

Case Progression through the Dispute Resolution Process

Preceding sections of this report have considered the different junctures of dispute resolution separately. Another perspective would emphasize their continuity as facets of a single process. Following a workplace injury covered under workers' compensation, whether medical only or lost-time, a worker may dispute certain facets of his or her case with the employer/carrier, seek informal assistance from the EAO, and, if unsatisfied with the outcome of that assistance, choose to pursue formal litigation by filing a PFB. The dispute may then be settled through mediation, or by mutual agreement prior to, or following, mediation, or it may proceed to resolution through a ruling of a Judge of Compensation Claims, or even the First District Court of Appeal.

Despite the sequential appearance of this process, it is important to recognize the frequent side-stepping of the sequence. The fact that more than nine of every ten RFAs are filed by attorneys, often simultaneously with the filing of a PFB, indicates a pro-litigation bias at the very outset of the process. The precedent of case law in allowing litigation of issues not previously submitted for informal resolution further undermines the RFA process. As for judges' orders, it is important to note that they need not indicate any dispute between the injured worker and the employer/carrier; the order may simply certify a mutually agreed upon settlement of the case. Lump-sum settlements, the overwhelming majority of substantive orders, do not require filing a PFB. Taken together, these different "violations" of sequence suggest that a flow chart for the movement of cases through the dispute resolution process would begin with a distinct cohort—injured workers covered under workers'

compensation—and trace that cohort through various patterns of movement into, and out of, the different process junctures.

Table 23 attempts to depict such patterns of movement, though the data represent only lost-time cases, and the mediation process is omitted altogether for lack of case-level data in the division's Integrated database. Injury years included in the table begin with 1995, the first full year for the availability of PFB data, and end with 1998 rather than more recent years to allow sufficient time for cases to proceed through the process.

For injury years 1995 – 1998 combined, more than a quarter of all lost-time cases (26.5%) had filed an RFA as of April 30, 2001. Comparison of submissions by individual year reveals a trend of increase that levels off for 1998. Among cases with RFAs for the combined injury years, more than eight of every ten (83.5%) also submitted a PFB. Among the 13,983 cases not submitting a PFB, 7,730 had at least one judge's order, leaving only 6,253 with no recorded activity beyond the RFA, equivalent to 2% of all lost-time cases, or 7.4% of cases with RFAs. By injury year, there is a trend of some decline in the percentage of cases whose RFAs represent terminal events: from 8.4% of 1995 cases filing RFAs, to 6.8% for 1998. The extent to which differences in case maturity impact these numbers will only become apparent over time, but it is clear that once an injured worker has filed an RFA, the likelihood of his or her proceeding to formal dispute remedies or lump-sum settlement of the case is very, very great.

Table 23

***Lost-Time Cases with RFAs, PFBs, and Judges' Orders
by Injury Year (1995-1998)***

	1995		1996		1997		1998		1995 - 1998	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Lost-Time Cases	79,953	100.0%	80,083	100.0%	81,049	100.0%	77,925	100.0%	319,010	100.0%
With RFA	19,637	24.6%	21,063	26.3%	22,407	27.6%	21,533	27.6%	84,640	26.5%
With PFB	16,566	20.7%	18,308	22.9%	19,912	24.6%	19,443	25.0%	74,229	23.3%
With RFA	15,657	19.6%	17,417	21.7%	19,044	23.5%	18,539	23.8%	70,657	22.1%
No RFA	909	1.1%	891	1.1%	868	1.1%	904	1.2%	3,572	1.1%
With Judge's Order*	23,479	29.4%	24,374	30.4%	24,670	30.4%	20,554	26.4%	93,077	29.2%
With RFA Only	2,323	2.9%	1,990	2.5%	1,881	2.3%	1,536	2.0%	7,730	2.4%
With PFB Only	673	0.8%	688	0.9%	609	0.8%	505	0.6%	2,475	0.8%
No RFA or PFB	6,490	8.1%	6,424	8.0%	6,161	7.6%	4,581	5.9%	23,656	7.4%
With RFA and PFB	13,993	17.5%	15,272	19.1%	16,019	19.8%	13,932	17.9%	59,216	18.6%

*Substantive orders only

Source: Division of Workers' Compensation Integrated database as of April 30, 2001, and the Total Dispute Resolution database as of March 20, 2000

The percentage of lost-time cases with PFBs has steadily risen from 20.7% for injury year 1995 to 25% for 1998. Overall, about 95% of these cases also have an RFA on file, and this percentage has varied little over the individual injury years from 1995 through 1998.

Among lost-time cases with judges' orders for combined injury years 1995 – 1998, almost two-thirds (63.6%) have both an RFA and a PFB on record. This percentage has varied over the four years in a consistent pattern of increase: from 59.6% for 1995 cases to 67.8% for 1998 cases. Cases with judges' orders that lack both an RFA and a PFB have declined from 27.6% for 1995 injuries to 22.3% for 1998. These may represent cases of lump-sum settlements not preceded by a dispute over benefits. Interestingly, cases with judges' orders more typically lacked a PFB than an RFA. For 1995 – 1998 lost-time cases with judges' orders, cases with an RFA but no PFB exceeded those with a PFB but no RFA by more than

three to one. This may indicate that many settlements are preceded by a dispute over benefits before the parties opt to settle and close the case.

Data in Table 23 indicate that over a third (35.1%) of all lost-time cases from 1995 through 1998 have either an RFA, a PFB, or a judge's order. The variation from year to year constitutes a trend of increase from a low of 33.8% for 1995 cases to a high of 36.3% for 1997 cases, followed by a decline to 34.7% for 1998. Lost-time cases with an RFA, a PFB, and a judge's order show a corresponding trend but at a much lower rate: from 17.5% for 1995, to a peak of 19.8% for 1997, then downward to 17.9% for 1998. Overall, fewer than one in five lost-time cases utilize the range of dispute resolution services consisting of an RFA, a PFB, and a judge's order. However, over one in three lost-time cases utilize at least one portion of this range.