

Why Employees Seek Attorneys

March 2009

Denied Claim/Liability

- **Some Questionable cases denial may be in order:** psychiatric stress, occupational exposure, unusual or novel fact scenarios
- **Groundless denials more likely with non-local TPAs** too overburden with claims to investigate claim
- **Some profiling:** new hires, young and single workers, lower income workers, Friday injury reported on Monday
- **Massachusetts:** early payment results in cease of benefits later-South Carolina
- **Look at source of evidence:** Claimant unsure of how to provide significant medical documentation of the work injury and which body parts injured
- Interview witnesses-Actually talk to the witnesses- didn't see it but heard him scream when he fell etc.
- **Inexperience:** Claimant limited knowledge of the WC system and is unable to or know how to report and/ or document the claim

Communication

Lack of Communication

- Emily F. 15 year employee had traumatic amputation and no returned phone call in 21 days
- Employer and Carrier assume the other is processing claim
- Claim is reported to huge parent company and not to the TPA
- Claimant required by employer usually to report in 24 hours yet employer/ carrier response often delayed

Lack of Understanding

- Jargon on forms and documents
- Vacation pay vs. temp total
- Repetitive trauma, injury by accident or occupational disease
- Commissioner is not there to represent the claimant
- Medical bills being received at claimant's home
- Claimant's reaction: pain, financial problems, and worry

Hostile or Intrusive Employer

- Overbearing demands: weekly out of work slips provided, need to know exact date of return, must report to work even if its to open mail
- Punitive light duty
- Coworker states claimant's job has been posted/notified that job will be filled
- Refusal to give the adjuster's contact information
- HR department overly involved in status of the case
- Manipulation of return appointment
- Drug testing
- Safety talks using claimant's injury as an example-ridicule
- Immediate change of attitude
- Contacted by adjuster with recorder
- Notified claim in under investigation
- Can't go to doctor appointments
- Light Duty; Shift Change; Written up
- Light duty hours not turned into adjuster (no temp partial)

Delay of Benefits

- Medical bills not being paid (review agents)
- Prescriptions not approved resulting in delay of reimbursement
- Late checks
- Checks arriving haphazardly
- Automatic computer payment mishaps
- Amount of checks vary with no explanation
- Physicians changed/ tests no authorized
- Affect on retirement- “just nine months away”
- TT v. sick leave
- None of us would pay wages late- Temp total nonchalant
- Penalties inadequate
- Collection agencies/ late bills/ power cut off
- Non-payment-Rx & Mileage

Lawyer Advertising

- Yellow Pages
- Radio
- Television
- Cable
- Polished and prepared
- Little effort needed to gain knowledge and a sense of control.
- They go to great efforts to make it easy
- Mesothelioma – specialty commercials
- Internet
- Utube/ My space
- Night and daytime often more effective
- (timed at a point of frustration or pain dealing with the comp claim and/or medical issues)

Advice of Friends, Family, or Doctor

- Constantly told that an attorney is needed
- WC system is overwhelming
- Potential third party claim
- Medical bills directed to the claimant
- Potential Social Security Issues
- Short term / Long Term Disability and Set off Issues
- Past history of Coworkers being fired on the job
- Perception that WC cases are somehow big injury cases v. PI cases
- Pain causes depression, helplessness which limits ability to cope with pain
- Pain Clinics- failed surgeries- no break through pain medicine allowed- live with it means to suffer with it to the claimant
- Medical care denied
- Second Injury Fund Notices/ Questionnaires

Restricted Duty

- What are the restrictions?
Spinal Fusion resulting in physical and pharmaceutical restrictions
- Refusal to consider minor modifications
- Coworkers resent taking on the burden of his lifting restrictions
- Not notified of alternative available light duty work
- Termination shortly after return to work
- Uncertain of recovery and how it will affect claimant's livelihood
- What work can they do?
- Will there be a job to return to?
- Will checks be stopped and family goes hungry?
- Lack of informed choices
- Potential of losing trade much less this job
- Game played to present evidence of what claimant can do –but not here. Fired anyway.

Worker/Employee Dissatisfaction

- Attitude towards job before the injury
- Job satisfaction correlates with extended absence due to injury
- Sub-par employee before injury provides employer with exit strategy for undesirable employee
- Very real fear dispute retaliatory discharge & ADA
- Hiring a lawyer- two edge sword
- Keeps labor lawyers busy
- Firing makes the phone ring
- No mandatory rehab
- Full duty v. no duty
- Claimant has past criminal record or bad personnel file)

Loss of Health Insurance/ other Benefits

- FMLA
- COBRA
- Continued only for a period of time
- Filling of position may lead to termination of benefits
- Accumulated vacation days lost
- Retirement packages affected when voluntary resignation occurs in settlement
- Healthcare needed for unrelated injury

Accident Unnecessary

- Company safety program
- Stocking shelves without use of stepladder
- Poor maintenance: sloppy housekeeping, lack of basic safety devices
- Failure to constantly train on policies
- Claimant fell out of truck bed
- Claimant shot by coworker with staple gun
- Piece removed from machine allowing hand to be caught