

WHY DO SO MANY WORKERS' COMPENSATION DISPUTES SETTLE?

Mike Kocer,
Risk
Management
Division



WHAT IS THE GOAL OF THIS SESSION?

- To raise awareness of how and why workers' compensation disputes arise and how the settlement process is used to resolve some disputes.

THE BASICS OF WORKERS' COMP, CONT.

- Generally, for an injury or illness to be covered by workers' compensation, the condition must be caused, aggravated or accelerated by work activities.
- MS 176 and administrative rules
- WCCA and Supreme Court cases
- Formal and informal resolution of disputed cases handled by OAH and/or DOLI

WC INJURIES & WHEN BENEFITS ARE PAYABLE:

- Must arise out and in the course and scope of employment – simply being at work does not make a claim compensable
 - Time, Place, Circumstances
 - Causal connection between injury and employment (increased risk)
- Work injury needs to be a substantial contributing factor when pre-existing conditions are involved
- Can include occupational disease and repetitive motion injuries, but these must meet AOCSE test

TYPES OF WORK COMP BENEFITS:

- Indemnity/Wage Loss Benefits – based on Average Weekly Wage
 - Temporary Total Disability (TTD)
 - Temporary Partial Disability (TPD)
 - Permanent Total Disability (PTD)
- Indemnity/Permanency/Loss of Function
 - Permanent Partial Disability (PPD)
- Medical – treatment to cure or relieve effects of work injury
- Rehabilitation – help with RTW; required by law if EE to miss more than 13 weeks; retraining/school

ROLE OF WC CLAIMS SPECIALIST

- ▶ Investigate claim & determine if compensable
- ▶ If compensable, pay appropriate benefits
- ▶ If not compensable, advise employee of reason and provide information on how they can dispute decision
- ▶ Coordinate medical care through CorVel
- ▶ Manage disputes – refer to legal counsel when necessary
- ▶ Oversee litigation/resolution of disputes
- ▶ Resolve claim either through RTW or mediation/settlement or conference/hearing

WORKFLOW FOR MOST CLAIMS

- ▶ Employee claims injury at work
- ▶ Claim investigated and accepted
- ▶ Medical and wage loss benefits paid
- ▶ Employee Returns to work
- ▶ All benefits paid, payment notification forms filed with employee and Department of Labor & Industry
- ▶ File closed

WORKFLOW FOR DISPUTED CLAIMS

- ▶ Employee claims injury at work
- ▶ Claim investigated and denied
- ▶ Employee retains an attorney
- ▶ Claim Petition filed with Office of Administrative Hearings (OAH)
 - ▶ Answer to employee claim petition filed
 - ▶ Discovery process – gathering of additional medical records, work records, independent medical examination, deposition
 - ▶ Settlement conferences set by OAH
 - ▶ Mediation (option)
 - ▶ Pretrial conference
 - ▶ Hearing or trial before WC Judge
 - ▶ Decision & Order
 - ▶ Appeal to Workers' Compensation Court of Appeals, Supreme Court

WORKFLOW FOR DISPUTED CLAIMS AFTER INITIALLY ACCEPTING CLAIM

- ▶ Employee claims injury at work, which is investigated and accepted
- ▶ Work comp benefits are being paid
- ▶ A dispute arises with regard to eligibility for additional benefit or the amount of a benefit
- ▶ Examples include vocational rehabilitation plan, type or duration of medical treatment, calculation of average weekly wage (employee could claim some type of additional employment with wage difficult to determine), need for health club membership, etc.
- ▶ A Medical Request or Rehabilitation Request is filed
- ▶ A Medical Response or Rehabilitation Response is filed
- ▶ Administrative conference
- ▶ Possible de novo hearing afterwards if either party objects to conference decision

MORE EXAMPLES

- Proposed discontinuance of employee's TTD or TPD benefits and employee objects – conference and possible de novo hearing
- Employee disputes opinion that they have not reached Maximum Medical Improvement and need additional treatment and payment of ongoing benefits
- Employee claims PPD in excess of what a physician has rated them at based on another physician's opinion
- Employee wants to change doctors multiple times, Qualified Rehabilitation Consultant (QRC), etc.
- Multiple other reasons – the list could go on and on
- All of these disputes generally start with an administrative conference which either party can appeal

SO WHY DO WE SETTLE CLAIMS?

