

MINUTES OF THE HOUSE COMMITTEE ON LABOR AND INDUSTRY.

The meeting was called to order by Chairman David Heinemann at 9:12 a.m. on February 9, 1993, in Room 526-S of the Capitol.

All members were present except: Representative Carmody (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Jim Wilson, Revisor of Statutes
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

Shelby Smith, Economic Lifeline II
Hubert L. Vinson, Alexander & Alexander of Texas, Inc.
Bart L. Griffin, Director of Records, Texas Workers Compensation Commission

Others attending: See attached list

Shelby Smith representing Economic Lifeline II, a group he put together with a seven-member steering committee, is interested in comprehensive workers compensation reform. His group feels administration is probably the most important area to address in cost savings in workers compensation; therefore, mediation, benefit review conferences, ombudsman program, and dispute resolution are of the utmost importance. (Attachment 1)

Hubert L. Vinson, Alexander & Alexander of Texas, Inc., Fort Worth, addressed the committee on behalf of Economic Lifeline II. Mr. Vinson offered some observations on the state of the workers compensation system and how it could be improved for employers and employees alike. He said what's missing in most states, including Kansas, is a dedicated information/communication process regarding benefits entitlement and an informal mediation arrangement where questions can be answered and disputes resolved without the need for litigation and attorney involvement. Included with his testimony is a copy of the "Texas Workers Compensation Times," a quarterly newsletter, and the Field Office Pilot Project. (Attachment 2)

Bart L. Griffin, Director of Records, Texas Workers Compensation Commission, Austin, spoke to the committee on the Texas workers compensation system and the success of their workers compensation reform. Mr. Griffin specifically addressed the statutorily established dispute resolution system and the ombudsman program. He provided copies of several brochures of the Texas Workers Compensation Commission: "High Lights" a monthly review of activities, accomplishments and statistics; "Information For The Injured Worker Or Beneficiary"; and "Free Help For Injured Workers & Beneficiaries." (Attachment 3)

The meeting adjourned at 10:00 a.m. The next meeting is scheduled for February 10, 1993.

GUEST LIST

COMMITTEE: HOUSE LABOR AND INDUSTRY

DATE: Feb 9 1993

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KANSAS

Workers Compensation Reform

COMMENTS

**Shelby Smith, Executive Director
Economic Lifeline II**

Before

**Senate Commerce Committee
House Labor and Industry Committee**

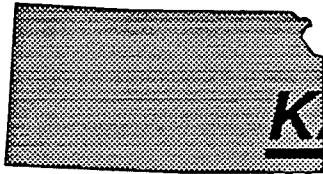
February 9, 1993

- Our single and sole objective is a COMPREHENSIVE reform. The top priority is a dispute resolution system with a mediation process and an Ombudsman program. Additionally, the following changes are imperative for a complete overhaul of a system which is broke: medical delivery cost controls; enhanced work place safety; clarification/simplification of the definition of disability; vocational rehabilitation reform; and an anti-fraud program.

To avoid the bureaucratic trap of business as usual, "we have always done it this way", requires a new commitment and a new structure. A strong philosophy of service to the public and the clientele being served must be adopted. Injured workers have the right to know they will receive ALL the benefits they are entitled to without hiring an attorney. Also, a structure needs to be designed for administrative solutions rather than litigation.

- Introduce Lloyd Lynd, Chairman of Lifeline II Steering Committee, Prairie Village, Kansas.
- Introduce Hugh Vinson, Alexander & Alexander, Fort Worth, Texas, an expert on Workers Compensation reform in the United States.

*House Labor and Industry
Attachment 1
2-9-93*



KANSAS

Workers Compensation Reform

TESTIMONY

HUBERT (HUGH) L. VINSON

Alexander & Alexander of Texas, Inc.

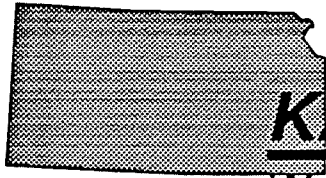
February 9, 1993

On behalf of Economic Lifeline II, I would like to offer some observations on the state of the Workers Compensation system and suggestions on how it can be improved for employers and employees alike, as has been accomplished in a few other states.

In 1961 the total cost of Workers Compensation was \$2 billion; in 1991 the cost was \$62 billion, and when the numbers are in for 1992, it will no doubt exceed \$70 billion. Costs are rising at well over 10% per year. This is no longer an expense business can absorb, or pass along, and expect to remain competitive in an increasingly competitive global environment.

Many, if not most, states are "on their knees" to this economic threat - - a few, like Maine and Rhode Island - - are on their backs. Others, like Texas, Florida, and Louisiana have walked very, very close to the edge. It's not a pretty sight businesses closing their doors, some moving operations to a more friendly state or worse, to another country as prices escalate and insurers withdraw from the marketplace. Former Texas Insurance Commissioner Phil Barnes called it "the death spiral".

No fault Workers Compensation laws were originally crafted some 75 plus years ago to minimize, if not eliminate, litigation. And, for many years they worked very well. But for whatever reasons, and there are many, they have begun to breakdown in this important area in the last 10 to 20 years. In 1991, in California alone, litigation costs were \$1.5 billion. Texas was a large and growing number until our new Workers Compensation law, Senate Bill 1, took effect and began to stem the tide. Then Governor Bill Clements called it the most important piece of legislation passed in the last 20 years. Most other states, including Kansas, are facing a similar problem.



KANSAS

Workers Compensation Reform

There is no single, simple solution to any problematic Workers Compensation system. However, as indicated and almost without exception, every state is faced with growing conflicts and increased litigation costs. A positive approach to this area will go a long way toward righting the system.

What's missing in most states, including Kansas, is a dedicated information/communication process regarding benefits entitlement and an informal mediation arrangement where questions can be answered and disputes resolved without the need for litigation and attorney involvement.

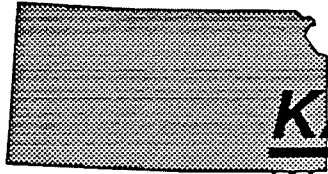
Several states, including Texas, Tennessee, and Alabama, have recently enacted legislation providing for an Ombudsman Program and a Benefit Review Conference. Generally speaking, the Ombudsman is a source of information and assistance primarily to injured employees. The Benefit Review Conference is essentially a "mediation meeting" where information is shared and disputes are attempted to be resolved in an informal atmosphere.

Alabama's program became effective January 1 of this year. Currently, they have eight Ombudsmen. Each was required to attend mediation training and to learn the Workers Compensation law. The manager of the program and senior Ombudsman has a general industry background, four are former insurance adjusters and three were previously state employees.

Employers are required to post notices in conspicuous places regarding the Ombudsman services and the mediation process. An 800 number is provided. Additionally, on receipt of the Employer's First Report of Injury, a postcard is sent to the injured employee outlining these services as well.

As expected and planned, most calls (56%) are from employees, (16%) from employers, with the balance from adjusters, attorneys and others.

Most questions (34%) deal with the law, (22%) concern disability, with the remainder having to do with medical, compliance, and other issues.



KANSAS

Workers Compensation Reform

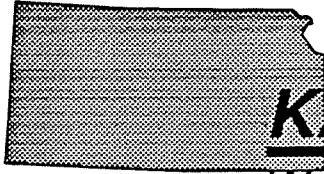
The most common problem is a breakdown in communication the parties haven't really talked and/or they haven't really listened. So far, the program is working extremely well with 95% of the issues being resolved at this first level.

As yet, Alabama has not had a Benefit Review Conference. It will be presided over by an Ombudsman in a very informal atmosphere with no official record or testimony being taken.

Likewise, Tennessee's program became effective January 1 of this year. They refer to it as the Workers Compensation Specialist Program as opposed to Ombudsman. There are currently a total of 11 Workers Compensation Specialists of which 6 are attorneys. The balance have various business backgrounds. They also require information posting regarding the services and provide an 800 number. Labor representatives are used for the first level of information requests and the Workers Compensation Specialist becomes involved only in the more complicated issues. Consideration is being given to advertising the services on selected TV spots. Preliminary results are encouraging and the system participants are enthusiastic about its future prospects.

So far, there has not been a Benefit Review Conference. However, unlike Texas, and Alabama, their mediation step is voluntary. It is possible some judges will require the Benefit Review Conference be held before proceeding with a trial. While the Benefit Review Conference will be presided over by a Workers Compensation Specialist, it will be a different person than the one who has been involved with the case. Again, this conference will be informal with no evidence or testimony as such.

In Texas, the new law not only makes provision for an Ombudsman program and Benefit Review Conference, but also provides for Arbitration as a choice to a Contested Case Hearing. Provision is also made for an Appeals Panel Review following an unresolved Contested Case Hearing, prior to allowing a Judicial Review. The result has been a dramatic reduction in attorney



KANSAS

Workers Compensation Reform

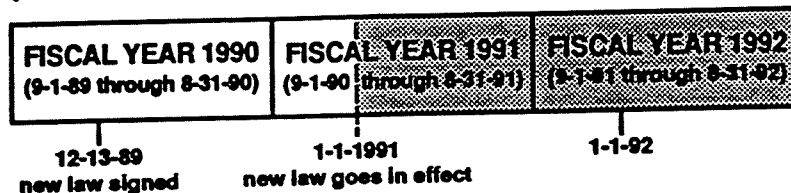
involvement and litigation.

One of your handouts, which is a copy of the Commission's quarterly newsletter, provides some statistics reflecting the improvements.

There is no question, however, that the Ombudsman Program and Benefit Review Conference have been the major keys to the system's current success. And we are fortunate to have with us Bart Griffin, Manager, Division of Records, who will discuss these programs and provide some insights into the reasons for their success.

TWCC Announces FY 92 Accomplishments

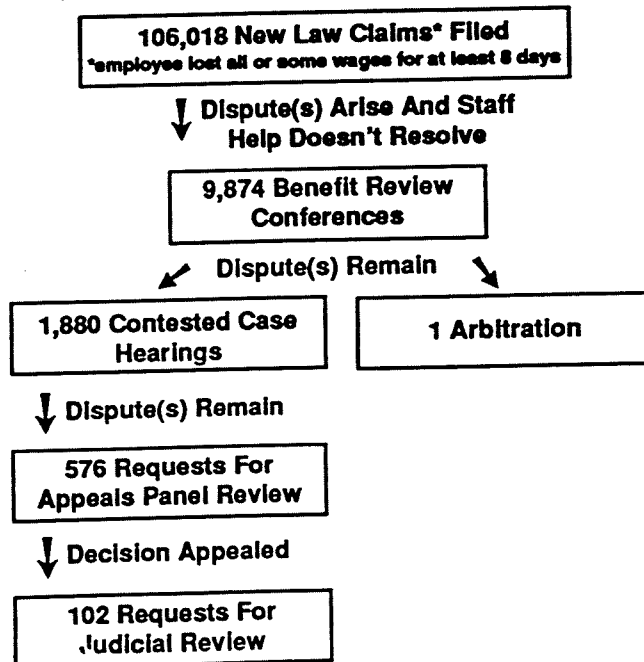
Fiscal Year 1992 was the first full fiscal year under the Texas Workers' Compensation Act or "new law." The Act went into effect January 1, 1991, part way through FY 91.



