



# OIEC QUARTERLY REVIEW

April - June 2009 (Issue 14)

## Letter from the Public Counsel

Dear Friends:



The Office of Injured Employee Counsel (OIEC) has had a lot on its plate for the past three years. Our agency has nearly doubled in size since it became operational in March 2006, and we have added a Customer Service Department and a cadre of Regional Staff Attorneys. Our Customer Service Representatives and Ombudsmen have

been trained to achieve different goals through separate chains of command but at the same time interfacing with one another in order to provide a seamless passing of injured employees from one department to another. Our directors and supervisors have done an excellent job of performing these functions without creating the impression of "bureaucratic red tape."

In the process of addressing these monumental tasks we have not been able to spend much time on the kind of leadership training that will be required to deliver continuing improvement – until now. That training will be one of our highest priorities for the coming year.

We are fortunate to have outstanding leaders within our agency, regardless of whether they have supervisory responsibilities. It has been emphasized that every employee will be evaluated for leadership skills because the success of every basic team requires leadership from within to achieve cohesiveness and teamwork.

I am pleased to report that this effort has been enthusiastically received, and I have no doubt that OIEC will grow into an example of State government at its best.

Sincerely,

Norman Darwin  
Public Counsel

### In This Issue

- 1 Letter from the Public Counsel
- 2 Legislative Update
- 3 Annual OIEC Conference
- 5 Outreach Initiatives
- 5 Question of the Quarter
- 7 Early Intervention Successes
- 7 Case Study
- 8 Employee Spotlight

### Contact Us

#### Office of Injured Employee Counsel

7551 Metro Center Drive  
Suite 100, MS 50  
Austin, TX 78744-1609

Phone: (512) 804-4170  
Fax: (512) 804-4181

Injured Employee Toll-free  
Number 1-866-393-6432  
[www.oiec.state.tx.us](http://www.oiec.state.tx.us)

Please provide feedback, ask questions, or send a request to be added to the Quarterly Review distribution list at [OIECinbox@oiec.state.tx.us](mailto:OIECinbox@oiec.state.tx.us).

# Legislative Update



The 81<sup>st</sup> Texas Legislature, regular session adjourned *Sine Die* (without a future date being designated for resumption) on June 1, 2009. During the regular session, several bills were passed that affect the workers' compensation system. Following is a list and brief summary of those bills:

## **HB 1058 (OIEC Recommendation):**

- Changes the standard a beneficiary has to show for failure to timely file a death benefit claim from "proof satisfactory to the commissioner of the compelling reason for delay" to "good cause."
- Redefines "eligible parent" by deleting existing text relating to a person who receives burial benefits under Section 408.186 (Burial Benefits).

## **HB 673 (OIEC Recommendation):**

- Provides that the Public Counsel may refuse or terminate services to an injured employee who:
  - Is abusive or violent or threatens any OIEC employee;
  - Requests assistance in claiming benefits not entitled by law; or
  - Commits or threatens to commit a criminal act.
- Public Counsel must notify the injured employee in writing and notify the TDI-DWC of Workers' Compensation.
- Codifies OIEC's ability to assist an injured employee at the State Office of Administrative Hearings (SOAH) during:
  - A workers' compensation administrative dispute resolution process; or
  - An enforcement action by the Texas Department of Insurance, TDI-DWC of Workers' Compensation (TDI-DWC) against an injured employee for a violation of the Texas Workers' Compensation Act.
- Authorizes OIEC, instead of TDI-DWC, to adopt (via rulemaking process) the *Notice of Injured Employee's Rights and Responsibilities in the Texas Workers' Compensation System*. TDI-DWC will distribute OIEC's publication.
- Provides that OIEC employees must maintain the confidentiality of information held confidential by law.
- Provides that any OIEC employee may not be compelled to disclose information communicated by the employee relating to the workers' compensation claim.
- Provides for an Ombudsman-client privilege, which is similar to an attorney-client privilege regarding confidential communications.
- Limits OIEC's authority to access TDI's fraud/enforcement files and attorney-client communication or work product while assisting an injured employee in an enforcement action.

