

The Link

**Quarterly Activity Report
October -- December 2003**



From The Office of Workers' Claims

During the 2nd quarter of FY 2003-04, ending December 31, 2003, Governor Ernie Fletcher, by reorganization Executive Order 2003-064, effective December 16, 2003, created the Cabinet for Environmental and Public Protection.

All authority, functions and responsibilities previously vested in the Secretary of the Natural Resources and Environmental Protection Cabinet, Secretary of the Public Protection and Regulation Cabinet, and Secretary of the Labor Cabinet were transferred to a new Secretary of the Environmental and Public Protection Cabinet.

Honorable LaJuana S. Wilcher was appointed by Governor Fletcher as the new Secretary of the Environmental and Public Protection Cabinet. The former Department of Workers' Claims is now an Office of Workers' Claims within a newly created Department of Labor. This reorganization was effective January 1, 2004 by virtue of Governor Fletcher's subsequent Executive Order 2004-031.

The Office of Workers' Claims will be headed by an Executive Director appointed by the Secretary, Environmental and Public Protection Cabinet, with the approval of the Governor in accord with KRS 12.050.

Future quarterly reports as published in "The Link" will reflect this new organizational structure as the Office of Workers' Claims strives to fulfill its mission as a "Resourceful administration of Kentucky's workers' compensation program and equitable and expedient processing of claims."

In connection with our adjudication system, Governor Fletcher, by virtue of Executive Order 2003-086, on December 31, 2003, appointed Honorable Marcel Smith of Lexington to a four year term as a new administrative law judge. Governor Fletcher also reappointed ALJs R. Scott Borders of Florence, KY; James L. Kerr of Lexington, KY; Sheila C. Lowther of Georgetown, KY; Lawrence F. Smith of Radcliff, KY; and, William Bruce Cowden, Jr. of Lexington, KY for additional four year terms.

By Executive Order 2003-087, on December 31, 2003, Governor Fletcher appointed Honorable Kent T. Young of Frankfort, KY to a four year term as a member of Kentucky's Workers' Compensation Board.

The Governor's appointment of ALJs and members of the Workers' Compensation Board are subject to Senate confirmation.

In addition, Governor Fletcher, by way of a letter dated December 31, 2003, has requested Honorable Charles Baird, Chair of the seven (7) member Workers' Compensation Nominating Commission, to convene a meeting for the purpose of submitting two (2) lists of three (3) names to the Governor for his consideration for appointing two (2) ALJs to fill vacancies which occurred on January 1, 2004.

Larry M. Greathouse
Office of Workers' Claims

Division of Information and Research

Coal Workers' Pneumoconiosis Update

As a continuation of an open records request that was processed by the **Research Section** during this quarter, below is a synopsis of the CWP information that was received and compiled during the October-December 2003 reporting period.

There were 122 applications for resolution of claims under the CWP (KRS §342.792) legislation. 74 claims were acknowledged and temporarily assigned and 48 claims were motions to reopen/reconsideration.

There were 15 awards and 99 dismissals in CWP cases. Of the incoming cases, three were found to have Party Consensus (PCWP) and 88 had No Party Consensus (NCWP). Panels found consensus 99 times. One case was found to have Final CWP Reading No Consensus (FCWP).

There were 369 Notice of ILO Reading (NILO) reports received and entered into the system.

The Research Section continues to monitor the CWP statistics and ensure not only timely filing, but also to maintain a grasp of the length of the process.

The Records Branch

The Records Branch within the Division of Information & Research is primarily responsible for collection, storage, and retrieval of data and distribution of information. This Branch includes the Coding, Data Entry, Open Records, and Research Sections.

During this quarter, the **Coding Section** received 9,728 first reports through EDI and manually added 514 first reports to the Office's database system.

The **Data Entry Section** received 26,861 pieces of mail (pleadings, motions, responses, documents, etc.), 7,787 orders from the Administrative Law Judges, 597 awards/opinions, and 520 docket orders during this period.

The **Open Records Section** responds to open records requests for information. This quarter, 3,271 written requests, 13 walk-in requests, 2,922 pre-employment requests, and 29 requests from the Social Security Administration were processed as well as 11 requests from the Department of Fish and Wildlife Resources.

The Scanning Branch

The Scanning Branch processed 54,252 total documents between October and December resulting in 367,094 sheets entered into the optical imaging system.

