



All About Claims

COLORADO DIVISION OF WORKERS' COMPENSATION

ISSUE 3 |

MARCH 2011

SPECIAL POINTS OF INTEREST:

A few pointers on
Division IMEs

Regional seminars
planned by DOWC

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A Tribute to a Life of Service

Judge Ron Jaynes remembered

Ron Jaynes, who last served as Administrative Law Judge for the Division's Prehearing Conference Unit, passed away on Friday February 4, 2011. Prior to retiring in 2009 for health reasons, he graciously agreed to an interview for the employee newsletter.



Ron Jaynes

A former CDLE Division Director and precedent-setting defense attorney, Jaynes was a co-author of *Colorado Workers' Compensation Law and Practice*. The judge responded to interview questions without pretense or apology—on a major league career spanning nearly half a century.

Can you tell us a little about yourself and what led you to the practice of law?

I was a drill instructor in the Marine Corps but I wasn't mean enough to be a drill instructor, so I went to naval justice school and became a court reporter in court marshals. I decided I could do as well as the lawyers that practiced there which for the most part, were not very good, so that encouraged me to go to law school. I graduated from CU Law in January of 1960.

Many of your fellow employees are not aware of the fact that you were Director of this Division in the seventies. What were some of the major issues you faced during that time?

I was Director from 1973 to 1975, and that wasn't this division that was the Division of Labor, and Labor had workers' comp and COSH (Colorado Occupational Safety & Health); boiler inspection and oil; apprenticeship counsel; private employment agencies; minimum wage and child inspection; labor and explosives—had all those things—comp was just one of the things that we had.

The seventies brought about some major changes in the workers' compensation system—including full and final settlements and vocational rehabilitation as a benefit. What was it about that time that generated change?

You've indicated that the seventies brought about some major changes—yeah it did—60-some amendments and I drafted them all—and then I had to lobby them through—and every one went through.

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*Always walk
through life as if
you have
something new to
learn and you will.*

-Vernon Howard

DOWC Claims Training coming up...

Are you a carrier, adjuster, manager, supervisor or attorney in need of Division of Workers' Compensation (DOWC) Claims Management training? If so, please join us! DOWC classes are free of charge but registration is required. Please take a moment to review the classes offered and a general description of the topics that will be addressed.

All classes will be conducted at the DOWC:
633 17th Street, 2nd Floor (Conference Room)
Denver, CO 80202
9 a.m. to noon

COURSES:

Overview of Claims Management Process **04/18/2011**

- * Overview of Rules 5, 6 and 7
- * Detailed discussion of lump sums; recent rule changes & enforcement; practice tips
- * 2010 legislative overview of bills/laws that affected Colorado workers' compensation system & resultant rule changes
- * Questions & Answers

Lump Sums **07/11/2011**

- * Rule changes & enforcement
- * How-to clinic/practice tips
- * Questions & Answers

Role of the Claims Management Unit **10/17/2011**

- * Comprehensive review of the DOWC Claims Management Unit and the Claims Management Process

Claimant Clinic **11/07/2011**

- * Discuss Basic Claims Process (DOWC Desk Aid DK9)
- * Review Employee's Guide (DOWC Publication)
- * Questions & Answers

[CLICK HERE](#) to access the registration form.
Instructions are included.

We look forward to seeing you!

Please contact DOWC Claims Managers **Joyce Meaux** at (303) 318-8615 or **Jackie Martinez Jepkes** at (303) 318-8768 for additional information. You may also contact Joyce and Jackie by e-mail at DOWC.Claimstraining@state.co.us.

Ron Jaynes

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It was probably the first time we had a conference with labor and management; and each amendment I put on a separate piece of paper—and I put in some that I knew nobody'd want—because we had to throw some out.

