



QUARTERLY REVIEW

Summer 2012 (Issue 26)



LETTER FROM THE PUBLIC COUNSEL

Dear Friends:

The April 2012 issue of the Journal of the American College of Occupational and Environmental Medicine (JOEM) contains an article entitled "Workers' Compensation Benefits and Shifting Costs for Occupational Injury and Illness." (JOEM, Volume 54, Number 4, April, 2012). This study revealed that of the \$67.09 billion total industrial accidents and illnesses medical benefits costs, \$29.8 billion was paid by workers' compensation, and \$37.332 billion was not paid by workers' compensation.

The study assumed that medical costs not paid by workers' compensation would be paid by private and public funds in accordance with percentages paid by those same funds for total national medical spending on all health care. It was also estimated that indirect costs associated with those injuries and illnesses amounted to \$160.675 billion, which was not paid by indemnity benefits.

It was further estimated that "innocent" third parties (such as private non-workers' compensation insurance carriers, injured employees, and tax-payers) pay approximately 79.28 percent of the amount not paid by workers' compensation insurance. That translates to workers' compensation carriers paying approximately 21 percent of the "true costs" of industrial accidents and illnesses.

At a time when our nation is debating how medical costs are to be paid, it is important that we realistically consider the economic impact of cost shifting in health care and specifically how those costs affect injured employees, insurance carriers, and employers.

Sincerely,

Norman Darwin, Public Counsel



Customer Satisfaction Survey Findings Used to Improve Agency Services



OIEC conducted its 2011 Customer Satisfaction Survey to assess the satisfaction level of the customers who have had recent contact (within the past year) with the agency. As required by Texas Government Code § 2114.002 "Customer Service Input," the agency shall gather information from customers regarding the quality of service delivered.

In accordance with these requirements and in an effort to obtain valuable feedback about the services it provides, OIEC conducted the 2011 Customer Satisfaction Survey with injured employees and other persons seeking information from OIEC between September 1, 2010 and August 31, 2011.

The development of the 2011 Customer Satisfaction Survey was based on suggested content from the Texas Government Code § 2114.002 as well as agency specific content. The survey was designed to be offered to anyone requesting assistance from OIEC by telephone or in person and customers utilizing OIEC's website.

The Customer Satisfaction Survey provides for an evaluation tool of the service OIEC provides to its customers. OIEC's primary customers are the injured employees of Texas, but its customers also include family of injured employees, employers, insurance carriers, legislators, and others. The survey was available in a variety of ways (English, Spanish, online, and paper copy) to ensure that all customers had the opportunity to comment on OIEC's services.

There were 280 OIEC customers who completed the survey. Of these, 77 percent were either injured employees or a family member of an injured employee. Overall, 91 percent of the respondents were satisfied with the services they had received from OIEC, and 86 percent reported that they would continue to receive services from OIEC even if they could obtain these services from another agency.

General results within the survey's eight categories included:

Assistance: 52 percent contacted OIEC by telephone between one and four times in the past 12 months while 40 percent of the respondents contacted OIEC even more often.

Website: 67 percent of the respondents reported that they were able to obtain information about services that were available to them by using the internet.

Facilities: 79 percent of the respondents reported that the public transportation and the distance to the facilities as well as parking were convenient. 85 percent reported that the facilities were clean and orderly and that it was easy to find their way through the building.

Staff: 92 percent of the respondents reported that the staff was able to answer their questions.

Communication: 93 percent of the respondents received the information they needed to obtain services, and 91 percent received clear explanations about the services available to them. (Continued on Page 2.)

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Complaint Handling Process: 81 percent of the respondents reported that they knew how to handle complaints regarding the services received from OIEC and felt that if a complaint was filed against OIEC it would be addressed in a reasonable manner.

Timeliness: 90 percent of the respondents reported that the time for their inquiries to be answered and the time that they had to wait to receive services was reasonable.

Printed Information: 89 percent of the respondents received printed information regarding the services that were available to them, and the information included was clear and understandable.