## **HB 2547**

- Applies to employers who employ 10 or more employees.
- Creates a duty for the employer.
- Requires that the treating doctor may request that the injured employee's employer provide the treating doctor with information regarding the scope of the injured employee's employment including specific tasks, duties, or activities that the employee was required to perform at the time the employee sustained the injury. This information provided by the treating doctor to the employer does not constitute:
  - A request by the employer that the injured employee return to work;
  - An offer of employment by the employer; or
  - An admission of the compensability of the injury of the employee.
- The employer must disclose the availability of other jobs that the employer would like for the treating doctor to consider in determining whether the injured employee is able to return to work.
- TDI-DWC is required to provide a form for the treating doctor and the employer to use to exchange that information.

(Continued on page 3)



## Legislative Update (Continued)



### HB 3625

- Conforms in-network language to non-network language by requiring a utilization review agent to issue and transmit a preauthorization determination of proposed health care services for a workers' compensation claim by not later than the third working day, rather than calendar day, after the date the preauthorization request is received by the health care provider.

### HB 4290:

- Workers' Compensation Health Care Network "Clean up" Bill.
- Changes the definition of utilization review to include retrospective review.
- Provides for various retrospective review requirements for the utilization review agent and the health care provider.
- Section 4201.206 of the Insurance Code is amended to encourage the utilization review agent to communicate with the health care provider prior to issuance of an adverse determination.

### HB 4545

- Provides that a party seeking judicial review has 45 days to file suit beginning on the day that TDI-DWC mails the Decision and Order to the party seeking judicial review.
- The mailing date is considered to be the fifth day after the date that the decision of the Appeals Panel was filed with TDI-DWC.

### SB 1814

- Continues the return-to-work pilot program and increases the amount of such reimbursement from \$2,500 to \$5,000.
- The carriers are required to provide the employers with return to work coordination services. The services are to be supervised by a certified case manager, not an adjuster.
- An eligible employer for these services must have had at least two but no more than 50 employees on each business day during the preceding calendar year. However, TDI-DWC has the rulemaking authority to extend the return-to-work reimbursement program to different types of employers (e.g. employers larger than 50 employees).
- Authorizes the Commissioner of Workers' Compensation to advance funds to the employer instead of a reimbursement (OIEC Recommendation).

## Annual OIEC Conference



Over 150 OIEC employees made the trip to San Antonio for the highly anticipated Annual OIEC Conference. Held at the Drury Inn River Walk, June 24<sup>th</sup> through June 26<sup>th</sup>, it was the first time the conference had been held outside of Austin. It was an excellent change of pace, and surprisingly far less expensive to hold there than in previous locations. The hotel had the charm of times past - in its previous life it was a bank building - with all the modern comforts. It also offered the convenience that dining, shopping, and entertainment were all within walking distance or a short taxi ride.

This set the tone for the conference. Everyone was able to relax and focus on the topics at hand. Topics for the conference included: recent legislative and rule changes; agency processes and applications; early intervention; case development; bad faith claims; and medical dispute resolution.

(Continued on Page 4)

# Annual Conference (Continued)

Guest speaker Brad McClellan gave an update of recent workers' compensation appellate decisions that employees found particularly helpful. Currently a claimant attorney in private practice, Mr. McClellan previously worked for the Texas Workers' Compensation Commission and understands the importance OIEC has in assisting injured employees through the complexities of the workers' compensation system.



Larry Jones, Director of Workforce Development for the Texas Workforce Commission, gave a helpful presentation about the programs the Texas Workforce Commission offers. It was a topic that employees have been wanting to know more about so that OIEC can better help its customers as they attempt to re-enter the workforce following an injury and when injured employees apply for SIBs.

The final conference presentation was much more introspective. Patricia Belleno, Alliance Work Partners, spoke about perception checking and the power of choice. She reinforced the need for everyone to do their part in creating a positive work environment. Following this, she challenged everyone to do ten anonymous random acts of kindness over the next few weeks. Hopefully OIEC employees and customers are feeling the impact of this challenge as it is put into practice.

