

## REMARKS FOR WCRC COMMITTEE HEARING June 24, 2010

By Sylvan Loegering, Volunteer Coordinator, ND Injured Workers Support Group

**NOTE:** *The following remarks were prepared prior to the Presentation by Mr. Timothy Wahlin, Workforce Safety and Insurance, regarding the outcome of WSI's continuing jurisdiction review project. His presentation may or may not affect any items described in these written remarks.*

Thank you for listening to my comments and considering my ideas at the recent WCRC hearing. I appreciate your listening to injured workers and searching for ways to improve our workers compensation system.

One of the things we discussed at an earlier hearing was the large number of injured workers who are not getting benefits and can not get their claims reviewed because they missed a 30 day deadline for appealing. There are many possible reasons for missing a deadline including some very valid ones. We discussed not knowing the deadline was pending for a number of plausible and valid reasons, such as pressing family issues, health issues including, but not limited to, pain/depression from work injury and not knowing how to properly file a request for reconsideration. (It should be noted that a significant number of iw's tell NDIWSG that they sent an appeal and WSI says they didn't receive it.)

Assuming that WSI maintains its policy as stated in an earlier hearing, the legislature has 3 options: 1) **Do nothing** and allow continuing denial of benefits because of a technicality. 2) We could **react to the problem** by passing legislation that would delineate situations that would require review of a claim at the injured worker's request. 3) Take a **proactive approach** to the problem and reduce denials based on the 30-day deadline.

Option 1 is not worth considering in my opinion. It would allow WSI to continue using the law to deny benefits on a technicality instead of using the law as originally intended- to help injured workers. The process, as described by Mr. Wahlin in an earlier hearing, puts a higher value on efficiency and uniformity than it puts on the welfare of injured workers who may deserve sure and certain relief.

Option 2 was discussed briefly and would involve amending 65-05-04 (continuing jurisdiction) and making it easier for an injured worker to get a claim reopened under continuing jurisdiction. A serious disadvantage to this approach is that it relies on the injured worker who may not understand the system to take the initiative. Also, as discussed in an earlier hearing, it would be a "messy" way to approach the problem.

I would like to present a concept that I believe could virtually assure that a claim would be decided on its merits instead of being closed on this particular technicality. It would have the advantage of greatly improving public image of WSI while not impairing WSI's ability to make decisions. In fact, it should enhance WSI's ability to make better decisions and, at the same time, reduce overall expenses for processing claims that are challenged by the injured worker.

The idea is to establish an injured workers assistance program that would aggressively work to prevent missed deadlines and poorly prepared appeals. In my opinion this should be totally separate from WSI but funded by workers compensation premiums.

Please review the material and consider it a good place to start. It is obviously not drafted in statute format, nor are all of the suggestions set in stone.

## INJURED WORKER ASSISTANCE PROGRAM

Initial draft by Sylvan Loegering, NDIWSG for WCRC, June 24, 2010

*Preliminary note: This draft is designed primarily to illustrate a concept and should not be considered as a complete, comprehensive description of the suggested program or of exact procedures.*

A program created by statute with the primary mission of reducing closure of injured workers' claims due to failure to request reconsideration of negative decisions within 30 days and a secondary mission of assisting injured workers with their request for reconsideration.

The IWAP would operate as an entity totally separate from WSI and would be paid for with money transferred from WSI funds. Employees would be considered state employees. It could be based in an existing State department such as Labor or Insurance.

Administrators of IWAP could determine the best way to accomplish its mission within parameters set by the legislature. Programs could be established to deal with learning disabilities, semi-illiteracy, language barriers and other injured worker impediments to filing an effective request.

