



QUARTERLY REVIEW

Five Year Anniversary Issue

*Five years of helping
hard-working Texans*



LETTER FROM THE PUBLIC COUNSEL

Dear Friends:

The Office of Injured Employee Counsel (OIEC) recently celebrated its fifth year as an independent agency dedicated to representing the interests of injured employees in Texas. When I assumed the duties of the Public Counsel we had fewer than 10 employees. We have grown to approximately 170 employees comprised of Ombudsmen, Customer Service Representatives, Regional Staff Attorneys, management, and operational staff.

We had inevitable growing pains and learning curves as we progressed into a mature, effective State agency. I had never worked in government, but our outstanding management staff provided me with their expertise on the technical side of government. The Governor's Office, elected representatives, and their staffs were likewise extremely supportive, and I am very grateful to them.

With the growth of the agency, its impact on its customers has grown as well. The agency is assisting nine times as many customers as it did in its first year. Even with this increased customer base, OIEC is still able to resolve disputes prior to beginning the formal dispute resolution process over 50 percent of the time. The result is that these injured employees receive a prompt resolution to their workers' compensation issues without requiring a proceeding. This has a positive effect on injured employees, insurance carriers, Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC), and the workers' compensation system as a whole.

I would like to congratulate our employees and managers for their outstanding work. They have demonstrated that devotion to State service and the principals of ethical and worthy goals can make a difference every day.

Sincerely,

Norman Darwin, Public Counsel



Five Years of Dedicated Service

*"OIEC has given me hope. Thank you."
- OIEC Customer*

The 79th Texas Legislature enacted workers' compensation reform through House Bill (HB) 7. HB 7 transferred the functions of the Texas Workers' Compensation Commission (TWCC) to the newly created Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC), effective September 1, 2005. HB 7 additionally created a new state agency, OIEC, to assist injured employees and administer an Ombudsman program. TWCC's Ombudsman Program was transferred to OIEC on March 1, 2006. From that date forward it has been OIEC's mission to assist, educate, and advocate on behalf of the injured employees of Texas.

In the Beginning

When it began, OIEC's Ombudsman Program assisted injured employees only after they had been scheduled for a dispute resolution proceeding. It became apparent that injured employees would benefit greatly if OIEC were able to assist them earlier in the process. The result was the transfer of additional TDI-DWC positions to OIEC to perform general customer service and early intervention.

There was also a shift to a "single point of contact" where an Ombudsman was assigned to an injured employee throughout the claim to increase the effectiveness of the process while further providing confidentiality for OIEC's customers. At the same time, Regional Staff Attorneys began providing regular Practical Skills Training as part of staff development. These changes improved the agency and its impact on customers.

Mission: Advocacy

*"Entire focus is on you as the injured worker."
- OIEC Customer*

OIEC has served as the voice of injured employees by providing comments on TDI-DWC rules. Over 85 percent of workers' compensation rules reviewed in fiscal year (FY) 2010 were changed to benefit the injured employee as a result of OIEC comments. Further, OIEC advocates on behalf of injured employees as a class and has filed several *amicus curiae* briefs in Texas Courts to protect the rights of injured employees. OIEC has proposed legislation over the past three legislative sessions to improve the workers' compensation system.

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Five Years of Dedicated Service (continued)

Mission: Assistance

"You gave us hope as well as straight answers and helped us every step of the way." – OIEC Customer

The number of telephone calls in which OIEC assisted an injured employee has increased nine-fold - from 31,430 in FY 2007 to 275,892 in FY 2010. The number of injured employees that have been assisted in-person at field office locations has increased even more - from 1,854 in FY 2007 to 22,874 in FY 2010.

OIEC's new "early intervention" efforts have had a significant impact on the dispute resolution process. The number of dispute resolution proceedings has decreased due in part to the number of disputed issues that OIEC resolves prior to a proceeding. OIEC is resolving more than 500 disputed issues per month prior to an administrative proceeding.

The assistance OIEC has provided to injured employees over the past five years is significant:

- Helped more than 862,000 injured employees by telephone;
- Helped more than 60,000 injured employees in-person at the field offices;
- Assisted more than 31,000 injured employees with Ombudsman services during administrative dispute resolution; and
- Referred over 21,000 injured employees to the Department of Assistive and Rehabilitative Services, the Texas Workforce Commission, the Texas Department of Insurance, or other social or regulatory services, such as the Health and Human Services Commission or licensing boards.

