

Worker's Compensation Reform Issue Explanations

Prepared for: Illinois Senate and House Worker's Compensation Committee Members

Background:

As a concerned Safety Manager at a self-insured company doing business in the state of Illinois, I attended the Senate Hearings on Worker's Compensation that occurred on November 29, 2010. I listened intently to the discussion that was held that day, as our plant is *5% of our parent company's workforce* (300 employees of 6,000), yet it *accounts for 66% of our parent company's Worker's Compensation costs*. It is our parent company's only significant asset in the state of Illinois.

It has occurred to me that some plain language description of my position on Worker's Compensation reform would help all of the people involved in the process to understand the aspects of the process that I feel are broken. I was very happy to see that the committee does indeed understand that there is a problem and seemed to rebut some testimony to the contrary. I was disheartened that the information provided to you from the commission were very high level view of the claims appeal and review process. The pieces of the standard that are broken can be understood much better if the claim process is reviewed from a much lower level. This paper is intended to help people who are not normally involved with Worker's Compensation to understand both the basic Worker's Compensation Process as well as the concerns of businesses that are affected by the standards on a daily basis, from the eyes of a person who deals with Worker's Compensation on a daily basis from a plant floor level.

A Basic Description of the Worker's Compensation Process

1. A Worker's Compensation claim must start with some sort of event. This could be a single event, such as with an injury, or it could result from exposure over a long period of time to a substance or stressor.
2. Once the event occurs, it is reported to the Employer. Most employers have an expectation of timely reporting and have established policies regarding both the expected time frame for reporting an incident and the actual method of reporting.
3. The employee in the state of Illinois has the right to treat with their choice of physician. The employee begins treatment and progresses to the point where the doctor feels no further improvement will occur. It should be noted that improvement is to the state of a normal worker or until further treatment will not result in improvement.
4. This is considered what is referred to as MMI or Maximum Medical Improvement.

5. An employee in the state of Illinois has three current choices at this point in a claim.
 - a. Do nothing and allow the claim to close.
 - b. Contact the employer regarding a Pro-Se Settlement with the WC Commission.
 - c. Contact a lawyer regarding pursuing the case through the WC Commission.
6. An Appearance before an arbitrator occurs for both Pro-Se Settlements and Trials.
7. The Pro-Se Settlement is approved or denied, or the decision from the trial is handed down from the arbitrator.

An employer may have concerns at any step of the process. Several possible disagreements could occur during the claim process, some examples are listed below. An employer may question:

- Their responsibility for the claim.
- The applicability of the treatment being given.
- The length of time an employee is to be off or at reduced duty.
- The cause of an employee's symptoms.

When an employer questions any portion of a claim, the standard method of addressing the concerns is the use of an "Independent Medical Exam (IME)." In the state of Illinois, both the employer and the employee have the right to do as many IME's as they wish. The employee has a set number of doctor choices to eliminate the practice of "doctor shopping." The employer can then work with the entity managing their claims to decide if the claim will be accepted or denied. If a claim is denied, the employee then has the right to challenge the denial with the WC Commission. At any point during a claim's process, an employee may choose to secure a lawyer. At that time, notice to the state will occur.

My concern involves several key portions of the standard which vary greatly from our neighboring states. They are:

- Determination of the Employer's Responsibility for a Claim.
- Pre-Existing Conditions, and how they affect Worker's Compensation
- Calculation of monetary awards after an employee is at MMI.
- The long timeline between MMI and final claim closure with Litigated Claims.

Issue #1: Any Cause Vs. Primary Cause and the Relationship to Pre-Existing Conditions

Any Cause: Illinois is considered an "Any Cause" state. This means that if ANY amount of work activity aggravates the condition, the company is liable for the *entire* condition. This standard has been applied in the state when less than 1% of an injury's causes result from a work related activity. If the condition has been "aggravated" by work activities, the employer owns the entire condition.