Fiscal Year 1992 was a landmark year in many areas:

- **The number of injuries decreased.**
In 1990, reported injuries totalled 43,750 per month. In FY 92, reported injuries averaged 32,913 a month, a drop of nearly 25 percent.
- **Workers received benefits faster.**
In 1990, an injured worker had to wait an average of 30 days after beginning to lose time until receiving the first check. In the first quarter of Calendar Year 1992, an injured worker only had to wait 17 days.
- **Thousands of disputes were resolved with the help of the Commission.**
The chart shows dispute resolution figures for new law claims.

New Law Claims - Fiscal Year 1992



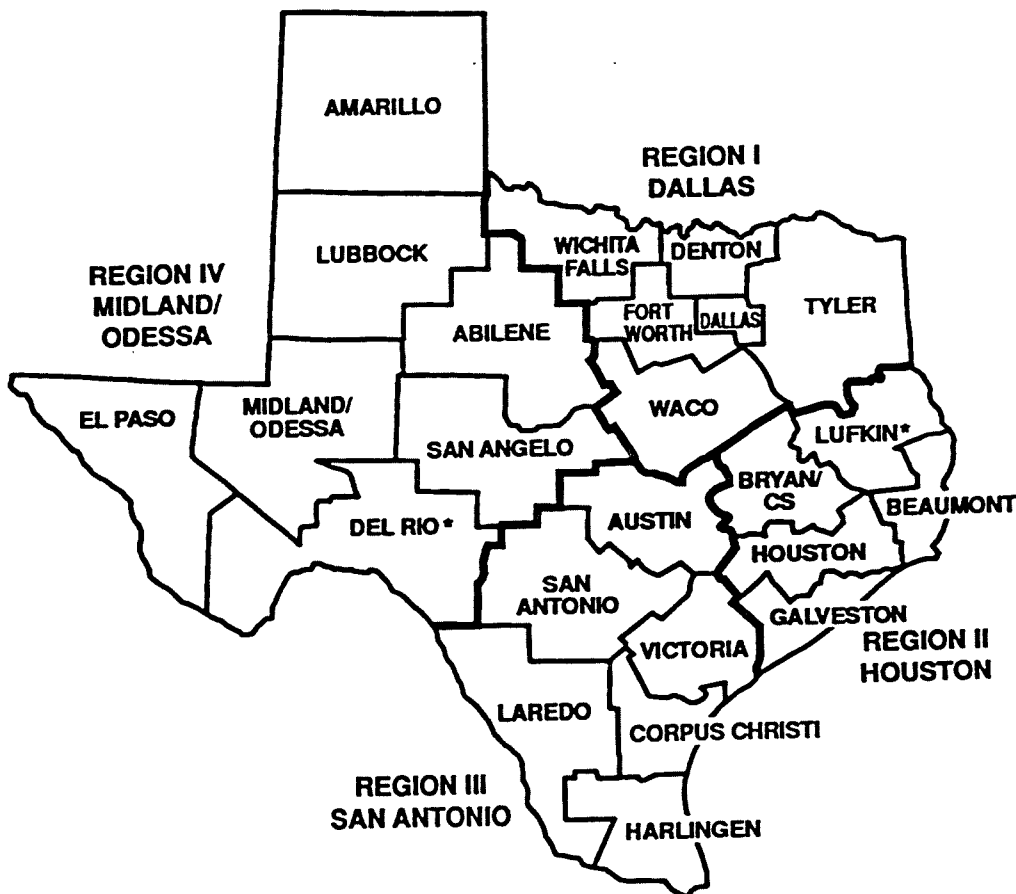
- **Attorney involvement decreased.**
In the first half of 1990, attorney representation was 95 percent at prehearing conferences. In FY 92, attorney representation for claimants was 43 percent at Benefit Review Conferences and 56 percent at Contested Case Hearings. Attorney representation for insurance carriers was 38 percent at Benefit Review Conferences and 90 percent at Contested Case Hearings.

- **The Commission went to its customers for an evaluation of our customer service.**
FY 92 started with the inauguration of a Customer Service postcard program allowing our customers to tell us how we did at serving them. The Commission also began a survey of claimants to better determine their needs. Although the Commission placed a strong emphasis on customer service from the beginning, a number of injured workers still had complaints. Until we can reach the point that we're assured that every injured worker is getting the benefits that they are due under the law, we cannot claim total success in the implementation of the law.
- **The staffs of our Field Offices were reorganized to better serve our customers.**
To address concerns about customer service, the Commission began a pilot program which later developed into the Customer Service Enhancement Program. The Program reallocated staff resources to provide better customer service. By the end of FY 92, the Customer Service Enhancement Program had expanded to most Field Offices. A key element was the restructuring of the Ombudsman Program to give the Ombudsmen a proactive role in dispute resolution. The Ombudsmen explain the dispute resolution process to unrepresented participants and assist unrepresented participants in preparing for a dispute resolution proceeding.
- **Figures show that the system is achieving cost savings.**
Figures from Texas Department of Insurance show that in the first half of calendar year 1992, insurance companies reported they had paid about one third less in actual medical and income benefit than they paid in 1990, the last year the old workers' compensation law was in effect.
- **Preparations began for the Self-Insurance Program which goes into effect January 1, 1993.**
During FY 92, the Division of Self-Insurance was formed. By the end of FY 92, Commissioners had proposed the rules to implement the Program, and more than 400 businesses had requested application forms.
- **Fraud is being successfully prosecuted, and employers and insurance carriers improved their compliance with administrative requirements.**
In FY 92, the Commission conducted 3,131 criminal and administrative investigations. Twenty-four criminal charges were referred to prosecutors. One referral led to a felony fraud conviction, and 12 others led to grand jury indictments. The Commission issued 650 penalties against 108 employers and 23 insurance companies. The average recommended penalty during the first eight months of 1992 was \$1,643. In 1990, the average penalty amount was \$123. The Commission worked closely with employers and insurance carriers to develop compliance plans, mostly focusing on timely filing of paperwork and timely payment of benefits.
- **Two medical fee guidelines were adopted, and work began on treatment guidelines.**
Commissioners adopted a Medical Fee Guideline and a Hospital Fee Guideline. A Physical Medicine Treatment Guideline has been proposed and work began on other treatment guidelines.
- **Medical cost savings were achieved as a result of the guidelines and other provisions.**
In the first eight months of 1992, the amount of medical bills submitted by health care providers was \$911,581,112. The amount paid by insurance companies according to Commission guidelines was \$791,744,813, a net savings to the system of \$119,836,299. In the first eight months of 1992, the Commission received 6,119 requests for spinal surgery. Of these, 812 were deemed unnecessary by second or third opinion doctors, resulting in a net savings to the system of \$8,120,000.
- **The Commission did long-range planning to identify how to accomplish agency objectives.**
The Commission developed an Agency Strategic Plan, began work on an Agency Systems Plan and revised its Performance Measures. The Commission coordinated closely with the Texas Department of Information Resources in the development and approval of automation plans.

- **The Commission began assisting the Texas Workers' Compensation Insurance Facility with the new requirements of House Bill 62.**
A new safety program for certain employers insured through the Facility was implemented in April 1992. Through the end of the Fiscal Year, 1,472 employers had been identified for the program, which requires them to have a hazard survey conducted and to develop and implement accident prevention plans. More than 530 plans had been submitted by the end of the Fiscal Year.
Preparations were made to begin another program in Fiscal Year 1993, that gives certain employers insured through the Facility an opportunity for a rate reduction if they have implemented safety programs.
- **The Commission's free safety consultation program continued to grow.**
The Commission provided 2,675 OSHCON or Occupational Safety and Health Consultation Program consultations to more than 1,900 Texas employers in FY 92. Before 1990, the program provided an average of approximately 1,200 consultations a year. A 1991 study showed a 21.5 percent reduction in reported injuries and illnesses associated with OSCHON consultations. The study also associated the safety consultations with a 15.6 percent reduction in those reported injuries and illnesses that resulted in more than one lost workday.
- **The Commission maintained a toll-free safety hotline for workers.**
In FY 92, the hotline received 2,620 calls, of which 811 were safety-related and 573 were complaints of unsafe working conditions, which were investigated by the Commission.
- **The Commission reached thousands of employees with its mandatory and voluntary back injury prevention training program.**
Back injury prevention training was offered through a mandatory pilot program in eight counties, reaching 525 workers. The Commission provided back injury prevention training through a voluntary program statewide, reaching 3,065 workers in FY 92. In addition, the Commission trained 143 employees from Texas businesses to be back injury prevention trainers. Through internal training programs in their businesses, each of these trainers can reach thousands more employees.
- **The Commission established new safety programs and offered safety training statewide.**
The Commission began a Safety Award Program and a Peer Review Safety Program. The Commission provides safety and risk management programs, free safety videos and publications to Texas employees and employers.
- **The Commission further reduced the injury rate for Commission employees in FY 92.**
In FY 92 the Commission reduced its injuries per 100 employee to 2.01, exceeding the FY 92 goal of 3.1 injuries per 100 employees. In FY 91, the Commission also met its goal, reducing injuries from 4.3 to 3.4 injuries per 100 employees. In 1992, the Commission emphasized training to prevent carpal tunnel syndrome and back injuries.
- **The Commission evaluated state agency safety programs and provided Risk Management guideline manuals to every state agency.**
The Commission began safety program evaluations for state agencies after that function was transferred from the Attorney General's Office. The Commission developed a risk management program review format and did a pilot implementation project. Risk management information software was installed and will be used to report exposure and loss data from state agencies to the Legislature.
- **Public information and assistance was offered through conferences, seminars and speakers.**
Approximately 450 people from 13 states attended the second Texas Workers' Compensation Educational Conference, co-sponsored with the International Workers' Compensation Foundation. The Speakers' Bureau provided 319 speakers statewide, reaching an audience of 23,193. Eleven Medical Review Educational Seminars were offered to health care providers statewide. The Commission participated in the TEC's Greater Texas Program and in other conferences and seminars across the state.



- The Commission improved its telephone and computer networks. To support the Customer Service Enhancement Program and other communication needs, the Commission acquired PBX systems for five Field Offices and the records facility, which added call routing support and significantly reduced the cost of the agency's telephone services. The agency expanded its wide area network at the beginning of FY 92.
- Three new Field Offices opened, and one Field Office was closed. Field Offices opened in Galveston, Victoria and San Angelo, and the Wharton Field Office closed. Two more Field Offices are scheduled to open in FY 93, bringing the total to 24 Field Offices.