Mission: Education

"Thank you for the mail out brochures. I would never have known of your great service." – OIEC Customer

The agency has developed and implemented multi-tiered outreach and education initiatives. The agency's website offers timely and quickly-accessed information for workers' compensation system participants. OIEC has developed many printed publications and brochures for its customers so they have the information they need to pursue their workers' compensation claim. OIEC has also performed almost 300 public presentations to Texas' employers, health care provider groups, and other workers' compensation system participants to educate them about the agency's services.

In a more personal outreach initiative, OIEC contacts beneficiaries to inform them of workers' compensation benefits and assist them in filing a benefit claim. OIEC also notifies State Senators and Representatives of work-related fatalities within their district, which has enabled many of them to express condolences to families and to be notified about possible workplace safety issues.

Moving Forward

Many of OIEC's achievements were accomplished because agency staff has the ability and determination to follow through and complete initiatives. OIEC staff is proud of the agency's accomplishments over the past five years and looks forward to continuing to provide the injured employees of Texas the exceptional service and assistance they deserve.



OIEC Hosts Open House

Celebrates Five Years of Helping Hard-Working Texans

OIEC's Central Office in Austin hosted an open house Tuesday, March 22, to mark the agency's fifth anniversary. TDI-DWC, legislative staff, and other stakeholders were invited to help celebrate and learn more about OIEC services.



OIEC staff informed visitors about the agency's functions and its four divisions: Customer Service, Ombudsman Program, Legal Services, and Administration and Operations. A slide show and posters highlighted some of OIEC's accomplishments. "It is important to celebrate this milestone event, our successes over the past five years, and to let others know about them as well," said Brian White, OIEC Deputy Public Counsel/Chief of Staff. "Now we can look forward with confidence to the next five years of helping hard-working Texans."

Public Counsel Reappointed

Governor Perry Reappoints Norman Darwin as Public Counsel

Norman Darwin was reappointed by Governor Rick Perry as the Office of Injured Employee Public Counsel for a term to expire Feb. 1, 2013. The Texas State Senate confirmed Darwin's appointment on March 16th with 30 ayes and zero nays. Mr. Darwin has led the agency as Public Counsel since it began in 2006.



Building Blocks of the Agency

Although OIEC employees specialize in different program areas, every employee shares a common goal – to assist, educate, and advocate on behalf of the injured employees of Texas. Over the past five years, programs to address the different aspects of this goal have grown to meet demand and are more effective and efficient than ever before.

Ombudsman Program

The Ombudsman Program was the basis for OIEC's existence as an independent agency. The bulk of the agency began when the Ombudsman Program and all its staff were transferred from TDI-DWC to OIEC in March 2006.



The role of the Ombudsman at that time was to assist injured employees after a dispute resolution proceeding had been scheduled. The role of the Ombudsman has evolved to allow an Ombudsman to get involved earlier in the claim process. This change led to a decrease in proceedings, largely due to Ombudsmen resolving more issues prior to the formal administrative process. Another shift was to assign an Ombudsman to a claim so that the Ombudsman would be more knowledgeable about the particular claim as it progressed through the system.

Ombudsman assistance is available at no cost to the injured employee. Ombudsmen are able to assist injured employees with their disputes informally and throughout the administrative process. The Ombudsman Program continues to value training for its staff, and the Ombudsmen work closely with the Regional Staff Attorneys (RSAs) to ensure injured employees have the best possible chance of getting the benefits to which they are entitled.

All Ombudsmen have a workers' compensation adjuster's license and must complete an extensive training program. They deliver the monthly education presentations in the field offices as well as many other outreach programs across the State.

Customer Service

When OIEC was created, the focus was on Ombudsmen assisting injured employees after a dispute had been scheduled for a dispute resolution proceeding. It quickly became evident that injured employees needed assistance at numerous points in their claims, not just when there was a dispute or denial of benefits. OIEC requested funding to transform the agency into a one-stop shop for injured employees. The Legislature granted the request and the Customer Service Program was born.

The first Customer Service Representative (CSR) was hired for the Dallas Field Office in October 2007. The Customer Service Program has grown to 50 CSRs who staff 22 field offices across the State. The CSRs benefit from ongoing training to enhance their knowledge of the ever-changing workers' compensation rules, laws, forms, and procedures. The CSRs provide information, assistance, documents, and forms to injured employees.

