

Substantial Change in Medical Condition:
a Multistate Comparison

Dana Baroni

The Research and Oversight Council on Workers' Compensation
August 2000

*Material produced by the Research and Oversight Council on Workers' Compensation
may be copied, reproduced, or republished with proper acknowledgment.*

Research and Oversight Council on Workers' Compensation
9800 North Lamar Blvd. · Suite 260 · Austin, Texas 78753
(512) 469-7811 · Fax: (512) 469-7481 · E-mail: info@roc.state.tx.us
Internet: <http://www.roc.state.tx.us>

SUBSTANTIAL CHANGE IN MEDICAL CONDITION: A MULTISTATE COMPARISON

Introduction

While an injured worker in Texas is entitled to all health care reasonably required by the nature of the injury for as long as it is needed, there are statutory limits to the amount and duration of most types of income replacement benefits for which a worker may be eligible. The Texas workers' compensation statute was carefully crafted to ensure the adequacy and equity of its benefit structure. However, there is concern that the system may not be flexible enough to provide fair compensation in cases where there is a substantial change in a worker's medical condition after a final determination of income benefits has been made. It is not known how often this situation arises in Texas nor what the overall impact to the system may be. This report seeks to describe the process by which the Texas workers' compensation system deals with substantial change of condition cases and compare this process with similar provisions in other selected states.

Background: The Texas Income Benefit System

Four types of income benefits are currently payable to injured workers:¹

- Temporary Income Benefits (TIBs) — paid during the period of temporary disability while the worker is recovering from an on-the-job injury.
- Impairment Income Benefits (IIBs) — paid to injured workers for permanent impairments according to an adaptation schedule.
- Supplemental Income Benefits (SIBs) — paid to qualifying injured workers for wage loss after all IIBs have been exhausted.
- Lifetime Income Benefits (LIBs) — paid for the life of the injured worker for specific catastrophic injuries (e.g., total and permanent loss of sight in both eyes, total and permanent loss of use in both feet at or above the ankle, etc.).

¹ Death Benefits (DBs) are also available to eligible beneficiaries in the event of a fatal work-related injury or illness.

Both IIBs and SIBs payments—by their nature provided to workers with more serious injuries—utilize an "impairment rating" given by a doctor that describes the worker's level of permanent body impairment due to the injury.² The impairment rating process begins once the injured worker reaches maximum medical improvement (MMI). MMI is the date at which a doctor certifies that the injured worker can no longer expect to heal any further, or 104 weeks after the date on which income benefits begin to accrue, whichever comes first.

After the determination of MMI, the doctor performing the examination assigns the worker an impairment rating using the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (Third Edition, Second Printing, February 1989).³ Most injured workers receive only one impairment rating. However, multiple impairment ratings are possible if the insurance carrier requests its own examination (a Required Medical Examination, or RME). Injured workers may receive impairment ratings from their treating doctor, an insurance carrier doctor, or in the event of an impairment rating dispute, a designated doctor chosen either by a mutual agreement between the worker and the insurance carrier or by the Texas Workers' Compensation Commission (TWCC).

Substantial Change of Condition in Texas

Injured workers in Texas, whose medical condition changes significantly after an impairment rating has been assigned and finalized, have no formal process available to modify their impairment rating in order to receive additional income benefits. According to TWCC Rule 130.5, once an impairment rating has been assigned, the worker and the insurance carrier have ninety days to dispute it. If neither party chooses to dispute the assigned impairment rating, it becomes final.

Insurance carriers rely on the finality of the 90 day rule in order to adequately project claim costs and reserve monies; however, many injured workers argue that ninety days is simply not enough

² The duration of IIBs payments are calculated at three weeks for each percentage of impairment (e.g., an impairment rating of nine would result in IIBs payments for 27 weeks). The amount of the payment is based on a statutorily-set percentage of the worker's average weekly wage prior to injury. For workers with an impairment rating of 15 percent or higher, SIBs may be available once IIBs payments cease. SIBs may continue until the employee returns to work earning at least 80 percent of his or her pre-injury wage, or until the statutory limit of income benefits has been reached (401 weeks).

