

KENTUCKY DEPARTMENT

OF WORKERS COMPENSATION CLAIMS

QUARTERLY ACTIVITY REPORT
JANUARY 1 - MARCH 31, 1998

COPIES TO:

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MISSION STATEMENT:

Resourceful Administration of the Kentucky Workers
Compensation Program and Expeditious and Equitable
Resolution of Claims

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INTRODUCTION

Providing quality service to Kentucky's workers and employers is the fundamental goal of the DWC. Our management strives to:

- **Bring stakeholders into the system as partners**
- **Analyze and review administrative processes**
- **Utilize technology to enhance effectiveness**
- **Constantly monitor system activity**

DWC has assumed a proactive role in efforts including pre-claims intervention, mediation and other alternative dispute resolution strategies.

Timely delivery of benefits, both indemnity and medical, and expeditious adjudications are core functions in which the Department of Workers Claims has focused much attention this past year and made great progress. As the needs of system users change, the system must adapt and develop. In a sense, the workers compensation program is always a "work in progress" designed to address the needs of the employers and workers of the Commonwealth.

Timely delivery of benefits and expeditious adjudications are core functions of the Department of Workers Claims.

RECENT ACTIVITY IN COVERAGE & COMPLIANCE

Concrete evidence supports that House Bill 1 is meeting the intended purposes of shrinking the monetary size of the program and the cost paid by Kentucky employers. Premiums paid by employers purchasing workers compensation coverage from carriers and self-insurance groups were approximately 766 million dollars in 1996 compared to approximately 671 million dollars in 1997.

Even though annual payroll growth has been 5.5% for insured employers, the actual cost of securing coverage has been reduced by 95 million dollars (12%) in a single year. Although earlier predictions based upon historical trends indicated potential for larger first year reductions, these initial predictions were not fully realized. The reasons for change in historical trends are being analyzed to provide insight for future use.

Given hot market competition and reductions contained in National Council of Compensation Insurance (NCCI) loss cost filings with the Department of Insurance, it is reasonable to expect the reduction in employer cost to continue for the near future. However, continued reductions in employer cost, although not easily predictable, are expected to slow as premiums seek their ultimate market level. Note that simulated premium for self-insured employers has not been included in this analysis because provisions of House Bill 1 changed the formula by which simulated premium is calculated and therefore increased simulated premium but not the losses self-insureds pay.

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ENFORCEMENT

DWC's Enforcement Branch consists of eight (8) enforcement officers located in six (6) offices throughout the Commonwealth and four (4) support staff including a Branch Manager located in Frankfort. Branch employees visit places of business to confirm coverage, analyze various records, and assist in the preparation of citations against noncomplying employers. The ultimate goal is to assure that all Kentucky employers subject to the Workers Compensation Act secure coverage as required by law. Beginning in 1994 increased attention and resolve was focused on the compliance effort with an attendant allocation of additional resources.

Although it is difficult to assess the success of the program designed to encourage compliance, the results of this enhanced effort are evident and quantifiable in the following areas:

- **Identification of industries with tendencies toward noncompliance**
- **Decreased cost of investigations from 1991 thru 1997**
- **Expense to Citations Assessed ratio of 1 to 1.1**
- **Evidence of increased employer compliance**

An analysis of citations issued over the most recent three year period indicates trends in the incidence of noncompliance and provides the DWC with insight for allocation of future resources in its effort to identify those industries with a high incidence of noncompliance. Expenses associated with the enforcement effort have been fairly constant with minimal increases from year to year between 1991 through 1997. Nonetheless, measurable results have dramatically increased since 1994.

The majority of uninsured employer citations are not contested and penalties are paid timely by the employer. However, these cases constitute a small part of the penalties assessed. Approximately thirty-one percent (31%) of all citations issued during calendar years 1994 through 1997 have been contested by the employer. Of those contested citations which have reached conclusion, ninety-three percent (93%) resulted in affirmation of the Commissioner's determination of noncompliance.

