation?
9. What cases are accepted by DLI for mediation?
10. What makes a mediation successful?

SUCCESS FACTORS

- Preparation
 - EMPLOYEE: pain & suffering, my friend's evaluation, apologies, etc.
 - Employee attorney: medical reports on causation, PPD, demand
 - Employer attorney: get authority, send all reports to adjuster, committee evaluations, employer approval if SIR