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Quarterly



Statistics

QUARTERLY ACTIVITY

Lost Time First Reports of Injury	9,246	Dismissals	227
Claims Assigned	1,954	Re-openings (medical)	72
Pre-litigated Agreements	872	Re-openings (overruled)	16
Awards	337	Re-openings (sustained)	72
Agreements	350	Re-openings (motion docket)	103
		Appeals (to Court of Appeals)	37
		Appeals (to Supreme Court)	25
		Appeals (to the Board)	180

Distribution by Body Part (Top Ten)

Claims

Multiple Body Parts Including Systems	413
Lower Back	411
Lungs	216
Knee	113
Shoulders	103
Disc	88
Ears	86
Wrist	85
Soft Tissue	45
Leg	30



FROIS

(First Report of Injury)

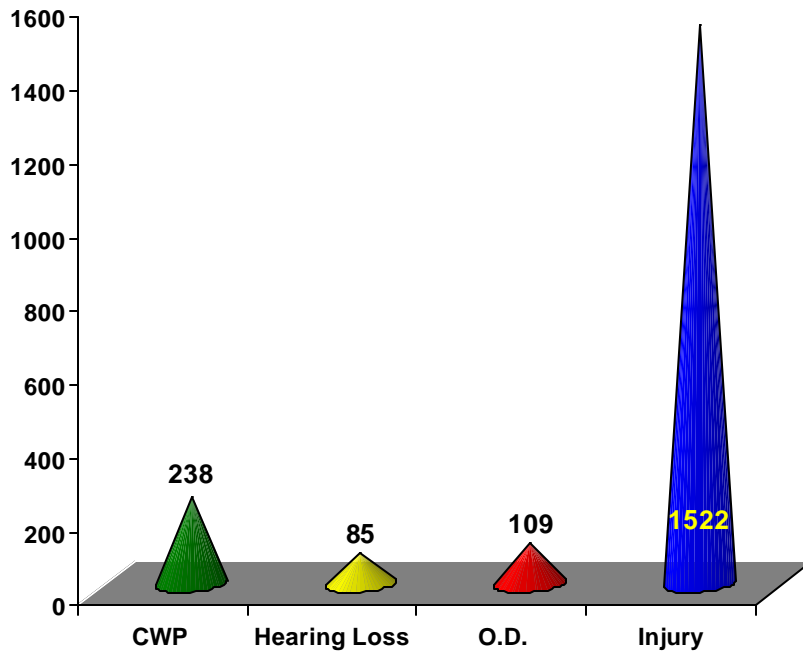
Lower Back	1,822
Multiple Body Parts Including Systems	1,671
Knee	750
Shoulders	640
Fingers	477
Wrist	447
Ankle	411
Hand	407
Abdomen Including Groin	270
Foot	263

Quarterly



Statistics

Distribution of Claims By Type



Top 10 Causes of Injury Claims

Lifting	317
Fall or Slip	314
Absorption/Ingestion	223
Strains or Injured by	162
Motor Vehicle	142
Repetitive Motion	106
Pushing/Pulling	91
Continual Noise	83
Other Injury (NOC)	79
Falling or Flying Objects	63

Distribution by Industry

Industry	Claims	First Reports
Agriculture, Forestry, Fishing	20	153
Mining	472	415
Construction	195	971
Manufacturing, Transportation and Communication	362	2,047
Public Utilities	199	915
Wholesale Trade	47	345
Retail Trade	198	1,362
Finances, Insurance, and Real Estate	26	128
Services	321	2,197
Public Administration	80	462
Unclassified	34	251

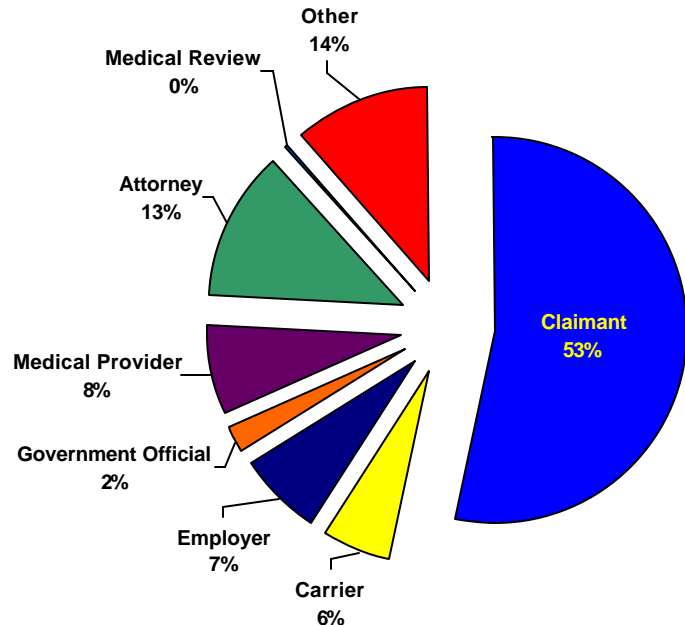
Division of Ombudsmen and Workers' Compensation Specialists Services

Sources of Requests for Assistance

Workers' Compensation Specialists and Ombudsmen received over 3,645 requests for assistance during this quarter.

