

COMMISSIONER'S

QUARTERLY ACTIVITY REPORT

July 1 - September 30, 1998

Walter W. Turner, Commissioner
KY Department of Workers Claims

3RD QUARTER ACTIVITY

166 Workers Referred To Universities For
Medical Evaluations

798 Awards Rendered

1,428 Settlements Approved

11,869 Injuries Reported

1,059 Claims Filed

323 Reopenings

575 Appeals Filed

2nd Report Card Issued on Timely Filing
of First Reports

TIMELY FILING OF FIRST REPORTS.

On September 18, the second report card on Timely Filing of First Reports was issued by DWC benchmarking staff. This report card was based on data electronically received between July 1 and December 31, 1997, prior to the establishment of the Benchmarking Program. The impact of benchmarking and carrier feedback cannot be fully assessed until report cards are based on currently transmitted data. It is our belief that some improvement will be evident after viewing the data electronically transmitted during 1998.

During the second half of 1997, over 400 carriers reported 19,439 FOIs (first reports of injury) with only 31% in compliance with timeliness standards as compared to 20,637 with 38% in compliance

during the first half of 1997. Carriers were directed to respond within 45 days of receipt of the report card and provide written explanation for apparent noncompliance. Preparation of written responses has prompted dialogue between the carriers and the Department. From this feedback, the DWC has discovered a number of common problems which carriers are experiencing in filing timely reports: They are:

- inaccurate FEINs reported for both the insurer and the third party administrator;
- data entry errors;
- management information systems problems
- employers' delay in informing carriers;
- carriers' uncertainty as to statutory filing requirements

The benchmarking process is designed to monitor the activities of carriers to improve carrier performance. The DWC has offered carriers additional tools to aid in EDI (electronic data interchange) reporting such as the Department's web site and the publication, *Kentucky Detailed Code Manual*. Additionally, the Department offers training for carriers interested in improving performance.

Currently, the Department is examining methods for carrier ranking and reviewing report card responses to determine if additional modifications to the report card process are needed. The next carrier report cards are expected to be released early in 1999. (See *Benchmarking Program Timeline*)

ENFORCEMENT OF COVERAGE.

During the third quarter, 165 citations were issued against employers who did not have workers compensation insurance policies in place. Penalties were assessed in the sum of \$208,450 in citation dollars and \$100,066.66 was collected. Enforcement administrative costs for the quarter were \$118,825.

CONSTITUENT SERVICES.

Specialists assisted in 42 new claim filings, 629 new dispute resolutions, and completed 435 successful mediations during this quarter. Ombudsmen and Specialists fielded 8,385 requests for assistance, compared to 7,267 for last quarter.

REQUESTS FOR ASSISTANCE			
	OMBUDSMEN	SPECIALISTS	TOTAL
JUL	1,579	1,545	3,124
AUG	1,746	1,327	3,073
SEPT	1,099	1,089	2,188
	4,424	3,963	8,385

ARBITRATOR ACTIVITY.

Arbitrators, in accordance with House Bill 1, remain the first level of decision making in claims resolution. This quarter, eight Arbitrators and six Administrative Law Judges, acting as Arbitrators were assigned 1059 new claims, held 1,306 benefit review conferences, rendered 536 benefit review decisions, and prompted 374 settlements. Activity was down slightly from the previous quarter.

Arbitrators shall render a written determination upon all matters at issue within ninety days of the assignment of the claim. During this quarter, there were approximately 318 claims that did not make the 90 day deadline. Some of these claims were resolved after the expiration of the 90 day period; however the vast majority of these remain unresolved because they are being held in abeyance at the request of one of the parties.

According to the arbitrators, the claims assigned the third quarter tended to have more threshold issues, e.g. causation, notice, and work-relatedness. Additionally, some attorneys, banking that KRS 342 will be substantially revised in either 1999 or 2000, appear to be reluctant to enter into claim settlements. This phenomenon may account for the slight decrease in the number of claims settled this quarter compared to the previous one.

ALJ ACTIVITY.

Administrative Law Judges continue to decide claims upon de novo review from Arbitrator benefit review determinations and upon transfer of complex claims prior to an initial arbitrator decision. In the third quarter of 1998, ALJs scheduled 123 formal hearings in these claims and also conducted informal prehearing conferences as a dispute resolution tool. Two hundred, sixty-two opinions were rendered by the judges during the third quarter. In addition, ALJs presided at appeal hearings from citations issued by Commissioner Turner for Chapter 342 violations, rendered appeal decisions in cases from the Frankfort Arbitrator motion docket, and made presentations on various legal topics before statewide seminars to both lay and attorney audiences.

In addition to their ongoing ALJ duties, half of the judges serve as arbitrators on a six-month rotation schedule. This rotation is in accordance with KRS 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 third quarter, 586 cases were assigned to Administrative Law Judges acting as Arbitrators. Further, during the third quarter of 1998, the ALJs acting as Arbitrators conducted 1306 benefit review conferences and rendered 174 benefit review determinations.

EDI-POC.

The Coverage Branch, through the use of additional resources, achieved "same-day processing" of the proof of coverage notices filed with the Department through NCCI. During this same period staff were working to assist in the development of a direct Internet solution for the proof of coverage requirements. This option will be made available free of charge to all carriers and is expected to greatly increase the accuracy and efficiency of this program. We anticipate an implementation date of mid November for this enhanced capability.

NCCI LOSS COST FILINGS.

On July 23, 1998, NCCI delivered its 1998 Loss Cost Filing with the Department of Insurance. Overall, the impact for non-coal mining classifications was a reduction of 3.7% from the September 1, 1997 filing. Subsequent to adoption of House Bill 1 in December 1996, NCCI has made three loss cost filings containing a cumulative reduction of 25.2% for non-coal classifications.