Ultimately the objective of the enforcement effort is not collection of fines, but rather complete, voluntary and timely compliance by all employers subject to the Workers' Compensation Act. The return on investment (i.e. dollars assessed and collected, citations upheld, and compliance obtained), has significantly increased since the enhanced effort began in 1994.

DWC has gained worthwhile insight through this analysis of enforcement branch activity. We now know that additional follow up measures are necessary to make sure that habitual offenders sustain coverage or get out of business. Additionally, DWC needs to identify penalty collection activities which bear fruit and avoid expenditure of resources in those instances where there is no reasonable prospect of recovery. And finally, we need to know why a handful of long "pending" cases seem to have fallen through the cracks.

GUARANTY FUNDS

House Bill 1 established three guaranty associations to protect workers and their dependents in the event of insolvency of a self-insured. By March 1, 1997, all three guaranty associations conducted organizational meetings, adopted bylaws and plans of operation, and during the year completed collection of initial member assessments. As of the end of the first year of guaranty fund presence no insolvencies of self-insureds had occurred which impacted any of the guaranty funds. The funds regularly meet, providing a forum for discussions of relevant issues. The table below provides the current fund balance for each guaranty fund.

CURRENT FUND BALANCE	
Ky Self-Insured Employer Guaranty Fund	\$556,630.14
Ky Group Self-Insurance Guaranty Fund	\$608,983.60
Ky Coal Employer's Self-Insurance Guaranty Fund	\$563,825.81

GROUP SELF-INSURANCE

Group self-insurance is available to employers through heterogeneous and homogeneous group self-insurance funds. With the increased market competition resulting from HB 1, several group self-insurance funds have converted to fully insured programs. Beginning with the July 1, 1997 conversion of ABC Safety & Workers Comp Fund of Kentucky, seven (7) group self-insurance funds have either completed or are in the final stages of successful conversions or buy-outs by fully insured carriers. Upon completion of a conversion or a carrier buy-out, the liability for the losses of the self-insured group fund is transferred to the buyer who becomes wholly responsible. Consequently, the self-insured group is no longer authorized to provide workers' compensation coverage and no longer qualifies for membership in the Ky Group Self-Insurance Guaranty Fund. The adjacent table summarizes conversion activity since December 12, 1996.

	CONVERSION ACTIVITY	
	Non-Municipal	Municipal
December 12, 1996	14	3
Completed Conversions	5	0
Conversions in Progress	2	0
January 1, 1998	7	3

House Bill 1 placed additional oversight requirements upon DWC relative to self-insured groups and provided the department with free access to books and

documents pertaining to the self-insurance activities of the entity. KRS 342.347 mandates in-depth financial and actuarial examinations of each self-insurance at least once every four years. Examinations of three self-insurance groups (AIK, KACo, & The League of Cities) were completed by the end of the fourth quarter. These examinations resulted in “Agreed Orders” between DWC and two of the three self-insured groups, under the terms of which the self-insurance groups will remedy material deficiencies noted in the examiners’ reports. Monitoring of the workers compensation operations of AIK and KACo remain a priority of DWC. On March 23, 1998, DWC initiated an examination of KESA, The Kentucky Workers’ Compensation Fund utilizing Certified Financial Examiners, consultants under contract with the Department of Insurance, coupled with DWC’s self-insurance auditors. An additional three (3) examinations of self-insured groups are contemplated for calendar year 1998.

SOUTH EAST COAL

On March 23, 1996, Governor Paul E. Patton signed into law, House Bill 287, passed by the General Assembly during the 1996 Regular Session, creating the means to restore workers’ compensation benefits to the former employees of bankrupt South East Coal Company. Under this law, \$6,817,846.43, representing unclaimed refunds due certain customers of Kentucky Utilities, was transferred to the Kentucky Workers’ Compensation Funding Commission establishing a trust fund called SERF (South East

Through investment accounts payments will be extended beyond the current projection.