Many employees rated this their favorite conference to date, due to both the topics and location. As hard as it is to believe, OIEC employees are already planning for next year's conference - so stay tuned!

## Technical Achievement Award Recipients

Each year at the annual OIEC Conference, OIEC recognizes an Ombudsman, an Ombudsman Assistant, and a Customer Service Representative for their exceptional skills and knowledge. It is difficult to choose just one in each position as OIEC is filled with many exceptional employees! This year the Technical Achievement Awards were presented to the following employees:



**Ombudsman, Lisa Lee.** Lisa exemplifies excellence in performing her Ombudsman role. She is trustworthy, reliable, and has excellent knowledge of the Workers' Compensation Act and Rules. As an Ombudsman Team Lead, Lisa assists with administrative functions during the Ombudsman Supervisor's absence. She continues to keep abreast of new policies and procedures and makes every effort to follow and support management directives. Lisa is proactive in looking at the "big picture" to protect the injured employees' interests and consistently goes the extra mile to assist the injured employees in gathering the necessary information prior to their proceedings. The consummate team player, Lisa always volunteers to take on additional work to serve our customers, whether it is assisting with incoming telephone calls or covering a proceeding when another Ombudsman is out of the office. She is a great advocate for injured employees.

**Ombudsman Assistant, Julie Ramirez.** Julie "goes above and beyond" what is required of her - every day. As an Ombudsman Assistant in a small field office, she not only provides injured employees with exceptional quality customer assistance, she also supports the Ombudsmen with quality administrative assistance. Julie communicates well with injured employees, doctors, and adjusters and has been extremely successful in resolving issues. Her strongest assets are her knowledge of workers' compensation, her ability to educate injured employees, identifying issues, and determining which documents are necessary to help injured employees support their positions. Julie has proven herself to be a strong asset to OIEC.



**Customer Service Representative, Tanya Malone.** Tanya joined OIEC a little over one year ago. With no prior workers' compensation experience Tanya was challenged with the huge task of learning workers' compensation. She dug in her heels and has worked diligently to become a strong Customer Service Representative. Tanya expertly assists customers with their claims and questions. She explains complex issues in a manner that is understandable and clear. She is also able to successfully resolve disputes by being assertive and professional. Tanya's daily work ethic is a display of excellent leadership, and she is a great example to her coworkers. She approaches each day with a positive attitude and with the goal of assisting injured employees to the best of her ability.

## OIEC Outreach Initiatives

OIEC is always looking for new ways to reach its customers and educate them about the workers' compensation system. Three of those ways involve meetings with health care providers, monthly presentations in the OIEC Field Offices, and large-scale distribution of OIEC educational materials.

### HEALTH CARE PROVIDER MEETINGS

As part of OIEC's business initiative, Anthony Walker, Associate Director of the Ombudsman Program, will be holding statewide meetings with health care providers, which will enhance the agency's outreach efforts by addressing medical benefit issues on behalf of injured employees.

OIEC held its first meeting with health care providers on June 17<sup>th</sup> and 18<sup>th</sup>, to address issues on behalf of injured employees in El Paso. Over 20 representatives attended the two-day event to discuss basic workers' compensation, preauthorization, billing, Independent Review Organizations, Medical Contested Case Hearings, and the role of OIEC in the workers' compensation system. The next meeting will be held in the Houston area later this year. OIEC plans to have at least one meeting quarterly with a goal of increasing health care provider participation in dispute resolution.

### MONTHLY OIEC FIELD OFFICE PRESENTATIONS

Do you know someone who would like to know more about OIEC, the services the agency offers, and current workers' compensation topics? If so, please tell them to come to OIEC's monthly education and outreach presentation in each of the local OIEC Field Offices!

