

Workers compensation problems



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14 February 2010 The workers' compensation system was created to protect the injured worker; however workers are treated unfairly, refused services, and subjected to additional stress. The workers' compensation system was created to protect the injured worker, or that is what the government had intended it to do. It is the oldest social insurance program, and it was adopted by most states in the second decade of the 20th century.

When this system was set up it was to insure the injured workers so that they would be entitled to certain benefits through a workers' compensation insurance company no matter who caused the injury. The system was meant to be a tradeoff between the employee and the employer. The agreement was that the employee would receive benefits no matter whose fault the accident was, in return the employer could not be held liable for the injury even if their negligence caused the injury. Before this system was developed, an employee could sue an employer for on the job injuries.

In return, the employer would try to prove that the employee was negligent, or that the employee was not performing their job properly when the injury occurred. This was time consuming process for all parties. Now, both parties have disputes over other issues, such as whether the injury happened while the employee was on the job, or how much in benefits the employee is entitled to receive. These benefits are not necessarily fair, so even though it was designed to protect the employee's it actually protects the employer and the insurance companies more by limiting their legal liability and obligations.

The system is very complicated and if a person is not familiar with the rules and procedures, they will probably not be treated fairly. This is the point where the injured worker needs to contact an attorney who knows how the workers' compensation system works and is willing to fight for the workers' rights. The laws in most states limit a claimant's legal expenses to a certain fraction of an awarded amount, which ranges from as low as 11% to as high as 40%, but the attorney can only collect if the claimant is successful.

A passage from the book, *Take Charge of Your Workers' Compensation Claim*, written by Christopher A. Ball, and Bethany K. Laurence, states, "I have yet to talk to an injured worker who felt that the workers' compensation laws were fair or adequate" (1). The injured worker is only allowed 66 2/3 % of the state wide average weekly wage. This is a little over half of what an injured worker would make if he was still able to work, and he has no chance for raises or bonuses. That is a big life style change for many workers and their families, not to mention having to deal with limitations caused by their injuries.

The injured worker is allowed medical benefits for their work related injury only. The employer will also offer to let the injured worker cobra their insurance if they are off for an extended amount of time, but most injured workers cannot afford to cobra the insurance with what workers' compensation pays them. This means they are without any health insurance, not just for themselves but for their families too, until they are able to return to work or can get on Medicare for their disability. If a death occurs due to a work related injury, it's not much different.

A small burial expense is paid, the maximum being \$2000.00. In addition to the burial, the deceased's dependants will receive support payments for a period of time. The amount depends on how many dependants. The spouse and children can receive 35% of the average weekly wage of the deceased and 10% of such wages are allotted for each child. If the deceased's spouse dies or remarries the children's share will increase to 15%, not to exceed $66\frac{2}{3}\%$ of the deceased's average weekly wage or the weekly maximum.

This may seem like a pretty reasonable amount but it's not when the family of the deceased has lost a loved one and the living spouse is left to try to support the family alone. This is just a portion of the struggles that the injured worker or their spouse has to deal with, there are more, including, the primary doctor may decide that the worker is able to return to work under light duty, while the injured worker may not feel that he or she is able to perform the work; the worker has no choice except to at least try to return to work.

If he has shown he has tried and cannot perform light duty work, the case will have to be re-evaluated by the workers' compensation insurance. Plus, the employer may decide that there are no modifications that can be made to the job description so the worker may not have a job, even if he is willing to try to return to work. Unfortunately, there are no laws that require an employer to make modifications to the worker's job description. This is where another one of the alleged benefits comes in to play.

If the worker is not able to go back to work earning the same income as before the accident, workers' compensation insurance will offer to send the

injured worker to a vocational expert. The vocational expert will try to help the worker learn new skills that will not complicate the existing injury.

However, this does not benefit all injured workers; some are not able to return to any kind of work because of their injury or medications that they are required to take. Besides dealing with the things listed above, the injured worker also has to content with being refused certain medical services.

The insurance company may refuse to pay for additional testing or medications, because they say it is not related to the injury sustained at work. According to J. Bradley Baker, Attorney of Law's website Feb. 2010, "Often times a workers' compensation carrier will admit that you have suffered an injury to one part of the body but deny other legitimate injuries." The carrier can require the injured party to get a second opinion from one of their chosen physicians if they believe it is not related to the initial injury, or they may just refuse medical service.

They also may refuse to pay for certain medications, for the same reason. This is where the workers' lawyer will need to step in. Mr. Baker also states on his website that often people have an injury that causes additional problems with other body parts, or pain they may cause additional problems for the worker including psychological problems, if this happens it should be reported to the medical professionals that are treating you immediately, even if the workers' compensation carrier refuses to acknowledge these problems.

The reason the carrier will try to refuse these services is because when it's time to do a disability impairment on the injured worker, the more areas of

the body that have been affected by the injury, the higher the disability impairment will be, the more they will have to pay out to you for a whole body impairment settlement when the time comes. They does not care that some of these other medical problems could be life threatening, it would be less expensive for them to pay out death benefits , than to continue paying medical expenses as well as having a expense for a disability impairment settlement.

When you have to deal with all of the problems with workers' compensation that are listed above, it adds more stress on the already overwhelmed injured worker and their family. This stress leads to additional problems, both physical and mental. When you have been injured and it causes limitations on your everyday life, not to mention trying to cope with the pain from the injury, and having to worry about how the bills at home are going to get paid while you're not able to work it takes a very strong person to handle all of these problems. There is also the factor that you may not be able to return to work.

Contributing to these problems the workers' compensation carrier may want to send a nurse that work for them with you to your doctors' appointments, and having them questioning everything the doctor says. The patient is not legally required to let the case nurse in the examining room; they can sit out in the waiting room until they get called back. The carrier will also hire a private investigator to sneak around and try to get pictures of the injured worker doing something that the insurance can use against injured worker to prove they are faking their injury.

This leaves the injured worker feeling like they are under constant surveillance. On the website Feb. 2010, there is an article called, How to Deal with the stress of Workers' Compensation, by Amy Smart, Ms. Smart states, " Being on Workers' Compensation can be hard on a person. Especially, when it feels that nobody is on your side. I know some people have suffered from Anxiety Attacks from being on Workers' Compensation, because of everything that goes along with it. Mostly, people get depressed on Workers' Compensation because they are hurt, out of work, and deal with these issues. Dealing with Workers' Compensation, in addition to being in mental and physical pain takes its toll on person already having to cope with the loss of a job and mounting up bills. This system was set up with good intentions, to protect the injured worker, but it has failed in the most important areas. The government needs to look at this system and take into consideration how all of these things affect the injured workers' and their families. It's not just about the insurance carrier and how much money they can save, it's about lives of innocent people and victims of a corrupt system.

These people did not ask to be hurt; but they have to deal with the consequences of whatever or whoever caused the accident they want compensation so they can provide for their families. I know that there are some that abuse the system but not everyone that is injured is faking their injury just to get a settlement. There are some who have serious injuries and they need protection from this system. In some cases the employers are negligent and should be held responsible. The insurance carriers need to realize not everyone is trying to cheat the system by collecting benefits that they are not entitled to.

There are some who have serious injuries that have led to other complications, such as depression and psychological problems. The insurance companies also need to realize that the injury workers are having to deal with a life changing process and do not need the extra stress that they put them through by refusing medical services or medications, that have been proven to be related to the initial injury. It would probably be a different outcome if the case workers found themselves injured and were left to try to get help from a system they are trying to protect. Works Cited: Ball, Christopher A. , and Bethany K.

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