By completing the Customer Satisfaction Survey, customers helped OIEC gather critical information that will be used for planning agency initiatives and improving the quality of services it provides.

Communications Corner

The agency's education efforts continue with an emphasis on providing the most current information about Texas Workers' Compensation. Recent legislative changes prompted changes to OIEC's publications and subject matter for the agency's monthly educational presentations.

New Publications. OIEC's publications have been updated to include recent statutory changes, many of which became effective June 1, 2012. Additional publications have also been developed on "What You Should Know about Using Prescription Drugs Safely," "Customer Service and Ombudsman Programs," and "Indemnity Dispute Resolution Process." The following publications (in both English and Spanish) are available on OIEC's website at www.oiec.texas.gov/resources/publications.html#brochures:

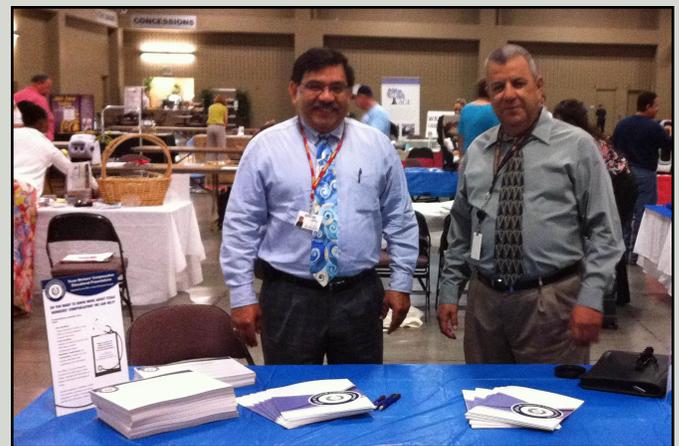
- "About the Office of Injured Employee Counsel"
- "Injured Employee Rights and Responsibilities"
- "Customer Service and Ombudsman Programs"
- "Indemnity Dispute Resolution Process"
- "Injured at Work?"
- "Retrospective Medical Necessity Disputes"
- "Preauthorization Process"
- "Medical Fee Disputes"
- "What to Expect at Your Designated Doctor Examination"
- "Early Return to Work Benefits Everyone"
- "Maximum Medical Improvement (MMI) and Impairment Rating: What You Need to Know"
- "How to Dispute Your MMI and Impairment Rating"
- "Medical Dispute Resolution Procedures"
- "What You Should Know about Using Prescription Drugs Safely"

This information is also available (at no cost) for employers, health care providers, or any entity 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.

Monthly OIEC Field Office Presentations. Each month, generally on the last Friday, OIEC field offices deliver an educational presentation on a workers' compensation topic. This past quarter the recent Medical Dispute Resolution changes was the topic. The topic for the upcoming quarter will be "Top Ten Things You Need to Know if You Receive a Workers' Compensation Medical Bill." It will include helpful information for both injured employees and their health care providers. The presentation will be held on the following dates: August 31, September 28, and October 26. Please contact your local OIEC field office for more information.

Public Outreach. A critical part of the agency's mission is to educate customers about OIEC and the Texas Workers' Compensation System. As a featured speaker or through a presence via an informational booth, OIEC is able to deliver timely, useful information to its customers. Over the past quarter, OIEC participated in the following events and conferences: Annual Texas Medical Convention; Texas Workers' Defense Project and Univision's Cinco de Mayo celebration; Annual City of Austin Safety Conference; Annual Texas Funeral Directors Association; and the State Bar of Texas' Workers' Compensation 101 Course and the Advanced Workers' Compensation Law Course.

If you would like OIEC to speak at your event, please send an email to OIECInbox@oiec.state.tx.us.



Juan Rodriguez, Ombudsman Supervisor, and Juan Mireles, Ombudsman Program Associate Director, attended the Annual City of Austin Safety Conference in May, 2012. They were able to answer employees' questions about the Texas Workers' Compensation System and provide them with outreach materials at the OIEC informational booth.