When a dispute or denial of benefits is identified, the CSR provides early intervention efforts by gathering information and documentation supporting the injured employee's position and presenting the information to an insurance company adjuster in an attempt to resolve the dispute or denial of benefits.



If the CSR cannot resolve the dispute, the information is forwarded to the Ombudsman Program for case development and formal dispute resolution. These two programs work closely together to assist and educate the injured employees of Texas.

Legal Services

The primary objective of the Legal Services Program has been to provide consistent and accurate legal advice and counsel to OIEC staff at all levels of the agency. Legal Services counsels the agency on all matters including personnel, open records, contracts, and policymaking. Regional Staff Attorneys (RSAs) provide technical guidance to the agency staff with regard to assisting injured employees. Since the agency began, the RSAs' role has



been expanded to include staff development through employee training.

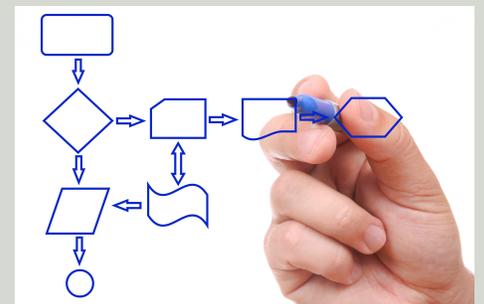
This quarter, Legal Services has completed some of the last elements of an extensive, long-lasting training initiative on causation. Legal Services filmed an hour-long training video that summarizes the arguments to be made in causation cases in Benefit Review Conferences (BRCs) and Contested Case Hearings (CCHs).

Over the years, Legal Services has been instrumental in filing *amicus curiae* briefs ("friend of the court" briefs). This is just one way the attorneys pursue matters before the courts on issues of importance to injured employees as a class.

Update: Legal Services is pleased to announce that a Motion for Rehearing in the Leordeanu case (see Quarterly Review 20, October-December 2010) was denied before the Supreme Court of Texas. Here is a link to the decision: www.supreme.courts.state.tx.us/historical/2010/dec/090330.pdf.

Administration and Operations

Administration and Operations (A&O) consists of two sections: (1) Operations and (2) Communications and Outreach. A&O's main focus five years ago was to get the new agency off the ground. A&O's responsibilities now include staffing, budget planning and management, purchasing, agency reporting, legislative matters, and outreach to stakeholders, including non-English speaking customers.



Communications and Outreach. OIEC has broadened its public outreach initiatives to reach more customers and stakeholders. The Communications and Outreach section utilizes a variety of initiatives to raise awareness of the services available, including educational outreach programs. OIEC staff provides outreach presentations to the public upon request and at each OIEC field office at noon on the last Friday of each month. From April through June the topic in the field offices will be "Maximum Medical Improvement and Impairment Ratings." More information is available at www.oiec.state.tx.us/resources/public_outreach.html. All interested parties are invited to attend.

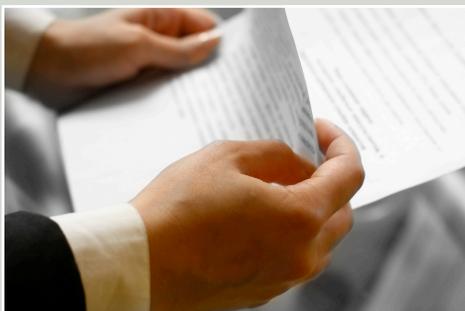
OIEC Communications Specialists develop educational materials, including flyers and brochures compiled into information packets for injured employees as well as employers, employee organizations, social service agencies, and other stakeholders who have a role in helping injured employees. OIEC, in partnership with VRC Industries of Austin, recently completed an outreach project to more than 30,000 employers across the State. VRC Industries employs Texans with disabilities.

Social media use is on the rise by state agencies. OIEC was one of the first agencies to use social media outlets. Facebook and Twitter accounts help educate customers about the agency and its services. Check this out by searching for "OIEC" at www.twitter.com and www.facebook.com.

The 82nd Texas Legislative Session has been a busy one for the Communications and Outreach section as it assists legislative offices with constituent issues related to workers' compensation and advocates on behalf of injured employees at the State Capitol as part of the agency's statutorily mandated advocacy work. OIEC has recommended eight pieces of legislation that will improve the workers' compensation system for injured employees in Texas.

