



Union Construction Workers' Compensation Program

Administered by Wilson-McShane Corporation

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PROGRAM PERFORMANCE: 2014 CASE STUDIES

- 1. An operating engineer was on a job site when the equipment began to overheat.** When the hood was opened a radiator hose became loose, sprayed out on the employee, and caused severe burns to both arms from the elbows to the wrists. Emergency care was given at the scene and then at the HCMC Burn Unit. The program's dispute resolution facilitator contacted the injured worker to explain the program and how the claim was going to proceed. The insurer accepted liability for the claim, paid the wage loss and medical benefits, and assigned a Qualified Rehabilitation Consultant (QRC) from the program's Exclusive Rehabilitation Provider Network who was a registered nurse experienced with burn injuries.

The injured worker was at first apprehensive about the QRC's role, and was not going to cooperate in establishing a rehabilitation plan. The QRC called the facilitator about the problem, and he called to explain the QRC's role in the recovery process. The proper forms were then signed so that the rehabilitation plan could begin. The goal was a return to work with the pre-injury employer.

The QRC managed the medical care and kept all the parties informed on the medical progress being made in the case. Return to work efforts were explored during the slow recovery that involved a number of surgical procedures. Unfortunately the medical care could not restore the injured worker to unrestricted work and the employer was unable to accommodate the permanent restrictions. The rehabilitation plan would be changed to job search and the exploration of retraining. The injured worker was devastated by the news, eventually hired an attorney, and refused to cooperate with the rehabilitation plan until there could be a meeting to discuss it with the attorney present. The QRC and the adjuster called the facilitator to request the meeting. The insurer agreed to continue to pay wage loss benefits until the facilitation could be scheduled.

At the facilitation the employer's representative, their insurer, the QRC and the placement vendor attended in person, while the employee and attorney attended by phone. During the meeting the QRC reviewed the medical treatment and vocational plans to-date, and the recommended next steps. A very cooperative exchange then took place with all the parties and the facilitator. By the end of the meeting the parties reached agreements on the future medical treatment and vocational plans. Potential disputes that could have adversely affected the employer and the employee were averted.

- 2. After being laid off as part of the sale of his former employer's company, a 57-year old electrician alleged both specific and Gillette injuries associated with his work activities there.** The employer completed a First Report of Injury and submitted it to their insurer. After conducting their investigation the insurer denied liability for all the alleged injuries, except for an older date of injury that had already been accepted. Both sides retained attorneys who requested a facilitation to discuss a full, final and complete settlement of the claims.

The parties were able to coordinate their calendars to allow for a meeting within two weeks of the request. Both sides were well prepared and motivated to settle the case. The attorneys, the employee and the insurer attended the meeting, which after several hours of intense negotiations, resolved the case to the satisfaction of both the employee and the insurer.



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3. **A 57-year old operating engineer injured his neck and right shoulder on the job.** The injury was immediately reported and the employer assisted the employee in scheduling the urgent care appointment with an Exclusive Provider Organization (EPO) clinic. The EPO Occupational Medicine doctor provided the initial care and released the employee to work with some minimal restrictions. The employer provided union work within those restrictions so the employee continued to earn scale and benefits, including his significant overtime. Eventually the restrictions were lifted and the employee returned to full duty work and overtime. Since this was a medical-only claim the insurer sent no paperwork to the program.

The injury continued to bother the employee's neck and shoulder, but he kept working through it. The employer finally suggested that he see an EPO specialist, and assisted in scheduling that appointment. The specialist recommended surgery on the shoulder, which was approved and performed quickly. The employee only missed 1.8 weeks from work, returned to work with a limit of 40-hours per week for 28 weeks, and then was released to full duty. The doctor eventually provided a permanent partial disability rating. The insurer denied the wage loss claim stating that the employee did not have any reduction in earning capacity, and both sides hired attorneys. The insurer contacted the program to discuss a possible resolution, and a facilitation meeting was scheduled.

The parties began the facilitation with the attorneys stating that their clients were interested in a full, final and complete settlement. During the meeting, however, it became clear that the employer and employee did not fully understand the implications of this type of settlement: **the likely need for a resignation by the employee and the end of a very good employer-employee relationship.** As the facilitator explained the need for the resignation the parties realized that they did not want that to happen. The employee wanted to continue to work for the employer and the employer did not want to lose one of their "key" employees. Options not yet considered by the attorneys needed to be explored.

With some help the parties reached a "to-date" settlement, which paid the injured worker most of the benefits in dispute. The wage loss claim during the period of 40-hour weeks was slightly compromised. The employee did not have to resign and the employment relationship remained intact.

4. **A 55-year old laborer stepped on some loose asphalt on a worksite and severely fractured his left ankle.** After four years of multiple surgeries and several attempts to return to light duty the parties agreed it was time to consider settlement options. Both sides retained attorneys who attempted to settle the case, but reached a point where they "needed some help". A facilitation meeting was requested so the parties could discuss a full, final and complete settlement of the case.

At the start of the facilitation meeting the attorneys informed the dispute resolution facilitator of the negotiation history, which had the parties at \$95,000 apart and neither side willing to move. The facilitator then spoke to the parties and their attorneys separately to discuss the claims and defenses. The facilitated negotiations got the parties down to a \$20,000 gap. The facilitator then suggested the parties consider a "proposal", which would protect their positions and provide an opportunity for the case to settle. Each party received the facilitator's proposal separately, and in response could either write "yes" or "no" on a sheet of paper. When both sides provided their confidential answer to the facilitator he informed them that the case was settled. Both sides were surprised and satisfied with the result of this process.



