



OIEC QUARTERLY REVIEW

April - June 2008 (Issue 10)



Dear Friends:

The Office of Injured Employee Counsel (OIEC) recently completed surveys that evaluate our employees' satisfaction with their jobs and injured employees' satisfaction with how well we do our jobs. There are some remarkable conclusions reflected in those surveys that I would like to address herein.

First of all, I would like to express my appreciation for the enthusiastic response that OIEC's employees showed by participating in the Survey of Organizational Excellence, which measures employee satisfaction. A response rate in excess of 50 percent suggests soundness; and OIEC's response rate was 82 percent. High rates also indicate that employees have an investment in the organization, want to see the organization improve, and generally have a sense of responsibility to the organization. OIEC showed strength in the areas of Strategic Orientation and Quality Construct. Strategic Orientation indicates that employees view the organization as able to quickly relate to its mission and goals and for creating programs that advance the organization. Quality Construct focuses on the degree to which quality principles, such as customer service and continuous improvement, are a part of the organizational culture.

Employee satisfaction usually indicates employee commitment and commitment usually leads to quality job performance. Our customers, the injured employees of Texas, gave us excellent marks in OIEC's Ombudsman Program Customer Satisfaction Survey for the service that we provided them. This evaluation compared Ombudsman services in 2008 against the responses from injured employees in 1997. The most recent survey results indicated an increase in the percentage of customers who felt that their Ombudsman went over their case with them, that they had enough time with their Ombudsman, and that they felt adequately prepared for their dispute hearings.

The numbers from both surveys indicate a high degree of job satisfaction and performance by our employees. We have been functional for a little over two years and have made remarkable progress. We look forward to making improvements in the months ahead and the information gathered from these surveys is critical to the agency's continued development. The leadership of the agency is charged with the responsibility to bring innovative and creative management to our job experience in addressing those areas where more progress is required.

Sincerely,

Norman Darwin, Public Counsel

In This Issue

- 1 Letter from the Public Counsel
- 2 Customer Satisfaction Survey
- 3 Professional Specialty Requirements
- 3 Question of the Quarter
- 4 Rule Updates
- 4 Agency Program Area News
- 5 Case Study: Accrued Death Benefits
- 5 Employee Spotlight

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Ombudsman Program Customer Satisfaction Survey

Each State agency is required to submit a Report on Customer Service to the Legislative Budget Board and the Governor's Office of Budget, Policy, and Planning in June of each even-numbered year as part of the State's strategic planning process (Government Code §§ 2114.001 and 2114.002).

OIEC contracted with the University of North Texas Survey Research Center to conduct the customer service survey to fulfill this requirement. Since this is the first year that OIEC has been required to submit a Report on Customer Service, OIEC chose to compare the 2008 report information to a previous survey conducted in 1997 by the Research and Oversight Council on Workers' Compensation (ROC), which is now a part of the Texas Department of Insurance, Workers' Compensation Research Group. The 2008 survey instrument is almost identical to the 1997 survey instrument so that a statistical comparison could be performed.



OIEC administers an Ombudsman Program to assist injured employees, free of charge, who choose not to hire an attorney in Texas Department of Insurance, Division of Workers' Compensation administrative dispute resolution proceedings. OIEC plans to use the results from the survey to help improve the Ombudsman Program and not for any other reason.

Deputy Public Counsel Brian White said "I believe claimant attorneys and OIEC share a common goal that can only be accomplished by working closely together-- to protect the interests of injured employees in Texas."

OIEC recognizes that there may be cases where an injured employee would benefit from attorney representation. In the event that an injured employee asks about obtaining an attorney, OIEC makes referrals to the State Bar for help in locating an attorney. OIEC considers all members of the State Bar's Workers' Compensation Section and other attorneys who represent injured employees a critical part of the workers' compensation system and recognizes that they share OIEC's goal to protect the interests of injured employees in Texas.

Of the 8,806 injured employees contacted for the survey, 1,956 interviews were completed. Two-thirds of the injured employees were between the ages of 40 and 59, and about 58 percent were male. Fifty-four percent of the injured employees had received assistance from an ombudsman and 62 percent had hired an attorney during their dispute.

Respondents were asked how satisfied they were, overall, with either their ombudsman or attorney. OIEC is encouraged that its customers feel more adequately prepared for a dispute hearing, are more satisfied with their Ombudsman, and feel that workers' compensation disputes are settled more fairly than ten years ago. OIEC attributes this success to the Legislature's and workers' compensation system participants' support and the dedication of the agency's employees.

A greater percentage of injured employees with ombudsman assistance in 2008 (66 percent) than in 1997 (60 percent) reported feeling adequately prepared for their dispute hearing. The findings were similar to those for injured employees with attorney representation (63 percent in 1997; 64 percent in 2008).