Internal Audit

The Internal Audit program assists agency administrators by furnishing independent analyses, appraisals, and recommendations about the adequacy and effectiveness of a State



agency's systems of internal control policies and procedures and the quality of performance in carrying out assigned responsibilities. The internal audit function was established in accordance with the provisions of the Texas Internal Audit Act, Government Code Chapter 2102.

Originally, OIEC contracted with a firm for this function. This firm performed a limited review of the Payroll/Personnel functions in June 2008. The agency determined that it would benefit from having an internal auditor employed by the agency. In FY 2009, the agency hired its first internal auditor.

All internal audits reports are completed by the internal auditor. They include annual reports for each fiscal year and periodic audits. Complete reports are posted on the OIEC website at www.oiec.state.tx.us/resources/audit_reports.html.

OIEC Leaders Meet

Tackle Important Issues at Conference

To kick off the new year, OIEC held its semi-annual Leadership Conference in El Paso January 5-7, 2011. Leadership conferences provide the opportunity to bring together the agency's Supervisors, Associate Directors, and Directors from different locations for business planning, education, and team building.

Business planning was a primary focus of the conference. There were updates and brainstorming sessions on each agency program area including the Ombudsman Program, Customer Service, Legal Services, Administration and Operations, and Internal Audit. Participants made progress on important procedural issues and worked together as an agency team with a common vision.

The group benefitted from a day-long session on change management and employee engagement presented by Dr. Barry Bales and Certified Master Trainer Joyce Sparks of the University of Texas' Governor's Center for Management Development. Bales and Sparks oversaw lively discussion and brainstorming activities on ways to provide high-quality management for the agency. OIEC management recently implemented reorganization and cross-training initiatives to place more OIEC team members in contact with agency customers to meet the growing demand for the agency's services. This change in operation has been a time of growth for employees and the agency. The lesson on change management was an excellent one for OIEC's leaders who will share the information with their respective teams and report back to the Public Counsel on the resulting progress.

Question of the Quarter

Q: You often talk about "early intervention" and "case development" by OIEC employees. They seem to be similar. What is the difference between these things?



A: One of the ways that OIEC helps injured employees is to assist them through the dispute process. When a dispute is first identified, it is in the "early intervention" stage. This term is used to describe the first 10 business days that OIEC Customer Service is working on the dispute. The early intervention is conducted by a Customer Service Representative and consists of gathering information, contacting the parties, and attempting resolution.

If early intervention is not successful, the case moves into the "case development" stage. Case development, conducted by the Ombudsman, is a more in-depth and complex attempt to resolve the disputed issue, particularly in terms of obtaining documentation such as medical reports and witness statements. The Ombudsman works with all parties to resolve the dispute during the case development stage.



The Faces of OIEC Leadership



Public Counsel Norman Darwin was born in Waco and graduated from Tyler High School. He's a proud graduate of Texas Christian University (TCU) and was commissioned into the Army after participating in TCU's ROTC program. He completed the University of Texas Law School in 1965. Norman is Board Certified in Personal Injury Trial Law and enjoys cooking, being particularly skilled at making huevos rancheros. He is looking forward to the birth of his daughter's first child – a girl – expected in May. He hopes to one day travel to Scotland and explore the heritage of his Ross family ancestors.



Deputy Public Counsel/Chief of Staff Brian White was born and raised in Austin. He is a graduate of the University of Texas and the South Texas College of Law. Brian enjoys running, sometimes with one of his four dogs, and skiing when the opportunity arises. His favorite travel destinations are Vancouver, Canada and Cabo San Lucas, Mexico.



Legal Services Director Elaine Chaney was born and raised in Indianapolis, Indiana. She received her Bachelor's degree from Indiana University in Bloomington and her Juris Doctorate from Indiana University in Indianapolis. Elaine loves all things Scotty but most of all her six-month-old Scottish Terrier, Baxter. Her favorite travel destination is Singapore.



Ombudsman Program Director Luz Loza was born and raised in Bucaramanga, Columbia. She earned a degree in Communications and Journalism from Universidad Externado de Columbia in Bogata. After moving to Texas, Luz studied Photography and Political Science at St. Edward's University in Austin. Luz is a proud aunt to five nieces and three nephews. She loves to dance, cook, read, and travel. Her favorite destinations are Budapest, Hungary and San Martin de los Andes in Argentina.



Customer Service Director Nancy Larsen was born, raised, and educated in Illinois before moving to Fort Worth in 1983. She and her husband of 49 years have three children and four grandchildren. Nancy enjoys golfing and spending time outdoors. Her favorite place to travel is Illinois to visit her family, but she also enjoys taking cruises with her husband. The most interesting places she has visited are Taiwan, Italy, China, and Greece. Nancy also enjoys reading mysteries.