(Continued on page 6)

## Question of the Quarter Changes to Supplemental Income Benefits?

**Q: I heard that there have been some changes in the requirements for Supplemental Income Benefits. Is this true and if so, how will it affect the way I apply for them?**

A: Yes, new Supplemental Income Benefits (SIBs) rules go into effect for all qualifying periods that begin on or after July 1, 2009. These new rules make changes in what an injured employee needs to do during the qualifying period to qualify for SIBs. The new rules also make changes in the documentation the injured employee will need to produce to obtain SIBs.

To qualify for SIBs an injured employee must demonstrate an active effort to obtain employment by meeting at least one of the five following work search requirements during each week of the entire qualifying period:

1. Return to work in a position which is commensurate with the injured employee's ability to work. (Rule 130.102(d)(1)(A))
2. Actively participate in a vocational rehabilitation program as defined in §130.101(8). (Rule 130.102(d)(1)(B))
3. Actively participate in work search efforts conducted through the Texas Workforce Commission. (Rule 130.102(d)(1)(C))
4. Document active work search efforts through job applications. (Rule 130.102(d)(1)(D))
5. Show an inability to perform any type of work in any capacity. (Rule 130.102(d)(1)(E))

To qualify for SIBs by making work searches, injured employees must provide sufficient documentation to show that they have, during each week of the qualifying period, made the minimum number of job applications and/or work search contacts required for unemployment compensation in the employee's county of residence. This number varies from county to county; so it is important for injured employees to know the number required in their county.

The application for SIBs has changed significantly and the new application must be used to apply for SIBs for all quarters in which the qualifying period begins on or after July 1, 2009. The new application requires more detailed information than the prior application, especially regarding the details of job searches. It is important for injured employees to become familiar with the new form as soon as possible to make sure that they are keeping all the information that will be necessary to fill out the application.

There are a number of additional details that will be covered in an information SIBs presentation, which will be held in each OIEC Field Office on July 31, 2009 from 12:00 - 1:00 p.m. Information about the new changes are also available on the OIEC website at [www.oiec.state.tx.us](http://www.oiec.state.tx.us). You can obtain information on how the changes in the SIBs rules may affect your specific case by contacting your Ombudsman.



## OIEC Outreach Initiatives (Continued)



On a scheduled date each month, OIEC employees conduct educational presentations for its customers. Everyone is invited to attend including injured employees, health care providers or their employees, employers, or anyone interested in OIEC's services or with questions about workers' compensation.

An office which has been particularly successful has been the Lufkin Field Office. If you are lucky enough to be in their office for a presentation, you might even be treated to a delicious lunch!

The remaining presentations for the year are scheduled for the following dates:

July 31<sup>st</sup>  
August 28<sup>th</sup>  
September 25<sup>th</sup>  
October 30<sup>th</sup>  
November 20<sup>th</sup>  
December 18<sup>th</sup>

The presentations last approximately one hour and take place in every OIEC Field Office at noon on the scheduled date. If you are interested in attending, please contact your local OIEC Field Office to find out what topic will be covered that month.

---

**PRINTED OIEC MATERIALS.** OIEC's outreach efforts have resulted in the development of an education and advocacy information packet to be provided to an employee when they sustain a work-related injury or need to file a workers' compensation claim.

OIEC's educational packet is a folder with brochures (available in both English, Spanish) that contain the following information:

- I've been injured. What do I do?
- What are an injured employee's Rights and Responsibilities in the Texas Workers' Compensation System?
- How do I find a doctor to treat my Workers' Compensation injury or illness?
- What is the Office of Injured Employee Counsel and how can it help me?
- How can an OIEC Customer Service Representative help me?
- What is an OIEC Ombudsman and how can an Ombudsman help me?
- What is the dispute resolution process income and medical disputes?
- What Community Employment Resources information is available?

OIEC has supplied these educational materials to OIEC Field Offices, Texas Medical Association (TMA), all State of Texas workers' compensation coordinators, all Texas Department of Criminal Justice (TDCJ) offices, Texas House of Representatives, Texas Senate, Department of Assistive and Rehabilitative Services (DARS), and the Texas Workforce Commission's local Workforce Solution offices.

