

Program Performance: Case Studies 2011

Union Construction Workers' Compensation Program

1. In July 2009 a roofer drove his personal vehicle to a job site at an airport. When he stepped out of his truck onto the flat surface of the parking lot he felt pain in his low back. The employer completed and filed a first report of injury. The insurer got all the medical records as part of the investigation, but then denied the claim. The records disclosed a significant history of back problems dating back to 1993, so the insurer doubted that exiting a truck could cause the back condition, and the current need for treatment and disability. Secondly, the insurer denied that the act of getting out of a truck onto a flat surface was a work-related event covered by workers' compensation insurance.

The employee called the Dispute Resolution Facilitator shortly after getting the denial to find out what he could do. The facilitator first contacted the Health and Welfare Fund (Fund) with the employee to get the medical treatment and disability payments covered by the Fund while the workers' compensation claim could be pursued further, avoiding any delay in treatment. The second call was to the insurer.

The insurer requested a neutral examination to determine if this incident could have even caused the current back condition. The neutral doctor reviewed the long medical history of back problems contained in the records. He concluded that the employee certainly had pre-existing back problems, but it was "plausible" that getting out of his truck could be a cause for the recent treatment and disability.

The facilitator contacted the employee, the employer and the insurer to discuss how to resolve the claim given the insurer's defenses, the neutral examiners' opinion, and the risks and expense of arbitration. After several telephone conferences with the parties and the Fund, everyone agreed to fully settle the disputed claims. The Fund and the workers' compensation insurer each paid a portion of the medical bills and disability payments, and the employee was paid for his out-of-pocket expenses.

2. A teamster was driving his truck over a railroad crossing that had no warning signals. As he began to cross he saw an oncoming train and pressed hard on the gas, but the train hit the backend of the truck. This was not the first time an accident occurred at this crossing. Miraculously he survived the accident and the multiple surgeries that followed. The medical team and the program's Qualified Rehabilitation Consultant worked closely with the employee, his family and the employer. Eventually he was released to light duty and the employer accommodated the restrictions as he progressed through work hardening. Everyone worked very hard to return him to his career, but his ability to recover reached its plateau. He was going to need a permanent job that would accommodate his permanent restrictions and medical needs.

The parties had a tearful meeting with the facilitator where an agreement was reached that would allow the injured worker to move on with his life and maintain his family's lifestyle. The employer and the employee agreed to discontinue the light duty work, but also to maintain their contact regarding his progress.

3. A pipefitter slipped in the snow at a job site landing on his right elbow and shoulder. He reported the injury immediately and the insurer accepted the claim. He continued to work light duty, and the employer voluntarily continued his wages for the three days he missed for medical appointments. The Exclusive Provider Organization's health care provider released him to full duty work after he completed treatment, and the employee returned to his pre-injury job with the employer.

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4. A bricklayer had herniated a disc in his low back in 2005 and again in 2008 while working for a participating contractor. Each time he had a surgical repair and was able to return to full duty work. Although he continued to have some pain as he did his job he managed it with stretching, ice and over-the-counter medication. Eventually he went to work for another participating contractor.

In February 2011, during a short lay-off from his “new” employer, the injured worker returned to his treating doctor to have his back checked. The doctor concluded that the back condition had degenerated to the point where additional surgery was necessary. The request for the surgery was sent to the insurer for the previous contractor, along with a medical record indicating that “an aggravation of his old injury” was the cause of his current back problem. The insurer denied the request and told the injured worker to file a claim with his current employer’s insurer.

The injured worker was certain this wasn’t a new injury, but told his employer about the situation. They were uncertain about the date of this alleged new injury and, since they had recently changed insurers, decided to file a first report of injury form with both insurers. Each insurer denied the claim pointing to the other insurer and the previous contractor’s insurer as being responsible for the claim. The injured worker called the Dispute Resolution Facilitator for help. After making contact with all three insurers to attempt resolution the facilitator set up a facilitation session.

Everyone at the meeting agreed that the injured worker’s need for treatment and disability was work-related, but none of the insurers could agree on which employer or insurer was liable when the session began. After a number of hours of discussions an agreement was reached: a Dispute Resolution Examination with a well known, highly respected back surgeon from the program’s list of neutral doctors would be scheduled to take place after the recommended surgery was performed to help resolve the issue of liability, and the previous contractor’s insurer and the current contractor’s second insurer would equally share in the payment of wage loss and rehabilitation benefits under a Temporary Order. The union’s Health and Welfare Fund agreed to pay for the medical expenses with the understanding that they would be reimbursed in full after the issue of liability was determined.

5. A laborer injured his right knee in 2008 when a ditch collapsed. The participating contractor’s insurer accepted liability for the claim, and paid for the surgery and wage loss benefits. After his recovery he returned to full duty work for a different participating contractor in 2009. After he began working for his new employer he reported that the same knee was hurting again. They filed a first report of injury with their insurer.

The insurers for both contractors denied liability and claimed the other was responsible for the new treatment expenses and potential lost time. The parties then came to a facilitation session where they agreed that a Dispute Resolution Examination would help determine who should pay for the claim. The facilitator had the parties agree on the selection of the neutral doctor during the meeting and scheduled the exam for the first possible date. The examiner’s recent report concluded that both insurers were equally responsible for the injured worker’s current condition and should equally share in paying the outstanding medical expenses.

6. A carpenter hurt his back in 2007 while lifting doors for a participating contractor. The insurer accepted liability and paid benefits. In 2008 they discontinued paying for any further chiropractic care. Nevertheless the injured worker continued to treat with the chiropractor. In 2011 the injured worker requested a facilitation to have his chiropractic treatment covered. The parties agreed to schedule a Dispute Resolution Examination.

The neutral examiner determined that the injury in 2007 was the sole cause of the injured worker’s condition, but concluded that the chiropractic treatment was not reasonable or necessary. The examiner’s opinion was that there was a disc herniation that required a trial of epidural injections. If that did not relieve the pain then surgery was likely going to be necessary.