

All About Claims

Colorado Department of Labor and Employment
Division of Workers' Compensation
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All About Claims is a newsletter published by the Colorado Division of Workers' Compensation designed to provide information to claims handlers. Please send comments or suggestions for future topics to JoAnne Ibarra, Special Assistant to the Director, at 303.318.8790 or by e-mail to JoAnne.Ibarra@state.co.us.

From the Director's Desk...

2% Increases to PT Claims

by Mary Ann Whiteside, Director

In *Salazar v. Ind'l Claim Appeals Office*, 10 P.3d 666 (Colo.App. 2000), the Court of Appeals held the 2% cost-of-living adjustment (COLA) applies to claimants who were receiving permanent total (PT) benefits at the maximum rate. See Sections 8-42-105(1) and 8-42-111(1,4), C.R.S. The Colorado Supreme Court declined to hear arguments. Therefore, the 2% COLA applies to PT claims for injuries occurring on and after July 1, 1991, and before July 1, 1994. The Subsequent Injury Fund has applied the COLA increase consistent with *Salazar* and issued payments accordingly for the adjustment and interest owed.

Many carriers have adopted procedures for identifying the affected claims, applying the COLA increase, and diarying those claims for increases every July 1. If you are an insurance carrier, self-insured employer, or TPA, affected claims must be adjusted in accordance with *Salazar*.

Keeping up with the Division...

Adapting Service Delivery in a Changing Workforce

by Mary Ann Whiteside, Director

Colorado's booming economy and population growth over the past decade have resulted in an increase in the demand for services both in the private and public sectors. Though the state's compensation system was changed to provide for greater flexibility in hiring and retention, a tight labor market has hampered efforts to hire or retain certain occupational groups such as administrative assistants whose functions are incorporated in all areas of service. With fewer workers to meet increasing demand, employers must re-evaluate service delivery methods and determine which tasks should be expanded, modified or eliminated altogether. In addition, we are cognizant of the fact that the Colorado Department of Labor and Employment has the second highest number of retirement-eligible employees of all state departments.

Over the next few years, we face severe difficulties in filling entry-level positions; this problem is coupled with the loss of historical memory with the retirement of experienced workers. Our best efforts can only be enhanced through *simplifying processes and increasing use of technology*.

As a state agency we are statutorily required to provide a defined set of services and we recognize that by combining certain job-related functions and units, we can deliver services with greater stability and efficiency. Mediation is a case in point. With the maturation of the Division, we recognized that mediation was a skill that was integrated throughout all areas of the Division including the Claims and Customer Services Units. Since there was insufficient demand to support a formal mediation unit, Mediator Sharon West has been transferred to the new Compensation Services Section, which houses Claims Management, Customer Service, Document Entry and the File Room. I believe her skills will

support the ongoing trend in dispute resolution there. In the event a formal mediation is requested, a Prehearing Conference Judge will act as mediator.

A major goal of the new Compensation Services Section will be to implement and market Electronic Data Interchange (EDI). EDI is an automated method for filing Employer's First Reports of Injury, and position statements with the Division and allows for system-to-system communication with minimum intervention. Division staff currently assigned to data entry will be assigned to quality review. Benefits should be realized through improved data quality, standardization in filing for multi-state claims administrators, and the ability to compare data from state to state. This does not begin to take into account the savings which will result from the reduction in paper costs, handling and storage.

Another noteworthy change is the transfer of the Carrier Practices Unit to a new Compliance Unit that includes Coverage Enforcement. The transfer will consolidate our enforcement efforts and give us the means to provide better oversight of employers and claims administrators.

I would also like to announce the publication of interpretive bulletins. The purpose is to provide clarification on the practical applications of the Colorado Workers' Compensation system. Look for bulletins in the *All About Claims* newsletter (see article below) and on our Web Site.

I look forward to your comments following implementation of these changes.

