



AGENCY OMBUDSMAN PROGRAM REVIEW

Audit Report # 2011-010

By:

The Office of Injured Employee Counsel

INTERNAL AUDIT DIVISION

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The Office of Injured Employee Counsel's (OIEC) mission is to assist, educate, and advocate on behalf of the injured employees of Texas. The agency fulfills its mission of assisting injured employees through its Ombudsman Program.

The purpose of this audit was to determine whether the Ombudsman Program policies, procedures, and directives are being followed and whether these procedures adequately reflect management's needs and requirements.

Scope and Methodology

The initial scope of the audit included a sample of injured employees assisted at six of OIEC's field offices. The Data Reporting Group of the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) prepares monthly and quarterly reports on OIEC's performance measures as required by the Legislative Budget Board. For this review the Data Reporting Group selected a sample of approximately 10 percent of the injured employees assisted in Benefit Review Conferences or Contested Case Hearings by the Abilene, Amarillo, Denton, Lubbock, Tyler, and Weslaco field offices from April 1, 2010 through March 31, 2011. There were 113 cases selected in the sample. The Working Folders for these injured employees were reviewed in the field offices for inclusion of certain documents required by the agency's policies and procedures.

The folders were reviewed for inclusion of the following:

- Working Folder Checklist Form OMB-04
- Appointment letters for injured employees
- Indications of whether the injured employees kept the appointments
- Ombudsman Assistance Request Form OMB-02
- Change of Ombudsman Form OMB-05, if applicable
- Copies or indications of reviews of Forms PLN1 or PLN11
- Copies or indications of reviews of Form DWC-041
- Identification of the assigned Ombudsman by Dispute Resolution Contact Data (DRCD) inquiry code "OMB"
- Indications of disputed issues identified by DRCD inquiry code "ODI"
- Inclusion of the claims on the Dispute Tracking Sheet
- Indication of whether special accommodations were required
- Indications that the Benefit Review Conference handout was provided
- Indications that the Benefit Review Conference video was shown
- Indications that the Contested Case Hearing handout was provided
- Indications that the Appeals Panel handout was provided.

In addition to reviews of documents contained in the Working Folders, the notes contained in the Dispute Resolution Information System (DRIS) automated database and the electronic documents contained in DWC's automated system (TxComp) were reviewed for electronic indications that some items, such as the appointment letters, were mailed to injured employees.



Additionally, the Ombudsman Program requires that each Ombudsman be observed each year in Preparation Appointments, Benefit Review Conferences, or Contested Case Hearings. This requirement is detailed in the agency's Ombudsman Training Handbook and in the Texas Administrative Code, Title 28, Part 6, Subchapter B, Section 276.10 (b) (3). The observations are performed by Associate Directors of the Ombudsman Program. The Ombudsman Program Coordinator maintains a tracking worksheet to record when the observations are performed as well as other training and licensing information for each of the Ombudsmen. This tracking worksheet was reviewed, and a sample of the observations recorded for the Ombudsmen in the field offices visited were traced to the documentation of the actual observations (Forms OMB-015, -016 and -017). There was one exception noted in this review.

The scope also included the review and assessment of written procedures governing the Ombudsman Program to determine whether these procedures adequately reflected management's needs and requirements, and whether the agency had procedures in place to assure compliance with applicable provisions of its enabling legislation, the Texas Labor Code, Chapter 404, Subchapter C, Section 404.103, and rules established under the Texas Administrative Code, Title 28 Part 2 (TDI) and Part 6 (OIEC).

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

Current administrative procedures and manuals for the positions of Ombudsman and Ombudsman Associate present a fairly detailed and clear message concerning how injured employees are to be assisted in informal and formal dispute resolution proceedings.

There is some opportunity to improve the procedures by additions to the Ombudsman Handbook, new directives, additional training, and emphasis of existing directives. Additionally, controls assuring compliance with existing procedures could be strengthened in key areas, such as:

- Using the Working Folder Checklist as a tool to ensure inclusion of required documents in each Working Folder and to evidence that required tasks have been performed;
- Emphasizing use of the Checklist to indicate when certain handout materials are provided to injured employees and when they view informational videos;
- Using DRIS code "ODI" to identify disputed issues in each case;
- Assisting each injured employee to complete the Employee's Claim for Compensation for a Work-Related Injury or Occupational Disease (Form DWC-041); and
- Actually filing the above referenced form with DWC.



The use of the Working Folder Checklist as a tool to ensure inclusion of required documents in each Working Folder and to evidence that required tasks have been performed, assisting each injured employee to complete the Employees Claim for Compensation for a Work-Related Injury or Occupational Disease (Form DWC-041), and actually filing the above-referenced form with DWC were suggestions noted in the previous examination and report issued August 18, 2010. Several of these recommendations were the subject of additional training provided and directives issued by management after issuance of the 2010 report.

