

QUARTERLY ACTIVITY REPORT

January 1 - March 31, 1999

Walter W. Turner, Commissioner
KY Department of Workers Claims

1ST QUARTER ACTIVITY

846 Awards Rendered (468 New Law)
735 Settlements Approved (272 New Law)
11,917 Injuries Reported (11,785 New Law)
979 Claims Filed (824 New Law)
301 Reopenings (290 New Law)
122 Appeals to Board (33 New Law)
34 Appeals from Motion Docket (3 New Law)
554 Appeals from Arbitrator to ALJ (338 New Law)
42 Appeals to Circuit Court (7 New Law)
36 Appeals to Supreme Court (0 New Law)
765 Prelitigated Agreements (610 New Law)
205 Dismissals (103 New Law)

Enforcement of Coverage

An essential part of the Department of Workers Claims' (DWC's) mission is enforcement of statutory provisions requiring non-exempt Kentucky employers to maintain workers' compensation insurance. Full compliance with insurance requirements helps assure prompt medical care for injured workers and expeditious delivery of income replacement in the event of disability. When coverage is not in place, extension of these benefits to injured workers is delayed and the cost of disabling injuries is often shifted to employers who purchase coverage through the mechanism of the Uninsured Employers Fund.

During the first quarter of 1999, approximately 2,300 Kentucky businesses were inspected by DWC enforcement officers to confirm the presence or absence of compensation insurance. More than 200 citations were issued by the Commissioner against employers operating without coverage. One

hundred forty-nine thousand, four hundred and forty-three dollars (\$149,443) was collected on current and previously issued citations.

Enforcement Branch personnel field-tested palm top computers in an endeavor to reduce paper flow, automate transmission, capture pertinent information, and reduce data entry. Although palm top technology appears promising, field-testing revealed data system integration obstacles which the current line of products failed to surmount.

EDI-POC

During the first quarter of 1999, the Coverage Branch, responsible for maintaining the Department's employer coverage database, processed 47,438 proof of coverage notices. A new internet-based "filing door" providing a cost-free mechanism to submit POC notices was made available to carriers by DWC.

In February, a POC editing program proved to be Y2K non-compliant as proof of coverage for policies terminating in the year 2000 were erroneously rejected. Although the edit error was promptly corrected and the integrity of the essential data elements was unaffected, the impact is significant as measured by the effort necessary to rework the data. Additional information regarding POC issues may be obtained by contacting Gary Davis @ (502)564-0905, Ext. 403.

Self-Insurance

The final examination report on KESA (The Kentucky Workers Compensation Fund) was issued with favorable findings as to the Fund's financial condition and regulatory compliance. Examinations of the Kentucky School Board Self-Insurance Fund were completed with final reports anticipated in April. The Department initiated examination of Forest Industries Self-Insurance Fund with fieldwork expected to be complete by mid-April.

During the first quarter of 1999, significant audit resources were devoted to processing information submitted by self-insured employers for simulated premium calculations. This process includes comparison of payroll and loss information previously filed with the Department and databases maintained by other governmental agencies.

Division of Ombudsmen & Workers Compensation Specialists

During the first quarter of 1999, DWC ombudsmen and compensation specialists fielded more than 5,500 calls from program participants seeking information or assistance. On almost 900 occasions, constituent service personnel interceded with carriers and self-insured employers on behalf of workers seeking benefits. Informal mediation which generally includes multiple telephone contacts with the employee and claims adjuster, is successful about 60% of the time in terms of securing medical services and/or temporary total disability benefits. The majority of DWC's mediation interventions are closed within one week of initial agency contact by the injured worker. Although this proactive approach has been highly successful, it is recognized that the bulk of the matters resolved are disputes over temporary and medical benefits. It appears that workers compensation specialists assist workers in preparation of Applications for Adjustment of Claims in less than 10% of the claims filed (31 claims this quarter) while the involvement of agency personnel in resolving disputes over medical services is becoming more frequent (59 medical fee disputes this quarter).

Requests for assistance: 5,531

Requests to intercede: 898

Successful interventions: 528

Claims filing assistance: 31

Reopening/medical dispute form assistance: 59

Ombudsmen Activity, Jan. - March, 1999

NUMBER OF REQUESTS RECEIVED	2,975
COMPLETED	2,725
PRIOR MONTH COMPLETED	465
PENDING	605
TYPE OF CALL:	
CLAIMANT	1,342
CARRIER	380
EMPLOYER	292
GOVERNMENT OFFICIAL	51
MEDICAL PROVIDER	255
ATTORNEY	308
MEDICAL REVIEW	24
OTHER	323
TOTAL:	2,975
SUBJECT BREAKDOWN OF CALLS:	
MEDICAL FEE SCHEDULE	157
LEGAL QUESTIONS	467
INFORMAL MEDIATION	532
PROCEDURAL QUESTIONS	1,244
MEDICAL FEE DISPUTE	57
CLAIMS STATUS INQUIRY	215
FRAUD	17
1 ST REPORT OF INJURY INQUIRY	88
COVERAGE	582
MANAGED CARE	33
REHABILITATION	30
REFERRAL TO OUTSIDE AGENCIES	230
UTILIZATION REVIEW	22
OTHER	303
TOTAL:	3,977
OTHER OMBUDSMAN ACTIVITIES:	
FRAUD REFERRALS	2
ENFORCEMENT REFERRALS	15
LETTERS/FAXED REQUESTS	217
REFERRAL'S TO GOVERNOR'S OFFICE	2
FORM REQUESTS	405
TOTAL:	579