* Lufkin and Del Rio Field Offices are scheduled to open in FY 93.

To request a subscription to the *TWCC Times*, send this form to: Texas Workers' Compensation Commission, MS 3B, 4000 South IH-35, Austin, Texas 78704-7491.

Name: _____

Business Name: _____

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TWCC Times

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Editor
Editorial Advisor

Arne Sigman
Linda McKee

TEXAS WORKERS' COMPENSATION COMMISSION

Field Office Pilot Project *

Objectives:

Test in two field offices, Harlingen and Fort Worth, a new program design that emphasizes dispute resolution and Ombudsman services while maintaining necessary general public information services and official duties on claims (approving advances, medical exams, correspondence, etc.). The Pilot Program will use mostly existing resources but will redistribute staff to focus resources on key areas.

Key Elements:

- Increase available time and scope of Ombudsman duties to include assistance in dispute resolution proceedings. Time will be made available by removing current general information duties and moving Disability Determination Officer level staff, if required to increase Ombudsman coverage.
- Dedicate certain Disability Determination Officers to handle claim related dispute resolution, prior to the setting of a proceeding, as only responsibility: Time is provided by the elimination of current claim file reviewing tasks.
- Dedicate certain Disability Determination Officers to handle official activities on claims such as approving advances, medical exams, setting issues for conferences and settlements.
- Dedicate individuals previously involved in support roles and Assistant Disability Determination Officer positions to provide increased general information, brochure distribution, etc. Time is provided by eliminating the current hard copy file review in favor of a periodic sample audit of files with violations referred to Compliance & Practices.
- Structure project management and pilot program evaluation process to determine the relative effectiveness of current and pilot programs.

* As a result of the success of the Field Office Pilot Project, it has now been adopted as the standard operating procedure.

Comparison of Current Process to Pilot Project;

Ombudsman

CURRENT

- Provide general information to injured workers, employers and general public
- Assist individuals in understanding worker's compensation benefits and procedures
- Receive and investigate reported complaints
- Make necessary referrals to other departments

PILOT

- General Information will be provided in the Customer Assistance Department
- "Assisting individuals in understanding Workers' Compensation benefits" is a Customer Service activity that is provided by all departments of the organization and is a primary responsibility
- Enter into and assist dispute resolution on all issues if requested
- Receive and investigate reported complaints
- Make necessary referrals to other departments, agencies and services
- Receive notices of all Benefit Review Conferences, Arbitrations and Contested Case Hearings
- Perform consultations on issues regarding procedures and preparation required for the hearing process
- Assist the injured worker and employers through the hearing process
- Assist participants in understanding their responsibilities through the hearing process
- Assist claims services person, Benefit Review Officers and Hearing Officers in communicating with employees, employers, medical providers and carriers
- Input information into the Compass claim records

RENT

Customer Assistance

New functional department - the positions were primarily Assistant Disability Determination Officers which performed the following responsibilities:

- Review of hard copy claim files on a regular basis for documented filings
- Audit compensation rates on regular basis and identify non compliance issues
- Assist injured workers in absence of Disability Determination Officer
- Purge for hard copy file retention requirements
- Respond to specific detailed questions and overflow calls
- Review claim file data for correct employer name, carrier, addresses, etc.

PILOT

- Hard copy claim file review is done on an as needed basis to respond to specific correspondence
- Auditing done through a periodic random sampling of files until automation takes place with referral to Compliance and Practices on violations
- Assistance to injured workers in absence of Disability Determination Officer is done through teamwork as opposed to assignment
- Customer Assistance is notified of file and telephone contact is made with the injured worker within 3 working days
- Incoming requests for general information handled by this functional area while providing general information regarding rights/responsibilities/medical rights/file location, what to do if a dispute arises/carrier & employer information
- Messages are returned within two (2) business hours of receipt
- Preliminary dispute resolution will take place and proper notation made in COMPASS. If necessary, written agreements submitted to Claims Services department
- Record disputed issues and respective positions on COMPASS
- Insure data received is accurate and obtain all other required data necessary to support other functional areas
- Enter data into COMPASS

SENT

Customer Assistance (continued)

PILOT

- Make necessary referrals to other field office staff members
- Make necessary referrals to other departments, agencies and services
- Identify and initiate activity with regards to violations

RENT

Records Maintenance

- Provide basic clerical support to the field office
 - Assist in completion of purchase requisitions
 - Maintain statistical information and data
 - Distribution of files and mail
 - Provide word processing requirements
- Maintain processing of mail (open, date, sort, pull and file)
- Provide support to the BRC/PHC/Hearings sections

PILOT

- Provide general support to the field office
 - Processing routine correspondence
- Provide support to the Proceedings Section
 - Schedule/provide notice of claim files for Benefit Review/Prehearing Conferences
 - Maintain docket calendar for all proceedings
 - Prepare Benefit Review Officer reports for submission to participants and Hearings Division
 - Perform complex word processing and/or transcription of dictation
 - Prepare Hearing Officer decisions for submission
- Maintain statistical information for the field office
- Maintain processing of mail to include opening, dating, sorting, filing and pulling to responsible party
- Responsible for completing purchase requisitions for supplies and maintaining inventory
- Purge active files to determine if may be retired and sent to General Files
- Maintain general field office calendar (staffing calendar)
- Perform random sampling for claim file monitoring
- Responsible for distribution of field office information (rules, policies, procedures)

SENT

Claims Services

- Provide general information to injured workers on their claim file
- Perform official activities required in a claim file
- Perform routine file review
- Perform routine audit of claim information
- Perform purging of hard copy claim files
- Supervise Review Team staff

PILOT

- "Providing General Information" will be given primary attention at the Customer Assistance level
- Perform the official activities required in a claim file
 - Request for Medical Examination Orders
 - Required Medical Exams
 - Advancement/Acceleration
 - Designated Doctor Referral
 - Identifying Violations
 - Handle Fatal/Statutory Total and Permanent Claims
 - Official Correspondence
 - Requests for:
 - Benefit Review/ Prehearing Conferences
 - Arbitration
 - Contested Case Hearing
 - Lump Sum - Impairment
 - Third Doctor Requests
 - Supplemental Income
- Perform Dispute Resolution
 - Specific claims identified by Information Assistance
 - Agreements
 - Request For Forms
 - Certify parties unable to resolve prior to referral to proceedings
- Make necessary referrals to other departments, agencies and services
- Assist in gathering necessary data and information
- Make necessary entries into COMPASS

RENT

Proceedings

- Conduct and oversee Benefit Review Conferences, Prehearing Conferences and Contested Case Hearings

PILOT

- Conduct and oversee Benefit Review Conferences, Prehearing Conferences and Contested Case Hearings
- Assist in gathering necessary data and information
- Serve as resource to dispute resolution activity in field office
- Assist field office in staff education

SENT

Health & Safety

- Provide health and safety consultations and assistance to employers and general public
- Complete necessary documentation or correspondence

PILOT

- Provide health and safety consultations and assistance to employers and general public
- Complete necessary documentation or correspondence
- Gather data and information as needed

TEXAS WORKERS' COMPENSATION COMMISSION

COMMENTS BY
BART L. GRIFFIN
DIRECTOR OF RECORDS

INTRODUCTION

I WOULD LIKE TO THANK YOU FOR INVITING ME TODAY AND ALLOWING ME TO TAKE PART IN YOUR DISCUSSION OF YOUR WORKERS' COMPENSATION SYSTEM. I THINK THERE ARE MANY SUCCESS STORIES COMING OUT OF TEXAS, THAT ANYBODY, LOOKING AT CHANGING THEIR SYSTEM SHOULD AT LEAST THINK ABOUT. I AM HERE TODAY TO TALK TO YOU SPECIFICALLY ABOUT A COUPLE OF THE SUCCESS STORIES IN TEXAS. THE STATUTORILY ESTABLISHED:

- 1) DISPUTE RESOLUTION SYSTEM; and,
- 2) THE OMBUDSMAN PROGRAM

OLD LAW DISPUTE RESOLUTION

TEXAS HAS HAD A SUCCESSFUL DISPUTE RESOLUTION SYSTEM WITHIN THE AGENCY FOR MANY YEARS. PRIOR TO THE REFORM OF OUR WORKERS' COMPENSATION ACT BECOMING EFFECTIVE, DISPUTE RESOLUTION WAS KNOWN AS A PRE-HEARING CONFERENCE. THIS WAS AN INFORMAL MEETING BETWEEN THE PARTICIPANTS DIRECTLY INVOLVED IN THE CASE. IT ALLOWED THEM THE OPPORTUNITY, TO SIT AT THE SAME TABLE, AND DISCUSS THE DISPUTES IN A CASE AND ATTEMPT TO GET IT RESOLVED WITHOUT COSTLY LITIGATION. THE PROBLEM WITH THE OLD SYSTEM WAS, IF THE CASE COULD NOT BE AMICABLY RESOLVED OR SETTLED, IT LEFT THE AGENCY'S JURISDICTION AND

*House Labor and Industry
Attachment 3
2-9-93*

WENT IN TO THE DISTRICT COURTS--TRIAL DE NOVO.

NEW LAW DISPUTE RESOLUTION

THE TEXAS REFORM ACT RESTRUCTURED THE DISPUTE RESOLUTION SYSTEM TO ALLOW THE AGENCY TO BE INVOLVED IN THE DECISION MAKING PROCESS THROUGHOUT THE DISPUTE. WE NOW HAVE A THREE-TIER SYSTEM WITHIN THE AGENCY. IT IS AN ISSUE DRIVEN SYSTEM AS OPPOSED TO A TOTAL CASE RESOLUTION SYSTEM. IT BEGINS WITH THE BENEFIT REVIEW CONFERENCE.

THIS IS VERY SIMILAR TO OUR OLD LAW PRE-HEARING CONFERENCE. THE BENEFIT REVIEW CONFERENCE IS AN INFORMAL PROCESS, MEANING, THE CONFERENCE IS NOT RECORDED AND THERE IS NO SWORN TESTIMONY TAKEN. A BENEFIT REVIEW OFFICER, WHO IS REQUIRED BY THE STATUTE TO BE FORMALLY TRAINED IN MEDIATION, PRESIDES OVER THE CONFERENCE TO MEDIATE THE DISPUTES AND, HOPEFULLY, RESOLVE THEM. THIS NEW PROCESS, AS IN THE OLD, CONTINUES TO BE SUCCESSFUL. APPROXIMATELY 70% OF ALL CASES SCHEDULED FOR BENEFIT REVIEW CONFERENCE ARE SUCCESSFULLY RESOLVED AT OR BEFORE THAT CONFERENCE.