For more information on OIEC and its Ombudsman Program, as well as the results from the Ombudsman Program: Customer Satisfaction Survey, visit OIEC's website at www.oiec.state.tx.us.



Professional Specialty Requirements for Doctors in the Workers' Compensation System



Texas Labor Code § 408.0043(b) provides that certain doctors in the workers' compensation system "must hold a professional certification in a health care specialty appropriate to the type of health care that the injured employee is receiving." These doctors include those who perform peer reviews, utilization reviews, independent review (IRO) of healthcare, and required medical examinations. Designated doctors and members of the medical quality review panel are also subject to these requirements.

In the rules adopted by DWC concerning medical dispute resolution by IROs, DWC addressed the professional specialty requirement by stating that the IRO doctor "shall be a doctor who would typically manage the medical or dental condition, procedure, or treatment under consideration for review, and who is qualified by education, training and experience to provide the health care reasonably required by the nature of the injury to treat the condition until further material recovery can no longer reasonably be anticipated." DWC repeated the quoted language as the definition for "professional certification" in the preproposal draft of its enforcement rules.

The issue of what is required by Labor Code §408.0043(b) is critical. However, OIEC is concerned that the definition fails to provide sufficient guidance on what is actually required to satisfy the professional specialty requirement. In other words, OIEC believes that the phrase, "is qualified by education, training and experience to provide the health care reasonably required by the nature of the specific injury to treat the condition until further material from or lasting improvement to the injury can no longer reasonably be anticipated" fails to clearly identify the criteria to be used to determine a doctor's qualification to serve in any given role in the workers' compensation system. Our concern is heightened by an awareness of historical difficulties in implementing a requirement other than licensure in the designated doctor selection process. When the "training and experience" and "scope of practice" requirements were added to Labor Code §408.0041 (the statutory provision dealing with the qualifications required of designated doctors), the former Texas Workers' Compensation Commission ultimately issued an advisory stating that licensure and scope of practice were "synonymous" in order to make the selection process function.

The language that the doctor be "qualified by education, training and experience" appears to reintroduce a requirement beyond holding the same licensure in order to establish the qualification of a doctor to serve in various roles in the system. However, the problems that were created by the "training and experience" and "scope of practice" requirements have not been addressed. As a result, OIEC is concerned that the legislative intent of Labor Code §408.0043 may not be realized in the system.

Question of the Quarter

I fell at work and injured my back. I just found out that the insurance company is disputing that my injury happened on the job. I think I might need a hearing - can OIEC help me with this?

This is exactly the kind of situation in which OIEC can help. If you are not represented by an attorney, you can contact OIEC and explain what is happening in your claim. If OIEC's customer service representatives are unable to quickly resolve your issue, they will refer it to the Ombudsman Program.

At that point an Ombudsman will review your claim, gather information, speak with the insurance carrier, and attempt to resolve the dispute informally. If it cannot be resolved informally, then the dispute might need to go to a hearing. The Ombudsman can help you request that hearing through DWC. Once it has been set, an Ombudsman will be available to prepare you for that hearing, attend the hearing with you, and assist you during the hearing.

It is one of OIEC's main responsibilities to help injured employees resolve disputes informally or through the hearing process, so please contact OIEC if you have any questions about this.



Rule Updates



Texas Department of Insurance, Division of Workers' Compensation (DWC)
Proposed Rule Update

OIEC recently made comments to DWC's Subclaim and Enforcement Rules. OIEC staff continues to participate in workers' compensation rulemaking initiatives as part of OIEC's mission to advocate on behalf of injured employees as a class.

Adoption of Office of Injured Employee Counsel Rule 276.11

Rule 276.11, Access to Injured Employee Medical Records, was adopted by Public Counsel Norman Darwin on June 10, 2008. Rule 276.11 allows an Ombudsman to request an injured employee's medical documentation from a health care provider in order to assist the employee in the administrative dispute resolution process. The documentation shall be received within five days of the request and health care providers may be reimbursed for the copy costs from the insurance carrier. OIEC believes that having access to an injured employee's medical documentation is critical to fulfill the agency's mission to assist, educate, and advocate on behalf of the injured employees of Texas.

As a result of resources the agency received during the 80th Texas Legislature, Regular Session, 2007, §§276.2 and 276.10 will be amended in the near future. Amendments to both sections are necessary to more closely align the rules with the agency's enabling statute, Chapter 404 of the Texas Labor Code.

Agency Program Area News

Customer Service Department

The Customer Service Department is now fully staffed and all Customer Service Representatives (CSRs) are working with injured employees by telephone and in person. The construction of the call center in the Fort Worth Field Office has been completed and it is also fully staffed. The call center CSRs will assist the injured employees in the Fort Worth field office area as well as answer the statewide toll free line 1-866-EZE-OIEC (1-866-393-6432).