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

I would like to thank Brian White, Deputy Public Counsel/Chief of Staff, Luz Loza, Ombudsman Program Director, and all the Ombudsmen in the field offices visited as well the Associate Directors and Supervisors for their cooperation and assistance during the conduct of this audit.



DETAILED ISSUES AND MANAGEMENT RESPONSES

Issue 1 – Working Folder Checklist

In the Ombudsman Handbook (June 2010 version, Section II C, paragraph 4), the Working Folder contents section gives written procedures regarding the Working Folder Checklist and its use.

The Working Folder Checklist in three of the 113 Working Folders in the sample could not be located for review. In several instances, the Working Folder Checklists were absent because they were not retained when the Ombudsman files were purged in accordance with Procedure ADMIN 10-02, issued May 2010 and revised April 2011.

Compliance with the use of this form is substantial.

Recommendations:

Management should emphasize procedures requiring the use of the Working Folder Checklist to ensure that all required procedures are performed and to document provision of handout materials and viewing of required videos. Management should also emphasize the requirement that the Working Folder Checklist Form OMB-04, the Ombudsman Assistance Request Form OMB-02, and the Index be retained when purging the Ombudsman files.

Current procedures affix the responsibility for purging files in accordance with procedure ADMIN 10-02 to Customer Service Representatives (CSRs). In my reviews of Ombudsman Working Folders, the failure to include or retain certain documents is cited as a compliance error for the Ombudsman Program when in fact these may be compliance exceptions for the Customer Service Program.

Management Response:

Management concurs and welcomes the helpful recommendations. We are always looking to improve our checklist form to comply with the Ombudsman Handbook. Management will modify the checklist to avoid misunderstandings between Management and the Internal Auditor as to the requirements established in the checklist.

Additionally, Ombudsman Management will continue to work with Customer Service to ensure records are properly retained. The agency's Records Management Officer has been consulted to provide additional training regarding records retention at the next agency-wide conference.



Issue 2 – Identification of Disputed Issues by Use of DRCD Inquiry Code “ODI”

The agency issued a directive July 14, 2009, for the use of a new DRCD inquiry code “ODI” to identify each disputed issue in a workers’ compensation claim. Six of the 113 cases sampled in the current review did not contain identification of disputed issues by using the DRCD Inquiry Code “ODI”.

This was an improvement over the prior review results (from 65 percent compliance in the prior review to 95 percent in the current review).

Recommendations:

Management should continue to emphasize the importance of the DRCD inquiry code “ODI” for identification of disputed issues.

Management Response:

Management appreciates the recommendation and continues to work vigorously on improvements. The agency still lacks a computer system to monitor disputed issues prior to a proceeding. The Dispute Tracking Sheet used to identify and monitor each disputed issue in a workers' compensation claim has been helpful as an interim solution until the Texas Department of Insurance and OIEC work on an automated solution. Management continues to work with TDI's IT Department to upgrade our computer system. Management continues to seek improved methods of identifying and monitoring disputed issues and ensuring that required DRCD codes are entered.

Issue 3 – Employee’s Claim for Compensation for a Work-Related Injury or Occupational Disease (Form DWC-041)

In Texas, employees protect their rights by filing an Employee’s Claim for a Work-Related Injury or Occupational Disease (Form DWC-041) within one year of the date of injury or within one year from the date the employee knew or should have known the injury or disease was work related.

A total of eight injured employee cases in the sample of the injured employee files and the electronic documents in TxComp did not contain a facsimile of the Form DWC-041. For the other 105 injured employee cases, there were copies of these forms either in the Working Folders or in the electronic documents in TxComp. During the current review, staff assisted the injured employees to complete the form and hand delivered the form to DWC. This additional assistance improved the compliance rate from 59 percent in the prior review to 93 percent in the current review.



Failure to submit the Form DWC-041 could weaken the injured employee's position in disputes that may arise concerning their potential benefits.

Recommendations:

Management should continue to require that Ombudsmen assist the injured employees in completing the Form DWC-041 and actually file the form on behalf of the injured employee by hand delivering it to DWC staff in the field office.