ARBITRATION

ON JANUARY 1, 1992, BINDING ARBITRATION BECAME EFFECTIVE. BY MUTUAL AGREEMENT OF THE PARTIES, THEY MAY ELECT TO GO THROUGH BINDING ARBITRATION AS OPPOSED TO A CONTESTED CASE HEARING. TEXAS HAS ONLY HAD ONE REQUEST FOR BINDING ARBITRATION SINCE JANUARY 1, 1992.

CONTESTED CASE HEARING

IF ISSUES ARE NOT RESOLVED AT THE BENEFIT REVIEW CONFERENCE, AND THE PARTIES DID NOT ELECT BINDING ARBITRATION, A BENEFIT CONTESTED CASE HEARING IS HELD. THIS IS A FORMAL ADMINISTRATIVE HEARING WHICH IS PRESIDED OVER BY A HEARING OFFICER, WHO IS A LICENSED ATTORNEY AND IS EMPLOYED BY THE TEXAS WORKERS' COMPENSATION COMMISSION. THE HEARING OFFICER IS THE SOLE JUDGE OF THE RELEVANCY AND MATERIALITY OF THE EVIDENCE PRESENTED AT THE HEARING. ONLY THE UNRESOLVED ISSUES FROM THE BENEFIT REVIEW CONFERENCE ARE DISCUSSED UNLESS THE HEARING OFFICER ALLOWS ADDITIONAL ISSUES TO BE RAISED. THIS WHOLE DISPUTE RESOLUTION PROCESS IS MEANT TO BE WIDE OPEN. EVERYTHING PRESENTED AT THE CONTESTED CASE HEARING MUST BE EXCHANGED PRIOR TO THE HEARING OR IT MAY NOT BE ALLOWED TO ENTERED INTO EVIDENCE.

APPEALS PANEL

IF THE DECISION OF THE HEARING OFFICER IS APPEALED, IT GOES TO THE THIRD TIER WITHIN OUR SYSTEM, A THREE MEMBER APPEALS PANEL WHO REVIEW THE DECISION OF THE HEARING OFFICER. THE PANEL WILL REVIEW THE PETITION REQUESTING THE APPEAL, THE RESPONDENTS BRIEF AND THE RECORDING OF THE HEARING, IF NECESSARY. THE PANEL WILL AFFIRM THE HEARING OFFICERS DECISION, REVERSE THE DECISION AND RENDER A NEW DECISION OR REVERSE THE DECISION AND REMAND THE CASE BACK TO THE HEARING OFFICER FOR FURTHER DEVELOPMENT AND CONSIDERATION.

JUDICIAL REVIEW

ANY PARTY THAT CONTINUES TO DISAGREE WITH THE AGENCY DECISION, CAN SEEK JUDICIAL REVIEW BY FILING SUIT IN THE APPROPRIATE COURT IN THE INJURED WORKERS' COUNTY OF RESIDENCY AT THE TIME OF THE INJURY OR DEATH. DURING ANY JUDICIAL REVIEW OF AN APPEALS PANEL DECISION, OUR AGENCY RETAINS JURISDICTION OF ALL OTHER ISSUES RELATED TO THE CLAIM.

ADDITIONALLY, THE JUDGE MUST GIVE THE DECISION OF OUR AGENCY THE APPROPRIATE WEIGHT. SINCE JANUARY 1991, ONLY 162 CASES HAVE BEEN FILED FOR JUDICIAL REVIEW OUT OF THE 800 DECISIONS OF OUR APPEALS PANEL.

OMBUDSMAN PROGRAM (OLD CONCEPT)

THE SECOND AREA OF DISCUSSION TODAY IS OUR OMBUDSMAN PROGRAM. THE OMBUDSMAN PROGRAM WAS STATUTORILY ESTABLISHED TO ASSIST UNREPRESENTED INJURED WORKERS, EMPLOYERS AND OTHER PARTIES TO ENABLE THEM TO PROTECT THEIR RIGHTS IN THE WORKERS COMPENSATION SYSTEM. I BELIEVE THE TEXAS LEGISLATURE'S INTENT, WAS FOR THE OMBUDSMAN TO BE ACTIVE AND AGGRESSIVE PROBLEM-SOLVERS, WHO, DETECT AND HELP RESOLVE DISPUTED ISSUES OR MISUNDERSTANDINGS BEFORE THEY ADVANCE TO THE COSTLY/COMPLEX DISPUTE RESOLUTION SYSTEM.

INITIALLY, OUR OMBUDSMAN WERE TASKED WITH MERELY RESPONDING TO GENERAL INFORMATION QUESTIONS. THEY WERE PROCEDURALLY NOT ALLOWED TO ATTEND A DISPUTE RESOLUTION PROCEEDING. WE DID NOT LIKE THE WAY THE OMBUDSMAN PROGRAM WAS SHAPING-UP. WE DID NOT FEEL WE WERE

GETTING ENOUGH "BANG FOR OUR BUCK". WE FELT IT SHOULD DO MORE. HOWEVER; ANY CHANGE WE NEEDED TO MAKE TO OUR OMBUDSMAN PROGRAM WOULD AFFECT THE RESPONSIBILITIES OF EVERYONE IN OUR FIELD OFFICES; SPECIFICALLY, THIS WOULD EFFECT HOW WE WERE ORGANIZATIONALLY STRUCTURED AND THE ASSIGNED RESPONSIBILITIES OF EACH PERSON IN THE FIELD OFFICE.

FIELD OFFICE

THE PROBLEM WAS, WHEN THE ORIGINAL OMBUDSMAN PROGRAM WAS ON THE DRAWING TABLE, WE DID NOT ASK OURSELVES THE CRITICAL QUESTION: "DOES OUR ORGANIZATIONAL STRUCTURE REFLECT WHAT IS IMPORTANT TO OUR BUSINESS?" WE LEARNED, THAT WHAT WAS IMPORTANT TO OUR BUSINESS WAS A MORE AGGRESSIVE PROGRAM. THE NEW LAW IS AN ISSUE-DRIVEN SYSTEM AND NOT A TOTAL CASE RESOLUTION SYSTEM. WE HAD TO HAVE STRUCTURE THAT WAS RESPONSIVE TO OUR CUSTOMERS. THE ORIGINAL ORGANIZATIONAL STRUCTURE WAS NOT PROVIDING THE LEVEL OF RESPONSIVENESS WE NEEDED.

SO, IN MARCH OF 1992, WITH A FOCUS TOWARD PURE AND SIMPLE CUSTOMER SERVICE, WE LAUNCHED A PILOT PROJECT IN TWO OF OUR 23 FIELD OFFICES TO STUDY A NEWLY DEvised CONCEPT OF HOW WE COULD BETTER MEET THE NEEDS OF OUR CUSTOMERS, AND, AT THE SAME TIME, REFOCUS THE DIRECTION OF HOW WE NEEDED TO HANDLE OUR DAILY CLAIM HANDLING BUSINESS. WE NEEDED TO TAKE A REAL LOOK TO THE FUTURE TO SEE WHERE WE TRULY WANTED TO BE AS AN AGENCY.

CUSTOMER SERVICE HAS BECOME THE MOST IMPORTANT AREA IN ALL TYPES OF BUSINESSES. THIS IS CERTAINLY TRUE FOR STATE GOVERNMENT AS WELL. THE PHILOSOPHY, AS SET OUT BY TEXAS GOVERNOR ANN RICHARDS

FOR TEXAS STATE GOVERNMENT, IS, THAT WE WILL BE OPEN, ETHICAL, RESPONSIVE, ACCOUNTABLE AND DEDICATED TO THE PUBLIC WE SERVE. WE TOOK THIS DIRECTION VERY SERIOUSLY.

PILOT PROJECT

WITH THE ENTHUSIASTIC SUPPORT OF OUR COMMISSIONERS AND OUR EXECUTIVE DIRECTOR, AND, FOLLOWING THE LEAD OF GOVERNOR RICHARDS, AND, IN AN EFFORT NOT TO CONFORM TO NORMAL STATE GOVERNMENT, WE REVIEWED HOW WE DID BUSINESS AT OUR SERVICE DELIVERY POINTS. WE PUT OURSELVES IN THE POSITION OF THE INJURED WORKER OR EMPLOYER. WE KNEW DEFINITE CHANGES WERE NECESSARY. WE WANTED TO MAKE THE PROCESS MORE EFFICIENT AND, AT THE SAME TIME MORE EFFECTIVE. EFFICIENCY WAS SIMPLY NOT ENOUGH. ADDITIONALLY, WE CONSIDERED THAT A NECESSARY PART OF OUR CUSTOMER SERVICE PROGRAM IS "CUSTOMER CONTACT" AND "CONTINUAL COMMUNICATION" WITH OUR CUSTOMERS.

FIRST, WE NEEDED TO LOOK AT THE MAJOR FUNCTIONAL GROUP ACTIVITIES IN THE FIELD OFFICE TO DETERMINE WHERE CHANGES WERE NEEDED. AS WITH ANY WORKERS' COMPENSATION SYSTEM, WE RECOGNIZED THAT THERE ARE CERTAIN ROUTINE REQUIRED WORK ACTIVITIES OF THE AGENCY, AND THOSE THAT OCCUR AND ARE UNIQUE TO EACH AND EVERY CLAIM.

WE HAD THREE OBJECTIVES WHEN CREATING THE IDEAL FIELD OFFICE OR SERVICE DELIVERY POINT:

- 1) WE WANTED TO FOCUS ON A HIGHER LEVEL OF CUSTOMER SERVICE
AND SATISFACTION
- 2) WE WANTED TO REFOCUS OUR OMBUDSMAN PROGRAM TO PROVIDE

TRUE ASSISTANCE TO PARTICIPANTS IN THE WORKERS' COMPENSATION SYSTEM; AND,

- 3) WE WANTED TO ACHIEVE A HIGHER LEVEL OF DISPUTE RESOLUTION AT THE EARLIEST POSSIBLE LEVEL.

LOOKING AT THESE OBJECTIVES, AND, PUTTING OURSELVES IN THE POSITION OF THE WORKER AND THE EMPLOYER, WE THOUGHT IT EXTREMELY IMPORTANT TO INITIATE IMMEDIATE CONTACT WITH AN INJURED WORKER ONCE WE ESTABLISH A FILE OR HAVE KNOWLEDGE OF AN INJURY. CONTACT WITH THE INJURED WORKER BEFORE THEY EVER RECEIVE A PIECE OF CORRESPONDENCE FROM OUR AGENCY WAS A FOCUS OF THIS EFFORT.

DURING THIS INITIAL CONTACT:

- 1) WE WILL PROVIDE GENERAL INFORMATION AND ADDRESS IMMEDIATE CONCERNS
- 2) WE WILL BRIEFLY DESCRIBE THEIR RIGHTS AND RESPONSIBILITIES
- 3) WE WILL NAME THE RESPONSIBLE FIELD OFFICE AND PROVIDE THE TOLL-FREE INJURED WORKER HOTLINE NUMBER.