Interpretive Bulletin--A Guide to HB 01-1116

by Mary Ann Whiteside, Director

In an effort to provide guidance on the practical applications of the Colorado Workers' Compensation Act, I will be publishing Director's interpretations of statutes and other factors affecting the system, in the form of *Interpretive Bulletins*. The purpose is to provide greater levels of consistency and predictability as to how the Colorado system is intended to operate. While the opinions do not have the force and effect of rule, they are afforded as navigational tools to clarify and simplify processes, create efficiencies, and to reduce litigation. Look for us on the Division's HomePage e-mail address at [Http://workerscomp.cdle.state.co.us](http://workerscomp.cdle.state.co.us).

If you have questions regarding this information or issues you would like to see addressed in future bulletins, please direct your inquiries to Mary Ann Whiteside, Director of the Division of Workers' Compensation, at 1515 Arapahoe St. Tower II, 4th floor, Denver, CO 80202, FAX 303.318.8049, or e-mail at MaryAnn.Whiteside@state.co.us.

House Bill 01-1116 was signed into law on March 11, 2001, and modified Section 8-43-203, C.R.S.—*Notice concerning liability*. Here is an excerpt:

“...[a] case will be automatically closed as to the issues admitted in the final admission if the claimant does not, within thirty days after the date of the final admission, contest the final admission in writing and request a hearing on any disputed issues that are ripe for hearing, including the selection of an independent medical examiner.... **HOWEVER, IF AN INDEPENDENT MEDICAL EXAMINATION IS REQUESTED PURSUANT TO SECTION 8-42-107.2, THE REQUEST FOR HEARING ON DISPUTED ISSUES THAT ARE RIPE FOR HEARING NEED NOT BE FILED**

UNTIL AFTER COMPLETION OF THE DIVISION'S INDEPENDENT MEDICAL EXAMINATION. THE RESPONDENTS SHALL HAVE THIRTY DAYS AFTER THE DATE OF MAILING OF THE REPORT FROM THE DIVISION'S INDEPENDENT MEDICAL EXAMINER TO FILE A REVISED FINAL ADMISSION OR TO FILE AN APPLICATION FOR HEARING. (Caps denote statutory change.)

The legislative intent was to prevent filings of multiple hearing applications by holding the process in abeyance pending completion of an IME on disputed issues of MMI and/or whole person impairment.

In order to further the legislative intent for judicial efficiencies, the statute must be implemented to ensure that only those claims that require adjudication advance to hearing and that undue process constraints are avoided. To do this, process clarification is necessary.

The Division reviews all IME reports issued in accordance with Section 8-42-107(2), C.R.S. If the report contains the required components, and is consistent with the requirements of the Guides, rules and curriculum, the Division issues a statement to the parties that the report has been accepted and may be considered final. A NOTICE OF COMPLETION letter is issued. If a report lacks crucial information or contains a significant error, an INCOMPLETE NOTICE-IME REPORT letter is sent to the physician and the parties outlining the specific area(s) needing to be addressed.

It is the opinion of this Division that the time frame for responding to the IME results does not begin to run until the Division notifies the parties that the IME report is complete and final. Rule XIV(L)(4)(d), Medical Review Panel-Independent

Medical Examination (IME), is consistent with this interpretation and provides that "[s]ervices rendered by an IME physician shall conclude upon acceptance by the Division of the final IME report." Rule IV (N)(6), Admissions of Liability, subsumes this process. The Division's Notice of Completion form now includes a Certificate of Mailing that the parties may use to ascertain the commencement of the 30-day time frame.

As a matter of practice, the Division reviews IME reports against a checklist to ensure:

- 1) All issues on the IME application have been addressed;
- 2) All required worksheets are completed and included with the report;
- 3) Any inconsistencies between narrative report, worksheets and summary sheet are addressed;
- 4) Issues that conflict with AMA Guides, departmental rules and Level II curriculum are addressed;
- 5) The physician has complied with Rule XIX relative to impairment ratings including completion of the Mental Impairment Worksheet, if applicable;

- 6) The physician has complied with Rule XIX relative to apportionment, if applicable;
- 7) Lumbar flexion is invalidated in compliance with Level II Accreditation requirements, if applicable; and
- 8) A Table 53 (spine impairment) rating is rendered in adherence with the required process.