ALJ Activity

During the 1st quarter of 1999, the fourteen Administrative Law Judges continued to perform their traditional duties, which include adjudication in *de novo* appeals from arbitrator decisions and in claims transferred from arbitrators prior to an initial arbitrator decision because of complex legal or factual issues. During this three-month period, 616 such files were assigned to the ALJs. The Administrative Law Judges scheduled 498 formal hearings. They also held informal conferences in most of these claims, to reduce the number of contested issues and promote settlements. The Administrative Law Judges issued 352 formal opinions, including 265 awards and 87 dismissals, during this quarter. Additionally, they presided at enforce-

ment hearings from citations issued by Commissioner Turner for Chapter 342 violations. A number of Administrative Law Judges also spoke on topics related to Kentucky Workers Compensation at various seminars. The Administrative Law Judges also issued opinions on remand from appellate bodies and section 13 appeals.

In addition to the foregoing duties, the Administrative Law Judges served as Acting Arbitrators on a six month rotation schedule. This rotation is in accordance with KRS 342.230(3) which states "...the Commissioner shall have the authority to assign the duties of an Arbitrator to an ALJ who shall work in that capacity as deemed necessary by the Commissioner."

During the first quarter of 1999, 599 cases were assigned to ALJS, acting as Arbitrators. These ALJs held 541 benefit review conferences and issued 285 benefit review decisions.

Finally, Judge Donna H. Terry completed her fifth year as Chief Administrative Law Judge. At her request, she was relieved of this designation and assumed a full adjudicative case load. As of January 1, 1999, she was succeeded as Chief Administrative Law Judge by Sheila C. Lowther.

Arbitration Activity

The following reflects arbitrator activity for the 1st quarter of 1999:

- Benefit review conferences, 1335
- Benefit review determinations, 609
- Unresolved claims exceeding 90 days, 257
- Settled claims, 354
- Transfers, 118

Settlement percentages are down from the 1st quarter of 1998. This can be attributed in part to the fact that the claims being litigated appear to have more threshold issues, e.g. notice, work-relatedness, than they have in the past. Although the number of unresolved claims appears to be high for the quarter, this number does not reflect the total number of claims past 90 days but rather the number of claims that were past 90 days for each month of the quarter. The majority of these past due claims were delayed because the parties agreed to place them in abeyance. Furthermore, a number of claims were de-

layed in order to give the parties additional proof time or to obtain a University evaluation pursuant to KRS 342.315. If claim filings remain at this level throughout 1999, there will be an approximate 10% decrease in claim filings for this year as compared to 1998.

Regulation Updates

803 KAR 25:026, Group Self-Insurers. On January 12, 1999, the amendments to this regulation were passed by the regulation subcommittee. The regulation became effective on February 18, 1999. Amendments to the regulation include the following subjects:

- a. Investment parameters
- b. Dividend payment plans
- c. Allowed increased number of trustees
- d. Conflict of Interest Statement
- e. Statement of Financial Condition

803 KAR 25:170, Filing of Claims Information. On January 12, 1999, the amendments to this regulation were passed by the regulation subcommittee. The regulation became effective on February 18, 1999. The amendments to this regulation include the following:

- a. Bringing the time period for filing first reports of injury (IA-1) into conformity with KRS 342.038 (Section 2(1)).
- b. Clarification and elimination of unnecessary language (Section 2 and Section 3).
- c. Elimination of the requirement for filing of information on medical bills denied. There is a July 1, 1999, date for collecting information on medical bills paid (Section 3).

803 KAR 25:175 & E, Filing of Insurance Coverage and Notice of Policy Change or Termination. The ordinary regulation became effective April 14, 1999 and replaced the emergency regulation. The amendments to this regulation give carriers an alternative when filing proof of coverage and change or termination of coverage. Now carriers may file with NCCI or electronically with the Department of Workers Claims. Any electronic transmission of data filed directly with the Department must demonstrate its reliability in tests rendered by the Department of Workers Claims and be approved by the Commissioner.

803 KAR 25:240, Unfair Claims Settlement Practices. On January 12, 1999, this regulation was passed by the regulation subcommittee. The regulation

became effective on February 18, 1999. This new regulation establishes standards for carriers to properly maintain records, document files, provide notice of policy provisions and information, diligently investigate claims, offer fair and equitable settlements and provide proper and timely communications. A carrier who complies with this regulation engages in fair claims settlement practices and will avoid civil penalties pursuant to KRS 342.267.

803 KAR 25:021, Individual Self-Insurers. The amendments to this regulation became effective March 19, 1999. The amendments to this regulation sets forth the following:

- a. Requirements for contracting with a service organization.
- b. Annual filings shall include a statement of financial condition and shall be done 120 days from the end of the self-insured employer's fiscal year.
- c. Deletion of coverage for contractors or subcontractors found in Section 10(2).