Employees Gain Knowledge, Camaraderie at Annual Conference

They may be located across the State, but OIEC employees are unified through one mission – to assist, educate, and advocate on behalf of the injured employees of Texas. The OIEC Annual Conference brings all team members together to ensure consistency, efficiency, and expertise throughout the agency.

OIEC Public Counsel Norman Darwin welcomed the staff to Fort Worth, where the conference was held in the Fort Worth Convention Center. Mr. Darwin set the bar high with a complex discussion of workers' compensation causation issues. Over the next three days, most topics centered on similarly technical issues, such as the Pharmacy Closed Formulary, a Legislative Update, and a Case Law Update. It is critical that OIEC employees are knowledgeable about these issues so they can best assist their customers.

The staff responded most favorably to two of the final presentations of the conference. The first was by Erika Copeland who is the Designated Doctor Outreach and Oversight Director at the Texas Department of Insurance, Department of Workers' Compensation (TDI-DWC). She spoke frankly about the expectations of designated doctors in the Texas Workers' Compensation System. Ms. Copeland gave examples, discussed challenges, and offered solutions to many of the issues that the OIEC employees face when assisting injured employees. The final presenter was Diane Schoenert who spoke about "Becoming a Fair-Minded Thinker." She explained the elements of thinking with respect to: purpose, point of view, information, questions, concepts, inference, assumption, and implications. Her approach was light-hearted yet practical, and everyone left planning to put her ideas into daily practice.

As always, the conference closed with the awards ceremony at which the agency comes together to celebrate individual and team successes. The longevity of the agency's employees was evidenced by the 25 employees who received service awards. Awards were presented for five, ten, 15, 20 years as well as an impressive 25-years of State service, which went to Enequina Aguirre, Weslaco Field Office Ombudsman. Also recognized were Team Six (Houston East and Houston West Field Offices) for their efforts in streamlining an agency procedure and the Ethics Committee members for their contribution to the agency. Finally, the technical achievement awards were announced, and this year's recipients were Ombudsman Lori Blount and Customer Service Representative Edna Sierra.

Upon return to their home offices, the OIEC team has taken the information they gained and the new connections they made to create a stronger agency. They will meet again to build on this strength next year when the conference will be held June 12 - 14, 2013 in San Antonio.



The Austin and San Antonio Field Office teams at the OIEC Annual Conference.

Technical Achievement Awards

The annual technical achievement awards are intended to recognize employees who exhibit superior performance or special efforts significantly beyond their regular duty requirements and directly related to fulfilling OIEC's mission. The recipients of this year's technical achievement awards were Lori Blount and Edna Sierra.



Ombudsman: Lori Blount. Ms. Blount is an Ombudsman in the San Antonio Field Office with nearly 15 years of workers' compensation experience. Her experience and tireless dedication to resolve issues resulted in a positive ending in a particularly difficult case.

In July 2010, Ms. Blount was assigned a case dealing with compensability, extent of injury, and disability. The injured employee's injury occurred when she was struck by a heavy food tray on her right ear while working as a waitress. A few days after the work-related injury, the injured employee experienced dizziness, pain, disorientation, and nausea. The injured employee was eventually referred to an otologist/neurotologist (medical specialties dealing with hearing, balance disorders, and neurological disorders of the ear), who diagnosed the injured employee with benign paroxysmal positional vertigo (BPPV) and trauma-induced migraine headaches.

The insurance carrier's position was that there was no injury in the course and scope of employment. The extent of injury was raised by the insurance carrier claiming that the subsequent diagnosis was an ordinary disease of life.

The nature of the injury is unusual for what Ombudsmen regularly encounter and one which requires expert medical evidence. Ms. Blount contacted the injured employee's medical specialist who then provided a causation narrative for the injured employee. Ms. Blount



performed extensive research on the diagnosis in dispute. She shared the results of her research, pertinent medical records, and the causation narrative with her Regional Staff Attorney who then assisted her with preparing questions for the insurance carrier's and injured employee's expert witnesses.