These packets are also available (at no cost) for employers, health care providers, or any related business to provide them to injured employees. If you are interested in obtaining copies of OIEC's education materials for yourself or to share with your customers, please send an email to [OIECInbox@oiec.state.tx.us](mailto:OIECInbox@oiec.state.tx.us) with the number of packets you would like and whether you need them in English, Spanish, or both.

It is OIEC's hope that by working together with the efforts and services of the community and State programs we can better assist the injured employees of Texas.



## Early Intervention Successes

When an injured employee first contacts OIEC, they mostly likely will be assisted by an OIEC Customer Service Representative. The Customer Service Representatives have knowledge and experience to answer most questions and also attempt to resolve disputes through "early intervention." Through persistent early intervention efforts, many disputes are resolved prior to being scheduled for a Benefit Review Conference which is believed to increase the likelihood that the injured employee is receiving appropriate benefits in a timely manner while saving the State costs on a proceeding. A few successes from the past few months include:



**Elvia Melchor**, Laredo Field Office, helped one injured employee obtain Temporary Income Benefits that were due to her. In this case, the designated doctor had rescinded the original maximum medical improvement date due to subsequent neck surgery and re-assessed maximum medical improvement to be nearly one year later. Ms. Melchor contacted the adjuster about Temporary Income Benefits owed for periods of disability that occurred between the original maximum medical improvement date and the new maximum medical improvement date. Based on this information, the adjuster issued a check to the injured employee for \$19,500 in Temporary Income Benefits that were due.

**JaneAnn Volek**, Victoria Field Office, explained to an adjuster that the minimum weekly benefit rate applies to Impairment Income Benefits as well as Temporary Income Benefits, as the adjuster was unfamiliar with that provision of the law. After the adjuster reviewed a copy of the statute provided by Ms. Volek, she issued a check to the injured employee in the amount of \$2,786.76 to compensate him for the previous underpayment of Impairment Income Benefits.

**Ana Covarrubias**, El Paso Field Office, worked with TDI-DWC and an adjuster's supervisor to help an injured employee get prescriptions filled. The prescriptions were issued by the treating doctor for injuries that were being disputed by the insurance carrier. The designated doctor examined the injured employee and agreed with the treating doctor that the requested medication was necessary. Ms. Covarrubias convinced the adjuster's supervisor to contact the pre-certification vendor, advised them of the designated doctor's findings, and resolved the dispute so that the prescriptions could be filled.

**Monica Pierce**, Waco Field Office, demonstrated excellent negotiating skills when assisting an injured employee with travel reimbursement. The expenses had been submitted to the insurance carrier in a timely manner; however, not all requested reimbursements were paid. Monica secured copies of travel reimbursements forms that had been denied, confirmed the date the were submitted to carrier, and was successful in negotiating travel reimbursement in the amount of \$1700.

## Case Study: Appointment of Second Designated Doctor

In many cases, injured employees face interruption or termination of their benefits as a result of the findings of an improperly appointed second designated doctor. While the issue of whether the second designated doctor was properly appointed should be resolved at the Hearings level, increasingly Hearing Officers have declined to resolve the issue citing a lack of jurisdiction.

In the instant case, the claimant sustained a compensable injury to her back while lifting a table in the course and scope of her employment. Following a request for a designated doctor examination, Dr. W examined the claimant and diagnosed her with right S1 radiculopathy and determined that she had not yet reached maximum medical improvement. He recommended that she have further diagnostic testing and physical therapy for her lower back. Subsequently, the carrier requested a second designated doctor examination to determine maximum medical improvement and impairment rating; however, this request incorrectly listed the claimant's hand and upper extremities as the injured areas on the treatment matrix.