The Customer Service Department began an initial contact outreach program in May 2008. The CSRs contact injured employees who have filed claims within the last 30 to 60 days and explain the services that OIEC provides. The CSRs follow up by sending OIEC brochures, DWC forms, and other requested written materials to the injured employees. It is our hope that providing information and assistance to injured employees early in their claims process will help them maneuver through the workers' compensation system with fewer complications and disputes.

Ombudsman Program

"Injured Employee Services" is now the "Ombudsman Program." This change is being made to:

- Clarify the role of the Ombudsman Program;
- More closely align OIEC with the language in its enabling statute (Chapter 404 of the Labor Code; specifically Subchapter D and Section 404.151) ; and
- Ensure the Ombudsman Program's heritage and fantastic reputation continues.

OIEC will be changing its brochures, publications, and the OIEC website in the near future to reflect this change.

The Ombudsman Program consists of Ombudsmen, Ombudsman Associates and Ombudsman Assistants. Most Ombudsman Associates transferred from DWC in September 2007 and have continued their intensive Ombudsman training program. A requirement of this position is to obtain and maintain a Workers' Compensation Insurance Adjuster's License. All Ombudsman Associates who entered the program last fall have successfully completed their adjuster's license training and testing. They are on track to become full Ombudsmen by September 1, 2008. This will increase the number of Ombudsmen OIEC has to assist injured employees and will further enhance OIEC's early intervention efforts.



Case Study: Accrued Death Benefits

Jesus Ortiz, an Ombudsman Supervisor, recently assisted in a complex death benefits case in which a central issue was the carrier's liability for payment of accrued death benefits.

The employee was injured when he fell over 30 feet to the ground. He later died from his injuries. The insurance carrier accepted liability for the death, which resulted from his work-related injuries. As the employee had passed away, Jesus assisted the potential beneficiary in the claim, the deceased employee's dependent mother (he was single and had no other dependents).

There were several other issues in the case, but the main one centered on Rule 132.17 which relates to Denial, Dispute, and Payment of Death Benefits. The carrier originally disputed that the mother was the beneficiary, and that even if she was, she had not timely filed a claim for death benefits. The beneficiary's position was that the carrier, (1) did not conduct an investigation into whether there was a beneficiary to the compensable death as it was required to do, and (2) that the carrier had received notice that the dependent mother was a potential beneficiary but failed to timely dispute her claim for death benefits.

Rule 132.17(f)(2) states, "If the notice of dispute is not filed within 15 days as required, the carrier is liable for and shall pay all benefits that had accrued and were payable prior to the date the carrier files the notice of dispute and only then is the carrier permitted to suspend payment of benefits."

The result of this case was that the parties agreed that although the deceased employee's mother, the sole beneficiary, failed to timely file her claim for benefits with DWC, that she would be paid death benefits from the date the employee passed away, until the date the carrier disputed her entitlement to receive death benefits.

Jesus enlisted the help of his Regional Staff Attorney (RSA) who helped identify the applicable laws and determine the best approach to take to pursue the legal arguments. His RSA noted that "it was quite impressive how Jesus handled the whole thing: taking the initiative to enlist my assistance, persistently working the case, and effectively communicating with all parties to achieve the agreement."

It was through this teamwork that a positive outcome was attained, which resulted in nearly \$25,000 for the deceased employee's dependent mother.

Employee Spotlight



Adriana Torres is an Ombudsman Assistant in the Amarillo Field Office. The Ombudsman Assistant is responsible for helping the Ombudsman with various administrative functions as well as answering customer questions. She has been with OIEC for one and a half years and during that time she has made a very positive impact on the Ombudsman Program through her initiative and intelligence.

Her Supervisor, Janey Aguilar, has high praise for Adriana. "We had a vacancy in the Amarillo Ombudsman position and during that time, several Ombudsmen covered those hearings. Adriana adapted very well to assisting the individual needs of those Ombudsmen," she said. "She loves what she does and always gives more than what is required of her in assisting injured employees."

Although she was not born in Texas, Adriana got here as fast as she could and has lived in Texas almost all her life. Prior to working for OIEC, she attended West Texas A&M University and plans to continue with her college education.

Her two-year-old son is her pride and joy, her "sunshine on a rainy day." In her spare time she enjoys reading, cooking, arts and crafts, and anything that has to do with her son. She loves sports and is a big Boston Celtics fan.

Adriana said, "I love learning and OIEC has provided a great amount of knowledge, diversity and the ability to make a difference in people's lives. I've been able to meet a lot of wonderful people who have made my time with OIEC a great experience. I hope to continue to be a part of this great group of people and to contribute to fulfilling our agency's goals."