The injured employee's physician testified at the contested case hearing. He is extremely knowledgeable and has published works on the disputed diagnosis. The insurance carrier's expert witness acknowledged the physician's publication and conceded to him at the hearing.

From the onset, Ms. Blount was diligent in working through the difficult case, establishing a rapport with the injured employee's physician and working closely with her Regional Staff Attorney. Her diligence, preparation, and attention to detail on this case resulted in the injured employee receiving a favorable decision at the Contested Case Hearing on all issues.

This case is only one example of the superior work that Ms. Blount does on behalf of injured employees on a daily basis. Her dedication and expertise are qualities that make her an excellent Ombudsman.



Customer Service Representative: Edna Sierra. Ms. Sierra is a Customer Service Representative in the San Antonio Field Office and has been recently promoted to an Ombudsman Associate. She joined OIEC in 2008 after working as an office manager with the same employer for almost 20 years.

Ms. Sierra's skills and experience were an excellent fit, and she was able to make immediate impact at OIEC. She was recognized for her knowledge and leadership skills and became the team lead for three OIEC Field Offices. She promotes teamwork within her local office and among other field offices. Along with her regular duties, she has taken on additional responsibilities, which include training employees, assisting other offices, and participating in agency automation process meetings. Even with her additional responsibilities, Ms. Sierra remains conscientious about meeting deadlines and plans her workday to ensure a consistent workflow between the Customer Service and Ombudsman Programs.

Ms. Sierra demonstrates a thorough knowledge of key responsibilities and understands the importance of continual learning. She encourages her co-workers and willingly shares information with them. Customers appreciate the fact that she works tirelessly on their behalf and strives for resolution of their issues. Her positive attitude is evident at all times and translates into excellent customer service both internally and externally.

In Memory of Richard Bennett, Beaumont Ombudsman



The Office of Injured Employee Counsel lost a friend and colleague on July 2, 2012, when Richard Bennett passed away as the result of a motor vehicle accident. Richard was born October 22, 1966 in Lake Charles, LA. He received a Bachelor's Degree in Professional Development from Amber University and a

Bachelor's Degree in Theology from Christian Life Theology School. Richard also graduated Magna Cum Laude from Southern California University with a Master's Degree in Business Administration. He is survived by his wife, Lucretia. Richard's smile was contagious and his energy and positive nature will be missed by everyone that was fortunate to know him. Our thoughts are with Richard's family and his entire community in the wake of his untimely passing.

Question of the Quarter

Q: The designated doctor said that I have reached maximum medical improvement with a five percent impairment rating. I talked to my treating doctor, and he says that he agrees that 5 percent is correct. My adjuster at the insurance carrier says he also agrees with the impairment rating and is not disputing it. I have been able to work since my injury so this is the first time I will be receiving any income benefits. What should I expect to receive?

A: Once you reach maximum medical improvement, you may be entitled to Impairment Income Benefits if you are assigned an impairment rating of one percent or greater. In your case, if there is no dispute, the Impairment Income Benefits would begin the day after you reach maximum medical improvement, and you would be paid weekly as they accrue. Impairment Income Benefits provide for three weeks of benefits for each percent of impairment. This means that you would receive 15 weeks of impairment income benefits. The amount of impairment income benefits are calculated using your average weekly (preinjury) wage multiplied by 70 percent (subject to maximum and minimum amounts for your date of injury). If you have questions about your impairment income benefits, please call 1-866-EZE-OIEC, and a Customer Service Representative can assist you.



Case Study: Death Benefits

This case is unique. Death claims are rare in Texas Workers' Compensation, accounting for only 0.4 percent of workers' compensation claims in the State (Biennial Report of the Texas Department of Insurance to the 82nd Legislature. Division of Workers' Compensation. Pages 2-4.). Mr. M was a 44-year-old construction worker who was found deceased in his car one morning not far from his job site by his employer. His vehicle was high-centered on a mound of dirt with the keys in the ignition in the "run" position; however, the engine was not running and the car's battery was dead. There were no signs of foul play. Mr. M was found slumped against the driver-side window with sunglasses on and a towel wrapped around his neck. He was last seen by his coworkers around 5:30 p.m. the previous day.