The most common topics related to Rights and Procedures (2,188), questions regarding claim status (663), and Form Requests (353).

In addition to constituent services, 419 requests for mediation were handled by the Division of Ombudsmen and Workers' Compensation Specialists Services. Successful resolution of 214 mediated cases was achieved between October and December, 2003.



Medical Evaluations

During this quarter, 100 medical evaluation reports were received from the University of Kentucky and the University of Louisville medical schools. The Department's medical scheduling staff received a total of 102 claims to be scheduled for evaluations at one of the university's medical schools.

Of the 102 claims to be scheduled, 69 involved hearing loss and 25 were injury related. There were two claims for fumes/chemicals, two claims for asthma, and two claims contagious disease. In addition, there were one claim each for asbestosis and lead poison.

This division also processes all x-rays for CWP to "B" reader panels. The medical schedulers had combined x-ray shipment of 369 x-rays for this quarter. Of the total x-rays, 122 were at the first "B" reader level, 122 x-rays for a second "B" reader interpretation, and 125 submitted for a third "B" reader interpretation.



Division of Claims Processing

The Claims Branch consists of the Claims Assignment, Agreement, Docket, and Case Files Sections. The staff of all sections provides support to the Administrative Law Judges. On a regular basis, the staff provides information and assistance to claimants, employers, attorneys, court reporters, and insurance representatives concerning claim and agreement status as well as various other issues.

The **Claims Assignment Section** receives, processes, and assigns all new applications for resolution of claim and re-openings to the law judges. They schedule benefit review conferences and court reporter services for the judges. For this reporting period, the staff processed 1,448 new claims (91 were CWP claims), and assigned 1,199 new claims to the judges. Additionally, 220 cases were referred from the Frankfort motion docket and assigned to the judges making a combined total of 2,419 cases assigned for benefit review conferences for February, March and April, 2004.

The **Agreement Section** receives and processes all agreements as to compensation filed on first reports of injury only (pre-litigation), motions for attorney's fee filed on first report agreements, lump sum settlement agreements, and requests for widow's benefits. They prepare the motions for submission to the Frankfort Motion Docket, attend the docket meetings, and process docket orders. The database is updated from all filings including agreements that are assigned to the law judges. For this quarter, they received 1,054 first report agreements, 230 attorney fee motions, 182 lump sum settlements, 1,014 approved agreements from the law judges, and 44 requests for widow's benefits.

The **Docket Section** prepares motions in cases that have not been assigned to a law judge and places them on the Frankfort Motion Docket for a ruling by the Chief Administrative Law Judge (CALJ). The staff assigned 642 motions to 15 motion dockets. The specialist attended the docket meetings and recorded the rulings of the CALJ. The staff completed and processed the judge's orders.



The **Case Files Section** receives and processes motions to reopen, attorney fee motions, and miscellaneous motions in cases that have not been assigned to the law judges and prepares them for assignment to the Docket Section. The staff received 653 new motions and assigned a total of 630. The section processes documents and mail in cases that have been assigned to the judges and forwards accordingly. They audit files that have been returned to the Office by the law judges after final decisions have been rendered and the appeal time has expired. Total files returned for October - December was 1,579.

Appeals Branch

The Appeals Branch of the Claims Processing Division processed 149 first time and 20 second time appeals during the second quarter of FY 2003-2004 for a total of 169 appeals.

The Workers' Compensation Board ordered final disposition on twelve claims while no full board opinions were rendered. Board member Honorable Jonathan Stanley rendered 39 opinions, Honorable John A. Gardner, 39 opinions and Honorable Dwight T. Lovan, 45 opinions.

There were 34 appeals to the Court of Appeals. The appeals staff prepared and transferred 30 records to the Court of Appeals. The court rendered 39 opinions including six final dispositions on the claims considered. There were 25 Court of Appeals decisions appealed to the Supreme Court which issued 14 opinions and four final dispositions.

