

Hello,

My name is Nicholas Stark I am a 31 year old husband and father of a now two and half year old who put myself through school and graduated from Colorado State University. I was formerly employed by Wal-Mart Distribution Center DC6019. I began working for Wal-Mart on August 22, 2001 as an unloader my job duty was to unload freight from tractor trailers. Every year of my employment I exceeded the mandatory production rate for my position. The production rates were increased every year of my employment as well as the incorporation of other job duties.

I injured my back on September 10, 2007 at which time production rates required us to move at the minimum 5,760 cases of freight in a 12 hour shift. My schedule was Saturday, Sunday and Monday from 6:00 am to 6:30 pm daily so in my work week I was required to unload 17,280 cases. In the six years of employment prior to my injury I had moved nearly 3,000,000 cases of freight for Wal-Mart. Often times we would receive trailers that had only a two hour window in which all of the freight had to be unloaded so that the driver could meet his next pickup. When this happened we were asked to unload at a much faster rate regardless of case count or freight type.

As you can imagine this type of manual labor was very physically demanding and would leave me sore for a couple days upon completion of a work week. On the weekend I injured my back I was asked to unload many appointments several were in consecutive order. It was during one of the appointments that while pulling a case down from overhead I had an uncomfortable feeling in my back. Having experienced soreness and fatigue following most shifts I had expected that this too would pass. It didn't this time I woke up in the middle of the night with severe back spasms that prevented any further sleep.

When I returned to work I informed my manager that I needed to go to the doctor, this request was not well received by the loss prevention manager. He was confrontational and very aggressive in his questioning. I was then taken to the doctor at the OHS office who spent approximately fifteen minutes examining me before deciding that my injury was "probably not" work related. That "probably" was in effect the end of my employment with Wal-Mart and the beginning of a nightmare that as I write this today September 10, 2009 has yet to end.

Having denied liability Wal-Mart would not allow me to work with any restrictions and placed me on leave. I was then unable to receive worker's compensation or unemployment leaving me without any income trying to figure out how I would still contribute to the care of my daughter who was only six months old at the time. Not only could I not contribute financially but I was in so much physical pain that I had to rely on my parents to provide care while my wife was at work.

Following the denial of liability I was seen by my primary care physician who believed it was a work related injury and relayed his position to Wal-Mart. At this point I asked management if I could be seen by a second OHS physician this request was flatly denied. I was then referred to an orthopedic spine specialist who also concluded that it was a work related injury so again I approached Wal-Mart and was denied. Three months after my date of injury I had an MRI performed that showed I had a herniated disc in my thoracic spine T11-T12.

Without any income and feeling like I was being mistreated I began working with a lawyer who believed that we should begin the legal process. We filed a petition with the state of Colorado the second week of November 2007 for an expedited appeal. While waiting for my court date I was referred to pain specialist for treatment. After reviewing my MRI this physician also believed that my injury was work related. Further more he stated that the condition of my back was a textbook example of a repetitive lifting injury. The initial court date was postponed by counsel for Wal-Mart for reasons I was never aware of. I was prescribed pain medication that resulted in me being hospitalized with a bleeding ulcer; I spent five days in the hospital and had to receive 3 units of blood.

I hadn't had a late payment in nearly eight years but the money we had been saving for our first house was gone by the end of April 2008 at which point the collection calls began. Several more court dates were postponed and my case wasn't before a judge until August 28, 2008. Following the court date counsel still had to meet with the physicians so there testimony could be recorded and forwarded to the judge. As of Christmas 2008 no decision had been rendered, I found myself unable to buy presents for my family and the anti-depressant doing little to help emotionally. I was in a hole that I didn't know how to get out of and I kept coming back to one thing "probably not" was all the justification a company with 400 billion in sales needed to deny liability.

On January 15, 2009 my lawyer called and I heard the first good news since the date of my injury, Wal-Mart was found liable. My excitement was quickly tempered with my lawyers suggestion that they may appeal the ruling and that they had thirty days to decide how they would proceed. On February 20, 2009 I was informed that Wal-Mart had accepted liability. Following this I received a check for back pay and have been receiving worker's compensation since. I have also learned that regardless of the long term affects of the injury, worker's compensation caps financial compensation at \$75,000.