In the medical examiner's report, it was noted that Mr. M had a slightly enlarged heart with an old bullet that was fully encased in fibrous tissue lodged near his mitral valve. The report also found that Mr. M had a fatty liver; however, toxicology reports came back negative for drugs or alcohol, and Mr. M was not shown to have a history of alcohol use. The medical examiner concluded that the cause of Mr. M's death was undetermined; however, the medical examiner did opine that it was "...unlikely that heat played a role in [Mr. M's] death." There was no supporting evidence or explanation to further explain this opinion.



Mr. M's beneficiary spouse, Ms. M, is being assisted by Ombudsman Victor Montes in the Dallas Field Office. The denial of Ms. M's claim for death benefits was unresolved at the benefit review conference level and was set for a contested case hearing. In order to establish that Mr. M suffered a work-related fatality, it was first necessary to establish the likely cause of his death. Because the medical examiner's report was inconclusive on this point, Mr. Montes pursued a number of options to obtain the required medical evidence. He first requested that TDI-DWC appoint a designated doctor to determine the likely cause of death; however, this request was denied because Mr. M was deceased and, therefore, unable to attend a physical appointment. Mr. Montes also contacted the medical examiner to see if he would be willing to elaborate on his report and to testify at the

contested case hearing. The medical examiner's rate for that service was prohibitively expensive for Ms. M. As a last resort, Mr. Montes filed a Motion for Continuance to allow additional time to obtain the needed medical opinion concerning the compensability of Mr. M's case. This request was denied and the contested case hearing went forward as scheduled.

In the course of the hearing, Mr. Montes was able to show that he had made a good faith effort to obtain the medical information necessary to entitle Ms. M to death benefits. Rather than rule on the evidence in hand, the hearing officer agreed to hold the record open for a short period of time to allow Mr. Montes a last chance to submit new evidence.

Mr. Montes discussed this case to his Regional Staff Attorney, Brad Manus, who assisted in identifying the central issue - proving that the weather contributed to Mr. M's death. Data maintained by the National Weather Service reveals that the date of Mr. M's death was an exceptionally hot day. The temperature remained at or above 100 degrees Fahrenheit from 11:55 a.m. through 8:15 p.m.; with a maximum temperature of 107.6 degrees Fahrenheit sustained from 3:55 p.m. through 5:35 p.m. In addition, the towel that was found around Mr. M's neck was handed out at the conclusion of the work day by the safety manager to combat the heat. The fact that Mr. M was found with his sunglasses on and a towel around his neck strongly suggests that he expired shortly after the conclusion of the work day. This means that the conditions of his work that day were temporally related to his death. A forensic pathologist in Fort Worth agreed to review the case and produce a written report by the June 11th deadline (when the contested case hearing record would be closed). In her report, the forensic pathologist reviewed the police records and autopsy and opined that the medical examiner was likely unaware of the extreme heat that Mr. M was subject to on the date of his death; and that the autopsy was consequently incomplete. The forensic pathologist concluded that:

...it is more likely than not, that the extreme heat conditions in which the deceased was working likely contributed to his death. The heat, in combination with mild cardiomegaly and the increased risk of an arrhythmia due to the lodged projectile in his heart are all likely contributory causes of the death of Mr. M.

Once Mr. Montes had the report in hand, the hearing officer agreed to continue the contested case hearing. The case was reset for August, 2012.

Besides being a rare case with significant benefits at stake, this case is unique in that many factors had to come together at the right time and for additional evidence to be submitted by an expert witness in only nine business days. The conclusion of this case will be covered in the next issue of the OIEC Quarterly Review.