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- 5. A carpenter started work on Monday morning as usual by walking over the uneven ground at the job site to begin his duties.** He was wearing his safety equipment including appropriate work boots. During the morning he began to experience pain in his right foot, but continued to work. By lunchtime the pain was severe enough that he reported it to his foreman. He was taken by the foreman to an EPO Occupational Medical Clinic.

The EPO doctor performed an examination and determined that an x-ray was warranted. The x-ray was done during the first appointment and showed a significant fracture. A referral to an orthopedic specialist within the EPO was made for an appointment the next day. The specialist determined that surgery was necessary to properly treat the fracture and allow for a good outcome: a full release to work after healing was complete.

The First Report of Injury was filed with the workers' compensation carrier, and they immediately began investigating the claim. The insurer decided to deny liability following the investigation for a number of reasons: the claim was a "Monday Morning Injury"; there were no witnesses to any traumatic event; the worker continued to work for a number of hours before complaining to his foreman; the boots being worn that morning should have adequately protected the worker's foot; and, the worker had a foot fracture to his left foot that was work-related one year earlier.

The injured worker had a UCWCP brochure that he received from his employer and the insurer. He called the dispute resolution facilitator about his situation. Since getting proper medical care was most important the worker's Health and Welfare Fund became involved to get the surgery approved and provide other benefits available to him. A dispute resolution examination was also scheduled with the cooperation of the insurer who provided the medical records for the neutral doctor's review.

The neutral examination took place within the month of the injury and the report was given to the facilitator two weeks later. The report was sent to the parties by the program the same day it was received. The report stated that the type of fracture involved was often caused by walking over uneven ground, and that the history provided by the worker during the examination and in the medical records supported his claim for benefits. The insurer reversed the denial, reimbursed the union's fund, and picked up liability for the claim. The employee recovered from the successful surgery and returned to full duty work with the same employer.

- 6. A union worker complained that his knee condition had gradually come on over the years and that his work was the cause of his eventual need for surgery.** His treating doctor was unable to provide a causation opinion that supported the claim, so his attorney requested a dispute resolution examination be performed to determine if the knee condition was related to his years of working at a union trade. The neutral doctor was selected with the cooperation from the attorneys for the parties, who also supplied the medical records and advocate letters.

The report concluded that based on the medical records and the examination that this was not a work-related condition. The doctor found that the employee's obesity, diabetes, and pre-existing arthritis (caused by a car accident that injured the same knee) were the causes for the need for surgery and disability. The report was reviewed by the parties and the claim was withdrawn.



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7. **A sheet metal worker began to notice the gradual onset of neck and shoulder pain.** He reported the problem to his employer and went to the designated EPO doctor to find out the cause of his symptoms. The doctor related the problem to his repetitive, overhead work, prescribed some over the counter medication and ice to treat his pain, and released him to return to work. The employer filed the necessary paperwork with their workers' compensation insurer. After a review of the medical records the insurer accepted the claim and paid the small amount of medical benefits. The employee continued to perform his full duty work and follow the doctor's treatment recommendations as needed.

Nine months later the employee's neck and shoulder problems became much worse. Again there was no specific incident that gave rise to his symptoms but rather came on gradually during his work. He reported the increased pain to the employer and returned to the EPO doctor. An MRI of the neck revealed a herniated disc. The employer filed another report of injury, but with their new workers' compensation insurer. The second insurer denied liability for the condition claiming that this was a continuation of the previously accepted claim and the responsibility of the other insurer. The first insurer denied liability citing that their claim was for a temporary injury with little medical care and an eventual lapse in treatment. The employee contacted an attorney who erroneously filed a Claim Petition with the Minnesota Department of Labor and Industry. Both insurers retained attorneys who filed Answers to the petition. The first insurer and the employer contacted the dispute resolution facilitator to ask what the program would do about this case.

The facilitator contacted all three attorneys to arrange for a conference call. During the conference call the employee's attorney stressed the importance of getting authorization for the recommended injection that would ease the employee's pain and aid in the treatment plan. Neither insurer was willing to provide authorization under a suggested temporary order. The attorneys did agree however to provide detailed letters to the employee's attorney that would be presented to the union's Health and Welfare Fund. The facilitator assisted in making sure these letters went to the right person in the union fund to expedite authorization for the injection. The attorneys also agreed that a Dispute Resolution Examination would help determine who would ultimately be responsible for the employee's medical benefits, and possible future lost wages.

8. **An iron worker slipped and fell on the ice at a job site and felt a sharp pain in his lower back.** The injury was reported immediately to the employer who assisted the employee in getting to the EPO Occupational Specialist. An MRI revealed a compression fracture to a single vertebral body in the lumbar spine. The employee was referred to an Orthopedic Specialist within the EPO, but the employee selected a different EPO specialist that was closer to his home.

The insurer promptly investigated and accepted the claim paying the medical and wage loss benefits. A UCWCP Qualified Rehabilitation Consultant (QRC) was assigned to assist the employee with the medical management of his case and his transition into a light duty position. The employer was able to provide light duty work.

The Orthopedic Specialist recommended a vertebroplasty to repair the fracture. The insurer authorized the procedure, but the procedure would have to wait for nearly four weeks. The QRC researched the EPO's doctors, found one that could perform the procedure within a week and scheduled the appointment.