WITH THIS PROACTIVE APPROACH, WE ARE NOW ABLE TO RECOGNIZE AND RESOLVE PROBLEMS OR POTENTIAL PROBLEMS MUCH EARLIER; WE ARE NOW ABLE TO ANSWER QUESTIONS OR CONCERNS MUCH EARLIER; AND, WE ARE NOW ABLE TO GET UNRESOLVED ISSUES INTO THE DISPUTE RESOLUTION PROCESS MUCH QUICKER.

THE CONCEPTUAL IDEA OF THE PILOT PROJECT MADE THE ENTIRE FIELD OFFICE FUNCTION AS A TEAM IN HANDLING WORKERS COMPENSATION CASES. BASICALLY, ANY EMPLOYEE MAY GET INVOLVED IN MAKING THE INITIAL CONTACTS OR HANDLING GENERAL INFORMATION CALLS. WE ALSO HAVE AN AUTOMATION SYSTEM THAT ALLOWS US TO LOG EVENTS INTO THE SYSTEM

DURING THE LIFE OF A FILE AND IT REMAINS AVAILABLE FOR REFERENCE TO THOSE ACROSS THE STATE HAVING ACCESS TO OUR AUTOMATION SYSTEM. BASICALLY, ANY AGENCY EMPLOYEE, ACROSS THE STATE, CAN ASSIST ANY PARTICIPANT OF A CASE BY REVIEWING THE DATA FILE AND ITS CONTACT LOG ON THE SYSTEM.

PRIOR TO THIS PILOT PROJECT, WE ALWAYS CONCENTRATED ON MANUALLY REVIEWING FILES, AUDITING DOCUMENTS, AND REVIEWING MOST OF THE CORRESPONDENCE IN A FILE. YOU MUST KEEP IN MIND, THE CARRIERS AND EMPLOYERS ARE REQUIRED TO DO CERTAIN THINGS HANDLING A FILE AND THEY ARE DOING THEM WITHOUT OUR INTERVENTION ON THE GREAT MAJORITY OF THE CASES. AS I AM SURE YOU REALIZE, THIS IS A LABOR INTENSIVE PROCESS WITH VERY LITTLE RESULT.

WE DID NOT HAVE A VALID REASON FOR CONTINUING BUSINESS THIS WAY. THE BOTTOM LINE IS, WE HAD TO LOOK TO THE FUTURE AND DEVELOP A MEANINGFUL CLAIMS-HANDLING PROCESS THAT TOOK CARE OF THE EXCEPTIONS IN THE LIFE OF A CLAIM FILE. THE PILOT PROJECT ESTABLISHED AN EXPERT GROUP TO HANDLE THE OFFICIAL ACTIVITIES, WHICH, ARE STATUTORILY REQUIRED TO BE REVIEWED AND, APPROVED OR DENIED.

ADDITIONALLY, IT CREATED A DISPUTE RESOLUTION ACTIVITY EVEN PRIOR TO A BENEFIT REVIEW CONFERENCE. TRAINED STAFF WILL GET INVOLVED IN A DISPUTE, THE MINUTE WE BECOME AWARE OF IT, AND GET THE PARTICIPANTS TALKING. WE DETERMINED MOST DISPUTES COULD BE EASILY RESOLVED IF THE PARTICIPANTS SIMPLY COMMUNICATED THEIR RESPECTIVE POSITIONS. TOO OFTEN IN THIS BUSINESS, WE FIND ADJUSTERS FOR INSURANCE COMPANIES WITH CASELOADS THAT WERE FAR TOO LARGE, AND IT PREVENTED TIMELY CONTACT WITH THE INVOLVED PARTICIPANTS ON DISPUTED CLAIMS. WE COULD NOT WAIT FOR INSURANCE

COMPANIES TO RESPOND TO THIS PROBLEM. WE HAD TO BECOME PROACTIVE. THIS PROACTIVE APPROACH, ALLOWED US TO BETTER UTILIZE THE CROWDED DOCKET SPACE BECAUSE FEWER AND FEWER CASES ACTUALLY NEEDED A BENEFIT REVIEW CONFERENCE.

OMBUDSMAN PROGRAM (NEW CONCEPT)

AND FINALLY, A VERY EXCITING PORTION OF THE PROJECT, WHICH IS WHAT GOT US LOOKING AT OUR ENTIRE PROCESS TO BEGIN WITH, WAS TO REFOCUS THE DIRECTION OF THE OMBUDSMAN PROGRAM. UNDER THE PROJECT, OMBUDSMAN ARE GETTING DIRECTLY INVOLVED IN DISPUTED CASES AND WILL PROVIDE ASSISTANCE TO ANY PARTICIPANT ONCE A CASE IS SCHEDULED FOR A BENEFIT REVIEW CONFERENCE OR CONTESTED CASE HEARING. THE OMBUDSMAN WILL CONTINUE TO PROVIDE ASSISTANCE IN RESOLVING DISPUTES OUTSIDE OF THESE FORMAL PROCEEDINGS. THEY WILL THOROUGHLY EXPLAIN THE COMPLEX PROCEEDINGS PROCESS AND, IF REQUESTED, ASSIST THEM THROUGH THE PROCESS. WE HAVE DEFINED "ASSIST" AS BEING ANYTHING FROM THE CRITICAL PREPATORY WORK, TO ACTUALLY COMMUNICATING FOR THE PARTICIPANT WHO REQUESTED ASSISTANCE. HOWEVER, WE ARE VERY CAUTIOUS OF NOT CROSSING THE LINE FROM ASSISTING TO REPRESENTING. THE OMBUDSMAN ARE NOT LAWYERS, AND, WE FEEL STRONGLY THAT THEY DO NOT NEED TO BE LAWYERS.

WE ARE WORKING WITH A VERY COMPLEX LAW THAT HAS BEEN DIFFICULT FOR MANY PEOPLE TO FULLY UNDERSTAND. WE MUST GIVE OUR CUSTOMERS AN OPPORTUNITY TO RECEIVE THE ASSISTANCE THEY NEED AND DESERVE FROM THE INCEPTION OF THEIR CLAIM THROUGH THE END OF THE PROCESS. WE FELT VERY STRONGLY, THAT IT SHOULD NOT BE NECESSARY FOR AN INJURED

WORKER TO HIRE A LAWYER TO GET THE BENEFITS THAT THEY ARE ENTITLED TO RECEIVE. OUR AGENCY IS CHARGED WITH THAT RESPONSIBILITY, AND THIS PROJECT HAS ASSISTED US IN MEETING THIS IMPORTANT OBJECTIVE.

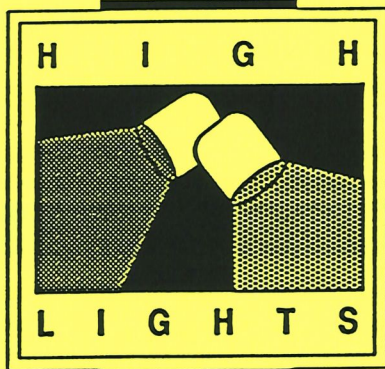
CLOSING REMARKS

AND, TO BRING YOU UP TO DATE, THE RESULTS OF THIS PILOT PROJECT USING THIS PROACTIVE CONCEPT, WAS RECEIVED MOST FAVORABLY BY THE COMMISSIONERS AND EXECUTIVE DIRECTOR. THIS CONCEPT HAS NOW BEEN IMPLEMENTED IN ALL OF OUR 23 FIELD OFFICES ACROSS OUR STATE AND HAS BEEN NAMED THE CUSTOMER SERVICE ENHANCEMENT PROGRAM. IT HAS BEEN A NEW AND SUCCESSFUL APPROACH FOR EXCELLENCE AND IS TAKING OUR AGENCY TO A HIGHER LEVEL OF CUSTOMER SERVICE WHERE WE ARE ACTUALLY REALIZING CUSTOMER SATISFACTION.

ADDITIONALLY, WE ARE COMMITTED TO WORKING WITH PARTICIPANT GROUPS. WE WANT CLEAR AND OPEN COMMUNICATION WITH THEM. IF WE HEAR THEIR SUGGESTIONS AND COMMENTS, OUR JOB AS ADMINISTRATORS IS MUCH EASIER IN THE LONG RUN.

AND IN CLOSING, I WOULD LIKE TO SAY WE GLADLY REALIZE AND ACCEPT THE CHALLENGE THAT THE EYES OF THE WORKERS COMPENSATION WORLD ARE ON TEXAS. WITH THE REFORM AND THIS NEW WAY OF DOING BUSINESS, THE FUTURE TRULY LOOKS GOOD FOR WORKERS' COMPENSATION IN TEXAS.

TEXAS WORKERS' COMPENSATION COMMISSION



A monthly review
of activities,
accomplishments
and statistics

December 1992

Covering the period from January 1, 1991,
to December 31, 1992

Distributed monthly by the Communication and
Public Information Section of the

TEXAS WORKERS' COMPENSATION
COMMISSION
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O.D. KENEMORE
RAMON CLASS

EMPLOYER COMMISSIONERS:
JACK GAREY, VICE CHAIRMAN
JOE L. HANSON
RICHARD A. PERKINS

TODD K. BROWN
EXECUTIVE DIRECTOR

An Equal Opportunity Employer

NUMBER OF INJURIES REPORTED TO COMMISSION

Employers with workers' compensation insurance must report to the Commission all job-related illnesses and deaths and any injuries that caused an employee to miss more than one full shift of work. The totals below also include injuries for which an employee received medical treatment but did not miss a full day of work.

	DECEMBER	1992
Number of Injuries reported by employers	27,389	375,459

NUMBER OF WORKERS' COMPENSATION CLAIMS FILED

The Texas Workers' Compensation Act took effect on January 1, 1991. The Act establishes benefits and claims procedures for workers who suffer job-related injuries or illnesses after January 1, 1991. Benefits and claims procedures for work-related injuries or illnesses that occurred before that date are based on a law enacted in 1917. The totals below are for compensable injuries, or injuries that occurred during the course and scope of the employee's work and which also caused the employee to lose all or some wages for at least eight days.

	DECEMBER	1992	1991
New law claims	7,394	107,208	123,546
Old law claims	370	6,700	36,457
TOTAL	7,764	113,908	160,003

NUMBER OF DISPUTE RESOLUTION PROCEEDINGS CONDUCTED

The Workers' Compensation Act established a three-step process to resolve disputes about claims. The first step is the Benefit Review Conference (BRC). Disputes not resolved at the BRC go on to a Contested Case Hearing (CCH). If either side is dissatisfied with the outcome of the CCH, he or she may appeal to the Commission's Appeals Panel. If either side is dissatisfied with the Appeals Panel decision, he or she may file suit to have the dispute resolved in court.