Primary Cause: In a “Primary Cause” state, the company is liable for the *entire* condition only if the employee’s work activity meets a certain defined level. For instance, many states use the 51% mark as the point with which a company will be liable for an employee’s condition.

Issue #2: Pre-existing Conditions

In the states that require the workplace to meet a certain level of cause for a condition, the majority of the time, there is a pre-existing condition involved. When dealing with pre-existing conditions, in these states an employee must be returned to the state of health they were in prior to the work related portion of the causes occurring. For instance, let’s say an employee has a shoulder strain from performing work duties. Through the course of treatment, an MRI is obtained which shows considerable degenerative damage within the shoulder. In Illinois, the employer could be responsible for a full shoulder repair necessary by the degenerative damage. In Primary Cause states, the employer is only responsible for the treatment required to get the employee back to the condition they were in prior to the work related incident. The Illinois employer owns the whole condition. Employers in our neighboring states own only the muscle strain.

Issue #3: Calculation of Awards Post MMI

Current Process: The current process of calculating award amounts after Maximum Medical Improvement is largely based on the arbitration process. The case is heard by the arbitrator, and the arbitrator sets the award based upon the past history of cases that have been heard before of the same injury type. Awards are based mostly upon subjective information presented by the legal teams presenting on behalf of their represented parties and historical case data.

Proposed Process: In neighboring states, the process for determining any award begins with the treating physician. The treating physician is required to fill out a form when releasing the employee from care that details any amount of award. For example, in Wisconsin, a physician must fill out a WKC-16 for any case that has more than 3 weeks or either restricted or lost time associated with it. A sample of a WKC-16 form has been included. The award in this instance is calculated utilizing a reference book published by the American Medical Association (AMA) titled “Guides to the Evaluation of Permanent Impairment (AMA Guidelines).”

A Brief Description of the AMA Guidelines: The AMA guidelines help to standardize the rating of disability based upon objective findings regarding an employee’s health at MMI. Dependent upon the body part that was involved in the injury, tests will be done which compare the employee’s current condition with that considered to be within a normal range. The book details how each test must be performed and how to document the results. In many states that use the AMA Guidelines, the treating physician will answer a battery of questions about

the injury, and the state's Worker's Compensation Commission will actually assign the permanency rating based upon the information provided. As noted in the attached sample of a WKC-16 used in Wisconsin, fingers are rated using the angle of extension and the angle of flexion. Other factors are allowed to be added into the equation, but the commission will review the physician provided information to set the Permanency Rating.

Permanency Ratings: A Permanency rating is the anticipated loss of use of the injured body part. Permanency ratings are typically referred to as a percentage of the injured body part. For instance, 5% to the hand, 35% of the arm, or 50% of the man as a whole are examples of permanency ratings that could be assigned. In the state of Illinois, awards from injuries will be structured in the same fashion, but they will be determined based upon the testimony that is heard by the arbitrator. The testimony may, or may not contain objective details about the employee's injury, and it may contain a significant amount of subjective information that is often difficult to sort through for an arbitrator who is not medically trained.

Issue #4: The Timeline Between MMI and the Final Closure of a Case

Once an employee has contacted an attorney and the case is filed with the Commission, the call will come up on a regular Worker's Compensation Status Call. At this time, attorneys can request to move forward or request that the case be continued. This process can continue for THREE full years before the Commission forces the case to go to trial. This time period is way too long, and my experience has been that it is often employee attorneys that are slowing the process, as that party has the lead in the process at that point. I can say this because my current employer is very aggressive in attempting to close out claims, and we are often left waiting. If the contested portion of the claim is the employer's responsibility for the claim, an employee can sit with no benefits for an extended portion of time. This doesn't help the employee if they are not physically able to return to work, and it can lead to some very troubling monetary troubles for the potentially injured party. It would be wise to reduce the length of time that cases can go without actually being heard. In addition, claims where the causes of the injury/illness are contested should be on a much faster track, which would ensure the causation is addressed as soon as feasible. If an injury is then determined to be caused by the work activity, then benefits could be started much sooner, if the case was initially denied.