A possible procedure would be as follows:

- 1)\* Receive notice of 30-day deadlines that contain the injured worker's name, contact information and a copy of the notice sent followed by updates of any injured worker response. (An alternative idea would be to transfer notices to IWAP after the 30-day deadline has passed and then proceed with steps 2 - 9 with an automatic extension of the deadline for 30 days or completion of step 4 whichever comes first)
- 2) Actively seek contact with the injured worker by mail, phone or e-mail.
- 3) Interview the injured worker to establish some facts.
  - a. Did the injured worker receive the denial?
  - b. Does the injured worker understand the notice and the 30-day deadline?
  - c. Does the injured worker claim to have already sent an appeal?
  - d. Does the injured worker want to appeal?
  - e. Does the injured worker feel confident in his or her ability to request reconsideration?
  - f. Does the injured worker want assistance in making such request?
- 4) Report to WSI regarding results of interview.
  - a. No plan to appeal- case closed as normal.
  - b. Proceed to step 5 or 6.
5. \*\*Extend or suspend a deadline under certain conditions (automatically honored)
  - a. Injured worker was unaware of deadline.
  - b. Injured worker wants to appeal and needs assistance.
  - c. Injured worker plans to appeal and circumstances prevent meeting deadline.
  - d. Injured worker claims to have sent appeal and wants to resubmit it or re-appeal.



6) \*\* Request a new deadline up to 30 days subject to item 5 to allow for preparation of appeal (automatically honored).

7) Assign an individual ("claims assistant"?) to each injured worker that qualifies for assistance.

8)\*\*\* Have the iw sign a release of information

9)\*\*\* The "claims assistant" would

- a) Receive and review the notice and the claim file
- b) Get additional information if needed
- c) Help the iw with the request for reconsideration
- d). Remain assigned to the iw and assist in future dealing with the claim.

\* This would require putting the Injured Workers Assistance Program in a "need to know" category so information regarding notices could be provided to it. This could be accomplished legislatively or by including a release of that information on the original incident report.

\*\*5) 6) would require having WSI automatically honor requests by IWAP for suspension, extension or resetting of deadlines. Reasonable limits could be set.

\*\*\*8) and 9) would not require legislation or additional changes in WSI's procedures.

### **Benefits of aforementioned injured worker assistance program:**

#### **To WSI:**

>It would enhance decision making by providing coherent, appropriate requests along with more comprehensive information. It would reduce time spent by claims analysts answering basic questions and would allow them to spend more of their time on claims analysis.

>It would reduce the workload on DRO\* by having much of the review work, information gathering and answering of iw questions done before a claim gets to DRO and would likely eliminate many claims from DRO\* workload.

>IWAP could be an optional alternative to DRO\*

>By allowing more factors to be considered early in the process it would probably reduce the number of claims that go on to the next level of challenges.

>It would reduce the number of calls, letters and e-mails to WSI complaining about perceived injustice and/or requests for review under continuing jurisdiction. This would reduce the number of hours spent dealing with those items.

>It would give WSI a much needed boost in public relations.

Note: No change in underwriting procedures would be enacted by this program.

**To injured workers:**

- >Claims wouldn't be closed solely due to inadvertent missing of deadline.
- >They wouldn't have to worry about lost mail or cost of certified mail services.
- >They would have assistance in preparing responses including advice on additional information that should be included in file.
- >They would have the comfort of knowing they are working with an individual whose goal is to help them.
- >Less expense would be involved in the event legal counsel is obtained because less time would be needed for discovery and preparation.

**To employers**

- >They would have the comfort of knowing WSI premiums are being used for the intended purpose which is to provide efficient relief to deserving injured workers.
- >They would know the claims handling process is more efficient.
- >They would have fewer complaints from disgruntled employees who feel cheated.
- >Employers who are concerned about employees who have been hurt on the job would know the employees are given every chance to have their claim adjudicated based on the merits of the claim.

**To the general public**

- >It might reduce taxes by having relief for indigent or uninsured injured workers paid by WSI instead of Social Services, medicare and other safety net programs.
- >It might reduce health insurance premiums because regular health insurance companies would not be paying medical expenses that should have been paid by WSI.

\*References to DRO are only to recognize overlap of functions so they can be dealt with and are not intended to demean services presently provided by DRO.