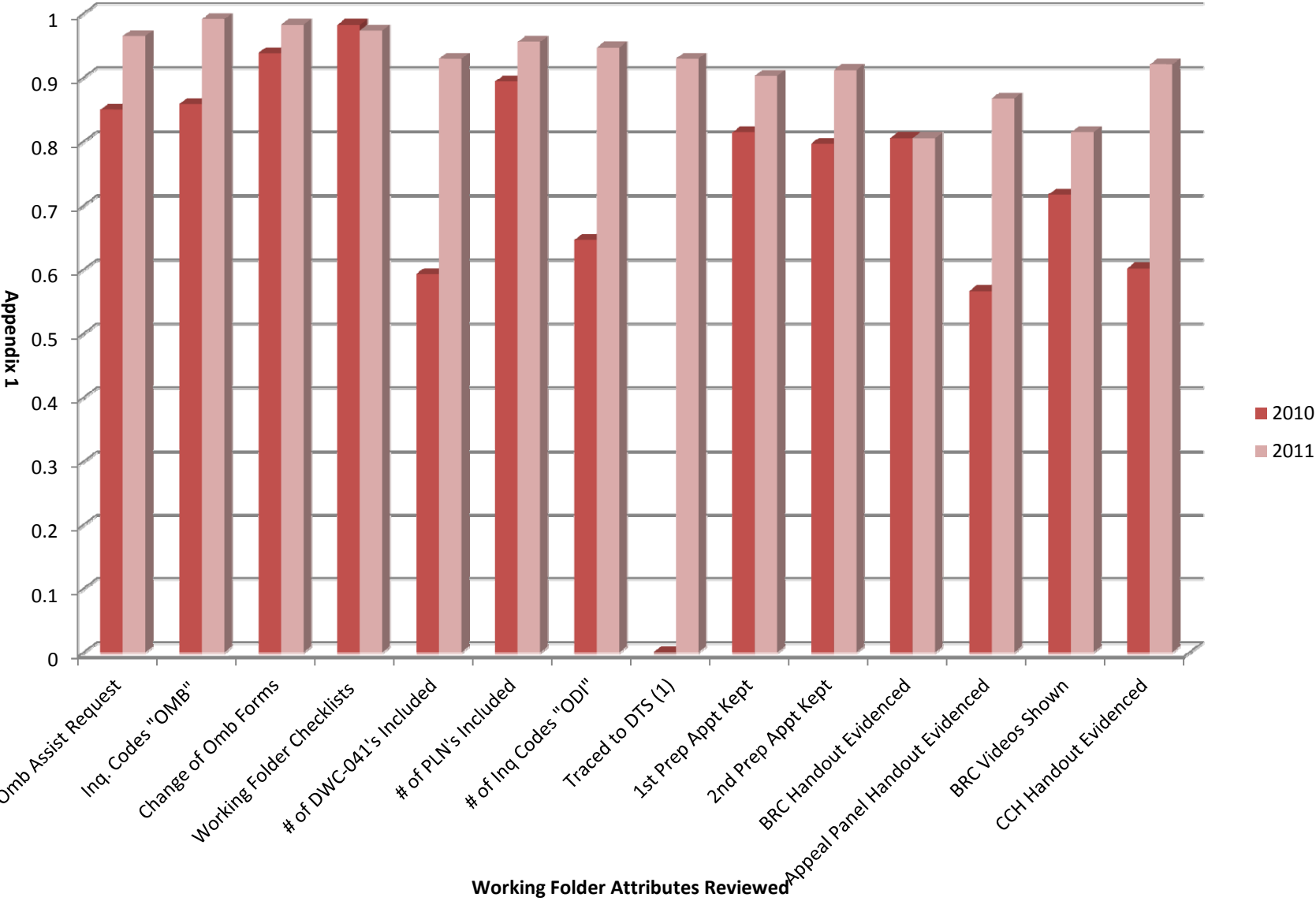
Management Response:

Management appreciates both the finding and recommendation and is working earnestly to improve the submission of the Form DWC-041 with the Division of Workers' Compensation when it is appropriate to do so. As previously discussed management will review our checklist to continue to increase the injured employee's compliance with the requirement to file a claim within the one year statutory timeframes. It is important to note that other documents can serve as a claim other than the Form DWC-041. In addition, if more than one year has passed from the date of the injury and a Form DWC-041 has not yet been filed, it might actually prejudice the injured employee to file a delayed Form DWC-041. Such a filing may well trigger a carrier to raise the defense of failure to file a timely claim. Both § 409.004 and Rule 122.2 specifically provide that the failure to timely file a claim will not result in the carrier being relieved of liability for compensation if it has not contested the claim.

Management has also established a Quality Assurance Review Procedure to monitor performance within the Ombudsman Program, which will permit a review to determine if injured employees are being properly educated and assisted about the Form DWC-041 and encouraged to file the form in those circumstances where it is warranted.



Ombudsman Compliance Rates



**Office of Injured Employee Counsel
Agency Ombudsman Program Review
Ombudsman Working Folder Reviews
Summary of Findings (Compliance Rates)**

	2010 Compliance Rates	2011 Compliance Rates
Number of Working Folders Reviewed	113	113
Omb Assist Request	85%	96%
Inq. Codes "OMB"	86%	99%
Change of Omb Forms	94%	98%
Working Folder Checklists	98%	97%
# of DWC-041's Included	59%	93%
# of PLN's Included	89%	96%
# of Inq Codes "ODI"	65%	95%
Traced to DTS (1)	0%	93%
1st Prep Appt Kept	81%	90%
2nd Prep Appt Kept	80%	91%
BRC Handout Evidenced	81%	81%
Appeal Panel Handout Evidenced	57%	87%
BRC Videos Shown	72%	81%
CCH Handout Evidenced	60%	92%

(1) Tracing to the DTS was not required during the 2010 period examined