Employee Spotlight: Veronica Boulden, Regional Staff Attorney



A self-described extrovert, Veronica Boulden is one of those people who bring a smile to your face at the thought of them. People are drawn to her for her optimism, humor, and good-nature, not to mention her competence

and expertise. She was an “Army Brat” born in Junction City, Kansas on Fort Riley. Her father was an Army Sergeant who was stationed in Kansas, Washington State, Louisiana, Germany, and Korea before settling the family in Meridian, Mississippi. Veronica attended Meridian High School and graduated with high honors. Veronica’s mother was a homemaker and factory worker, and following her parents’ divorce, her mother served as the model for Veronica’s indefatigable lust for life. As a child, Veronica and her younger sister, Cassandra, who was the only soft-spoken and introverted member of the family, were both very close to their mother whom Veronica described as “the authority.” Veronica remarked that no matter what kind of trouble they got into, they knew that their mother always expected the truth. And she always got the truth because Veronica and Cassandra knew the respect was there.

Veronica attended the first land grant college in the United States—Alcorn State University in Lorman, Mississippi. She graduated cum laude with a degree in political science. She was also a member of Zeta Phi Beta where she engaged in various get-out-the-vote activities and teen pregnancy counseling. After undergraduate school, Veronica attended law school at the Thurgood Marshall School of Law at Texas Southern in Houston. During that time, she clerked at the General Counsel’s office at Texas Southern.

Before joining OIEC, Veronica worked with an attorney in Houston in products liability and toxic tort. She honed her litigation skills by defending breast implant and big tobacco companies before one of the most imposing judges in Harris County. She found in herself a killer instinct that was, perhaps, misplaced in her role as that kind of defense attorney. It was OIEC’s gain when Veronica shifted gears and joined the agency as a Regional Staff Attorney in Houston. Her supervisor, Elaine Chaney, has remarked that Veronica possesses the rare ability of remaining upbeat in difficult situations, and that she is a delight as an employee and person. Equally important is Veronica’s consistent ability to produce accurate and timely work-product as a staff attorney.

Veronica is engaged in a way that lifts knowledge as well as spirits.

Her previous work required long hours, so the chance to work for OIEC meant that Veronica suddenly had more free time to devote to her husband and son—both named Jerome. She met her husband in a movie theater after he approached her during a certain Wesley Snipes/Sean Connery movie. After dating for awhile, Veronica became impatient and proposed to him at a restaurant. She bought the ring, she wrote the poem, and proposed. The other patrons approved and bought them champagne. Two years into her marriage, she suffered the trauma of losing her mother, who was only 49 years old. When it happened, Veronica thought again and again about how grateful she was that her mother was able to see her graduate law school. Part of Veronica’s motivation for becoming a lawyer was to make things better for her mother and other mothers like her. She was also grateful for her step-father, Coty, who always loved his extended family.

In 2001, Veronica and Jerome had their only son who they sometimes refer to as “J-2.” He stays busy with Tae Kwon Do, football, baseball, and basketball, and Veronica is there 100 percent for him. A few months ago, Veronica’s life was upended again when her father passed away. The difficulty of planning her father’s funeral was exponentially complicated when she discovered that she had an older sister that she did not know about. But even in describing this potentially embarrassing revelation, Veronica was laughing. At times it doesn’t seem like anything can distract Veronica from her positive outlook on life. It is as if Veronica is just along for the ride—but along for the ride of her own life. Not many people can actually turn over control of their life and just live in the moment the way Veronica can.

Outside of work and family, she enjoys movies like *Tombstone*, the *Indiana Jones* Trilogy, and *James Bond* films as well as the television show, *Dancing with the Stars*. She admitted to one vice; always indulging in the latest and greatest kinds of cars. When asked what historic personage, living or dead, she would like to have lunch with, she responded “Michelle Obama.” Veronica believes in the First Lady’s work to reduce childhood obesity—a cause which mirrors some of Veronica’s own public service while in a sorority.

Veronica is imminently approachable, full of laughter and a positive outlook. She is a natural at making you feel included and building people up. Her life experiences have enriched her ability to remain optimistic in light of challenges, which make her an excellent fit for an agency which assists injured employees.