Administrative Law Judges

During this quarter, there were 16 Administrative Law Judges, one of whom was designated as Chief Administrative Law Judge. The Administrative Law Judges have offices in ten locations and hear cases at hearing sites in twelve cities.

The Administrative Law Judges held 1,358 benefit review conferences during this time. During these conferences, the Administrative Law Judges presided over settlement negotiations, ruled on evidentiary disputes and identified contested issues. During this period, 663 formal hearings were conducted and 563 opinions were rendered. They also issued 25 decisions in claims on remand from the Workers' Compensation Board, Court of Appeals, and Supreme Court of Kentucky.

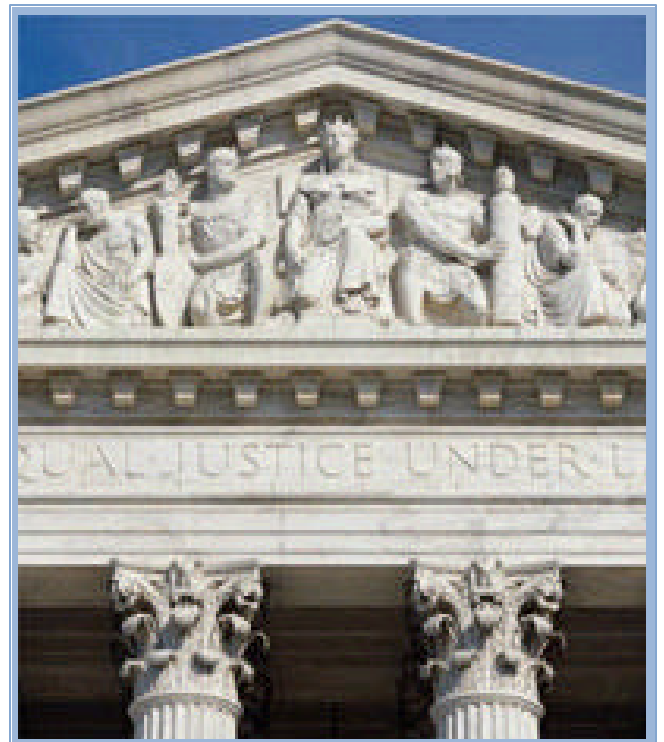
Office of General Counsel

Between October and December, the Office of General Counsel received 194 citation cases, eight unfair claims practice cases, and four fraud cases with fines and penalties collected totaling \$41,917.34.

The Office was involved with continued activity relating to Green Coal/Green Coal Construction Escrow Account.

December 4, 2003, the Board heard oral arguments on cases challenging the constitutionality of the pneumoconiosis statutes/regulations and cases involving challenge to statutory authority of black lung regulations. General Counsel filed a brief on behalf of the Office of Workers' Claims to defend the validity of the regulations. The Board cannot rule on issues of constitutionality or validity of agency regulations. An appeal is expected to be filed with the Court of Appeals.

Counsel represented Workers' Claims in Appalachian Regional Healthcare et. al. v. KIGA, KGSIG and Office of Workers' Claims.



Division of Security & Compliance

Self-Insurance

The Self-Insurance Branch periodically reviews the financial strength of individual self-insured employers, audits each self-insured group fund, and determines the surety requirements necessary to secure the benefits of the self-insured employer's workforce. Branch auditors utilize independent resources, including business periodicals, regional and national newspapers, Internet business sites and Dun & Bradstreet services to monitor the financial condition of self-insurers.

Employers seeking to maintain their self-insured status continue to find the challenge difficult as the hardening of the insurance market offers fewer options that allow them to meet surety requirements. The increasing number of requests for surety reductions reported earlier this year continued throughout this quarter.

Routine Self-Insurance Branch Activities for this period include the following:

- Completion of surety calculations and surety revisions
- Preparation and completion of simulated premium calculations
- Preparation and disbursement of updated instructions for the 2004 simulated premium and surety loss data for self-insured employers and Third Party Administrators (TPA)
- Analysis, update and review of former self-insured coal and non-coal companies
- Utilization of A.M. Best ratings in evaluation of participating insurance companies
- Oversight of Third Party Administrators (TPA's) handling the payment of claims for Beth Energy and New Horizons Holdings, Inc.
- Preparation of re-certification dockets for self-insured employers

Self-Insurance Special Projects:

- Continuation of the group self-insurance examination of Forest Industries
- Program to identify employers experiencing loss reserve irregularities
- Research of surety and reserve issues related to black lung claims to reflect the impact of HB 348
- Development of an audit program to monitor self-insured Boards of Education and to identify issues of concern that are specific to that unique group
- Initiated review of companies that self-administer claims in order to verify compliance with regulations

Coverage

Kentucky employers meet their workers' compensation insurance coverage requirements through purchase of a policy from an approved insurance carrier authorized to write workers' compensation policies in Kentucky, by meeting requirements and being approved to carry self-insurance, or by joining a self-insured group. The Coverage Branch maintains proof of coverage information received for each insured Kentucky employer. This information is submitted to the Coverage Branch through Electronic Data Interchange (EDI) and maintained in a master database. The database documents policy coverage, cancellations, termination or lapse in coverage, and other significant data.

Transactions received and processed from all vendors for this quarter totaled 40,185 with an overall acceptance rate of 73%. Kentucky Employers Mutual Insurance Company (KEMI), maintained the greatest overall acceptance rate among the vendors with an 87%.

Enforcement

The Enforcement Branch plays a key role in the administration of the workers' compensation laws in the Commonwealth. Compliance with the Workers' Compensation Act helps to assure prompt medical care for injured workers and timely delivery of income replacement in the event of work related disability. During this reporting period, Compliance Officers throughout the Commonwealth made on-site investigations of 2,072 businesses and found 272 employers in violation of the Workers' Compensation Act. As a result of these and previous investigations, 264 citations were issued to noncompliant employers and \$101,317 was collected in penalties. Enforcement statistics for the previous quarters this calendar year are noted in the table below.

Enforcement Statistics

(Calendar Year 2003)

	First Quarter Jan.-March	Second Quarter April – June	Third Quarter July – Sept.	Fourth Quarter Oct.-Dec.	CY03 Totals
Investigations	2,441	2,942	2,405	2,072	9,860
Citations Issued	113	72	124	264	573
Penalties Collected	\$78,008	\$78,363	\$74,451	\$101,317	\$332,139

Administrative Services

The Office of Workers' Claims receives funding from an assessment levied on workers' compensation insurance premiums and simulated premiums on self-insurance employers, which is collected by the Workers' Compensation Funding Commission (KRS 342.122). The Department has expended 40.2% of its budget for personnel totaling \$5,483,455.13. Also, 39.9% of the budget has been used for discretionary expenditures totaling \$1,322,072.67.



The Technical Support & Design and Development Section

The Technical Support & Design and Development Section responds to all technical, networking and programming needs for the Office of Workers' Claims. Technical Support staff responded to 249 Helpdesk calls this quarter. Staff moved telephone extensions for section offices that moved. Staff gathered surplus, sanitized it, and turned in surplus request. Random checks of virus software were made to ensure that updates were being performed as they should. Staff updated Microsoft Security patches and updated (or verified that they were updated) all dat files on workstations and servers. Staff updated all Blackberries with latest software revisions. Technical Support updated the CPMS program on users machines (twice for this quarter because of different updates). The SIMBA server was rebuilt to get users back on-line. TSM backup software was loaded on SIMBA server and continues to monitor for daily backups. Technical Support re-ghosted all section machines, except four sections, to Windows 2000 and XP and loaded all critical updates. Support staff worked with GOT staff on SIMBA issues. Technical Support staff wrote scripts for .net framework version 1.1 and pushed to users machines. Section staff attended meetings and did research on Active Directory issues. FileNet was updated on five scanning machines and FileNet fixes were placed on machines. New letterhead templates were designed and deployed for all of the Office of Workers' Claims. Projectors were Inventoried and a list of equipment for each was made. Technical Support worked on ghost image for cd 94 and 79 boxes. MARS was loaded on various machines and MARS updates added. Staff also worked on OCX files for RFA and Supplies programs. Design and Development staff continued progress on the EDI system for Proof of Coverage, First Report of Injury & Subsequent Reports of Injury. Staff transitioned the development and analysis of SIMBA to the Office of Workers' Claims, Design and Development Section. Staff met with Simba users for testing new builds and planning future builds. In addition, the Trading Partner databases were merged to make interfacing and managing easier, Med Fee CDs were made and a new docket application was developed and implemented.

Technical Support attended five classes & Design and Development attended four classes making a total of nine classes during this quarterly period.



This agency does not discriminate on the basis of race, color, national origin, religion, age or disability in employment or provision of services.

Kentucky Office of Workers' Claims
657 To Be Announced Avenue
Frankfort, Kentucky 40601
502-564-5550