Relying on this description of injury, the TDI-DWC appointed Dr. R as a second designated doctor because Dr. W no longer met the matrix. Dr. R examined the claimant and determined that she had already reached maximum medical improvement with a 0% impairment rating. A Contested Case Hearing was held to determine whether or not Dr. R was properly appointed as the second designated doctor and whether or not his report should be invalidated. Ombudsman Judy Tyson assisted the claimant arguing that because the treatment matrix used to appoint Dr. R was clearly in error,



## Case Study (Continued)

Dr. R should not have been appointed as the second designated doctor and that his findings should be invalidated. The Hearing Officer noted that the matrix was incorrect. The Hearing Officer determined that she had no jurisdiction to decide the issue of whether Dr. R was the properly appointed designated doctor, whether his report should be invalidated, or whether the claimant should be reexamined. However, because the Hearing Officer did not believe that the issue of the appointment of a second designated doctor affected benefits, the claimant's benefits ceased as a result of the second designated doctor's report.

On appeal, the Appeals Panel found that the issue of whether or not Dr. R was the properly appointed designated doctor *does* directly affect the claimant's benefits, and that as a result, the Hearing Officer erred in determining that she did not have jurisdiction on the issue of whether a second designated doctor was properly appointed. The Appeals Panel reversed the Hearing Officer's determination and remanded the case for a resolution of that issue.

On remand, the Hearing Officer found that Dr. R was a properly appointed second designated doctor. In the "Background Information" section of her Decision and Order, the Hearing Officer found that while the carrier incorrectly listed the claimant's injuries on the matrix, it was not the duty of the TDI-DWC to check the validity of the information provided by the carrier. Furthermore, the Hearing Officer stated that because it was not the duty of the TDI-DWC to confirm the validity of the matrix information, the TDI-DWC did not deviate from its normal procedures. Therefore, the injured employee did not show that Dr. R was improperly appointed as second designated doctor. This decision is currently being appealed.

This situation should be of particular interest because, in effect, the Hearing Officer has declined to change an outcome, which was the result of an admitted error and which affects the benefits of an injured employee. Clearly the statute and the rules do not provide for a second designated doctor in this instance, but when faced with that information, the Hearing Officer failed to take corrective action. In advocating for injured employees, this situation can be seen as one that will encourage the willful manipulation of the TDI-DWC matrix to request a new designated doctor in instances where unfavorable ratings have been entered.

## Employee Spotlight

### Judy Tyson, Ombudsman, Lubbock Field Office



Amherst, Texas, viewed from an airplane, stretches from horizon to horizon like an expansive checker board of irrigated land. The town itself is seven blocks by ten blocks and spurs off of Highway 84 outside of Lubbock like a kind of tennis racket. Judy Tyson was born and raised here. Her parents were cotton farmers and her grandparents on her mother's side were some of the original settlers in Lamb County. As a girl, Judy described herself as a tomboy who raised show calves and ponies, drove the family tractor, and hunted with her father in an area known as the Sand Dunes. One might assume these things about any farmer's daughter who grew up in a place where the high school graduating class is less than fifty people; however, Judy is also quick to reveal a very technical mind—and is, perhaps, better defined that way.

Judy's supervisor, Janey Aguilar, is eager to explain how self-motivated and dedicated Judy is. Janey used the catchphrase, "goes the extra mile," which actually describes Judy's first job pretty well. Judy's experience in the workers' compensation system began with a job in Lubbock for the Texas Workers' Compensation Commission. She began working as a receptionist and after four years was working as a docket clerk for Lubbock and Amarillo, a job which required her to spend two-and-a-half days in Lubbock and two-and-a-half days in Amarillo. Following that job, she worked for a private practice attorney as a legal assistant. After eight years in the private sector of the workers' compensation system, she returned to the Texas Workers' Compensation Commission as a Customer Service Officer. She has been an Ombudsman with OIEC since September of 2007.

Judy has a matter-of-fact way of speaking and presents herself earnestly. She mentioned a few more things about Amherst. Most people who stay in Amherst after high school go into agriculture. Judy didn't stray far from Amherst and didn't go into agriculture. One can see that Judy is a person who is fascinated by where she comes from and is also vigilant not to let that define her.