Real World Examples of Claims: Illinois vs. Indiana

My experience in safety has taken me primarily to three states, Indiana, Illinois and Wisconsin. While the majority of my experience has been in the state of Wisconsin, I have the unique fortune of having some actual data from injury analysis that was done for both my current employer and a company in Indiana. As the person responsible for Worker's Compensation at

both companies, I have been able to pull specific data on very similar cases for comparison. I was the plant employee responsible for case management of each of these claims. Therefore, I am able to provide accurate Representations of the injury types and outcomes for comparison.

	Indiana Claims	Illinois Claims
Case Indicator	Medical + TTD + 0% Permanency	Medical + TTD + Arbitrated Award
A: Rotator Cuff Tear	\$35,057.61	\$60,829.00
B: Rotator Cuff Tear	\$33,867.29	\$73,391.00
C: Carpal Tunnel Release	\$25,607.20	\$59,615.00
Totals	\$94,532.10	\$193,835.00

Indiana A: This case was a surgical Rotator Cuff Tear to the shoulder of the injured employee. The employee was a 40 year employee who had developed issues over time due to the work activities the employee performed on a daily basis as a stock picker. Due to the employee's long term employment with the company, the workplace was determined to be more than 51% of the cause of the injury. The employee underwent surgery for the rotator cuff tear. At MMI, the employee had excellent strength, full range of motion and no lingering affects from the surgery. The employee had a full duty release, and the case ended with no permanency.

Illinois A: This case was also a surgical Rotator Cuff Tear to the shoulder. The employee described the cause as pain developing over time from doing his job. The employee was a 5 year employee of the company. Under the course of treatment, an MRI was performed which showed significant degenerative changes within the joint. Surveillance of the employee while he was under significant restrictions found the employee roofing his house and doing activities that violated his restrictions. The company had an IME performed, which showed the workplace aggravated the degenerative condition. The employee underwent surgery which was successful at repairing the tear. The employee received a full release with no restrictions at MMI.

Indiana A vs. Illinois A: The cases are similar because both showed degenerative changes to the shoulder. Both injuries were surgical, and both resulted in the employee having no lingering affects from the surgeries. Range of Motion and strength were both in normal ranges at MMI. Illinois A had significant degenerative changes that likely would not have occurred from only 5 years working at a company considering the employee had been in the workforce for 40 years by the time he was injured. Regardless, both were accepted claims with equal results at MMI. Illinois A resulted in an award payment of \$23,769.39 to the employee and his attorney. No

permanency was due to the employee in Indiana A because he had not negative affects of his injury after the injury. Both employees were essentially returned to the same state or better then before the injury occurred.

Indiana B: This case was also a surgical rotator cuff tear of a single shoulder. The employee in this case worked the Receiving Dock at the facility. Her job duties included unloading trucks and transporting goods to the Bulk Stock staging area of the facility. The employee was unloading a pallet of material and stacking it into a bin. When she placed a stack of material in the bin, she felt a pull/pop in her shoulder. The employee reported the incident and began treatment. After conservative treatment failed, she had an MRI which showed a tear. She underwent surgery to repair the shoulder. At MMI, she had excellent mobility, no loss of motion and no reduction in strength. She was released to full duty with no permanent restrictions.

Illinois B: This case was also a surgical rotator cuff tear. The employee was operating a machine which required some use of a hammer during the course of operation. The employee felt sudden pain in his shoulder while swinging the hammer. Conservative treatment was not successful and an MRI was obtained. The MRI showed a rotator cuff tear that would require surgical treatment. At MMI, the employee was released to full duty with no permanent restrictions.

Indiana B vs. Illinois B: Both of these cases are extremely similar in nature. Neither case had extensive degenerative damage as shown by the MRI. Both cases had a specific incident that was the cause of the shoulder pain and subsequent rotator cuff tear, and both cases resulted in no negative impact to the worker. The Indiana case resulted in no permanency, while the Illinois case resulted in an arbitrated award of \$25,829.00 to the injured employee and his attorney.