We met all day and into the night over at 200 E. 9th. Chuck De Moulin was in the legislature in the business affairs and labor committee, and he carried the bill. He went before the committee and he said, 'This is a consensus bill. Labor and management have all signed off on it and I've got all their signatures'—I made them sign every piece—'and I suggest you just pass it out.' They did, with virtually no debate. It was monumental.

- The automatic change in the compensation rate each year was drafted in—because we had to go to the legislature every time we wanted a raise and they'd battle it out for hours—over \$5.00—so we decided we didn't want to do that anymore, so that came in along with a whole bunch of other things...
- Before 1975—fatalities were [compensated for only] six years—that's all—and we created lifetime benefits for widows and widowers.
- There was no Voc Rehab—that came in.
- Under the Occupational Disease Act (OD), a permanent total was [paid for a maximum of] six years, and that didn't make any sense. If you were injured in an accident you got lifetime benefits—but not in an OD case—so we changed that. What we actually did was to move the Occupational Disease Act into [workers'] comp to make them virtually the same—because it didn't make any sense that they weren't.

What else do you recall about that time?

What used to drive me absolutely bonkers was that every other agency of the state impacted my division—if I wanted money I had to go to the legislature; if I wanted to buy something, I had to go to [state] purchasing; if I wanted to sell something, I had to go to excess property; if I wanted to hire somebody, I had to go to [state] personnel. So I decided—I'm not running this agency, everybody else is—so I put in my resignation and I went into the office and told my secretary, 'I have a lot of paperwork so I'm out to anybody but my wife or the governor.' Within 30 minutes my wife called. Within another 30 minutes the governor called. And he placed his own call. And he said, 'I understand you're leaving us?' And I said, 'Yessir,' and he said, 'I'd like to talk to you.' So I went over 7 o'clock the next morning and he spent two hours trying to talk me out of leaving. And he knew [Governor Richard Lamm] I was a Republican and it didn't matter. He liked me and he knew labor liked me but I told him the same story and I think they made some changes, I mean—do we now have our own personnel and purchasing? I used to have to go state-wide.

I put in my resignation and I went into the office and told my secretary, 'I have a lot of paperwork so I'm out to anybody but my wife or the governor.' Within 30 minutes my wife called. Within another 30 minutes the governor called. And he placed his own call.



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What are some of the accomplishments, either personal or public, of which you are most proud?

I still feel the major changes to comp in 1975 [were important] because they really changed the law significantly...

And another thing that's kind of interesting when I was Director...Tom De Marino came to me and he said: "Ron, I want to settle this case."

And I said, "Tom, we don't settle workers' comp cases,"

"Well, we should."

'Well, what's your authority?' I said. And he said, "The statute says: 'no settlement is good unless approved by the Director'—so obviously, the Director can approve a settlement."

'OK—what you got?' I said.

"I have this permanent total—George Ashen is on the other side—we are in agreement. I want to pay \$25,000.00 for a full and final settlement."

'That's not much for a permanent total—'

"Actually, it is. His comp. rate is \$49 a week and with his Social Security [offset], he's getting about five bucks a week,"

'Where do I sign?' I said.

That was the first workers' comp. settlement in this state—and think of how many we have now. They have proliferated. If we weren't settling all these cases, we'd have to have three times the judges we do.

You have been credited with the advent of the phrase: "idiopathic fall." What is it, how did it come about and what is its significance?

"Idiopathic" means personal—something that is personal to you such as a stroke that isn't caused by the job. If you're up on a ladder and you have an idiopathic fall it's compensable because of positional risk—but on level floor—it's different. I had the first case. It was in the mid-1970s and involved Gates Rubber Company. This guy was at work and had a seizure. He wasn't able to break his fall, struck his head and died. I represented Gates and it was properly denied. Gordon Jorgenson heard the case and he compensated it. His theory was that the concrete floor created a positional risk. I disagreed.

Interestingly, it took almost 10 years for that case to wind through the courts. The reason was that Director Jurita Smith got wind of the case and called me and said, 'I want you to appeal that case because I think it's wrong.' I said, 'I think it's wrong too.'