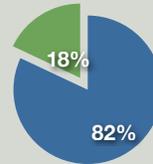


Internal Auditor Lesley Wade was born and raised in Temple, Texas. He is a graduate of the University of Texas and a Certified Public Accountant. Les enjoys motorcycling and fly fishing. He and his Labrador "Blue" like exploring new fishing spots on small rivers and creeks in Central Texas.

Planning for the Future

Imminent Retirements Prompt OIEC to Step Up Plans for Future Workforce

Within the next two years, 18 percent of agency employees will be eligible for retirement. This includes more than 42 percent of OIEC staff in a supervisory role who will be able to retire by the end of fiscal year



2013. "That is a lot of vital knowledge and experience that could be lost within a short time unless OIEC takes additional steps to plan for its future workforce," said Brian White, OIEC Deputy Public Counsel/Chief of Staff. Recruitment and retention activities, cross-functional training, and succession planning are the keys to ensuring a knowledgeable and effective workforce regardless

of the number of staff members who leave the agency. Succession planning is a tool to develop "bench strength" in an organization, White said.

The succession planning process – which will take place over the next several months – involves analyzing positions throughout the agency, pinpointing the critical skills and knowledge necessary to accomplish the agency's strategic goals, identifying staffing needs, and developing and implementing an action plan to address them. "Our going through this process shows that management looks toward the future with optimism and invests in employee development and growth," White said.

Field Office Closing

Victoria Field Office Closing in November

The OIEC Field Office in Victoria will close November 1, 2011. This decision came as the result of several factors: the lessor of the office building did not renew the lease and budget concerns served as a barrier for a new office space in Victoria. OIEC's administrative attachment to TDI-DWC does not allow funding for OIEC to lease its own office space.

The Victoria office currently handles local-area claims and all out-of-state claims. When the office closes, OIEC will remain dedicated to providing services to the Victoria community as claims are ushered to the next closest field office – likely to Corpus Christi, San Antonio, or Houston East. Any Victoria-area resident may assert the right for a proceeding to be held within 75 miles of the injured employee's residence. In such instances, OIEC will travel staff to Victoria for a proceeding. Out-of-state claims will be redistributed based on where the employee was injured.

OIEC stands firm in its mission to assist, educate, and advocate on behalf of injured workers across the great State of Texas, and the goal will be to ensure that each injured employee continues to receive the high level of service that has come to be expected of OIEC.



Texas Legislature

Proposed Legislation Monitored During Session

The 82nd Texas Legislature is in full swing with approximately five weeks left in the regular session. OIEC staff has been busy during the session with nine recommended bills filed on behalf of the injured employees of Texas.

OIEC recommended one regulatory bill, House Bill (HB) 3430, which was filed by Representative Bill Zedler and referred to the State Affairs Committee in the House of Representatives. HB 3430 relates to certain requirements in connection with review determinations by an independent review organization (IRO). This bill has been referred to the House State Affairs Committee and is awaiting a hearing date.

HB 1872, filed by Representative Helen Giddings, relates to information to be provided to employees covered by workers' compensation health care networks. The House State Affairs Committee reported this bill to Calendars on April 19, 2011. HB 1872 was recommended by OIEC in the 81st Legislative session.



Other legislative recommendations by OIEC include:

- Senate Bill (SB) 511, filed by Senator Leticia Van de Putte, passed the Senate and was received by the House on April 20, 2011. It should be referred to a House Committee next.
- HB 3427, filed by Representative Bill Zedler, was referred to the House State Affairs Committee and is awaiting a hearing date.

These two bills relate to a designated doctor's examination under the workers' compensation system.

- SB 93, filed by Senator Eddie Lucio, was referred to the Senate State Affairs Committee and is awaiting a hearing date.
- HB 3362, filed by Representative John Smithee, was referred to the House State Affairs Committee and is pending in Committee.

These two bills relate to the appointment of an attorney for a workers' compensation claimant in certain proceedings initiated by an insurance carrier.

- SB 809, filed by Senator Kel Seliger, was engrossed in the Senate, received in the House, and referred to the House State Affairs Committee on April 4, 2011.
- HB 1870, filed by Representative Helen Giddings, was reported favorably as substituted by the House State Affairs Committee on April 12, 2011.

