

Steven Siemers Dispute Resolution, LLC
1939 Harrison Street, Suite 904
Oakland, CA 94612
Office Phone: (510) 318-6380
Cell Phone: (510) 316-7256
stevensiemers@gmail.com
www.stevensiemersdisputeresolution.com

Theoretical Overview of the Alternative Dispute Prevention and Resolution Process

Litigating, deciding and settling workers' compensation claims has been the focus of my professional life since 1982.¹ This experience has led me to a number of conclusions:

1. Workers' compensation claims don't get better for the injured worker or the employer over time.
2. A muscular approach adjusting and defending workers' compensation claims, which seems to have become the standard practice in California, sets off a chain reaction that extends the life of claims and thus the overall cost of claims.
3. Hostility is often set off at the commencement of a claim when the injured worker perceives:
 - a. A suspicious response from a supervisor when an injury is reported,
 - b. Indifference, or worse, from the claims examiner, and/or
 - c. Inadequate attention from the treating doctor.
4. When the injured worker feels fear and distrust the likelihood of litigation increases dramatically, and it is very difficult to undue the snowballing effect once it starts rolling.

The Fundamental Proposition of Carve-Outs

Carve-outs were a construction trade union idea. In order to help union signatory contractors better compete with non-union contractors for projects, they sought to collaborate with their union signatory contractors to build carve out programs to streamline the provision of compensation, return injured workers to work more quickly and close claims faster to ultimately reduce losses.

In order to accomplish this, more resources were utilized on the front end of the claim, rather than the back end, in order to eliminate, or at least limit, the dynamics mentioned above. If the obstacles that tend to extend claims and drive up the cost can be tempered, the result is timely case closure, reduced cost and increased union member satisfaction.

¹ Fourteen years as an applicant's attorney (13 in the SF Bay Area and 1 in LA), 5 years as a WCJ in SF and Oakland, 2 ½ years as Chief Judge of DWC and since 2004 a mediator, arbitrator, ombudsperson and ADR director and consultant.

These resources included a nurse advocate, an ombudsperson and a mediator. Proactively attending to the medical and legal needs of the injured worker at the outset of the claim and offering a fair and rational response to the claim profoundly increases the opportunities, as the claim progresses, to engage the injured union member and resolve both interim disputes and the claim itself in its entirety.

Where Do The Savings Come From?

Self-insured employers (most all municipalities) are required by state law to maintain reserves to cover the anticipated cost of all claims. These reserves must be collateralized, and this ties up large sums of money. Furthermore, these reserves increase over the life of the claim as circumstances change and as medical inflation increases the cost of treatment. All of us that have litigated workers' compensation claims understand that the value of claims rarely go down. We can all tell many a war story of claims that could have been settled for a fraction of what they wound up settling for years or decades later. This increase in claims value, or put another way, this increase in reserves, is what's known as "loss development".

When a claim is handled efficiently and intelligently and the injured worker is provided with quality medical care and promptly returned to work the claim is in a posture where it can be settled earlier. When a claim is settled, its "loss development" can be terminated. When a program can accelerate the pace of claims resolution, the early termination of "loss development" generates significant savings. The interesting aspect of this is that by treating the injured worker *better* significant savings are generated.

Timely and Fair Dispute Resolution

Nurse Advocate

Typically, the nurse advocate will contact all injured union members within 24 hours of notice of the injury. He/she will advise them of his/her availability to assist them in addressing all medical concerns regarding their claim.

Ombudsperson

The ombudsperson will provide advocacy for the injured employee with the goal of making sure that the employee gets the compensation to which he or she is entitled and in a timely fashion.

Timeliness and the ability to develop trust and respect with the injured employee and the claims staff is critical if communication is to be adequately transmitted and problems solved.

Mediation

The nurse advocate and ombudsperson will resolve the vast majority of disputes and potential disputes. However, there will be disputes that they are not able to resolve. In this case, either party may file a request for a mediation.

Unlike an appearance before a workers' compensation judge, a mediation will include all relevant parties and will focus on the single case at hand, unlike the multiple settings in the statutory system. The attention given to the case allows a resolution in the vast majority of mediations held.

Arbitration

Where a case cannot be resolved at the ombudsperson or mediation stage, the likelihood is that there is an issue of law or fact that must be heard and decided. The arbitrator will hear the evidence and decide the case within 30 days of the date of submission.

Appeal

An Arbitrator's decision is appealable to the Commissioners of the Workers' Compensation Appeals Board as a decision from a Workers' Compensation Judge would be.

Conclusion

Engage the injured member immediately following the injury through the nurse advocate and the ombudsperson in order to expedite the provision of quality medical care. Return the injured employee to work as soon as practical. As soon as possible, do what is necessary to determine case value, get it settled and approved and thereby terminate the loss development. This will result in increased employee satisfaction with the process and significant cost savings as well.