

Executive Summary

Disputes are likely to occur when benefits perceived as due are not provided in a timely manner—or not provided at all. The 1993 reforms sought to provide a vehicle for informally resolving disputes between injured workers and employers/carriers before attorneys become involved by establishing the Employee Assistance and Ombudsman Office (EAO) within the Division of Workers' Compensation. Rules were promulgated requiring that injured workers, medical providers, employers, or insurance carriers file a Request for Assistance (RFA) with the division to initiate a 30-day mandatory informal dispute resolution period before the formal process can begin.

The EAO received nearly 681,000 RFAs containing more than 2.4 million issues between January 1, 1994, and December 31, 2000. This represents well over 400,000 separate cases, for an average of 1.7 RFAs per case. The number of RFAs submitted annually has grown from about 45,000 in 1994, almost doubling in 1995, and increasing each year through 1999, when RFAs approached 120,000. The total number of issues on RFAs has risen almost twice as fast as the number of RFAs, causing the average issues per RFA to increase from 2.2 in 1994 to 4.1 in 2000, while average issues per case over the same period rose from 3.0 to 7.2.

The issue most frequently appearing on RFAs each year is that of Medical Authorization and Treatment, representing nearly 27% of all issues. The implementation of mandatory Managed Care Arrangements in Workers' Compensation beginning in 1997 does not appear to have had much effect on this proportion. Interestingly, the second most frequent issue on RFAs is Attorney Fees, at over 16%. This issue is not under the jurisdiction of EAO and should

not be included on an RFA. Similarly, the EAO seldom has authority over issues related to Penalties and Interest, yet this category comprised close to 14% of disputed issues, making it the third most frequent issue.

Among the more than 644,000 RFAs containing issues the EAO could potentially resolve, 13%, or nearly 84,000, have been completely resolved by the EAO since the fourth quarter of 1994. Over 8% percent more, or about 53,000, have been partially resolved. The rate for complete resolutions has dropped steadily from one in four RFAs in 1994 to one in 25 for 2000, and rates for partial resolutions have continuously declined, as well. For more recent years, the drop in these rates may be a consequence of concentrating staff efforts on the Early Intervention Program (EIP). Among the more than 1.6 million *individual issues* the EAO could potentially resolve since its inception, the EAO has been most successful in completely resolving disputes concerning Notice of Injury, at over 81%. More than one of every five disputes involving Independent Medical Examiner has been totally resolved, while roughly 15% of disputes related to Additional Benefits, Medical Authorization and Treatment, and Payment of Medical Bills have been totally resolved. Among the more difficult disputes to fully resolve are those related to Permanent Total Disability, Temporary Partial Disability, or Supplemental Benefits. Overall, issues related to direct provision of benefits, including medical services, have been more subject to successful intervention by EAO specialists than those related to determination of disability or compensability.

With the transition to the division's new Integrated computer system in March 2000, information pertaining to the party submitting the

RFA—typically, the injured worker, the carrier, a medical provider, or an attorney—is no longer reliably collected. However, previous editions of this report have included data showing that well over nine of every ten RFAs are submitted by attorneys. In addition, the prevalence of Attorney Fees as a reported issue, despite EAO's lack of jurisdiction to intervene in such disputes, speaks to the ongoing level of attorney involvement in workers' compensation disputes at the informal stage.

Measured in 100-day increments, the largest portion of RFAs are filed within 100 days of workplace injury. Since 1994, a trend for earlier submission of RFAs has been evident for the mature injury years.

If disputes are unresolved after 30 days, the injured worker may proceed to the formal dispute resolution stage. The litigation process includes several steps: a Petition for Benefits (PFB) must be filed with the division; mandatory mediation is then scheduled; if mediation fails, a hearing before a Judge of Compensation Claims (JCC) takes place. Beyond the JCC order, the First District Court of Appeal (DCA) or the Florida Supreme Court may decide the dispute's final disposition.

Over 478,000 PFBs were submitted to the division from mid-October 1994 through December 2000. About 315,000 workers' compensation cases have involved a PFB since the last quarter of 1994, which translates to about 1.5 petitions per case. The more than 97,000 PFBs submitted during 2000 denote an almost 60% increase since 1995. Nine of every ten cases submitting PFBs in 2000 represented initial submissions, the highest ratio of "new business" since 1995.