These two bills relate to judicial review in district court of certain workers' compensation disputes.

- SB 1194, filed by Senator Jose Rodriguez, was referred to the Senate State Affairs Committee and is awaiting a hearing date.
- HB 2740, filed by Representative Inocente "Chente" Quintanilla, was referred to the House State Affairs Committee and is awaiting a hearing date.

These two bills relate to the amount of temporary income benefits to which an injured employee is entitled under the workers' compensation system.

- SB 1764, filed by Senator Jose Rodriguez, was referred to the Senate State Affairs Committee and is awaiting a hearing date.
- HB 2745, filed by Representative Inocente "Chente" Quintanilla, was referred to the House State Affairs Committee and is awaiting a hearing date.

These two bills relate to workers' compensation supplemental income benefits.

- SB 807, filed by Senator Kel Seliger, was referred to the Senate State Affairs Committee and is awaiting a hearing date.
- HB 2692, filed by Representative Joseph Deshotel, was referred to the House State Affairs Committee and a public hearing was scheduled for March 30, 2011. It was left pending in committee. This bill has been amended to OIEC's Sunset Bill.

These two bills relate the authority of OIEC under the workers' compensation program to obtain grant funding.

- HB 2691, filed by Representative Joseph Deshotel, was referred to the House State Affairs Committee.

This bill relates to the submission date of the OIEC's legislative report and was amended to OIEC's Sunset Bill.

As reported in previous issues of OIEC's *Quarterly Review*, OIEC is being reviewed by the Sunset Advisory Commission. Legislation has been filed to continue the agency for at least six more years. OIEC's Sunset Bill, SB 651, authored by Senators Joan Huffman and Chairman Glenn Hegar was referred to the Senate Government Organization Committee. OIEC's Sunset Bill, HB 1774, authored by Representative Larry Taylor was passed on April 18, 2011. SB 651 was left pending in Committee while HB 1774 was reported favorably as substituted, and the committee report was engrossed by the House as amended and received in the Senate on April 19, 2011.

More detailed information is available on OIEC's 82nd Texas Legislature web page, www.oiec.state.tx.us/resources/leg_session_page.html

Performance Measures

Second Quarter Measures Submitted



Performance measures are a part of the State's Strategic Planning and Performance Budgeting System. Purposes of performance measures include:

- Indicating how progress toward agency goals and objectives is measured;
- Allocating resources and determining appropriation levels;
- Focusing agency efforts on achieving priority goals and objectives; and
- Monitoring tools to help guide government and make it accountable to the taxpayer.

OIEC's key Second Quarter performance measures were submitted to the Legislative Budget Board and the Governor's Office of Budget, Planning, and Policy on April 8, 2011. During the first half of the current fiscal year (September 1, 2010 through February 28, 2011) OIEC achieved a 27 percent increase in targets met for all performance measures.



New Features Launched

New Publications

OIEC continues to create outreach materials that help educate customers. Recently four new publications were developed:

“Early Return to Work Benefits Everyone” - This brochure targets employers and employees with suggestions about how they can make return-to-work happen and information about TDI-DWC’s return-to-work reimbursement program.

“2011 Monthly Educational Presentations” - This flyer targets all customers to let them know about OIEC’s monthly educational presentations.

“What to Expect at Your Designated Doctor Examination” - This brochure provides an overview of the examination and outlines the information the treating doctor should provide and what to expect after the exam has occurred.

“Maximum Medical Improvement and Impairment Rating: What You Need to Know as an Injured Employee.” - This brochure provides a general overview of maximum medical improvement and impairment ratings as well as the impact they may have on income benefits.

All OIEC brochures and flyers are available on the OIEC internet Publications page:

www.oiec.state.tx.us/resources/publications.html#brochures.

Website Additions

The OIEC website is an excellent resource for customers and system participants. To better serve our customers, four new pages have been added to the agency website.

“82nd Texas Legislature” - www.oiec.state.tx.us/resources/leg_session_page.html

“Sunset Review Process”- www.oiec.state.tx.us/resources/sunset.html

“OIEC Video: Overview and Services”

- English www.oiec.state.tx.us/webcast/video/video_oiec_nm.wmv
- Spanish www.oiec.state.tx.us/webcast/video/video_oiecsp.wmv

OIEC continues to evaluate the needs of its customers in determining what publications and web pages should be added in the future. If you have a suggestion about new information that should be developed, please send us your ideas at OIECInbox@oiec.state.tx.us.