Restoration Fund). The Commissioner of the Department of Workers Claims was designated as plan administrator. For those claimants who chose to participate, past due workers’ compensation benefits were paid without interest and weekly payments of benefits were resumed. The monetary amounts due claimants were determined by the staff at Workers Claims and distributed by the Division of Special Fund.

Since August 9, 1996, when the first payments were mailed, South East Coal claimants have received almost five million dollars. The outstanding liability for concluded and pending claims exceeds fund balance, creating a deficit. The fund currently receives interest at an approximate rate of 5.74%, which is estimated to extend payments to the year 2012.

The Kentucky Workers’ Compensation Funding Commission, at the Commissioner’s request, has divided the Fund between a short-term investment account, estimated to pay claims through 12-31-2002; and a long-term investment account that, through higher yields, will extend the payments beyond the current projection. This investment plan will maximize the financial resources available to compensate the injured workers of the defunct South East Coal Company.

BENCHMARKING CARRIER PERFORMANCE

Through publication of benchmark reports, DWC will provide feedback regarding carrier achievements and deficiencies. The project will reveal patterns of regulatory violations which will be referred to the Commissioner for consideration of citation. Benchmarking carrier performance is essential to ensure timely filing of injury reports, prompt and accurate payment of indemnity benefits, prompt payment of medical expenses, timely filing of notice of coverage and to reduce the incidence of unfair claims settlement practices.

CARRIER REPORT CARDS

HB 1 stipulates a proactive approach by DWC to enhance carrier performance in an attempt to assure on time delivery of benefits to employees and extension of medical services. The benchmarking staff is producing a series of report cards which focus on carrier and self-insured employer performance in 11 key areas.

CARRIER PERFORMANCE INDICATORS

- #1 Timely Filing of Fatalities (342.038)
- #2 Timely Filing of First Reports (342.038)
- #3 Timely Payment of Income Benefits (342.040)
- #4 Proper TTD Payment Amounts (34.730)
- #5 Proper Reporting Subsequent Reports (342.038(5))
- #6 Prompt Payment of Travel Expenses Related to Medical Evaluations (342.315)
- #7 Prompt Payment of Medical Expenses (342.020)
- #8 Timely Notice of Coverage (WCI1) (342.340)
- #9 Prompt Notification of Cancellation of Coverage (WCI2) (342.340)
- #10 Incidence of Unfair Claims Charges (342.267)
- #11 Utilization Review (342.035)

TASK FORCE ESTABLISHED

The Commissioner has established an advisory task force of insurance carriers and third-party administrators to provide insight and promote communication in the months ahead as the report card process continues.

TIMELY FILING OF FIRST REPORTS UPDATE

The report card process is promoting an on-going dialogue between DWC and carriers. Here is feedback DWC received about the “Timely Filing of Fatalities” and the “Timely Filing of First Reports.”

CARRIER FEEDBACK

1. Carriers are willing to make a more diligent effort to timely file reports.
2. Carriers have increased communications with employers and stressed the necessity of filing in a timely manner.
3. Carriers personnel are better educated about the statute and its requirements.
4. Carriers expressed an interest in EDI training.
5. Carriers requested that additional claimant information be included on the report cards.
6. DWC needs to change the report card computer program to accommodate no lost time injuries, occupational diseases and intermittent periods of disability.
7. Statutes and regulations regarding electronic filing requirements need to be consistent.
8. Data quality depends on the joint efforts of DWC and Carriers.

SHOW CAUSE ORDERS FOR FAILURE TO FILE FIRST REPORTS ELECTRONICALLY

In a separate action, DWC has initiated enforcement actions to bring carriers and self-insureds into compliance with statutory filing requirements, KRS 342.038 and KRS 342.039, and 803 KAR 25:170.

Despite the implementation of the electronic filing requirements on January 1, 1996, several carriers and self-insureds failed to file requisite electronic reports. DWC issued 22 warning letters to non compliant entities and to those who failed to electronically file these reports despite warnings. DWC issued orders requiring the respondents to show cause why penalties should not be imposed.

