

## Manager/Supervisor Risk Management

#33– 3/1/12

A twice weekly e-mail training for YCPARMIA members

### TOPIC: WORKERS' COMPENSATION –APPORTIONMENT

Let me start this topic with a reminder: we are addressing some very big topics in a very limited and general way. The intent is to provide supervisors with a broad idea of risk management issues that might affect them and/or their employees.

“Apportionment” addresses contributing causes of permanent disability. The Labor Code makes it clear that the employer is only liable for the percentage of permanent disability that was directly caused by the industrial injury/illness. The disability, if any, is apportioned based on causation.

As in most WC decisions, the responsibility falls on the doctor. They are required to make an apportionment determination by finding what approximate percentage of the PD was caused by the direct result of the industrial injury, and what percentage of the PD was caused by other factors both before and after the industrial injury. This includes the effect of other industrial injuries.

There is no permanent disability re-set button. A worker that has been paid disability for a body part will only get PD payments on a subsequent injury to that body part for any new/additional PD. For example, a person with a previous 10% disability on their wrist suffers a new injury to that wrist with a new PD rating on the wrist of 13%. The PD for the new injury is 3% (the new 13% rating less the previous 10% rating). Similarly, a PD award can be reduced by non-industrial factors. The most recent example for YCPARMIA was a worker who suffered a hearing loss. PD was reduced by non-industrial factors like aging, and prior military service. Maybe a better example would be a work stress claim. If the worker is found to have an industrial stress/psyche disability, the PD could end up being reduced by the percentage of disability that was caused by non-industrial factors like family problems, financial issues, marital troubles, and health conditions.

There is an important distinction; apportionment generally only applies to permanent disability benefits. The employer is normally responsible for 100% of medical and temporary disability benefits resulting from a compensable industrial injury regardless of contributing non-industrial factors. On permanent disability claims apportionment is probably involved in less than 10% of our PD files. One other comment, we have had subsequent injuries to the same body part where the doctor's determination of total PD is actually less than what was paid on the first injury (there is no resulting reimbursement).

What does this mean for the supervisor? The supervisor will sometimes be questioned regarding their knowledge of their employees' health, life style, complaints and comments to determine if there are non-industrial or pre-existing causes that have possibility contributed to their worker's industrial disability. This information will ultimately be provided to the treating doctor to aid them in their determination of possible apportionment.

Next topic: Workers' Compensation – Temporary Disability