	DECEMBER	1992	SINCE 1-1-91
BRCs	1,206	12,486	15,172
CCHs	207	2,359	2,797
Requests for Appeals Panel review	91	726	857
Appeals Panel decisions issued	75	685	764
Requests for judicial review of dispute	15	139	148

PLEASE SEE OTHER SIDE

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PERCENT OF ATTORNEY INVOLVEMENT IN WORKERS' COMPENSATION CLAIMS DISPUTES

The Workers' Compensation Act guarantees all parties in a workers' compensation claim dispute the right to legal representation. The Act was designed, however, so that fair and equitable benefits would be paid to injured workers even without representation.

PERCENT OF INJURED WORKERS REPRESENTED BY AN ATTORNEY	DECEMBER	1992	1990
At the Benefit Review Conference	30 %	37 %	Not applicable
At the Contested Case Hearing	48 %	51 %	Not applicable
At the pre-hearing conference (the old-law equivalent to the BRC)			95 %

NUMBER OF FRAUD INVESTIGATIONS; NUMBER AND AMOUNT OF ADMINISTRATIVE PENALTIES ISSUED

The Act authorized the Commission to investigate individuals and businesses for obtaining or denying workers' compensation benefits illegally or for failing to comply with the Act or Commission rules. Enforcement provisions went into effect June 1, 1991.

FRAUD INVESTIGATIONS	DECEMBER	1992	SINCE 6-1-91
Number	231	3,468	4,499
Criminal charges referred	3	30	43

ADMINISTRATIVE VIOLATIONS	DECEMBER	1992	1992 DOLLAR AMOUNT
Number of penalties issued	107 *	907 **	\$1,332,803

* Includes penalties against 16 employers and three insurance companies.

** Includes penalties against 137 employers and 24 insurance companies.

NUMBER OF OSHCON INSPECTIONS PERFORMED

The Commission's Occupational Safety and Health Consultation Program—called OSHCON—provides free safety consultations for Texas employers with 250 or fewer employees at any one worksite and 500 or fewer employees companywide.

	DECEMBER	1992
Number of OSHCON safety consultations	193	2,984

AMOUNT OF WORKERS' COMPENSATION MEDICAL COST SAVINGS

Amount of medical bills reported to Commission	\$ 1,089,750,248
Amount paid by Insurance companies according to Commission guidelines	\$ 945,219,766
NET SAVINGS TO SYSTEM	\$ 144,530,482

Number of spinal surgery requests received in 1992	9,450
Number deemed unnecessary by second / third opinion doctors	1,441
NET SAVINGS TO SYSTEM	\$ 14,410,000

Your Rights In The Workers' Compensation System

You cannot be fired for filing a workers' compensation claim. Texas law prohibits an employer from discharging or otherwise discriminating against you because you in good faith filed a claim or hired a lawyer to represent you in a workers' compensation claim.

You may have a civil right of action to recover damages against an employer who violates this provision.

- You have a right to know whether or not your employer has workers' compensation insurance. Your employer must tell you by posting notices in the workplace and by giving you a written statement when you are hired. Notices must be provided in English and in Spanish.
- If your employer has workers' compensation insurance, the name of the insurance company must be written on the notices posted in the workplace.
- If your employer has workers' compensation insurance, you must be notified that you can get information about your rights from the OMBUDSMAN in each local



TWCC Safety Hotline Answers Calls 24 Hours A Day

TWCC offers a 24-hour hotline for workers to report unsafe conditions in the workplace.

To make a report, call

1-800-452-9595

TWCC Field Office or at **1-800-252-7031**.

- If your employer has workers' compensation insurance, notices must be posted telling you about TWCC's Safety Hotline for reporting unsafe conditions in the workplace, **1-800-452-9595**.
An employer is prohibited from suspending, terminating or discriminating against you because you in good faith report an alleged occupational health or safety violation.
- You must be notified within 15 days when your employer acquires or cancels workers' compensation insurance.
- For certain public employees, different posting and notification requirements apply. Call TWCC Risk Management at **1-512-440-3800** for details.
- You cannot be required to pay workers' compensation insurance premiums. You may have a civil right of action to recover damages against an employer who violates this provision. Exceptions may apply for certain contractors who make written agreements with subcontractors, for deduction of insurance premiums.

Penalty For Fraud Is \$5,000

Fraud is an administrative violation punishable by a penalty of up to \$5,000. Fraud is committed if a person, to obtain or deny payment of workers' compensation benefits for himself or another, knowingly or intentionally:

- makes a false or misleading statement;
- misrepresents or conceals a material fact;
- fabricates, alters, conceals, or destroys a document; or conspires to commit one of the above three acts.

Fraud may also be prosecuted as a criminal act.

How TWCC Resolves Disputes

After your claim is filed, a dispute may arise over benefits.

TWCC provides several means of resolving disputes. First, the TWCC Disability Determination Officer (DDO) works to resolve disputes. If that is not successful, disputes may go through one or more of the following options until the dispute is resolved:

- A Benefit Review Conference, which provides an informal mediation;
- A Contested Case Hearing, which allows sworn testimony;
- Review by the TWCC Appeals Panel;
- Litigation in Texas courts (only the disputed issue, not the entire claim); or
- Arbitration for disputes not resolved at the Benefit Review Conference, if the parties agree.

If your employer does NOT have workers' compensation insurance:

- You may have a common law right of action to recover damages for personal injuries or death sustained in the course and scope of employment.
- You may call the TWCC OMBUDSMAN at the local TWCC Field Office or at **1-800-252-7031**, to ask questions about your rights. You may report safety violations to TWCC's Safety Hotline, **1-800-452-9595**.

HABLAMOS ESPANOL.

Este folleto está disponible en Español. Llame a su oficina local de la TWCC o llame a **1-800-252-7031**.

(WE SPEAK SPANISH.)

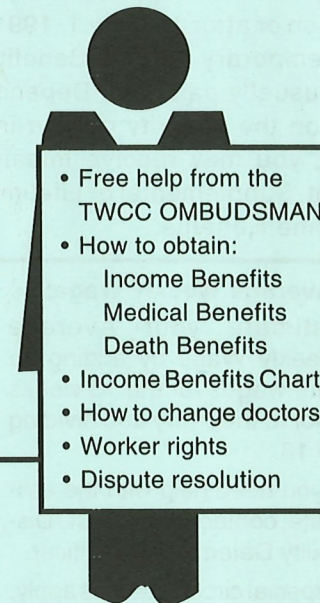
This brochure is available in Spanish. Call the local TWCC Field Office or call **1-800-252-7031**.

Texas Workers' Compensation Commission



Information For The Injured Worker Or Beneficiary

When The Employer Has
Workers' Compensation Insurance



- Free help from the TWCC OMBUDSMAN
- How to obtain:
 - Income Benefits
 - Medical Benefits
 - Death Benefits
- Income Benefits Chart
- How to change doctors
- Worker rights
- Dispute resolution

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Income Benefits Chart



Income benefits are checks you may receive to replace part of the wages you lose because of a "compensable injury," *if* your employer has workers' compensation insurance.

Checks are paid by a private insurance company or by a self-insured employer, such as a city or school district.

State law determines how much you will receive in benefits. The chart applies for injuries on or after January 1, 1991.

Temporary Income Benefits are usually paid first. Depending on the severity of your injury, you may receive Impairment, Supplemental or Lifetime Income Benefits.

*Average Weekly Wage:

Estimate your Average Weekly Wage by adding up your wages for the 13 weeks prior to the injury and dividing by 13.

If you need help with the estimate, contact your TWCC Disability Determination Officer.

If special circumstances apply, for example if you were injured soon after you began work, or if you work part time, adjustments will be made.

TYPE OF BENEFITS	WHO RECEIVES BENEFITS	HOW MUCH BENEFITS PAY	MINIMUM/ MAXIMUM	WHEN BENEFITS BEGIN	WHEN BENEFITS END
TEMPORARY Income Benefits (TIBS)	Temporary Income Benefits are weekly checks that are paid while you recover from a compensable injury, <i>if</i> : <ul style="list-style-type: none"> you have lost time from work for <u>more</u> than 1 week because of the injury, <u>or if</u> you earn lower wages for <u>more</u> than 1 week because of the injury. <i>Lost time or lower wages resulting from an on-the-job injury is called <u>disability</u>.</i>	Weekly Temporary Income Benefits checks pay 70% of the difference between your Average Weekly Wage* and your post-injury earnings, <u>after</u> you have 1 week of lost time (or lower wages). This is usually about \$7 for each \$10 of income lost <u>after</u> the 1st week. <u>If you earned less than \$8.50/hour before your injury:</u> For the 1st 26 weeks, weekly Temporary Income Benefits checks pay <u>75%</u> of the difference between your Average Weekly Wage* and your post-injury earnings, <u>after</u> you have 1 week of lost time (or lower wages). Amount <u>cannot</u> exceed your previous year's earnings.	Temporary Income Benefits Weekly Minimum: \$66 Maximum: \$438 (effective 9/1/91-8/31/92)	Temporary Income Benefits are paid weekly <i>if</i> you have <u>more</u> than 1 week of lost time (or lower wages). Benefits begin to be counted on the 8th day after your lost time (or lower wages) began. Your 1st check, for 1 week of benefits, is paid at the end of your 2nd week of lost time (or lower wages). No check is paid for the 1st week <u>unless</u> you have 4 weeks or longer of lost time (or lower wages).	Temporary Income Benefits may end <i>temporarily</i> if you return to your pre-injury pay rate, then start again if you have more lost time (or lower wages). Temporary Income Benefits end <i>permanently</i> when you reach Maximum Medical Improvement <u>or 104 weeks after benefits begin to be counted, whichever is earlier.</u>
IMPAIRMENT Income Benefits (IIBS)	Impairment Income Benefits are weekly checks that are paid if you have permanent damage from a compensable injury.	Weekly Impairment Income Benefits checks pay 70% of your Average Weekly Wage.*	Impairment Income Benefits Weekly Minimum: \$66 Maximum: \$307 (effective 9/1/91-8/31/92)	Impairment Income Benefits begin to be paid weekly after you reach Maximum Medical Improvement (MMI) <i>if</i> a doctor assigns an impairment rating for you.	Impairment Income Benefits end after you get 3 weeks worth of checks for each percent of your impairment; maximum payment period is <u>300 weeks.</u>
SUPPLEMENTAL Income Benefits (SIBS)	Supplemental Income Benefits are monthly checks that are paid after Impairment Income Benefits end, if you meet certain conditions for permanent damage and for lost income because of a compensable injury.	Monthly Supplemental Income Benefits checks pay 80% of the difference between 80% of your Average Weekly Wage* and your current wages. The amount is calculated quarterly & payments may be small. <i>You must report changes in your income to TWCC.</i>	Supplemental Income Benefits have no minimum. Maximum: \$307 (per week, paid monthly) (effective 9/1/91-8/31/92)	Supplemental Income Benefits begin to be paid monthly after your Impairment Income Benefits end <i>if</i> your impairment rating is 15% or more & you are earning less than 80% of pre-injury wage as a direct result of your injury.	Supplemental Income Benefits end when you are no longer eligible or <u>401 weeks after the date of your injury, whichever is earlier.</u> <i>All Temporary, Impairment and Supplemental Income Benefits end 401 weeks after the date of your injury.</i>
LIFETIME Income Benefits (LIBS)	Lifetime Income Benefits are weekly checks that are paid if you suffer a catastrophic compensable injury: loss of hands, feet, eyesight & other conditions described by law.	Weekly Lifetime Income Benefit checks pay 75% of your Average Weekly Wage.* Payment increases 3% annually.	Lifetime Income Benefits Weekly Minimum: \$66 Maximum: \$438 (effective 9/1/91-8/31/92)	Lifetime Income Benefits begin to be paid weekly <i>if</i> you have an injury that meets conditions described by law.	Lifetime Income Benefits are paid until your death.