³ See TWCC Rule 130.1(c)(2). Starting on or after October 15, 2001, all new impairment ratings (i.e., where there is no previous MMI date assigned to the workers prior to October 15, 2001) will be assigned using the fourth edition of the *AMA Guides*. If a previous MMI date does exist for an injured worker prior to that date, subsequent impairment ratings will be based on the third edition, 2nd printing.

time ensure that a worker's physical condition is stable. TWCC argues in favor of the 90 day limit, stating that allowing an impairment rating to be revisited after the 90 days may discourage doctors from assigning an appropriate impairment rating initially.⁴

Although the Texas workers' compensation system does not provide a process by which an injured worker can establish a change of condition, the TWCC Appeals Panel has made exceptions in the past in certain instances. In a recent court case, *Rodriguez v. Service Lloyds Insurance Co.*, 997 S.W.2d 248(Tex.1999), the Texas Supreme Court ruled that, while there were instances where the TWCC Appeals Panel decided the 90 day limit did not apply, the issuance of an Appeals Panel decision was not the proper process to amend a rule. In response to the Supreme Court's ruling, TWCC adopted Rule 130.5(e) which established limited exception to the finality of the 90 day rule. Rule 130.5(e), as modified, reads as follows:

Rule 130.5⁵

(e) The first certification of MMI and impairment rating assigned to an employee is final if the certification of MMI and/or the impairment rating (IR) is not disputed within 90 days after written notification of the MMI and IR is sent by the Commission to the parties, as evidenced by the date of the letter, unless based on compelling medical evidence the certification is invalid because of:

- (1) a significant error on the part of the certifying doctor in applying the appropriate AMA Guides and/or calculating the impairment rating;
- (2) a clear misdiagnosis or a previously undiagnosed medical condition; or
- (3) prior improper or inadequate treatment of the injury which would render the certification of MMI or impairment rating invalid.

As currently written, this rule does not specifically address those instances in which the injured worker's condition has either deteriorated (i.e., the worker's condition is worse than it was previously for the same injury) or improved outside of the restrictions laid out in Rule 130.5(e). Notably, the rule does not make reference to the term "substantial change of condition." It may, however, provide some framework for clarifying and identifying cases involving significant change in condition. In a response to comments on the proposed amended rule, TWCC asserted that a "substantial change in condition" is provided for under "a previously undiagnosed medical condition" in 130.5(e)(2)

⁴ See response to public comment, *Texas Register*, January 11, 1991.

The purpose of this paper is to explore the process, extent and nature of the provisions for change in condition in other states. A second phase project will develop a set of working definitions for “substantial change of condition” as well as a framework for data collection to estimate the potential impact of different benefit scenarios.

Method

In order to assess how other state workers’ compensation systems handle substantial change in condition issues, Research and Oversight Council on Workers’ Compensation (ROC) staff conducted a survey of administrators at selected state workers' compensation agencies. The states surveyed included Arkansas, California, Colorado, Florida, Iowa, Kentucky, Minnesota, New York, and Oregon. These states were picked based on criteria involving compatibility with the Texas system, uniqueness, and innovation. The survey included questions regarding:

- how or whether these states defined “substantial change in condition” or a “reopening of a claim;”
- statutory and/or regulatory eligibility requirements and barriers;
- whether improvement as well as deterioration in a worker’s physical condition was considered;
- the process of reopening a claim; and
- controversies, if any, surrounding the substantial change in condition issue.

State agency administrators were also asked if they collected any data on the percentage of workers who qualified as having a “substantial change in condition.” However, none of these states reported that they capture sufficient data to estimate the impact of these requirements.

Results

All nine states have a formal process by which an injured worker could reopen a claim, based on a “substantial change in condition.” Typically, an injured worker must provide medical evidence to support a substantial change of condition claim and barriers may exist in situations where the worker is involved with a lump sum award, court settlement, or a period free from medical treatment. States differed on whether the reopening of the claim was an administrative or court driven process, as well as the timeframes involved in the reopening of a claim. In cases of

⁵ Effective date: March 13, 2000.

reopening a claim, several states allowed for both the increase and decrease of income benefits based on whether an improvement or deterioration in the worker’s physical condition occurred. In those states that allow both an increase and decrease in income benefits, either party (injured worker or insurance carrier) can request a claim to be reopened.

Definitions and Evidence

As seen in Table 1, each of these states has terms in its statute referring to a change in medical condition as a result of a work-related injury. Importantly, the burden of proof rests with the injured worker who must supply medical evidence to substantiate a change in condition claim.