The frequency of both RFAs and PFBs has generally increased every year since 1994, though PFBs did experience one anomalous year of decline (1998) followed by a surge of over 20,000 additional petitions the next year, and RFAs dropped off slightly for 2000. For most years, the growth rate of PFBs

exceeded that of RFAs. This resulted in a decline in the ratio of RFAs to PFBs from a high of 1.7 in 1994 to a low of 1.2 in 2000. It would appear that, in general, RFAs increasingly proceed to formal litigation or PFBs are filed without a prior attempt at informal resolution of the dispute. In this regard, a significant (36-40% for the four quarters of 1999), though declining, proportion of PFBs have no prior matching RFA. There is not always a link, however, between RFAs and PFBs for a given case. Petitions have been filed covering issues documented as resolved by the EAO, and, in a 1996 case, the First District Court of Appeal ruled that issues could be introduced at pretrial even though not previously submitted to the EAO.

Similar to the trend for RFAs, the highest number and percentage of PFBs are submitted within 100 days of injury. For mature injury years, there is a trend for earlier submission of PFBs.

At comparable data vintage of 18 months after the year of injury, the number of injured workers submitting PFBs has held steady at roughly one in five for injury years 1996-1999, though increasing a bit for each year except 1999. This suggests that the increased volume of PFBs draws not so much from an increased base of submitters as from an increase in submissions from a fairly constant submitter base.

The 1993 reforms mandated that all workers' compensation cases go through mediation prior to a formal hearing. The number of state mediators grew from four to 31 by the end of 1997. Approximately 107,000 state, or non-private, mediations were held between January 1994 and December 2000. The annual number of mediations increased by an annualized rate of almost 13% over the six-year period. Over half (53.5%) of concluded mediations have resolved all issues or all non-attorney-fee issues, and about a third (32.7%) reached an impasse where no issues were resolved. Beginning with the fourth quarter of 1996, mediations resulting in total resolutions (or resolution of all non-attorney-fee issues) were subdivided into three categories: washouts, all issues

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resolved, and all issues resolved except attorney fees. Since then, close to 70% of these total or near-total resolutions were washouts, reflecting the popularity of lump-sum settlements since implementation of the 1993 reforms. Since 1994, approximately 48,000 cases were settled prior to mediation, a number nearly equal to three-fourths of the mediations with all or some issues resolved.

From 1988 through 2000, over 603,000 substantive orders, representing almost 488,000 cases, were signed by Judges of Compensation Claims (JCCs) and recorded in the division's database, covering injuries for any year through 2000. There was a consistent increase in the number of such orders signed by the JCCs through 1994, reaching a peak just above 50,000. After stabilizing at this level for the next three years, orders increased to more than 57,000 in 1999. By contrast, when judges' orders are categorized by injury year rather than by order year, the highest number in the period from 1988 to 2000 pertains to injury year 1989. The peak of over 53,000 substantive orders for 1989 injuries was followed by an uninterrupted decline through injury year 1994; after stabilizing for a year at about 38,000, the number of orders rose by about 3,000 for the next two mature years. Between pre-reform injury year 1993 and post-reform injury year 1994, the number of orders dropped by more than 13%. Since workers' compensation data for the most recent three injury years are still immature, apparent declines for 1998-2000 are inconclusive. A comparison between order and injury years shows that 221,621 judges' orders pertained to injuries since January 1994; thus, of the 366,978 substantive orders signed in the seven post-reform years, over 60% pertained to pre-reform injuries.

Among awarded issues, lump-sum settlements, or washouts, predominated, accounting for 57% or more of awarded issues for every order year except 1994. Attorney Fees/Costs ranked second in every order year, comprising one of every five awarded issues, occurring over five times more frequently than

third-ranked Indemnity Benefits. Washouts and attorney fees represented close to eight of every ten awarded issues. Among denied issues, on the other hand, Dismissal of Claim accounted for one of every five issues, but no other issues were predominant. Three categories each comprised roughly one in ten denied issues: Medical Authorization and Treatment, Indemnity Benefits, and Independent Medical Examiner. Washouts ranked eleventh as a denied issue.

Claimant attorney fees/costs increased 224% from 1988 to 1999 order years, soaring from nearly \$69 million to nearly \$223 million. During the same 12-year period, the number of cases with recorded claimant attorney fees/costs rose 134%, from 14,973 to 35,030. This resulted in growth in average attorney fees/costs of 39% during this time, from \$4,585 to \$6,357. Re-distributed by injury year, however, average attorney fees/costs have declined with each successive mature injury year, dropping from \$8,284 for 1988 injuries to \$5,087 for 1997 injuries, a 39% drop. There was a notable decline of \$1,305 (18%) in this average for 1994, the first post-reform injury year, indicating that efforts to control attorney fees seem to have had an impact. Claimants have paid an increasing share of these attorney fees/costs over the last decade. Rising from 55% in order years 1988 and 1989 to 74% in 1996, this rate reflects the dramatic growth of washouts, as the statute specifies that claimants, rather than carriers, must pay attorney fees for lump-sum settlements.