The Division does *not* substitute its judgment for the clinical judgment of the physician nor does it routinely address or evaluate:

- 1) Final impairment rating percentage;
- 2) Whether the physician gave a "correct" diagnosis;
- 3) The physician's determination of work-relatedness; or
- 4) Specific calculations.

Got a Question?

The Division of Workers' Compensation frequently receives letters from our various constituencies requesting information or enforcement on issues related to claims handling practices. We'd like to share some of those inquiries and responses with you in order to "simplify the processing of claims, reduce litigation and better serve the public." (See Section 8-43-217, C.R.S.). For purposes of this column, we invite questions from claims adjusting personnel. While the answer will not apply to all factual situations, we hope to provide a forum for discussion.

Recently, the Division received an inquiry regarding the Level II accreditation course and IMEs.

The person felt that allowing IME doctors to opine as to a claimant's rating even if the claimant was found not to be at MMI: (1) controverts the notion and law that it is not possible or reasonable to rate someone who is not medically stable and (2) Places undue burden on the carrier via Rules of Procedure IV (n)(6) to either admit to

the rating or file for a hearing on the issue of permanency.

My response follows:

You have asked that I review the Division's policy of requesting that a physician performing a Division IME provide an estimated impairment rating if they find that the claimant is not at maximum medical improvement ("MMI"). This practice came about because of the number of cases in which, although the IME physician found the claimant not to be at MMI, the claimant wished to have the case concluded, i.e., perhaps the claimant did not wish to continue treatment or did not want further surgery. In such instances, we had received many requests to have the claimant return to the IME doctor for a follow-up visit for an estimated impairment rating so that the case could be settled. This proved to be inefficient and time-consuming for all parties concerned, including the Division and the physician, and caused further delay in concluding the case. We then began to suggest to the IME physicians that, in cases where both MMI and an impairment rating were requested,

they issue an estimated rating if possible in those instances where the claimant was assessed not at MMI. This was presented as an option; physicians are not required to do so. We instituted this practice to foster settlement or negotiation and to decrease the need for follow-up visits and attendant costs.

You note that you believe that this has caused confusion among adjusters who feel that upon receipt of such an estimated rating that they must file a final admission. The statute is clear that a finding of MMI must precede an impairment rating; it follows that a rating without a date of MMI could necessarily be considered invalid under the Act. The Division has proceeded in this matter with this view in mind. We propose to address the issue you have presented by affirmatively stating in our IME unit's "Not at MMI" notification that any rating rendered under these conditions is not binding on the parties, nor is it governed by Rules IV or XIV. Therefore, a final admission is not required until a final rating is received.

Mary Ann Whiteside, Director

Outside Colorado

A Closer Look at Federal Legislation

by Mary Ann Whiteside, Director

On February 28, 2001, I met with U.S. Acting Assistant Secretary of the Department of Energy (DOE), Paul Seligman, and his special assistant Kate Kimpan, to determine how the recent nuclear workers' legislation (Energy Employees Occupational Illness Compensation Program Act) will impact state workers' compensation benefits. The following is an overview of the new federal legislation along with a few thoughts as to potential issues that may arise as the federal government moves toward implementation. (Note: the summary information on this legislation was taken from the U.S. Department of Energy's Fact Sheet at www.eh.doe.gov/benefits).

General provisions: This federal law establishes a program to provide compensation to employees of the U.S. Dept. of Energy (DOE), its contractors and subcontractors, companies that provided beryllium to the DOE, and atomic weapons employers. Covered employees, who suffer from cancer caused by radiation, beryllium disease, or chronic silicosis, are eligible to receive a lump sum payment of \$150,000 for disability, and payment of future medical expenses associated with the disease (unless other legislation providing an alternative benefit program is enacted prior to July 31, 2001). If the worker is deceased, eligible survivors may receive the lump sum payment. The Act also establishes an Office of Worker Advocacy within the DOE to assist affected workers who suffer from other occupational diseases with making application for and establishing entitlement to state workers' compensation, once agreements have been entered into between the DOE and the States.

