

## WORKERS' COMPENSATION - CLAIMS HANDLING 101

By: Everette Lee Herndon, Jr.

The philosophy behind and the purpose of the enactment of the worker's compensation statutes in the various states was, and still is, to promptly provide benefits to an injured employee for covered and compensable injuries with a minimum of delay and hassle. Worker's compensation claims should be handled with the aim of providing benefits promptly and fairly unless and until the facts demonstrate that the claim should be denied. In most states, in exchange for the prompt payment of compensation, workers gave up many common law remedies. The employers gave up common law defenses such as contributory negligence of the employee, negligence of a co-worker, etc. The worker's compensation system was not set up to be an adversarial system and should not be used as such.

The American Educational Institute, Inc. (AEI), a nationally recognized insurance industry educational organization, provides certification as a Workers' Compensation Claim Law Associate. One of the textbooks in the AEI program is **Introduction To Worker's Compensation: Origin and Development**. The textbook, page OD 23, states:

*“CONSTRUCTION OF STATUTES: Workers Compensation Statutes have been described as social legislation. As such they have been construed liberally in the courts to achieve their social purpose - to secure reasonable monetary compensation for injured workers without the expense, delay and uncertainty encountered in the judicial system.*

*As a California court put it in Hutchinson v. Workers' Comp Appeals Board, 209 Cal. App. 3rd 372 (1989):*

*The underlying policy of the workers' compensation statutes and their constitutional foundation as well as the recurrent theme of countless appellate decisions on the matter, has been one of pervasive and abiding solicitude for the worker.”*

Another one of the AEI texts in the AEI certification program is **The Course and Scope of Employment in Workers' Compensation**. This text is also used nationally to educate workers comp adjusters and others. See page CO 83:

### ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT DEFINED

*“As a general rule, an injury arises out of employment only when there is a causal connection between the injury and the performance of required work. “In the course of” refers to the relationship of the injury and employment with respect to time and place of the accident or occurrence.*

*For an accident to arise out of and in the course of the employment, it should happen within working hours at a time and place where the claimant could reasonably be expected to be carrying out a task for the employer and while performing an act in furtherance of the employer's interest."*

Insurance industry standards call for the insurance carrier and their designated adjusters to adhere to the philosophy and purpose of the workers compensation statutes of the various states. Worker's compensation claims are normally handled on the basis of claims handling standards taught nationwide, unless there are statutes or case law locally that call for a modification or change.

As an example, Hawaii provides for a presumption of coverage for a worker's compensation claim unless and until proven otherwise:

*"Presumptions. In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary:*

- (1) That the claim is for a covered work injury;*
- (2) That sufficient notice of such injury has been given, . . ."*

Hawaii Revised Statutes Chapter 386-85

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## THE ISSUE OF COMPENSABILITY

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If the Employee and the activities of the Employee were in accord with the intent and philosophy of workers compensation coverage, and there is nothing in State statutes or case law

that speaks to the contrary, there would no reasonable basis for Insurer to contest the compensability of the claim

An adjuster, especially a workers' compensation adjuster, has a non-delegable duty to reasonably and objectively review all reasonably available information and form an objective and unbiased decision about coverage and benefits.

**The Claims Environment** (by: James Markham, Kevin M. Quinley, Layne S. Thompson, First Edition, 1993) states on page 29:

*“An investigation must often be undertaken to fully develop the facts needed to determine coverage. Good faith claim practices require that this investigation be objective, thorough, and timely.”*

The Insurer is, of course, free to investigate further if they have any reason to question the compensability of the reported injury. The investigation should be done promptly. If the Insurer fails to conduct any investigation to counter the presumption of compensability, the Insurer has no basis for contesting compensability.

A workers compensation claim is generally considered and handled by the insurance industry as a first party claim by the employee. **The Claims Environment**, on page 19, states:

*“Claim representatives handling first-party losses should promptly pay all amounts they know the insurer owes and should negotiate in a forthright, honest, and flexible manner over any amounts that are in dispute.”*

An adjuster must give at least equal consideration to the interests of the injured or deceased worker as it does the interests of the employer or the insurance carrier. An adjuster should probably give the benefit of the doubt to the injured or deceased worker. There must be a reasonable investigation and a reasonable basis for denial before the Insurer can deny the claim or bring up the issue of compensability. A workers' compensation claim, as with any first party claim, should be denied only when there is sufficient evidence of non-compensability.

The Insurer should implement or utilize reasonable standards for the proper investigation of the claim. The Insurer's adjusters, and the Insurer's attorney, should be properly trained and educated as to the need to quickly resolve any issues of compensability.

The Insurer should objectively, thoroughly and timely investigate the claim prior to denial. The Insurer should adhere to the insurance industry standard and the intent and spirit of the State system. For purposes of adjusting a workers compensation claim the claim should probably be presumed covered until proven otherwise.

DUTIES AND STANDARDS

- \* In a first party claim the adjuster's job includes assisting the claimant with the claim.
- \* A claim should be investigated promptly and objectively.
- \* If there is an issue or question of coverage or compensability it should be investigated immediately and resolved quickly, normally within a few days, or a week at most.
- \* A claim should be evaluated promptly and objectively.
- \* The benefits due on a workers comp claim should be established quickly.
- \* An insurer should give at least equal consideration to the interests of a first party claimant as it gives to its own interests.
- \* Undisputed amounts should be paid quickly.
- \* If benefits are due, payments should be started quickly to the proper recipient, normally within a couple of weeks, at most.
- \* An insurer must have a reasonable basis, and proof, before it can deny a claim.

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