Indiana C: This case was a bilateral carpal tunnel from a long term employee in the customer service department. The employee reported pain and numbness in both hands and arms. After she was diagnosed with carpal tunnel, surgery was done to both wrists. The employee recovered fully, and as is typical with most successful Carpal Tunnel surgeries, range of motion, strength and the numbness were all improved. The employee was returned to work full duty with no restrictions.

Illinois C: This case was also a bilateral carpal tunnel. Also a long term employee, this illness's cause was related to repetitive use of welding clamps over the course of doing the employee's work activities at the plant. Surgeries to both hands were performed. Significant improvement was noted, and the employee was returned to work with no restrictions.

Indiana C vs. Illinois C: Both cases were nearly identical, successful bilateral Carpal Tunnel cases. Neither employee suffered any lingering affects. The Indiana worker received no permanency award. The Illinois employee received a significant award for each hand, which resulted in a differential between the cases of \$34,007.80.

Conclusion:

While it is very difficult to ensure that all parties involved understand the issues at hand, I hope that the committee can see the significance of the issues that have been raised to the costs associated with Worker's Compensation in the state of Illinois. Worker's Compensation was always designed to protect injured workers while at the same time preventing fraud and abuse of the system. The arbitrated awards often have very little basis in fact, and the significant amounts of the awards actually create an incentive to report claims. At some facilities, employees have been known to brag about the awards they received, which perpetuates the desire to report any ache and pain to the employer as a work related injury. The existing statutes that require so little of the cause of the injury to be the workplace before the injury is considered work related cause an unnecessary burden on employers who are working to secure their futures in the state of Illinois. Because these costs are so variable, business plans really cannot be developed to manage the risk. With fixed costs such as taxes, employers can account for the expenses within their business plan, minimizing their annual impact on profitability.

About the Author: Mike Bond is the current Safety Manager for Manchester Tank and Equipment in Quincy, IL. Graduating with a degree in Safety Management with a minor in Insurance in 1999 from Indiana State University, Mike has worked at many Union and Non-Union facilities exclusively in Safety Management. Former employers include Packerland Packing Company in Green Bay, WI, Columbia House Co. in Terre Haute, IN, Bremner Incorporated of Ripon, WI, and Waukesha Engine of Waukesha, WI. Facilities where Mike has been employed range from 300 employees to 1450 employees, and he has handled safety at as many as 3 separate plants at one time. Mike has been responsible for day to day management of Worker's Compensation claims throughout his career.

MEDICAL REPORT ON INDUSTRIAL INJURY

Provision of your Social Security Number (SSN) is voluntary. Failure to provide it may result in an information processing delay.
 Personal information you provide may be used for secondary purposes [Privacy Law, s. 15.04 (1)(m), Wisconsin Statutes].

PATIENT Injury	WC Claim Number	Employee Name		
	Employee Social Security Number	Employee Address		
	Date	Employer Name	Insurance Company	
HISTORY	History as described by patient			
DIAGNOSIS (Please be as detailed as possible)				
PERMANENT DISABILITY (Describe permanent elements of disability, such as limitation of motion, pain, weakness, etc., and describe effect on working ability.)	What amputation present?	Comparative x-rays taken? <input type="checkbox"/> Yes <input type="checkbox"/> No		Stump: <input type="checkbox"/> hardy or <input type="checkbox"/> tender
	Has permanent disability resulted? <input type="checkbox"/> Yes <input type="checkbox"/> No	Date of Last Exam	Has healing period ended? <input type="checkbox"/> Yes <input type="checkbox"/> No	Patient discharged? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Description of permanent disability (Record finger motion losses on reverse.)			
	Was surgery performed as a result of accident? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, state type of surgery:			
	If healing has not ended, what is minimum permanent disability expected?			
PRIOR DISABILITY	What previous disability?			
PROGNOSIS	Prognosis:			
	Date injured was or will be able to return to a limited type of work: State any limitations:			
	Date injured was or will be able to return to full-time work subject only to permanent limitations:			
	What further treatment should be given?			
Additional comments, if any:				
Date	City	Physician or Chiropractor Signature (in own writing)		
	Phone Number () -	Typed or Printed Name		