Eligibility requirements:

Beryllium-Related Disease Benefits: An employee of the DOE, its contractors, its subcontractors, or a private company that provided beryllium for use by the DOE, or such an employee's survivor, is eligible for benefits if the employee:

1. was exposed to beryllium at a DOE or beryllium-provider facility;
2. contracted chronic beryllium disease; and
3. is or was disabled or died as a result of this disease.

In addition, the program will provide employees who are sensitized to beryllium with regular medical examinations to check for the presence of chronic beryllium disease.

[Note: Beryllium is not included as an occupational disease exempt from the 5-year statute of limitations under Colorado law. See Section 8-41-206, C.R.S., *Disability beginning five years after injury*. This poses particular problems if an eligible employee seeks compensation from both state and the federal workers' compensation programs given distinctions between

state and federal eligibility requirements, and differing statutes of limitations.]

Radiation-Related Cancers: An employee of the DOE, its contractors, or of an atomic weapons employer, or such an employee's survivor, is eligible for benefits if:

1. the employee developed a cancer after beginning employment at a DOE or an atomic weapons facility;
2. the employee's cancer was at least "as likely as not" related to this employment, in accordance with guidelines to be developed that are based on a number of factors, including the employee's radiation dose, calculations using radio epidemiological tables, the type of cancer, past health-related activities, and other relevant factors; and
3. the employee is or was disabled by or died from the cancer.

Silica-Related Disease or Special Exposure Cohort: These benefits appear tied to employees of facilities outside of Colorado, although additional classes of workers can be added to the Special Exposure Cohort based on a recommendation of an independent Advisory Board on Radiation and Worker Health appointed by the President.

Uranium Miners: Certain uranium miners in Colorado who have received lump sum payments under the Radiation Exposure Compensation Act (RECA), or their survivors, are entitled to receive an additional \$50,000 lump sum payment and payment of future medical expenses for the cancer for which RECA benefits were awarded.

Other Occupational Disease: DOE contractor employees with occupational illnesses arising from exposure to a toxic substance at a DOE facility can apply to the DOE's Office of Worker Advocacy for help in obtaining State workers' compensation benefits. (The original versions of this act intended that employees who contracted *other diseases* {not beryllium, or listed cancers, etc.} apply for state workers' compensation, but the final version appears to allow benefits from both sources.) Under this effort, the DOE would forward a worker's application to an independent panel of physicians appointed by the Secretary of Health and Human Services. The panel would determine whether the employee's illness or death was due to exposure to a toxic substance at a DOE facility. Based on a determination of work-relatedness, the DOE Office of Worker Advocacy would assist the employee with a State claim for benefits, and to the extent provided by law, direct a contractor not to contest claims before the State. (Under the context of the Act, these occupational diseases should be limited to those resulting from toxic exposures. However, it can be argued that this applies to any occupational illness.)

Implementation: Based on discussions with DOE staff, the Act will be implemented with involvement from three federal departments. The Dept. of Labor will be responsible for administering benefits for disability, death and/or medical treatment for the beryllium and radiogenic cancers. The Dept. of Health and Human Services will be responsible for creating physician panels to determine estimates of radiation exposure for employees from various facilities, in addition to determining the likelihood of the employees' current illnesses as meeting criteria for "work-related" status under the definitions in the Act. And finally, the Dept. of Energy will administer the Office of Worker Advocacy, to assist workers in getting state workers'

compensation benefits. At the time of our meeting, the departments had not yet begun to coordinate implementation efforts. Nonetheless, the DOE has established a task force with state workers' compensation experts to assist in their implementation efforts, and the U.S. Dept. of Labor is at work developing a set of implementation rules.