To date, show cause orders have been filed against 16 carriers/self-insureds, representing failure to file 40 first reports of injury. Nine carriers and/or employers corrected their filings after receiving a warning letter. DWC will become more aggressive in imposing penalties in the future as reporting entities have been afforded ample time to have their EDI systems fully operational.

CONSTITUENT SERVICES

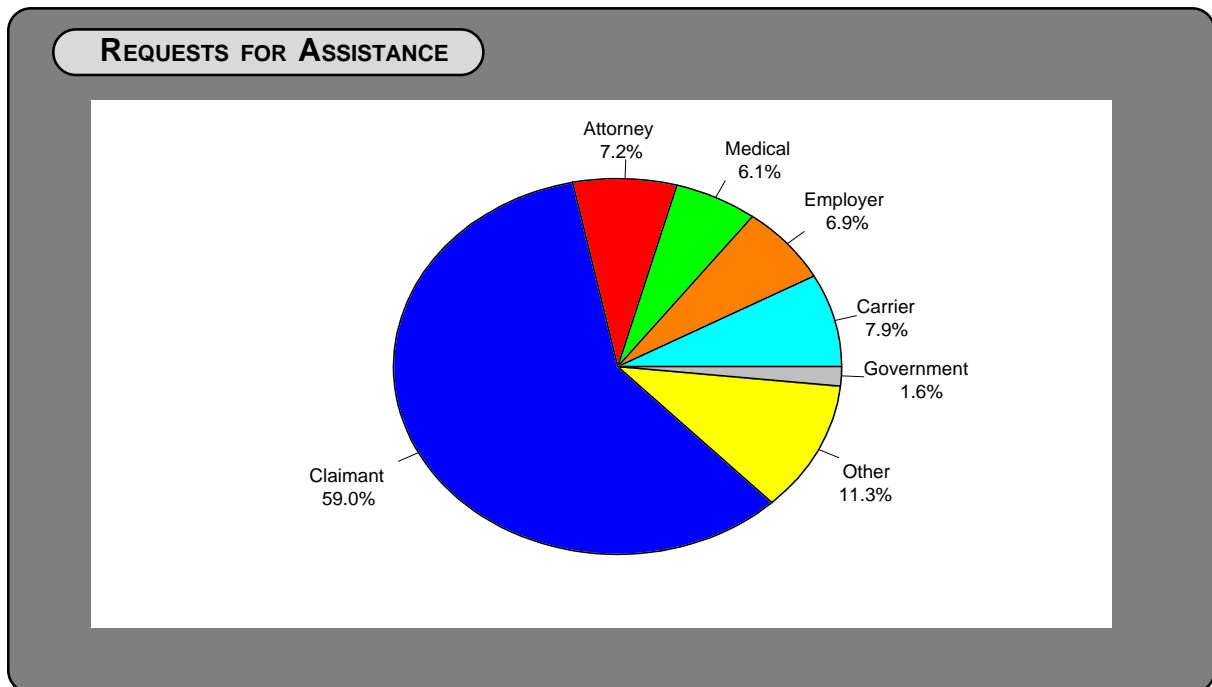
The Division of Ombudsmen and Workers Compensation Specialists Services provides information concerning the workers compensation program, the rights and duties of employees and employers, access to the system and benefits, and assists with resolution of disputes over workers compensation benefits.

Beginning January 1, 1998, the Division of Ombudsmen and Workers Compensation Specialists Services came under the direction of Zaring P. Robertson, a former administrative law judge. One of Director Robertson's initial assignments is to evaluate the efficiency of rehabilitation mechanisms.

Ombudsmen & specialists handled 7,108 requests for assistance in the first quarter.

Ombudsmen and Specialists, upon request, intervene in disputes between employees, employers, doctors, insurance carriers and other participants in the workers compensation system. They facilitate communication, the exchange of informations and attempt to resolve disputes prior to litigation. Specialists may help employees prepare claims if a dispute cannot be resolved through mediation.