Rules Proposed

OIEC proposed three new administrative rules (§276.13 Ombudsman Ethics, §§276.7 and 276.8 OIEC Ethics) to codify the agency’s ethical standards.

The proposed rules were published in the February 25th issue of the Texas Register on the Texas Secretary of State website, www.sos.state.tx.us/texreg/index.shtml. The agency appreciates feedback. Please send comments to Deputy Public Counsel/Chief of Staff Brian White at brian.white@oiec.state.tx.us by 5:00 p.m. June 10, 2011.

Black History Month

Black History Month is an annual celebration of achievements of Black Americans and a time for recognizing the central role of African-Americans



in United States history. OIEC and TDI-DWC paid tribute with a program and luncheon that educated staff about African-Americans’ culture and achievements. The program was completed by staff from the two agencies singing “We Shall Overcome.”

Early Intervention

Success Stories

When workers’ compensation benefits are disputed, injured employees begin the dispute resolution process with a CSR. The CSR collects information and documentation to accurately identify a dispute and begin early intervention. The Customer Service Program is proud to share three of its early intervention success stories.

In Corpus Christi, a CSR assisted an injured employee whose treating doctor requested preauthorization for a surgical procedure. The preauthorization request was denied and the



doctor stopped the process. The CSR contacted the doctor’s office, explained the preauthorization process, and helped the office complete the request for reconsideration. The

insurance carrier again denied the request. However, the CSR assisted the injured employee in filling out and filing a request for the assignment of an Independent Review Organization (IRO) to review the request. The IRO overturned the insurance carrier’s denial, and the insurance carrier was required to pay for the surgery.

In Victoria, a CSR assisted an injured employee who had received a report from a treating doctor that indicated she had reached maximum medical improvement (MMI) and was assessed a four percent impairment rating. The injured employee did not agree with the rating but did not understand how to dispute it until she spoke with the CSR. The CSR noted that the document had not been filed with TDI-DWC. She obtained a copy of the document, filed it with TDI-DWC, and assisted the injured employee in filling out the request for a designated doctor. The injured employee was examined by the designated doctor who found her to have a 12 percent impairment rating (instead of four percent). This resulted in an additional 24 weeks of impairment income benefits for the injured employee.

In the final example, an employee had sustained injuries to his hand and shoulder. The hand required immediate treatment and no significant treatment was rendered to the shoulder. After the hand treatment concluded, the treating doctor initiated treatment for the shoulder injury. The insurance carrier verbally denied the treatment, arguing the shoulder injury was not part of the workers’ compensation claim. However, the insurance carrier failed to file a written denial as required. The CSR assigned to this dispute contacted the adjuster and supervisor requesting approval for the shoulder treatment. While waiting for this dispute to be resolved, the injured employee sought medical treatment through his group health carrier. The CSR obtained medical records and the claim for compensation filed by the injured employee and forwarded them to the insurance carrier. Both clearly reflected that the injured employee had received treatment shortly after the injury occurred and had notified the insurance carrier that a shoulder injury was also being claimed. The insurance adjuster’s supervisor reviewed the records and approved treatment.

This is only a sampling of the injured employees helped by the dedicated CSRs in the Customer Service Program.



Case Study

Causation

The following case serves as an excellent example of the application of OIEC's extensive training on causation. In this case, the injured employee was able to show that his injury extended from a left hernia to a right-sided inguinal hernia. The claimant was assisted by Ombudsman Peggy Brewer in the Houston West Field Office.

The claimant was employed as a firefighter/EMT and sustained an injury June 29, 2010 as a result of lifting a 350-pound tire during physical training. Initially, the claimant trivialized his pain; however, he reported his injury after a couple of days upon noticing a bulge on the left side of his abdomen. The insurance carrier accepted this injury as compensable. The claimant then saw Dr. C approximately a month later and a left hernia was confirmed. At that time, the right inguinal hernia was not apparent; however, Dr. C did notice weak fascia on the right side and noted that a small, right-sided hernia could have been missed if sufficient abdominal pressure was not achieved during the exam. In September 2010, the injured employee's left hernia was repaired by Dr. B. At that time, Dr. B also diagnosed the claimant with a right inguinal hernia. This diagnosis was confirmed by Dr. C in October 2010. In Dr. C's notes, he remarks, "tenderness is not always present when examining for hernias. It is reasonable to conclude that [the] same mechanism of injury that caused the left-sided inguinal hernia would likely result in a right-sided inguinal hernia as well."