Table 1: Definitions and Type of Evidence Required to Indicate Substantial Change in Condition, Texas and Other States

States	Definitions	Type of Evidence
Arkansas	change of condition	medical evidence from treating or Independent Medical Examiner (IME) doctor
California	increased disability	medical evidence
Colorado	change of condition	medical evidence
Florida	change in condition	medical evidence
Iowa	substantial change in condition	medical evidence
Kentucky	a change in disability	medical evidence
Minnesota	substantial change in condition	medical evidence from treating or IME doctor
New York	a change in condition based upon an unanticipated medical condition, new or increased symptoms, or an over-all worsening of disability	medical evidence
Oregon	aggravation or worsened conditions	medical evidence
Texas	substantial change of condition	N/A

Source: Research and Oversight Council on Workers' Compensation, 2000.

Note: In Texas, “substantial change of condition” is not defined in the statute or rules. Medical evidence may be used by injured workers and carriers to dispute the date of MMI and/or the worker’s impairment rating under Rule 130.5.

Time Limitations

With the exception of Minnesota, all of the states examined for this report place a limit on the allowable timeframe in which a claim can be reopened (see Table 2). Minnesota has a lifetime limitation allowing a claim to be reopened until the worker dies. Other states either use a limitation from last benefit payment award date, from date of injury, or both. For those states that use both, the rule generally allows the longer timeframe of the two to apply. Florida not only uses a period from last benefit payment (2 years), but also includes a period from last benefit rejection (also 2 years), which lengthens the overall time period for reopening a claim.

After Minnesota, New York had the longest time limitation for reopening, 18 years from date of injury and 8 years from last benefit; however, there is a clause in its statute that states no claim can be reopened until 7 years after the date of injury. Arkansas has one of the shorter time limits (2 years from the last benefit payment or date of injury). The shortest time limit overall is Texas, which allows for only modification, not reopening of a claim, by disputing the date of MMI or the impairment rating within 90 days of the date it was assigned.

Table 2: Time Limitations to Reopen a Claim, Texas and Other States

State	From last benefit payment	From date of injury	Additional
Arkansas	2 years	2 years	
California		5 years	
Colorado	2 years	6 years	
Florida	2 years		2 years from last benefit rejection notice
Iowa	3 years		
Kentucky			4 years from date of benefit award
Minnesota			Until death of injured worker
New York	8 years	18 years	
Oregon	5 years	5 years	
Texas			90 days from date the impairment rating was issued

Source: Research and Oversight Council on Workers' Compensation, 2000.

Note: New York's statute prohibits the reopening of a claim until 7 years after the date of injury.

Barriers/Restrictions

Most states have restrictions or barriers regulating the reopening of a claim (see Table 3). Usually these barriers involve lump sum awards and other types of settlements. Minnesota, however, has no restrictions on reopening a claim. Although Florida has barriers indicated in its statute, sources indicated that those types of claims have been reopened in the past. New York recently added a restriction involving cases where an injured worker receives a settlement from the insurance carrier, which prohibits the worker from reopening the claim at a later date. In Texas, compromised settlement agreements are not allowed and workers may only choose to receive their IIBs in a lump sum. Workers who receive IIBs in a lump sum, however, forfeit their ability to receive SIBs in the future.

Table 3: Barriers To Reopening A Claim, Texas and Other States

State	Barriers
Arkansas	joint petition settlement for final resolution
California	compromise and release agreements
Colorado	terms in settlement to not reopen
Florida	joint petition for settlement, after 1 year with no medical treatment

Iowa	compromised settlement or commuted benefits
Kentucky	a settlement of judgement in civil court
Minnesota	none
New York	section 32: if worker receives a settlement from the insurance carrier
Oregon	if worker requested a lump sum award
Texas	no reopening and modifying after impairment rating is final (90 days)

Source: Research and Oversight Council on Workers' Compensation, 2000.

Process and Dispute Resolution

All states in the study, except Texas, allow an injured worker to reopen a closed claim. Table 4 shows the process the injured worker must follow in different states, as well as the entity having final determination if the case is disputed. In general, the process is either administrative or court driven. In Kentucky, for example, the injured worker must file a motion in court. All other states, with the exception of Colorado, allow the injured worker to file a request with the insurance carrier first. Colorado requires the injured worker to file a request with the state workers' compensation agency.

States differ in the ways they resolve disputes over the reopening of a claim. New York, Iowa, and California use their workers' compensation agencies to handle disputes administratively, while the remaining states resolve disputes in court through the use of Administrative Law Judges. State administrators were also asked if an improvement in condition could be considered when reopening a claim. Three states consider improvement of condition as an option (California, Colorado, and Iowa).