During the first quarter of 1998, Ombudsmen and Specialists handled 7,108 requests for assistance, exceeding the 6,647 requests made in the fourth quarter of 1997 as well as the 5,576 requests for the first quarter of 1997.



MEDICAL UTILIZATION REVIEW

During the first quarter of 1998, a concerted effort to improve utilization review continued in the area of regulatory compliance, regulatory amendment, and data analysis. Orders were issued to self-insured employers who had not communicated with the Department regarding mandated utilization review and medical bill audit programs to show why they should not be penalized (803 KAR 25:190). This action towards compliance revealed great communication problems, but few instances of noncompliance. Monetary penalties were imposed on self-insured employers during the first quarter of 1998. Thirty-three (33) Self-Insureds were issued Show Cause Orders. Four Self-Insureds paid penalties by agreed order ranging from \$100 to \$500 for a total of \$1,100. Two Self-Insureds were issued civil penalties in the form of an official citation and penalty in the amount of \$500 and \$1,000. \$500 has been collected; the \$1,000 citation has been contested and awaits formal administrative hearing. Activity directed at noncomplying insurance carriers will continue during the second quarter of 1998.

Following through on the work of the Utilization Review Advisory Committee, the Commissioner promulgated amended versions of 803 KAR 25:190, Utilization Review and Medical Bill Audit and 803 KAR 25:096, Selection of Physicians, Treatment Plans, and Statements for Medical Services.

33 Self-Insureds were issued Show Cause Orders during the first quarter.

Amendments to 803 KAR 25:190 streamline the process whereby medical providers may seek assurance of payment for services rendered to injured workers. This change addresses the growing concerns medical providers have with respect to payment for treatment, and attempts to assure employee access to health care. Additional amendments attempt to reduce system friction by requiring earlier initiation of utilization review, shortening time frames for decision making.

Amendments to 803 KAR 25:096 emphasize the duties of injured workers as well as carriers to ensure that a single physician is overseeing the plan of medical treatment. Coordination of medical treatment by a single physician helps eliminate duplication of services, therefore, lowering medical costs.

During the first quarter of 1998, DWC undertook an extensive audit of Utilization Review and Medical Bill Audit programs. Audit information is expected to enhance DWC's ability to analyze qualitative aspects of the utilization review process.

MEDICAL BILL REPORTING

Kentucky has reached a critical point in the implementation process for receiving medical data electronically. DWC has worked closely with the International Association of Industrial Accidents Boards & Commissions (IAIABC) to develop reporting standards that are relevant to workers compensation business needs.

The IAIABC has adapted the 837 Transaction to include informational reporting from the payer to a worker's compensation agency, focusing on only those elements that relate to workers compensation issues. The initial Medical Bill/Payment Report (3051) was developed specifically for Kentucky, however it was abandoned by the IAIABC short of completion. Although this format has been refined through the development of three additional versions, there is currently no completed IAIABC medical implementation guide. Therefore all components needed for successful implementation of medical bill reporting are not currently available. It would be improvident and costly for Kentucky to abandon national standards and strike out on its own with local standards which could not be used by carriers in multiple jurisdictions.

We have invested significant time, effort and money to develop a modern system positioned for the future.

Information technology is a major focus of DWC and we have invested significant time, effort and money to develop a modern system positioned for the future. Kentucky will assume a more active role in the development of an IAIABC electronic data interchange (EDI) implementation guide for medical bill/payment reporting in order to provide our trading partners with the tools necessary to comply with our medical bill reporting mandate. DWC holds a strong belief that technology can improve program services for injured workers. Assurance of timely adjudication and payment of benefits, both indemnity and medical, are now core functions of DWC.

ALJ ACTIVITY

In accordance with 342.230(3), "...the Commissioner shall have the authority to assign the duties of an Arbitrator to an ALJ who shall work in that capacity as deemed necessary by the Commissioner." During the first quarter of 1998, 438 cases were assigned to 7 Administrative Law Judges acting as Arbitrators. Each ALJ shall serve as an Arbitrator on a six-month rotation schedule. During the first quarter of 1998, the ALJs rendered 472 opinions.