What Is Workers' Compensation Insurance?

If your employer has workers' compensation insurance, this insurance:

- pays medical costs if you are injured on the job;
- may pay income benefits to replace part of wages you lose because of an on-the-job injury; and
- pays death benefits to your legal beneficiaries if you are killed on the job.

If you are injured on the job, see *How To Obtain Benefits If You Are Injured On The Job*, below.

If you are a beneficiary of a worker killed on the job, see the section *How To Obtain Death Benefits*.

How To Obtain Benefits If You Are Injured On The Job

- Follow **Steps 1-3** below, if your employer has workers' compensation insurance. If income benefits are due, you will begin getting checks. Income benefits are explained in the chart below.
- Follow the steps in the section *How To Obtain Medical Benefits*, at right.

1. Give notice of injury (or occupational disease) to your employer.

When to notify your employer:

A. INJURY:

You (or someone acting on your behalf) must notify your employer of an **injury** within 30 days.

B. OCCUPATIONAL DISEASE

If you have reason to believe you have an **occupational disease**, you should tell your employer. Notice should be given not later than the 30th day after the date on which you knew or should have known that the disease may be related to the employment. Notify the employer at the place where you worked on the date of the last injurious exposure to hazards of the disease.

How to notify your employer:

A form is NOT required. The notice may be written or verbal. Provide the following information to any person who holds a supervisory or management position:

- your name, address & phone number (if any)
- the date, time & place the injury occurred
- a description of the circumstances & nature of the injury
- the names of any witnesses (if known)
- the name & location of the health care provider that treated you for the injury
- the name of the person (if any) acting on your behalf

2. File a claim with TWCC.

You must file a claim for compensation with TWCC using Form TWCC-41 within 1 year of the injury. Call TWCC at the local Field Office or at **1-800-252-7031** for assistance. Even if you are already receiving weekly checks, a claim must be filed.

ALL benefits may be denied if you fail to give notice of injury within 30 days, or fail to file a claim with TWCC within 1 year, unless you have good cause.

3. If you no longer work for the business where you were injured, you may need to report information about your income. Contact TWCC if A or B applies to you.

A. If you are not receiving income benefits and you no longer work at the business where you were injured, tell TWCC about any income losses when:

- you are unable to work because of your injury or
- you earn less because of your injury.

B. If you are receiving income benefits and you no longer work at the business where you were injured, you must tell the insurance company when:

- you start earning any income,
- your income increases or decreases or
- you have an offer of employment.

Contact TWCC at the local Field Office or at **1-800-252-7031** for instructions.

How To Obtain Medical Benefits

Medical benefits are paid for reasonable and necessary medical treatment of a compensable injury if your employer has workers' compensation insurance.

A compensable injury is an injury or occupational disease that causes damage or harm to the body, and that arises out of and in the course and scope of employment.

Steps In Obtaining Medical Benefits

1. Get emergency medical care, if necessary.

2. Choose and visit a doctor, if necessary.

Follow TWCC Rules for choosing and changing doctors (see below).

3. Before getting medical care or treatment, tell the doctor the injury occurred at work.

If your employer has workers' compensation insurance, a doctor may not bill you for costs relating to a compensable injury. The insurance company pays the bills. The doctor may ask to verify your claim by calling the insurance company. Get the insurance company's name from your employer, or by calling TWCC (call the local TWCC Field Office or **1-800-252-7031**).

4. Follow Steps 1-3 in the section *How To Obtain Benefits If You Are Injured On the Job*, at left.

TWCC Rules For Choosing And Changing Doctors

1. FIRST CHOICE OF DOCTOR

You may choose your own doctor.

Do NOT count the following as a first choice of doctor:

- a doctor providing emergency care or
- a doctor chosen by your employer, unless you continue to visit that doctor for 60 days.

2. SECOND CHOICE OF DOCTOR

You may change to a second doctor if you send written notice to TWCC within 3 days of going to the second doctor.

(See instructions at right.)

If your doctor refers you to a specialist, it does not count as a change of doctor.

3. ADDITIONAL CHOICE OF DOCTOR

A change to a third or additional doctor must be approved *in advance* by the insurance company. Make a request by submitting Form TWCC-50 to TWCC.

How To Send Written Notice When Changing To A Second Doctor

1. Write down this information, if known:

- your full name, address & social security number;
- the date and nature of your injury or illness;
- your Workers' Compensation Claim Number, if known;
- your employer's name and address;
- your insurance company's name;
- the name and address of both your first and second doctors;
- the reason for changing doctors.

2. Mail the information to your local TWCC Field Office. If you need the address, call the local TWCC Field Office or call **1-800-252-7031**.

Mail the notice within 3 days of your first visit to the second doctor.

If you have questions, call TWCC at the local Field Office or at **1-800-252-7031**.

The TWCC OMBUDSMAN Provides Free Help If You Are Injured On The Job

Free help is available from a state agency, **Texas Workers' Compensation Commission (TWCC)**, if you are injured on the job or if you are a beneficiary of a worker killed on the job.

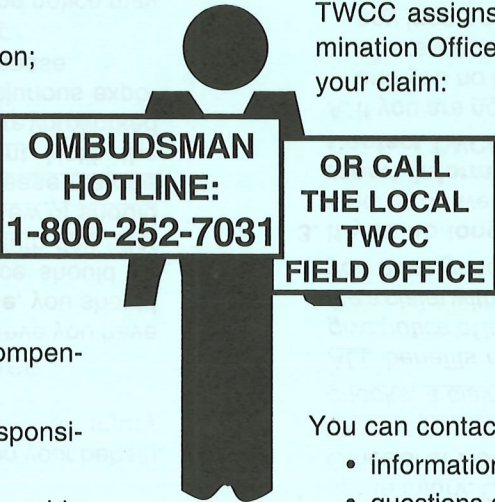
To get help, call TWCC (see phone list below). Ask for the OMBUDSMAN. If TWCC has sent you a letter that assigns you a Disability Determination Officer (DDO), please ask for your DDO.

HOW THE OMBUDSMAN HELPS

The OMBUDSMAN can:

- provide general information;
- help you find out if your employer has workers' compensation insurance;
- explain how to report an injury and how to file a claim, if your employer has workers' compensation insurance; and
- explain your rights and responsibilities.

The OMBUDSMAN cannot provide legal advice.



HOW THE DDO HELPS

TWCC assigns a Disability Determination Officer (DDO) to manage your claim:

- if your employer has workers' compensation insurance, and
- if you have more than one week of lost time (or lower wages).

You can contact your DDO for:

- information about your claim;
- questions about benefits; and
- help if problems arise.

How To Call The Local TWCC Field Office

Calls to the OMBUDSMAN hotline, **1-800-252-7031**, are automatically connected to the Field Office closest to you. If your call is not long distance, please call direct to the Field Office in:

Abilene	(915) 690-7900	Denton	(817) 380-1400	Lubbock	(806) 765-2700
Amarillo	(806) 345-5200	El Paso	(915) 757-6000	Midland/Odessa	(915) 699-3700
Austin	(512) 453-8230	Fort Worth	(817) 347-1000	San Antonio	(512) 593-0070
Beaumont	(409) 838-8400	Galveston	(409) 744-5773	Tyler	(903) 534-6250
Bryan/C.S.	(409) 361-9000	Harlingen	(512) 412-5300	Victoria	(512) 576-9612
Corpus Christi	(512) 883-2551	Houston	(713) 880-0206	Waco	(817) 751-5900
Dallas	(214) 905-8652	Laredo	(512) 721-5700	Wharton	(409) 532-0662
				Wichita Falls	(817) 720-4900

How To Obtain Death Benefits

Death benefits are weekly checks that replace part of the wages lost as a result of a worker being killed on the job. They are paid if you are a legal beneficiary, and if the employer of the deceased worker has workers' compensation insurance.

To claim death benefits:

1. File a Death Benefit Claim with Texas Workers' Compensation Commission.

If you are a beneficiary, you (or a person acting on your behalf) must file a claim within one year of the worker's death.

Failure to file within one year may result in loss of benefits unless good cause exists for failure to file on time.

Claims are made on Form TWCC-42. After TWCC is notified of the death, TWCC usually sends the form to you within 10 days. To request a copy, call TWCC at the local Field Office or at **1-800-252-7031**.

2. Request burial benefits.

The insurance company will pay actual burial costs (but not more than \$2,500) if you paid for the burial. Some transportation costs may be paid if the worker died away from the usual place of employment.

Questions? Call TWCC at the local Field Office or at 1-800-252-7031.

Death Benefits Chart

Who receives Death Benefits?

Death Benefits are paid:

- if the employer of the deceased worker has workers' compensation insurance and
- if you are a legal beneficiary of a worker killed on the job as a result of a compensable injury.

The following may be legal beneficiaries entitled to death benefits:

- the spouse
- minor children under the age of 18
- children up to 25 years of age if a full-time student
- children with a physical or mental handicap, who were dependent on the deceased worker
- other persons who meet legal requirements for economic dependence on the deceased

Each person must file a separate claim for death benefits, unless the claim expressly includes another person or is made on behalf of another person.

How much do Death Benefits pay?

Weekly checks are 75% of the deceased worker's Average Weekly Wage, estimated by adding up the worker's wages for the 13 weeks prior to the injury and dividing by 13.

Minimum weekly check is \$66; Maximum is \$438 (effective 9/1/91-8/31/92).

When do Death Benefits begin and end?

- Weekly checks begin to be paid to beneficiaries after a compensable injury results in death.
- Weekly checks are paid to spouse until death or remarriage; children until 18 (longer if disabled or full-time student); others 364 weeks.