Employee Name	Employee Social Security Number
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Instructions for finger injuries

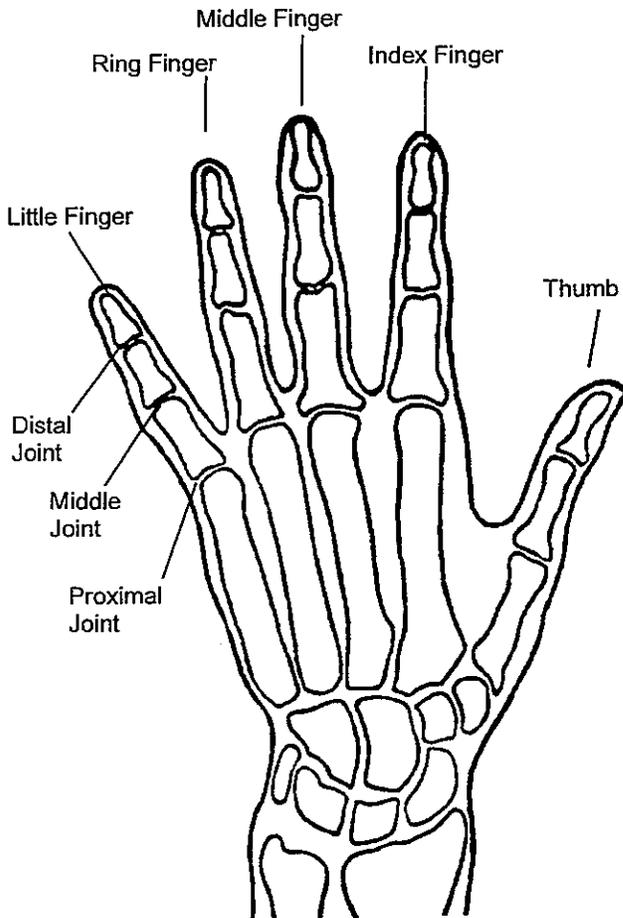
Please use statutory terms in referring to fingers, such as thumbs, index, middle, ring, and little fingers, and distal, middle, and proximal joints. Where there is limitation of motion, list separately the normal range of motion in degrees, the "degrees" loss of flexion, and the "degrees" loss of extension for each joint of each finger. The Worker's Compensation Division will evaluate the loss of use due to loss of motion of the fingers.

Where there are other elements of disability of the fingers, such as deformity, weakness, pain, or lack of endurance, give your opinion on the percentage loss of use as compared to amputation for such elements of disability and specify the joint at which such loss is estimated.

Digit	Joint	Angle Ext./Flex	Normal Range of Motion	Degrees Loss Extension	Degrees Loss Flexion	Estimate % loss of use for additional factors at joint involved and reason for additional allowance
Thumb	Dist					
	Prox					
Index	Dist					
	Mid					
	Prox					
Middle	Dist					
	Mid					
	Prox					
Ring	Dist					
	Mid					
	Prox					
Little	Dist					
	Mid					
	Prox					

CIRCLE HAND INVOLVED: Right Left

DOMINANT HAND: Right Left



See DWD 80.32 & 80.33 for guides to evaluation for amputations, restrictions of motion, ankylosis, sensory loss, and surgical results for disability to the hip, knee, ankle, toes, shoulder, elbow, wrist, fingers and back.

If fingertip amputation is present, submit comparative x-rays or a statement indicating whether the bone loss was less than one-third, between one-third and two-thirds, or more than two-thirds of the distal phalanx.

If amputation is below the distal joint, submit comparative x-rays.