ARBITRATOR ACTIVITY

Settlement rates appear to be steadily rising over prior quarters. This can be attributed in part to increased experience among the arbitrators as well as increased experience and familiarity of the parties with the new system. Although the number of unresolved claims within 90 days appears to be high (200) for this quarter, this number includes all claims that were pending before an arbitrator for more than 90 days for any month of the quarter. A number of dispositions were delayed because of inclement weather in February when benefit review conference had to be cancelled and rescheduled. Furthermore, a number of the parties needed additional time to present proof since medical appointments and evaluations were missed due to the

snow. It is anticipated that the vast majority of those claims have now been resolved, or will be resolved during April of 1998.

Arbitrators

*Held 1,288 Benefit Review Conferences
Issued 537 Benefit Review Decisions
Approved 426 Settlements
Transferred 21 Cases to ALJs*

WORKERS COMPENSATION BOARD

During the first quarter of 1998, 196 appeals were filed with the Workers Compensation Board (WCB), as compared to 285 during the fourth quarter of 1997. The WCB disposed of 264 claims during the first quarter, as compared to 343 final dispositions during the fourth quarter of 1997. The Workers Compensation Board is in full compliance with the 1994 legislative mandate that it issue opinions within sixty (60) days of the filing of the last brief. Sixty-six appealed claims are currently ripe for decision. Sixty claims are being held in abeyance awaiting precedent setting decisions upon cases involving the same issue now pending before the Court of Appeals, Supreme Court or for other reasons. There are approximately 444 Board decisions on appeal to the Court of Appeals and the Supreme Court.

*66 appealed
claims are cur-
rently ripe for
decision*

CASES HELD IN ABEYANCE

CODE NBR. ISSUES

00	10	MISCELLANEOUS
19	0	(11-13-95) JOINDER OF KU IN SOUTH EAST CASES <i>UEF vs. SPANGLER</i> (95-CA-2173) (92-23490) (WAS <i>UEF vs. BENTLEY</i>)
39	0	(10-11-96) DOES SEXTET APPLY WHEN PART OF SECOND DISABILITY IS PREEXISTING ACTIVE <i>KY. STONE vs. BRUMLEY</i> (89-30555)
41	1	(10-18-96) PSYCHIATRIC APPORTIONMENT BASED ON PHYSICAL INJURY APPORTIONMENT <i>SPURLIN vs. COLEMAN</i> (94-42267)
43	1	(12-16-96) IS 45 DAY RULE OF 342.020 INSUFFICIENT TO DENY PAYMENT OF CLAIMANTS MEDICAL BILLS <i>PARSONS vs. THE SHOE ASSEMBLY</i> (89-30418)
44	1	(2-21-97) SHOWING OF PROGRESSION NECESSARY TO REOPEN AWARD UNDER 342.732(1)(B) <i>LEMARR vs. NEW HOPE CO. OF KENTUCKY, INC.</i> (93-33551)
52	1	(6-20-97) DOES <i>COOK vs. PADUCAH RECAPPING</i> APPLY UNDER KRS 342.730(1)(C) <i>GAYHEART vs. CYPRUS MOUNTAIN COALS CORP.</i> (95-16772 ET AL.)
53	3	(7-18-97) WHETHER AN AWARD FOR FUNCTIONAL IMPAIRMENT WITHOUT OCCUPATIONAL DISABILITY CAN BE MADE UNDER 342.730 (1)(B) AS AMENDED <i>SPECIAL FUND vs. LARRY JOHNSON</i> (95-36132)
55	1	(9-2-97) WHETHER ALJ MAY AWARD A RIB WHEN EITHER THE FVC OR FEV-1 IS BELOW 80% <i>SPECIAL FUND vs. LARRY MENSER</i> (94-34234)
56	0	(10-17-97) WHETHER AK STEEL & ARMCO STEEL ARE CONSIDERED SEPARATE ENTITIES FOR PURPOSES OF APPORTIONMENT <i>ARMCO STEEL vs. HAYES</i> 96-CA-3175 (94-08859)
57	26	(12-8-97) RETROACTIVE APPLICATION & DEFINITION OF THE PRESUMPTIVE WEIGHT TO BE PROVIDED A MEDICAL SCHOOL PHYSICIAN'S EXAMINATION AS PROVIDED IN KRS 342.315(2) PENDING WCB DECISION IN <i>FOX vs. MAGIC COAL</i> (97-00369) & <i>HAWES vs. PEABODY COAL</i> (96-08675)
58	1	(12-19-97) LENGTH OF BENEFITS ON REOPENING, WHEN ORIGINAL AWARD WAS A TOTAL <i>SPECIAL FUND vs. MAURICE LITTLE</i> (84-31052) & <i>SPECIAL FUND vs. KERMIT GLENN MORRISON</i> (86-07645)
59	1	(1-30-98) RETROACTIVE APPLICATION OF 1996 AMENDMENT TO RIB CLAIMS <i>COLONIAL COAL vs. BREEDING</i> (95-49893)
60	13	(2-20-98) RETROACTIVE APPLICATION OF 1996 AMENDMENTS TO KRS 342.732(1)(A) PROVIDING THAT RETRAINING INCENTIVE BENEFITS SHALL BE PAID TO AN EMPLOYEE ONLY WHILE ENROLLED IN A TRAINING OR EDUCATION PROGRAM <i>CLAIR BREEDING vs. COLONIAL COAL Co.</i> (98-SC-67) (95-49893)
61	1	(2-27-98) LEGALITY OF 803 KAR 25:010(27)(1)(A) <i>UEF vs. HALL</i> (93-27848)