For more information on the program and its implementation, visit the U.S. Department of Energy Web Site at www.eh.doe.gov/benefits. Jo Anne Ibarra has been appointed the Division's liason on these matters. Please direct any questions to her at 303.318.8790. Ms. Ibarra is fluent in Spanish.

ANNOUNCEMENT

Level I Physician Accreditation Seminar

The Colorado Department of Labor and Employment, Division of Workers' Compensation, will present a Level I Physician Accreditation seminar on

November 15, 2001 (Denver – Holiday Inn/Denver SE)

Level I Accreditation is for licensed chiropractors, dentists and podiatrists; however, MD/DOs may also apply. The Level I Accreditation seminar is a series of lectures and a workshop led by specialty experts on the basics of treating a workers' compensation patient. The program outlines pertinent administrative and legal aspects of the Workers' Compensation system as well as training on using the Medical Treatment Guidelines.

The fee to become accredited for the statutory three-year period is \$200, which includes the cost of the seminar or home study option. To obtain a registration form or for more information, please contact the Physician Accreditation Program at 303.318.8763.

* A home study process is available if you are unable to attend a seminar.

WORKERS' COMPENSATION FORMS AVAILABLE ON THE INTERNET

Visit our website at:

<http://workerscomp.cdle.state.co.us>

for current Workers' Compensation information.



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For More Information Contact:

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www.workerscomp.cdle.state.co.us

Given the grade "A" by the professional journal,
Workers' Compensation Policy Review.



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A note on file formats:

Some documents on this site are in PDF format and require a one-time download of [Adobe Acrobat Reader](#) to view and print them.

MISSION STATEMENT

The Division Workers' Compensation provides state of the art information to enable injured workers, employers, insurance carriers and self-insured employers to comply with the statutory requirements of the Workers' Compensation Act and to encourage safety on the job and containment of costs, and when injuries occur, understand fair, useful and efficient processes of resolution at a reasonable cost.

INTERVIEW

The Division of Workers' Compensation is a Colorado state agency that administers the mandatory workers' compensation program. The Division provides information to the public to help them understand the workers' compensation system, provides dispute resolution services, and enforces compliance with the laws and rules of workers' compensation.

Customer Service is always available for general questions about the workers' compensation system such as:

How to file a claim.

- Injured workers' rights and obligations and follow-up of their claim.
- Employers obligations under the law regarding insurance, where to purchase insurance, filing claims for injured employees and responsibilities as employers.
- Procedure for insurance companies on handling claims.
- Responsibilities of medical professionals, medical fee schedules and billing requirements.
- Information for employers seeking to self-insure or implement safety and loss control programs that lead to a certification for reduced premiums.

The Division provides a variety of services including Dispute Resolution, Claims Management, Premium Cost Containment Certification, Research and Statistics, Self-Insurance, Medical Cost Containment, Medical Services Delivery and Coverage Enforcement.

Our website may provide answers to some or all of your questions; however, if you need additional information, please contact us by calling the number provided on this page.

Publications Available From The Division of Workers' Compensation

The following publications are available from the Division of Workers' Compensation. They are available on our internet site at: <http://workerscomp.cdle.state.co.us> , or by contacting our Customer Service Unit at 303.318.8700.

- ◆ *Workers' Compensation Guide for Adjusters*
- ◆ *Workers' Compensation Guide for Employees*
- ◆ *Workers' Compensation Guide for Employers*
- ◆ *Essentials of the Workers' Compensation Premium Cost Containment Program and Employer Certification*
- ◆ *Workers' Compensation Loss Prevention and Loss Control Program Manual*
- ◆ *Self-Insurance Information and Application*
- ◆ *Workers' Compensation Act*
- ◆ *Dispute Resolution Services Brochure*
- ◆ *Overview of the Division of Workers' Compensation*
- ◆ *Colorado Work-Related Injuries*
- ◆ *Introduction to Workers' Compensation Video*

Brochures Available

- ◆ *Insurance Requirements Brochure*
- ◆ *Communications Unit*
- ◆ *Electronic Data Interchange*
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