Local TWCC Field Office

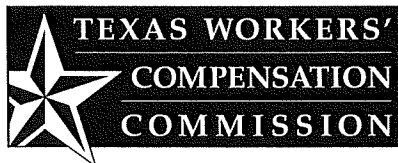
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Dallas	(214) 350-9299
Denton	(817) 380-1400
El Paso	(915) 757-6000
Fort Worth	(817) 336-6553
Galveston	(409) 744-5773
Harlingen	(210) 412-5300
Houston	(713) 880-0206
Laredo	(210) 721-5700
Lubbock	(806) 765-2700
Lufkin	(409) 639-6425
Midland/Odessa	(915) 699-3700
San Angelo	(915) 657-0404
San Antonio	(210) 593-0070
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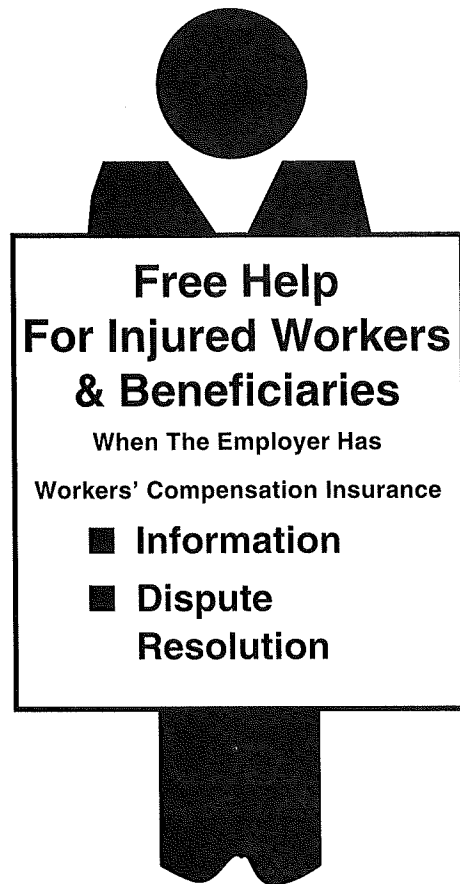
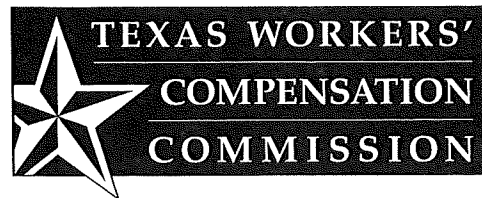
DD users: Call **1-800-RELAY TX**, then ask agent to call the number you wish to reach.

Employers: Free help is also available to employers by calling the numbers shown here.



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A FREE SERVICE IN EVERY TWCC FIELD OFFICE

*This brochure is available in Spanish.
Este folleto está disponible en Español.
Llame a su oficina local de la TWCC o
llame a **1-800-252-7031**.*

How To Get Information From TWCC

Free help and information is available from the **Texas Workers' Compensation Commission** (TWCC) if you are injured on the job, if you have an occupational disease, or if you are the beneficiary of a worker killed on the job.

To get help and information, please call the TWCC Customer Assistance staff at the local Field Office or at **1-800-252-7031**. If you want more written information, please ask for the brochure "Information For The Injured Worker Or Beneficiary."

The TWCC staff can answer questions about:

WHAT BENEFITS MAY BE PAID

- The Customer Assistance staff can find out whether or not your employer provides workers' compensation insurance coverage. If your employer has this insurance and if your claim is accepted by the insurance company, the insurance:
 - pays medical costs if you are injured on the job;
 - may pay income benefits to replace part of the wages you lose because of an on-the-job injury;
 - may pay income benefits if you have permanent impairment from an on-the-job injury; and
 - pays death benefits to the legal beneficiaries of a worker killed on the job.
- The Customer Assistance staff can explain how much you may receive in benefit payments and for how long. If income benefits are due, checks will be sent to you by the insurance company (or by the claims administrator if your employer is self-insured).

GETTING MEDICAL CARE

- The Customer Assistance staff can explain how to get medical care paid for by workers' compensation insurance.
- The Customer Assistance staff can answer questions about choosing doctors.

REPORTING YOUR INJURY

- The Customer Assistance staff can explain how to report your injury or occupational disease to your employer on time.
 - If you have an **injury**, tell your employer within 30 days of your injury.
 - If you have an **occupational disease**, tell your employer within 30 days of the date you know that the disease may be work-related.

FILING YOUR CLAIM

- The Customer Assistance staff can give you a TWCC claim form and explain where to mail it. They can help you if you need help filling out the claim form.
- The Customer Assistance staff can explain how to file your claim on time. If you don't file on time, all benefits can be stopped, unless you have good cause for filing late.
 - If you have an **injury**, file a claim with TWCC within one year of your injury.
 - If you have an **occupational disease**, file a claim with TWCC within one year of the date you know that the disease was work-related.

HOW YOUR CLAIM IS HANDLED

- The Customer Assistance staff can help if you have a question about your claim.

TWCC Can Help Resolve Disagreements

TWCC provides free help if you are a worker or a beneficiary who has a disagreement about your workers' compensation claim.

A disagreement about a specific item is called a "disputed issue." Examples of disputed issues are the amount of benefits, an impairment rating or any other disagreement about a claim.

If you have a disagreement, please call the TWCC Field Office or **1-800-252-7031**. Your call will go to the TWCC Customer Assistance staff or to a TWCC Disability Determination Officer. Often, the TWCC staff can resolve the problem by talking with the parties involved. The parties usually are the injured worker (or beneficiary) and the insurance company.

You Can Request Dispute Resolution

If the TWCC staff can't help the parties agree, either party may request Dispute Resolution. To find out how you can request Dispute Resolution, call the TWCC Field Office or **1-800-252-7031**.

Generally, dispute resolution begins with a Benefit Review Conference and goes through the other options until disputed issues are resolved. Or, at any point, the parties are free to resolve disputed issues on their own.

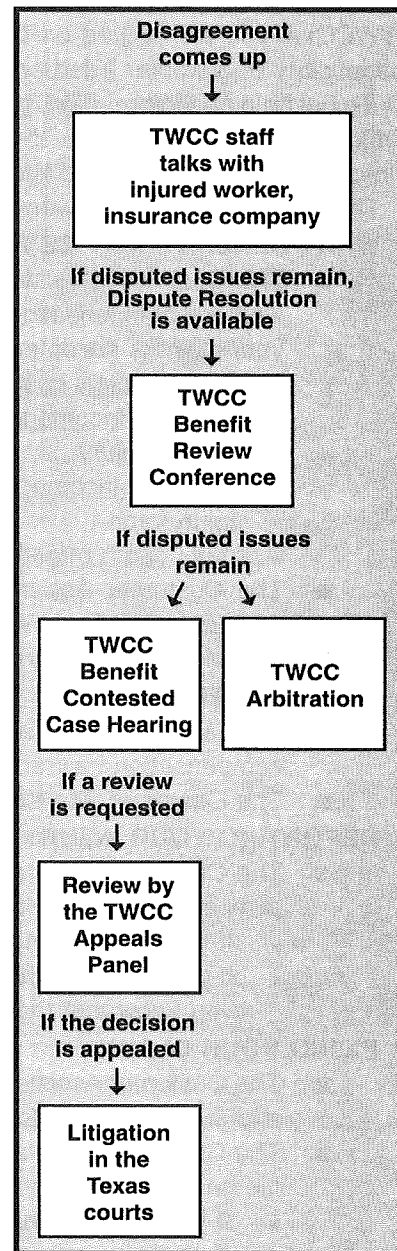
Please ask about time requirements for requesting Dispute Resolution. For example, if you disagree with your impairment rating, you must dispute it within 90 days or the impairment rating is considered final.

The TWCC Ombudsman Can Assist You With Dispute Resolution

If you are not represented by an attorney, the TWCC Ombudsman can help you:

- prepare for a Benefit Review Conference;
- prepare for a Contested Case Hearing;
- request Appeals Panel Review; or
- prepare for Arbitration.

The Ombudsman can go with you to a Benefit Review Conference, Contested Case Hearing or Arbitration. The Ombudsman can help by giving you information, but the Ombudsman *cannot* provide legal advice and *cannot* represent you. You can call the Ombudsman at the TWCC Field Office or at **1-800-252-7031**.



Here are the steps that can be taken to reach agreement on disputed issues. At any point, the parties are free to resolve disputed issues on their own.

Dispute Resolution Is Available

TWCC Benefit Review Conference

- The Benefit Review Conference brings everyone together for an informal discussion of one or more disputed issues. The injured worker and other parties must attend.
- The Conference is held within 40 days after TWCC receives the request (or within 20 days for expedited cases). A TWCC Benefit Review Officer is in charge of the Conference. It usually takes place at the TWCC Field Office.
- At the Conference, the Benefit Review Officer:
 - may help the parties resolve disputed issues and write out an agreement;
 - may order an insurance company to start, continue or stop payment of benefits; or
 - may arrange a Benefit Contested Case Hearing if disputed issues are not resolved.

TWCC Benefit Contested Case Hearing

- The Contested Case Hearing is a formal meeting where sworn testimony is taken; an evidence may be presented. The injured worker and other parties must attend.
- The Hearing is held within 60 days of the Benefit Review Conference (or within 30 days for expedited cases). A TWCC Hearing Officer is in charge of the Hearing. It usually takes place at the TWCC Field Office.
- At the Hearing, the Hearing Officer:
 - considers only disputed issues listed in written statements made before the Hearing;
 - may issue subpoenas, request more evidence and question witnesses; and
 - may issue orders or rule on requests presented at the Hearing.
- After the Hearing is closed, the Hearing Officer makes a written decision on benefits. The Hearing Officer's decision is later mailed or delivered to the parties.

Review By The TWCC Appeals Panel

- After a Contested Case Hearing, a party who wants a review by the Appeals Panel must make a written request. The injured worker and other parties do not attend the review.
- A written request for a review must be filed with TWCC within 15 days after a party receives the Hearing Officer's decision. A copy of the request must be given to the other party the same day. The other party has 15 days to file a written response with TWCC.
- The TWCC Appeals Panel Judges review the request, the response, what happened at the Contested Case Hearing and the Hearing Officer's decision. The Judges make a written decision and it is mailed to the parties.

Litigation In The Texas Courts

- If a party is dissatisfied with the Appeals Panel decision, a party may appeal the decision in the Texas courts. The court considers only disputed issues reviewed by the Appeals Panel.

TWCC Arbitration

- If disputed issues are not resolved at a Benefit Review Conference, the parties can choose binding Arbitration. Arbitration is arranged only if both parties sign a form, and the form is filed with TWCC within 20 days of the Benefit Review Conference.
- Parties who choose Arbitration cannot have a Contested Case Hearing or Appeals Panel Review, and the law strictly limits issues that parties may take to court.