PREMIUM & ASSESSMENTS.

With the assistance of the Workers Compensation Funding Commission, staff within DWC Security & Compliance Division have tracked the cost of the workers compensation program as measured by premium paid by insured employers and members of self-insurance groups and simulated premium established for self-insured employers as per statutory formulas. Also, taking into account the Special Fund assessment, DWC projects a reduction in workers compensation program costs from \$1.1 billion in 1996 to \$872 million by year end 1998.

PHYSICIANS FEE SCHEDULE.

The occurrence of a number of scenarios could beckon a reversal of the downward trend in employer premium during the later part of 1999. Foremost of material matters is adoption by the Commissioner of a new workers compensation fee schedule effective January 1, 1999. In recent months, the annual inflation rate in health care costs has approached double digits. The trend in general health care costs is partially reflected in the new physicians fee schedule proposed by the Commissioner based upon the work of DWC's consultant, PricewaterhouseCoopers. Using the 1996 workers compensation physicians fee schedule as the benchmark under the new schedule effective January 1, 1999, physicians reimbursements will increase 8.9%. The impact of this adjustment is ameliorated by the fact that change takes place two years after the inflation in the medical consumer

price index began to occur. Moreover, the newly established reimbursement levels will remain in place for two years while medical cost inflation, predictably, will continue to rise. Nonetheless, in that payments for medical services account for approximately half of workers compensation benefit dollars, the effect of the new fee schedule on employer premium may be significant.

NATIONAL DEVELOPMENTS.

Observers of nationwide developments in workers compensation predict the approaching end to a "soft" insurance market wherein stiff competition amongst carriers for employer premium dollars has driven down premium levels. Combined loss ratio (expense ratio of insurer costs to revenue) are said to be climbing -- an indicator that workers compensation lines may not be as profitable as in the recent past. According to A.M. Best Co. Data, 1997's calendar-year combined ratio was 101.8, compared to 99.7 for 1996. NCCI reports a 1997 accident-year combined ratio of 115 compared to 108 for the prior year.

Changes in the economy could alter workers compensation losses and affect rates. Common thought a decade ago was that greater utilization of the workers compensation program by workers occurred during periods of recession and layoff. This "myth" was purportedly dispelled by late 1980 studies which demonstrated more workplace injuries during full employment because more workers were exposed to the risk of injury over longer work weeks. Yet, during the September 1998 IAIABC (International Association of Industrial Accident Boards and Commissions) Convention, the vast majority of states currently reported declines in new workers compensation claims as well as lower premium, irrespective of statutory changes. Taking all these matters into account, it would appear that Kentucky's workers compensation rate structure will remain relatively stable -- but absent the sharp decline in premium levels which took place from 1996 to 1998.

Budget Analysis

Fiscal Year 1998 - 99 as of September 30, 1998

Annual Budget

	Allotment	Spent as of 9/30/98	% Spent
Personnel	\$11,724,000	\$2,589,844.51	22%
Operating	3,150,000	473,443.61	15%
Capital Equip.	120,000	0	0%
Total	\$14,994,000	\$3,063,288.12	20%

Percent of year lapsed 25.0%

CLAIM FILINGS.

As shown in the chart below, 1,059 new claims were filed with DWC in the third quarter reflecting relative stability throughout the year. Mathematically, projecting to years end 1998, it appears that 4,559 claims will be filed compared to 4,981 during 1997. Declines have occurred in the number of coal workers pneumoconiosis and hearing loss claims while the volume of injury claims has remained constant over nine quarters.

CLAIMS ACTIVITY THROUGH SEPTEMBER 1998

	Jan-March 98	April - June 98	July - September 98	Total - 3 quarters
Injury	1116	1064	1007	3187
O.D.	27	27	19	73
RIB	28	21	9	58
Hearing Loss	43	35	24	102
Total	1214	1147	1059	3420

REPORTS OF INJURY.

Through the first three quarters of 1998, 36,725 First Reports of Injury (FROI) have been filed with DWC. Statistically, this projects to 48,967 FROI for calendar year 1998 as compared to 44,736 in 1997, 42,485 in 1996 and 49,246 in 1995. We believe that the number of injuries reported in 1996 may be an anomaly occurring as the result of mandating that FROIs be filed electronically (through EDI) in the standard format authorized by the IAIABC. Some self-insured employers, carriers and self-insurance groups encountered difficulty in implementing this technology and the reporting of injuries was delayed. Note that the

foregoing data is indicative of the year in which the injury was reported which in some instances varies from the year in which the injury actually occurred. During the last nine quarters, DWC has emphasized prompt reporting of injuries to the extent of imposing penalties against non-complaint entities. The reason for a significantly greater number of FROIs being filed in 1998 versus 1997 merits investigation. Statutorily, only injuries causing lost work time of more than one day are to be reported to DWC. The report is to be filed within one week of the employers knowledge of an occurrence.

SELF-INSURANCE.

During the third quarter, the Self-Insurance Branch auditors continued their examinations of the operations of the Kentucky School Board Self-Insurance Trust, completed the review of KESA, and initiated an examination of Workers Guardian Self-Insurance Fund.

In addition to the self-insured group audits, the Self-Insurance Branch is completing the backlog of extensions to re-certify self-insured companies. Due to the majority of self-insureds being recertified during June and July, the Branch experiences an annual temporary backlog of approximately two months. There remain approximately 25 self-insured employers requiring further analysis prior to recertification.

KY Department of Workers Claims
Perimeter Park West, Building C
1270 Louisville Road
Frankfort, KY 40601
502.564.5550

<http://www.state.ky.us/agencies/labor/wrkclaim.htm>