The work comp litigation process is designed to and encourages informal resolution of disputed claims

- ▶ OAH does not have capacity to hear every claim
- ▶ Settlement offers parties a known resolution versus the unknown resolution likely through a hearing and the appeal process
- ▶ Claims information can change significantly from date of injury to weeks, months or years into the claim
- ▶ Some examples: information may not be shared with us during the initial investigation, injury is more significant than originally reported or there are other injuries added by association with original injury
- ▶ Agency is unable to keep employee working and/or employee is not truly motivated to return to work and cooperates just enough to maintain benefit eligibility

OTHER REASONS TO CONSIDER SETTLEMENT, ESPECIALLY FOR EMPLOYERS

- Work comp legal proceedings tend to generally favor employee, but system is suppose to be neutral
- Cost of defending claims is a factor – IMEs, depositions, surveillance/investigation all costs money
- Employer may not want the employee to return
- Oftentimes able to resolve other employment law issues with workers' compensation settlement
- Employers that want to "dig their heels in to prove a point," tend to lose at hearings

CASE EXAMPLE

- 51 year old General Maintenance worker who claims bilateral wrist, arm, and cervical pain after helping unload two large delivery trucks on the same day. The employee was helping move items weighing up to 75 pounds by himself. The employee is an avid bow hunter and has a carpentry business as a second job. Several days prior to the work injury, the employee had returned from a one week bow hunting trip. He does not get along with his supervisor and he calls in sick at least one time per month. History of personal depression. Went to doctor before the work injury complaining of a sore neck with pain sensation going down into his right arm.
- ER thinks employee quit job after argument with his supervisor
- 10 days later calls HR and files a workers' compensation claim, stating he has been unable to work because of his injury; also claims that he has been so depressed that he forgot to notify work sooner and thought he had told them that he was sick, but does not really remember
- Employee tells HR that his supervisor has been harassing him and making things difficult for him to be at work
- WC claim investigated and denied

EXPOSURE IF COMPENSABLE

- After a one-year discovery process, parties agree to mediation prior to hearing date
- Exposure estimated at \$218,000
 - TTD 52 weeks 45,000
 - TPD 225 weeks 110,000
 - PPD 10% 8,000
 - Voc. Rehab 15,000
 - Medical interveners 40,000

THE "FACTS" BEFORE US

- The employee is deemed credible through deposition and would make an above average witness according to defense counsel
- Employee has favorable medical support that his injuries are work-related from multiple physicians
- Employee attorney suggests that depression likely aggravated by work injury and will pursue medical to support this
- We have a favorable IME opinion stating that there was no work injury
- We have two co-employees who will challenge validity of employee's claim
- We recommend settling the claim for up to \$120,000, and we might have to agree to cover future medical treatment

THE DECISION

- Settled claim on a full, final & complete basis with an \$80,000 payment to employee and \$20,000 in payments to medical interveners
- Because claim was originally denied, we were able to close-out all future medical treatment
- Employee agreed to an employment release in which employee acknowledged resignation from the agency and the State of Minnesota releasing the state from any & all employment related claims for a separate \$100 payment

THE "VERDICT"

- Had we won at hearing, we would have paid zero to employee
- Had we lost at hearing, we would have paid benefits accrued to date + ongoing benefits
- The compromise or settlement gave each party a "win" so to speak
- We always consider settlement and weigh it versus odds of prevailing at a hearing
- Employer ultimately needs to accept reality of situation and weigh what is best financial and workplace decision