A Benefit Review Conference was held in November 2010, and the insurance carrier argued that the right-sided hernia was pre-existing in nature. Parties were unable to reach an agreement, and the case was elevated to a Contested Case Hearing (CCH). In the CCH, the claimant — through his Ombudsman — argued that the evidence on record from Dr. C and Dr. B both clearly established that the compensable injury was a producing cause of the right inguinal hernia. Furthermore, the claimant argued that the insurance carrier should not be relieved of its duty to pay on the extent of injury unless it could show that the left inguinal hernia was the sole cause of the right inguinal hernia.

Perhaps the best single sentence summarizing the injured employee's strategy for arguing causation can be found in the claimant's "Brief Regarding Extent of Injury":

Without some indication that a pre-existing condition was the sole cause of a disabling injury, the presence of such condition or the fact that they contribute to the disability does not disqualify a worker from receiving workers' compensation benefits. (7)

This argument can be made because the carrier is clearly making a sole cause argument that a pre-existing condition bars the injured employee from receiving benefits for the right inguinal hernia. It is also worth mentioning that, were the insurance carrier to make any argument other than sole cause, that evidence would not have been relevant to any issue before the Hearing Officer in this case.

On January 24, 2011, the Hearing Officer ruled in favor of the claimant and found that the compensable injury does extend to include right inguinal hernia.

Employee Spotlight

Reba Hutson, Ombudsman

In some form or another, Reba Hutson has been involved in workers' compensation since 1968. Sometime between then and now, she became the epitome of a champion for helping people. She will never retire, she said. Part of that longevity, she admitted, was the thrill of outwitting lawyers and making the system work for people. She can only half hide her emotion when recalling some of the injured employees who have said to her that all that really mattered was that someone helped them.

Reba was born at home, 10 miles northwest of Lufkin in Pollok, Texas. She attended school in Lufkin and discovered an interest in technology. After high school, she married William "W.Z." Zid and moved to California where she lived up and down the coast while W.Z. was serving in the Navy. When she returned to Lufkin, she attended Angelina College and her husband went to work as a welder for Lufkin Industries. Reba first majored in journalism before changing majors to computer science. She also studied computer language at Southern Methodist University (SMU).

Reba's start in workers' compensation came when she worked for a large grocery store chain in Lufkin. Besides programming the first computer at the grocery store, she also helped administer the store's workers' compensation insurance. From there, she went to work for the Labor Board and lived at Crystal Beach on Bolivar Island — a community that was obliterated by Hurricane Ike. When asked if she had returned since the hurricane, Reba replied, "Nope. Don't go back. I don't dwell on the past."

W.Z. and Reba raised two daughters and a son, and today she has six grandchildren and nine great-grandchildren. To some, she is known as Nanny and to others, Mimi. She also has a Scottish Terrier named Mister Mugs and a basset hound named Copper. In 2006, W.Z. passed away from lung cancer. Reba now travels with her grandchildren (last trip: Disneyland) and takes great interest in their

many hobbies. She is also interested in visiting churches — to understand the lives of people in the past — and makes a regular point to see the bluebonnets in the spring.

Despite the claim that Reba never takes her work home, there was one case that compelled her to take extraordinary measures. An injured employee that she was assisting was likely going to receive lifetime income benefits for a catastrophic back injury. Both the Benefit Review Officer and Hearing Officer found him to have a 50 percent impairment rating. However, the Hearing Officer noted that while he accepted the 50 percent rating, the back injury was likely due to a pre-existing condition. The insurance carrier seized on that point and appealed the case, resulting in an appeals panel decision of a zero percent impairment rating. Reba admitted to being unable to sleep at the thought of this denial. In an amazingly improbable act, she found the injured employee an attorney who would take his case pro bono to the district court. He prevailed and was given lifetime income benefits for his injury.

It might make Reba uncomfortable to know that she is frequently held up as a kind of "gold standard" for Ombudsmen at OIEC. She would never be motivated by such a statement, though. She's diligent in her work because of a belief that injured employees mostly don't care if they win or lose; only that someone cares enough to make their case. In conference settings, the phrase "ask Reba" circulates in whispers during question-and-answer sessions. Her coworkers have described her as tenacious, direct, competent, and accurate. She has worked continuously since age 13 and exclaimed that she wouldn't "give it up for a gold-plated monkey because working makes you what you are!"

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