Table 4
Process to Reopen a Claim, Texas and Other States

State	Reopen	Benefit amounts: increase, decrease or both	Process	Next steps if disputed
Arkansas	yes	both	files with insurance carrier	Administrative Law Judge
California	yes	both	files with insurance carrier	Workers' Compensation Appeals Board
Colorado	yes	both	files a petition with workers' compensation agency	Administrative Law Judge
Florida	yes	increase	files with insurance carrier	Workers' Compensation Judge
Iowa	yes	both	files with insurance carrier	Workers' Compensation Commission
Kentucky	yes	both	files a motion in court	Administrative Law Judge
Minnesota	yes	increase	files with insurance carrier	Compensation Judge
New York	yes	unknown	files with insurance carrier or employer	Workers' Compensation Board
Oregon	yes	increase	files with insurance carrier	Administrative Law Judge

Texas	no	NA		
-------	----	----	--	--

Source: Research and Oversight Council on Workers' Compensation, 2000.

Summary

Of the nine states reviewed in this paper, the time limitations on reopening a claim range from two years since last benefit payment, to 18 years from date of injury. One state, Minnesota, has no limit. The barriers to reopening a claim, the process by which to reopen, and opportunities for dispute resolution are fairly consistent in the states reviewed. Across the states, barriers seem to be generally elected options agreed to by the injured worker. Lump sum awards and terms of not reopening a claim are the most common in the reviewed states.

The process for reopening a claim in most states requires an injured worker to make the first request with the insurance carrier. If the insurance carrier denies the claim, the injured worker can follow a prescribed dispute resolution process similar to the one in Texas. Kentucky requires the injured worker to proceed directly to court with a request to reopen, and Colorado requires the worker to submit the claim directly to the state's workers' compensation agency. While it is not known which process would be easier for the injured worker, having the worker file directly with the insurance carrier first has its advantages for the state systems. The resolution of disputes by states is divided almost equally between an Administrative Law Judge and a division within the state workers' compensation agencies. The ability to both increase and decrease income benefits is definitely an incentive for insurance carriers and may deter fraudulent claims by injured workers.

How Texas Compares

Although there is no data available to estimate how many injured workers in Texas experience a substantial change in condition, anecdotal evidence suggests that there may be a significant benefit equity problem for some injured workers.

Compared to other states, Texas differs significantly in the time allowances for not only modifying a claim, but in the ability to reopen a claim due to a change in condition. For an injured worker in Texas who experiences a substantial change in condition, and thereby loses wages, there is currently no administrative or court avenue for additional income compensation. The 90-day time limitation for disputing a final impairment rating may put permanently impaired workers at a disadvantage by requiring either quick action or extreme foresight to make any necessary modifications to the income benefit allowance. It should be noted that only about one-

third of all injured workers receive impairment ratings, and may be impacted by a substantial change in condition.

Although Rule 130.5 may provide some injured workers with an avenue to reopen a claim, the specific mention of a “substantial change in condition” is noticeably absent. According to Rule 130.5, the three instances in which the 90-day rule does not apply deal strictly with those impairment ratings that were based upon some false premise, not a situation in which an injured worker’s condition simply worsens or improves. Furthermore, TWCC stated that an undiagnosed condition was a “later, new diagnosis unrelated to the evaluated body parts.” Examples given included 1) an injured worker later developing a psychological overlay, and 2) an injured worker later diagnosed with post-concussion syndrome. While an injured worker with a new, disabling condition, or an impairment rating based upon a false premise, may be eligible to revisit an impairment rating, it is unclear if a deterioration or improvement of a condition would be eligible for re-evaluation. Although the rule addresses some concerns, workers whose injuries deteriorate over time may not be eligible for additional income benefits, while others who improve over time may be overcompensated.

Based on Rule 130.5, TWCC has essentially defined substantial change in condition as either significant error, misdiagnosis/under-diagnosis and mis/improper treatment that was based on a faulty premise. While this is a significant step in addressing injured workers’ concerns, the rule still differs from other states in allowing the reopening of claims.

Next Steps

The purpose of this paper was to review how the issue of substantial change in condition is handled in other states in order to understand whether the current benefit structure in Texas adequately covers all workers who sustain on-the-job injuries. Phase II of this project will develop a set of working definitions for “substantial change of condition” and a framework for data collection to estimate the potential impact of different benefit scenarios.