

Dean Johannesen  
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Claim # 2005-717910

For the record, my name is Dean Johannesen. Most people call me Tony, except my wife when she is mad at me. I am the General Manager, a hands-on working manager, at Dakota Prairie Ag elevator in Edgeley. I was injured in a workplace accident on June 23, 2005, when a grain auger I was repairing collapsed driving my face into the pipe bracing that runs from the wheel to the forward part of the main tube.

Injuries suffered were lacerations to mouth area, broken teeth and teeth that were separated from the lower jawbone and most seriously and longest lasting, injury to my left eye.

I am here today to object to the method of determining at what point a permanent partial impairment award is given, specifically what I call the 15% whole body deductible. I also object to the law that prohibits injured workers from hiring an attorney on a contingency basis and the statute of limitations on mileage, and expense claims.

Treatments the day of the injury were facial x-rays, sutures to close the laceration and a referral to Dr Lindemoen an Oral Surgeon. The next day I had oral surgery to start the repair of my teeth. Since then, I have had numerous oral surgeries, root canals, a bone graft, crowns and implants.

Because of the eye injury I have seen ophthalmologists in Jamestown, Fargo and the University of Minnesota. The most recent ophthalmologist visit was with Dr. Haynie in Fargo. His diagnosis is optic nerve damage. This loss of sight in the left eye is permanent. It will never improve.

Because of this loss of sight, I cannot drive a commercial vehicle outside the state of North Dakota. I do have some peripheral vision in the left eye, but can distinguish only shapes in the center vision of the eye. I cannot read a newspaper, using only my left eye.

Now the problem and why I am here today. I have applied to WSI for Permanent Partial Impairment, because of loss of vision in the left eye. WSI

made an appointment for me with Dr. Gary Haynie in Fargo on January 10, 2008 to evaluate my left eye. The appointment started with Dr Haynie introducing himself to me and then saying, "Understand that I am working for WSI and it is my job to find malingerers in the system." This statement left me to wonder if his evaluation was unbiased.

Dr. Haynie and WSI have determined that the loss of sight in my left eye is 10% whole body loss. This does not meet the requirement of 16% whole body loss. Therefore no permanent partial impairment will be awarded. Ten-percent whole body loss seems like a fairly insignificant amount, but when it is concentrated to the affected area it means significant damage to that area.

I appealed these findings to the Office of Independent Review. In their review they agreed with Dr. Haynie's findings and sent a Certificate of Completion (suitable for framing) saying such. Because I did not agree with the Office of Independent Review, I requested a hearing before an Administrative Law Judge. WSI appointed Ms. Janet Seaworth as the Administrative Law Judge and she soon contacted me to set a date for a hearing. She was helpful but said she was going to rule only on whether or not the law had been followed unless new evidence could be submitted. New evidence would be an evaluation by another doctor that would show something that Dr Haynie's evaluation didn't. Doctors must be qualified and certified to do evaluations directed by the American Medical Association's Guides to the Evaluation of Permanent Impairment. Ms. Seaworth said WSI should be able to provide a list of Ophthalmologists qualified to perform these evaluations. When I called WSI about this list they were very reluctant to share it. Only after I told them Ms. Seaworth said they would be able to provide the list did they give it to me. Dr. Haynie is the only one qualified in North Dakota. Here is the rest of the list WSI provided.

Leonard Hershkowitz, Houston, TX.

Irvin Kalb, Sarasota, FL.

David Tasker, San Antonio, TX

Lee Yasgur, Cherry Hill, NJ

Are these the only people in the U.S. qualified to do this, or were these names in faraway locations provided to discourage getting another opinion?

I think to discourage seeking another opinion or so it would seem. I wonder if this list would be the same if it was WSI seeking a second opinion.

Another area that is discouraging for injured workers is the opportunity to be represented by an attorney. Most injured workers cannot afford to be represented by an attorney paid on an hourly basis. But North Dakota law prohibits them from hiring one on a contingency basis. I think this law should somehow be changed so that the inability of an injured worker to come up with a pile of cash at the beginning of his claim doesn't prevent him from being heard. I don't know what the solution is, but even felons will have an attorney appointed for them if they cannot afford one. It is hard to believe that an injured worker is treated with less respect.

The statute of limitations on collecting out of pocket expenses the injured worker incurs getting to appointments also needs to be addressed. So far I have never collected mileage, hotel or any other expenses associated with this claim. When I did ask about it a couple of months ago, I was told the law says any thing over one year old can not be paid. I have to admit it was an oversight on my part not to collect these expenses as things went along, but what difference does it make when it is paid as long as the case is still open?

Just for comparison the loss of sight in one eye in Minnesota has a value of \$22,800 and in South Dakota \$79,950. Wyoming uses the formula of degree/percent of whole body loss assigned by a physician, times 2/3 of the State Average Monthly Wage times 44 months. The loss of sight of one eye on an accidental death and dismemberment policy pays one-half of the policy face value. As you know in North Dakota there must be a 16% whole body loss to have any value and then at 16% the value would be only approximately \$4,000 according to what I have been told.

The asset that every worker in North Dakota brings to the job everyday is his body. When that asset is injured on the job and cannot be repaired, some value should be placed on damage to that asset. Under the current system it seems to me the worker has a 15% deductible on his body to come to work everyday in North Dakota. I came to work on the morning of June 23, 2005 with all my employee assets in tact. By noon that day the sight in my left was at best impaired, and has not improved. The damage to a worker's body should be no different than if someone hits your car. The injured party is entitled to restitution for the damage.

Based on the fact I cannot renew my CDL without restrictions and the fact that I cannot read a newspaper or distinguish anything but shapes with my left eye, I feel requiring the 16% whole body loss threshold is unfair to injured workers. To prove my point I would like to take all of you for a drive. I will drive, but I will cover my right eye, the good one, before we take off. While 10% whole body impairment seems like a fairly small amount, when that is concentrated down to the affected area, it becomes a much larger percentage of that area. I think you will find it is uncomfortable to ride with a person whose good eye is covered. I doubt you would get into a car with a drunk, nor would you get into a car with a person that cannot see. However, you may have a better chance of arriving at the destination with the drunk driver.

I believe using the whole body impairment percentage threshold is a very unfair method of determining permanent partial - impairment awards and this method is just a way of not paying injured workers if the whole body loss is less than the threshold. All of you as members of this legislative committee have the ability to change the laws to do the right thing for the workers of North Dakota. North Dakota's economy is booming because of the agriculture, manufacturing, and the oil and wind energy industries. On occasion, workers in all of these industries will get injured. You have the ability to provide for the injured workers by changing existing laws to treat injured workers fairly and with respect for their contributions to this great state.

By the way as of June 9, 2008 I dropped my WSI appeal because it just isn't worth the time and hassle. The qualified doctors are just too far away. The existing laws and roadblocks did the job for WSI.

Thank you for allowing me the time to address this committee.  
If you have any questions, I will attempt to answer them at this time.