

Manager/Supervisor Risk Management

#45– 4/12/12

A twice weekly e-mail training for YCPARMIA members

TOPIC: WORKERS' COMPENSATION – LAWYERS

In California Workers' Comp the way for an injured worker to start legal proceedings is to file an Application for Adjudication with the Workers' Compensation Appeals Board (WCAB). The attorney that represents the injured worker in those proceedings is called an "applicant's attorney." YCPARMIA receives over 400 claims per year, and we estimate about 10 of them will have an applicant attorney at some point during the claim process.

Should an injured worker hire an attorney? The answer is always, "it is completely up to you." We will never offer an opinion or tell anyone not to get an attorney (and on occasion we will actually encourage an unrealistic claimant to retain counsel). If the employee feels that they cannot represent their own interests, or feels that they are being mistreated they should consider retaining counsel. If complex medical or legal issues arise they should almost certainly consider representation. The feedback that YCPARMIA gets suggests that the most common reason that an injured worker hires an attorney is poor communication. They feel that their claims examiner, the medical provider, and/or the employer are not addressing their questions. A second common reason is that the injured worker is frustrated by their own lack of control over the WC process. A last common reason is that they think their attorney can get them more money, which is sometimes true, sometimes not. In any case the attorney cost for the injured worker is generally 12-15% of their permanent disability award.

Recently there was an advertisement by a WC law firm that announced they would "fight for the injured worker's rights." One might ask who were they going to fight? The workers' comp process, when it works, should be pretty much non-adversarial. The employer's part of the claim process is generally limited to making decisions on accommodating modified work restrictions. Medical disputes with the treating doctor are subject to the QME process where a neutral doctor is substituted into the decision making process. The claims examiner's treatment decisions are grounded on the utilization review process by another neutral doctor applying State adopted guidelines. The whole process is structured pretty tightly by the Labor Code; to assist in this process the injured worker can access State (DWC) Information and Assistance Officers to help in resolving disputes and misunderstandings.

Obviously on the right case an applicant attorney can provide valuable service to their client, but there are some consequences when an injured worker retains counsel. Communication with the claims examiner ceases; all further communication is through their attorney. Generally the employer/insurer will hire defense counsel, and the injured worker will probably be deposed. The claim process will probably slow down while disputes are resolved, often by the WCAB. If the injured worker finds that their attorney is unresponsive, or they are not satisfied with the progress of their claim we cannot help them. Their attorney becomes the sole source of assistance and advice in handling their claim.

Next topic: Workers' Compensation – Concluding the claim