New Law Claims Analysis

Through letter of March 4, 1999, Representative J.R. Gray and Senator Glenn Freeman, Co-Chairs of the Interim Joint Labor & Industry Committee, re-

quested the Commissioner to answer a number of inquiries the Committee deemed pertinent to evaluating "new law" claims. The Committee request precipitated departmental analysis of 6,064 compensation claims wherein the Request for Resolution indicated an injury or last exposure occurring subsequent to December 11, 1996, viz claims substantively governed by House Bill 1 adopted in Special Session, December 1996. Responding to the Committee's inquiry necessitated an intense research effort by DWC staff. The project revealed numerous information system deficiencies beginning with a lack of uniformity by program participants and adjudicators in setting forth precisely in agreements and awards essential data fields including functional impairment ratings. A lack of consistency was noted as to coding and data entry. Gradual injury and combined and consolidated claims involving "new" and "old" law injuries presented particular difficulty with respect to isolating information fields.

Fulfilling the Labor & Industry Committee request ultimately required eyes on viewing of more than 4,000 agreements and awards, a task made possible only by reason of state of the art technology, i.e., ready access to stored records on the Department's computerized imaging system. The project was instructive as it presented in concrete form the issue of whether the data fields captured by the Department are the same

NEW LAW CLAIMS OVERVIEW

RESEARCH FINDINGS					
<u>ACTIVITY SUMMARY*</u>					
	Claims	Awards	Settlements	Dismissals*	Pending*
Injury	5,862	618	2,858	314	2,072
CWP	85	6	7	44	28
OD	9	2	1	2	4
(except CWP)					
Hearing Loss	108	15	18	23	52
TOTAL	6,064	641	2,884	383	2,156
<u>RESOLUTION DETAIL*</u>					
	Awards		Agreements		Fatalities
	Perm	Partial/Perm Total	Perm	Partial/Perm Total	
Injury	572	46	2,853	5	52
OD	6	2	8	0	0
Hearing Loss	15	0	18	0	0
TOTAL	593	48	2,879	5	0

fields of information pertinent to policy-makers. DWC found that what policy-makers want and what DWC has in stock are far from being a perfect fit.

An ongoing information system redesign project is expected to enhance the retrievability of data. Training of DWC personnel from data entry staff through adjudicators as well as external participants who supply data, will improve data quality. An additional measure to be addressed is gaining the input of policy-makers in an attempt to identify information fields which are useful in measuring program performance.

The average functional impairment under the AMA Guidelines as reflected upon agreements resolving injury claims was 7.55%, while the average disability rating (functional impairment times KRS 342.730 grid factor) for injury claims resolved through agreement is 8.53%. Upon hearing loss claims resolved through agreement, the average functional impairment rating is 10.88% while the disability rating is 8.60%.

For claims concluded through adjudication [Arbitrator Benefit Review Determinations or ALJ Opinion and Awards], both the AMA functional impairment ratings and the disability ratings on average are higher, indicate that instances of less severe injury are more likely to be resolved by agreement between the workers and employer/insurance carrier. The average functional impairment upon injury claims concluded through award is 10.71% and the average disability rating is 13.95%, while for hearing loss the respective averages are 10.86% and 13.1%.

Return to work status is a measurably impor-

tant predictor of whether a claim will be resolved by agreement as opposed to proceeding to adjudicator determination. When claims are resolved by agreement 75% of the time, it is stipulated that the injured employee retains both the capacity to return to the job performed at the time of injury, and in fact returned to work at the same or greater wage. To the contrary, when claims are concluded through adjudicator determination (other than dismissals,) findings reflect that 38% of the injured workers retain the physical capacity to return to the same work performed at the time of injury, yet, only 10% of those granted injury awards had returned to work at wages equivalent to those earned at the time of injury.

Methodology Notes:

1. Survey includes all "new law" claims filed through March 8, 1999.
2. Percentages are based on only those records wherein pertinent fields stated and exclude dismissed claims, total disability awards and settlements, and with respect to return to work status, hearing loss and occupational disease claims.
3. Awards include ALJ Opinions and Arbitrator Benefit Review Determinations as of the highest level of determination and include awards/BRDs which may not be legally final.
4. Dismissals include awards/settlements for temporary total disability benefits and/or medical services only as well as claims dismissed by agreement, absent recognition of permanent impairment/disability.
5. Pending are those claims wherein an order of disposition has not been entered.

Budget Analysis			
Fiscal Year 1998 - 99 as of March 31, 1999			
1999-2000 FY	Budget	Spent YTD	Spent
Total Budget	\$14,994,000	\$9,471,046	63.2
Personnel	11,724,000	7,630,359	65.1
Operating	3,150,000	1,609,817	51.1
Capital Equip.	120,000	230,870	192.4
Percent of Fiscal Year lapsed as of			
March 31, 199975.0%			



This agency does not discriminate on the basis of race, color, national origin, religion, age or disability in employment or provision of services.

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