TOTAL 60

PROOF OF COVERAGE

As of January 1, 1998, the National Council for Compensation Institute (NCCI), began transmitting electronic proof and termination of coverage information to the Department of Workers Claims. All coverage data processed has been manually reviewed to ensure data integrity and full carrier participation. DWC continues to work closely with NCCI to ensure a smooth and successful transition from paper filings to an electronic environment.

FISCAL ACTIVITY

HB 1 directed DWC to offer new services, exercise greater program oversight and resolve disputes as to entitlement to benefits in a more informal yet more expeditious fashion. To meet these objectives, HB 1 expanded DWC's budget for FY 97-98 from \$10,614,200 to \$15,182,500 and raised the personnel cap from 204 to 272 employees. The cap now stands at 268 since four positions were eliminated as the result of the decision not to reappoint two Administrative Law Judges upon expiration of their terms ending December 1997. For the third quarter of this fiscal year (ending March 31, 1998), DWC's actual expenditures were \$9,167,932. Thus, with the lapse of 75% of the fiscal year, the agency has spent only 60.4% of its budget.

BUDGET EXPENDITURES	
97-98 Budget	Post HB1
Personnel	\$11,489,700
Operating	\$ 3,530,800
Capital Equip.	\$ 162,000
Total	\$15,182,500

The total permanent full-time personnel "compliment" now stands at 230. Thirty-eight vacancies exist. Efforts are underway to fill these slots when necessary as quickly as possible.

1997-98 ACTUAL EXPENDITURE AS OF CLOSE OF BUSINESS 3/31/98

	Budgeted	Spent*	Balance	%Spent
Personnel	\$11,489,700	\$7,407,619	\$4,082,081	64.5%
Operating	\$ 3,530,800	\$1,717,275	\$1,813,525	48.6%
Capital Equip.	<u>\$ 162,000</u>	<u>\$ 43,038</u>	<u>\$ 118,962</u>	<u>26.6%</u>
Totals	\$15,182,500	\$9,167,932	\$6,014,568	60.4%

*Spent through March 31, 1998.

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