



# **LEGAL SERVICES DIVISION REVIEW**

Audit Report # 2012-005

**By:**

**The Office of Injured Employee Counsel**

**INTERNAL AUDIT DIVISION**

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The Office of Injured Employee Counsel (OIEC) was established March 1, 2006 as a result of House Bill 7 during the 79th Texas Legislature, Regular Session, 2005. House Bill 7 abolished the Texas Workers' Compensation Commission (TWCC) and established the Division of Workers' Compensation (DWC) as a division within the Texas Department of Insurance (TDI). House Bill 7 also preserved and moved TWCC's Ombudsman Program to OIEC.

The mission of OIEC is to assist, educate, and advocate on behalf of the injured employees of Texas. OIEC fulfills its mission of assisting injured employees through its Ombudsman Program, Customer Service Program, and other outreach activities. The Legal Services Division provides assistance to the Ombudsman Program and the Customer Service Program through the Regional Staff Attorneys (RSAs), serves as the agency's general counsel, advocates on behalf of the injured employees of Texas, and provides other services to OIEC management.

The purpose of this audit was to review the responsibilities and activities of the Legal Services Division; to determine whether policies, procedures, and directives are being followed; and whether those procedures adequately reflect management's needs and requirements.

## **Background Information**

Legal Services has an extensive role in providing training on legal issues in workers' compensation to OIEC staff. With a team of six RSAs the Division observes the Ombudsmen in preparation appointments, Benefit Review Conferences, or Contested Case Hearings. Each RSA is assigned to a team of from 12 to 18 Ombudsmen. The observations enable the RSAs to evaluate the effectiveness of the assistance that Ombudsmen provide, to provide constructive feedback to the Ombudsmen, and to identify training issues.

Legal Services develops and delivers Practical Skills Training two to three times each year for the Ombudsmen. This training focuses on current issues in workers' compensation and is designed to provide useful, practical information and solutions for the Ombudsmen. The overriding goal of the training is to refine the skills of the Ombudsmen and to enhance their ability to provide effective assistance to injured employees at all stages of the administrative dispute resolution process, including the case development stage, where effort is made to resolve issues before a dispute resolution proceeding is scheduled. With the addition of a Customer Service Program and more Ombudsmen, OIEC has committed to helping injured employees resolve issues relating to their receipt of benefits as soon as possible by serving as an advocate for the employee at or near the time of the insurance carrier's denial.



The Practical Skills Training helps to further this commitment by providing information and strategies that can be immediately employed to make a persuasive showing to the carrier that the disputed income and medical benefits are owed and should be provided to the injured employee. Legal Services is involved in developing and delivering training on issues for the Ombudsman monthly teleconferences and the Customer Service monthly teleconferences.

The Legal Services Division has also developed a Core Training Links section of the OIEC intranet site that provides ready access to critical baseline information about workers' compensation that every OIEC field office employee must know or be able to easily locate in order to assist and educate the injured employees of Texas.

Legal Services fulfills the agency's advocacy role by analyzing and providing rule comment to the rules proposed by TDI and DWC. Every informal and formal rule proposal issued by TDI or DWC is analyzed to determine the potential impact of the proposed rules on injured employees. Comment is provided in an effort to ensure that the rules do not adversely affect injured employees.

Legal Services also advances the advocacy role of OIEC by pursuing matters before the courts on issues of importance to injured employees as a class. OIEC filed one *amicus curiae* brief with the Texas Supreme Court on issues dealing with injured employees.

Legal Services also assists management in developing suggested legislative recommendations that will protect the interests of injured employees.

Legal Services counsels OIEC management regarding the Public Information Act (open records), contracts, policymaking, and other issues affecting the daily operations of the agency. The Division develops, reviews, and revises OIEC policies and procedures and is also charged with reviewing agency documents and reports for legal accuracy and the agency's response to complaints regarding OIEC employees and agency policies. Legal Services also administers human resources issues (such as hiring and disciplinary practices) and provides legal counsel to the agency's program areas.

The Legal Services Division is also responsible for a final review of the agency's responses to customer complaints. In the audit report on Complaint Process Follow-up Review issued October 17, 2011, there were six instances in which the Legal Services Division did not meet their suggested guideline of five business days for these reviews.



## Scope and Methodology

The initial scope of the audit included a review of the responsibilities and activities of the Division and whether the Division met its responsibilities within time frame guidelines. The period covered by this review was from September 1, 2010 through August 31, 2011.

The scope also included the review and assessment of written procedures governing the responsibilities and activities of the Legal Services Division to determine whether those procedures adequately reflected management's needs and requirements.

The Division's responsibilities and activities reviewed during this examination were as follows:

- The analyses and comments on proposed formal or informal rules by TDI or DWC were reviewed for FY 2011. These reviews were traced to the performance measures reported during the period.
- A sample of the RSAs' observations of Ombudsmen in preparation appointments, Benefit Review Conferences, and Contested Case Hearings during the period was reviewed.
- The Division's final reviews of constituent assistance letters for the period were reviewed.
- The *amicus curiae* brief filed by the Division during the period was reviewed.
- Employee complaints and grievances during the period were reviewed.

This project was conducted in accordance with generally accepted government auditing standards and the *Standards for the Professional Practice of Internal Auditing* as set forth by the Institute of Internal Auditors (IIA).



## Overall Conclusion

Under the provisions of FIELD 08-04 the Division's RSAs are required to observe Ombudsmen in preparation meetings, Benefit Review Conferences, or Contested Case Hearings a minimum of three times per year. There were no instances in which this requirement was not met.

Personnel policies of the agency contained in Procedure ER-08-01 Performance Planning and Development System require that each RSA has an annual performance evaluation and an annual Performance Plan prepared by the Director of Legal Services. These plans are recorded on Form ER-02N. Section V of this form provides for recommended Employee Growth and Development requirements. For most of the RSAs this section was left blank.

Management has agreed with the findings and recommendations in this audit and developed a plan for corrective actions.

I would like to thank Elaine Chaney, Director of Legal Services, Gary Kilgore, Associate Director of Legal Services, and Brian Tickle, Legal Assistant, for their cooperation and assistance during the conduct of this audit.



## **DETAILED ISSUES AND MANAGEMENT RESPONSES**

**Issue 1 – Employee Planning and Development forms for the RSAs should include development and growth suggestions in Section V of Form ER-02N**

During the fiscal year ended August 31, 2011, several of the RSAs did not have proposed training, activities, and resources identified in Section V of their annual performance plans.

### **Recommendations:**

The Director of the Legal Services Division should include developmental goals in each staff members annual PPD, Form ER-02N.

### **Management Response:**

Management agrees with this recommendation.

The Director of Legal Services will include proposed training and activities, as appropriate, in Section V of the evaluation for Legal Services' staff.