While winning the case was great it doesn't come close to compensating for the two years this has tormented me. Not to mention that I still have pain everyday that limits my ability to be the dad I want to be. There are several things that need to change regarding the current system.

1. The timeline for an expedited appeal needs to be adhered to and there needs to be a fine schedule for those postponing hearings.
2. There needs to be another avenue for individuals in disputed cases to receive some sort of financial compensation/assistance.
3. The cap on compensation needs to be completely revamped the current system is so arbitrary that long term cost of injuries are completely ignored. Why should spilling a cup of coffee receive more compensation than an individual with a chronic back injury that will require treatment for the rest of their life? More to the point Wal-Mart stores has sales of more that \$12,680.00 a second with money like that they can deny every claim and know that they won't be financially harmed.
4. There needs to be a mechanism that allows people in this situation to place a hold on medical debt incurred due to the injury in dispute. Having collection calls daily regarding medical bills that are disputed when you have no income and no means to pay is very stressful.
5. A mechanism that also allows consumer debts to be held until resolution would also help eliminate much of the stress that is associated with constant pressure applied by creditors.
6. There needs to be a means for individuals who have been financially devastated through situations like mine to repair their credit. Such as making the credit scores retroactive to the time of injury so they aren't plagued by a credit score that has been diminished through no fault of their own.
7. In disputed claims legal cost born by the claimant should be the responsibility of the employer if they are found liable. Worker's compensation currently pays around 60% of wages, when legal representation is required the fees are approximately 20% of benefits received leaving the employee only 40% of pre-injury wage.
8. The employee should be allowed by law to seek compensation for pain and suffering when the employee provides secondary physician positions of work relatedness that are dismissed.
9. To have physicians contracted by employers and incentives are provided based on the number of claims and speed at which those individuals are released is a recipe for unethical practices. Also those employed by Pinnacol should not receive bonuses based on claim denials, their function should be ensuring the complete care of the individuals not expediting their removal from the system.

Thank you,
Nicholas Stark
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Sen. Carroll:

Although, this is probably not new information for you, I would like to tell you about my own personal experience with Worker's Compensation system in Colorado.

I was in the Worker's Compensation system from approximately 1995 through 1998. The Worker's Compensation insurance company my employer contracted with was Liberty Mutual. I was in the system because I developed severe repetitive stress symptoms while using a computer. As I stated to the insurance company appointed doctor, my goal was to continue to be a productive employee. I appreciated having a job.

To make a long story, short (and aren't all Worker's Compensation stories long?), in my experience, I found 3 things remarkable:

I was told by numerous practitioners within the system (who, in retrospect, must've viewed me as a babe in the lion pit) that how the Worker's Compensation System in Colorado works, was that a certain amount of money -- in my case I think it was \$30,000?? is allocated for each case and that amount of money is rationed until the fund is spent out, and then the Worker's Compensation company presses the doctor extremely hard to close the case. This is exactly what happened to me.

My experience was the system was horrible. As it is practiced in Colorado, the system simply is a methodology for shunting employees with work related injuries out of the system without the employer having to spend much money. The only people who benefited through this system were the Insurance Company, and the practitioners that the Worker's Compensation insurance company hired - the doctor the company hired to oversee the case, and all the evaluation doctors and medical practitioners. Much of the money seemed to be spent hiring doctors who specialize in Worker's Compensation cases to evaluate my case as to if I was "faking it" or not (Why I would want to fake an injury that threatened my highly paid professional job, is beyond me). I did not benefit, and certainly my employer did not benefit, because they lost a highly valued, and, at that time period, hard-to-find employee.

Numerous practitioners also told me that, "you are lucky that your Worker's Compensation insurance company is not Pinnacol. Pinnacol is nasty, aggressive, and wants to limit the costs associated with your case, not provide you with medical treatment that might help you become a productive employee again.

I could go on and on and on, but I'm sure you've heard the stories before. It sickens me and brings tears to my eyes when I read about Pinnacol, and their spending habits, and methodologies. It is a shame. And to consider that this company was/is state sponsored/funded/etc. is horrific.

Thank you for listening.

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(voice dictated September 5th 2009)