

Flaws in Workers' Compensation System

By Cindy L. Kobal, Esq.

There are many flaws in the workers' compensation system. These flaws can egregiously harm the injured worker physically, financially and emotionally. The news and TV seem to focus on the bad injured workers who have committed fraud or abused the system. The truth is that those injured workers do not represent the average workers' compensation claimant. Those are the rare exceptions. The news and TV never seem to focus on any of the bad things that injured workers experience when going through the workers' compensation system.

One of the many issues is the length of time appeals can take to approve treatment or surgery. For example, an injured worker was on temporary total disability, which was appropriately approved in the hearing process under the claim. The injured worker required surgery, which took several months to approve through the appeal process. If it would've been approved promptly, the injured workers' ailments would've been addressed and he would've been able to return to work sooner. Instead of returning to work three-six months after the incident, it took 18 months awaiting approvals.

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I have even seen cases in which the doctor no longer believes surgery to be the best option as it needed to be performed earlier. Delays allowed further damage to be done to the body as a result of the lack of medical intervention.

These situations cost not only the employee additional time in discomfort and away from work, it is costing the employer and the Bureau of Workers' Compensation money.

Most of these injured workers want to be back to work and making their normal salary, not a lesser amount. Most don't want to await treatment or surgery in pain. They don't want to get behind on bills due to their lessened income. The public sector is often not aware that the length of time a worker is off work usually stems from the arduous appeals process. If they are off work and cannot have any treatment or the appropriate surgery for many months, they certainly cannot return to work until their injury is resolved.

Additionally, the injured worker who was on temporary total disability and was finally able to have surgery and return to work may have already suffered additional major consequences. Many suffer a severe financial loss while awaiting temporary total compensation. Some may have developed psychological conditions that need to be added to their claim due to long-term physical suffering as well as feeling like a loss to society from being unable to work. The psychological condition may also lead to the need for counseling, medication and/or more time off work.

The lengthy periods for claim processing and appeals happen for many reasons. Sometimes, the Bureau of Workers' Compensation takes too long to initially

issue an order or the claim gets lost in the shuffle of the volume of cases. It can be an employer who appeals every single issue at every hearing level despite a lack of contrary evidence. There are even cases in which the employer holds up the case and fights everything despite the fact that their own independent medical examination report states that temporary total disability as well as treatment or surgery should be approved under the claim. There are also instances in which the injured worker's own doctor or medical facility holds everything up, preventing the lawyer's access to the medical records or medical documentation needed to help the injured worker. Also, there are situations in which the injured workers may hold up the claim themselves due to not returning phone calls, sending back release forms or providing necessary information in order to keep the claim moving. Most often, however, that is not the reason for a major delay in their claim.

This is a hard issue to fix as there aren't any real answers as to how to solve many of the circumstances that delay the injured worker's claim or benefits. I do think everyone involved in the process should be more cognizant of the delays that occur and realize the harm done to the injured worker in these situations. After all, the real reason for the workers' compensation system is to help injured workers. This is an important detail to remember. More focus should be put on the injured workers and the pain and suffering they go through when workers' compensation is mentioned. The term is often associated with negativity and fraud. This is a huge injustice to the large amount of workers using the workers' compensation system for the reason it was created. They were injured at work. Many of them tend to suffer more while awaiting appeals, waiting for the treatment they need, making less money or going without money for a long period of time. These things can happen to anyone and this system was created for workers.