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"If we weren't settling all these cases, we'd have to have three times the judges we do."



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But that was a bad thing because you had to go to the Industrial Commission twice. And so the claimant attorney came in and moved to strike my appeal. I became a witness and had to withdraw. I gave the case to Larry Blackman who fought it and fought it and fought it and finally prevailed. It was about 10 years. The claimant attorney died in the mean time.

The court adopted the phrase “idiopathic fall”—and indicated that this could have happened anywhere—crossing the street, at home, etc.

After 48 years in the practice of law, what keeps you in the game?

It’s too late to learn something new and I’m too poor to retire.

What do you like about working in the public sector?

I have a desire to perform public service—I actually do. I find the people here are hard working and competent. Before I came to work for the state I thought all state employees were lazy, but they’re not—and I think they may work much harder than a lot of people in the private sector.

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L to R: Claimant Attorney Neil O’Toole, Judge Jaynes, and Respondent Counsel Katherine Lee



A few pointers from the Division IME Unit....

Follow-Up DIMEs

Remember these occur when the DIME doctor has placed a claimant 'not at MMI,' and the claimant is then returned to the authorized treating physician for more treatment. Generally the claimant is returned to the DIME doctor after the ATP determines that the claimant reached MMI. Rule 11-7 requires that "the party requesting the follow-up appointment shall provide written notification on a Division-prescribed form." (Form WC178). The burden for requesting the follow-up exam generally falls on the respondent, *Williams v. Kunau*, 174 P.3d. 33, 35 (Colo. 2006). It is important to remember to file that form with the Division, with a copy to the claimant, so that the Division IME unit can prepare the appropriate notification to the DIME physician and expect a follow-up report. For further guidance also see Director's Interpretive Bulletin 11A (March 2006).

And, some clarification on the second paragraph of Rule 11-7: "A return visit for range of motion shall be considered part of the initial IME [A]ny additional fees required for repeat range of motion shall be paid by the party that requested the IME." This language is intended to distinguish a routine return-for-repeat-ROM visit from a true, more substantial follow-up examination. If a DIME physician is not able to complete ROM on a claimant, or the findings at the first visit were invalid, the claimant must return for repeat measurements. In this instance the doctor has not yet completed his/her report of the first examination; therefore that additional ROM exam "shall be considered part of the initial IME" – and form WC178 is not needed. The party paying for the DIME must also pay for this return visit per the schedule shown in this same section 11-7, "99241 Follow-up for repeat Range of Motion Measurements" (currently \$115.44).

Agreed-Upon DIMEs

The statute and the rule encourage the parties to agree-upon a DIME physician in lieu of pursuing the 3-physician panel selection process. Remember that the Division IME unit must still receive a copy of the DIME Application form (with the name of the doctor included) and be notified of the appointment date in order to send the physician the appropriate notice and forms prior to the appointment.

The Division IME unit can provide a copy of a current list of DIME physicians; call our office at 303-318-8655.

DIME Doctor "Inventories"

A DIME panel physician has the discretion to designate or limit the parts of the body and/or medical conditions for which he/she will or will not perform impairment ratings. These specifications are factored in to the designation of the physicians selected for the 3-physician panel for each DIME. A compilation of each physician's "inventory" is available on the Division's website. From the DOWC main webpage, under Insurance Coverage Information, click on "Assorted Listings/Databases," then click on the item "Independent Medical Examination Physician Listing." Please note that some physicians may be listed even though they are no longer active on the DIME panel.





Division of Workers' Compensation Regional Outreach Seminars ...coming to an area near you!

Great for:

Medical Providers | Claimants | Claimants' Attorneys
Employers & Self- Insurers | Adjusters | Insurance Representatives & Attorneys

In an effort to continue the “conversation” that began last year with our 1st Annual Workers' Compensation Educational Conference, the Division of Workers' Compensation is planning an informational outreach to practitioners in the Western, Southern, and Northern regions of the state.

Our purpose is to increase dialogue by offering topics relevant to local practitioners within the Workers' Compensation community, in addition to making attendance easier for residents who live outside the Denver-metro area.

Each session of topics will vary from place to place—you'll want to attend them all! The Regional Outreach will consist of 1 day with 4 topics of interest, including 1 topic revolving around local practices and procedures. Look for more information to come, including specific locations and topics! If you would like to contribute ideas on topics that you would like to see, we would be glad to take your suggestions into consideration!

Changes to Rule 17: Medical Treatment Guidelines

Director Paul Tauriello adopted Exhibit 5: Cumulative Trauma Conditions (CTC) Medical Treatment Guidelines on September 16th, 2010. The guidelines went into effect on October 30, 2010. It is important to note that Exhibit 5 replaces two other guidelines: Carpal Tunnel Syndrome and Cumulative Trauma Disorder. Guidelines for carpal tunnel syndrome have been incorporated into the Cumulative Trauma Conditions Medical Treatment Guidelines. The Medical Treatment Guidelines are located on the following website: [DOWC: Medical Treatment Guidelines](#). For further information, please contact **Barbara Fahmy** at (303) 318-8760 or **Kathy Villa** at (303) 318-8766.



Colorado Department of Labor and Employment

Division of Workers' Compensation

Communications Unit

633 17th Street, Suite 400

Denver, CO 80202-3660

Web: www.colorado.gov/cdle/dwc

Excerpt from a letter to state employees dated 2/1/11:

We are committed to redefining good government. We know our daily work must be effective, efficient and elegant.

Specifically:

- **Effective.** Are we getting done what we need to? Do we have the same priorities as the people of Colorado? We need to look at outcomes to judge whether our programs are successful.
- **Efficient.** Services should be timely and cost-effective. We will measure everything in order to become more efficient. We will eliminate waste and duplication wherever we find it.
- **Elegant.** When we say elegant, we are not talking about fashion. We are talking about the delivery of state services in a way that elevates you and the person receiving state services. When someone applies for a license or inspection they shouldn't feel disrespected by the interaction, and neither should you. This is the essence of customer service.

Governor John Hickenlooper

DID YOU KNOW...

When there is a change in an insurer or a designated third party administrator, Workers' Compensation Rule of Procedure 5-13 requires that the insurer or third party administrator provide the Division with a list of all claims affected by the change within 30 days. Failure to comply with this rule subjects the insurer and administrator to penalties of up to \$1000 per day for each day's violation. Please take time to review Rule 5-13:

5-13 INFORMATION ON CLAIMS ADJUSTING

Every insurer, or its designated claims adjusting administrator; shall provide the following information on claims adjusting practices to the Division:

(A) The name, address and telephone number of the administrator(s) responsible for its claims adjusting. This information shall be provided upon request or within 30 days of any change in the administrator(s) or the geographical location of the administrator(s). Notice of such change shall be provided in writing to both the claimant and the Division. Notice shall include the name, address, and toll-free telephone number of the claims administrator(s).

(B) A list of all claims established with the Division that are affected by the change described in the preceding paragraph. The list shall include claimant name, social security number, date of injury, insurer's claim number, and worker's compensation claim number, if available.

(C) Upon request of the Director, any or all records, including any insurer administrative policies or procedures, pertaining to the adjusting of Colorado Workers' Compensation claims. This authority shall not extend to personnel records of claims personnel. All documents shall remain confidential.

For a current list of Accredited Physicians...

Find it on the Division's website at:

www.coworkforce.com/dwc/physicians/default.asp

All About Claims

is a newsletter published by the Division of Workers' Compensation Communications office and is designed to provide information to claims handlers. Please send comments or suggestions for future topics to Lise Maes by e-mail at lise.maes@state.co.us.