The division's database stores claimant attorney fees and associated costs as a combined figure, preventing in-depth evaluation of fees and their relationship to the statutory formula. As a first step toward this important distinction, claimant attorney fees/costs for washouts entered in April 2001 were separately recorded by hand. Analysis of this sample revealed that attorney fees comprised about 94% of the combined fee/cost total. Thus, attorney fees, rather than associated costs, are the primary drivers of previously reported trends. These orders with attorney fees were also examined to determine the percentage

with fees exceeding the statutory limit. Three-quarters of the cases contained fees in excess of the statutory calculation, with average fees over one-third higher than the formula. Among cases at or below the limit, average fees were just 5% below the formula. Another discovery of this limited research was that no correlation appears to exist between large settlement awards and excessive attorney fees. Future research efforts are required to substantiate these findings.

The overwhelming majority of judges' orders signed since the 1993 reforms have been settlements. The new statute allowed the washing out of ongoing or anticipated medical benefits for any accident year for the first time. For pre-reform injury years, post-reform settlements have consisted primarily of medical washouts of cases previously settled for indemnity issues. For injuries sustained since 1994, however, almost every settlement has concurrently washed out both medical and indemnity benefits. Comparable vintage analysis shows that both the total and median settlement awards have remained significantly below those for injury year 1993. At three and one-half years past the injury year, total settlement awards of over \$476 million for 1994 injuries were nearly \$115 million (19.4%) less than awards at the same point in time for 1993 injuries. This relationship was maintained with two additional years of maturity. The median settlement award captured three and one-half years after the injury year was \$10,500 for post-reform 1994 injuries, compared to \$14,550 for pre-reform 1993 injuries. As with total awards, this trend for median awards continued at the next two stages of maturity. These data clearly indicate that post-reform settlements have been less costly per case.

An interesting trend emerges when examining trends in settlements versus substantive non-settlement orders by injury year at 40-months maturity. Cases with settlements but no other substantive order grew rapidly for injury years 1990 through 1993, peaking at 19.0%. With the implementation of the legislative reforms in 1994, these cases declined by nearly two percentage points, then began a slow growth to reach

18.8% for 1997 lost-time cases, only two-tenths of a percentage point below the 1993 level. Yet, for all cases with settlements, with or without another substantive order, 1997 ranked more than three percentage points above 1993. Conversely, just one in ten cases with injuries incurred between 1990 and 1997 had non-settlement substantive orders, whether accompanied by a settlement or not. While the percentage of cases with substantive orders that comprise both settlements and non-settlement orders has grown from 4.4% to 8.4% for 1997 injury cases, the percentage of cases with only non-settlement substantive orders dwindled from 4.5% to just 1.9%. This suggests that the relative growth in post-reform settlements may have been driven to a significant degree by the increased inclination for washing out cases with disputed benefits rather than by addressing those disputes individually.

The division has developed an indicator of litigation intensity for all lost-time cases using a cumulative reporting perspective. Data for injury years 1983-2000 were examined to determine if a judge's order was issued at any point in time over the life of the claim up to April 30, 2001. A litigation rate was derived by dividing the number of cases with at least one substantive judge's order by the total number of cases for each injury year. Across pre-reform injury years 1983-1993, 23.3% of cases had a substantive judge's order. During this time, the rate more than tripled, from 9.9% to 32.8%. For mature post-reform injury years and even for preliminary year 1998, rates have already surpassed the previous eleven year's combined average, although they remain below the rates for 1992-1993. Comparable vintage analysis shows that litigation rates among lost-time cases with injuries sustained between 1992 and 1998 were consistently lowest for 1994. Following that injury year, however, rates have risen steadily to eventually surpass pre-reform litigation rates within 30 months post-injury year. The growth in the number of settlement awards washing out medical benefits is a contributing factor in this surge of litigation. It should be pointed out that it is currently not possible to clearly

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distinguish orders following joint stipulations in which there was no dispute from orders originating in disputes. Thus, these rates should not be interpreted to signify the intensity of disputes; rather, they show the level of involvement of JCCs in workers' compensation cases.

Examination of the movement of cases with 1995-1998 injuries through the dispute resolution process shows that fewer than one in five lost-time cases escalated the use of services to include an RFA, a PFB, and a judge's order. Even for those cases, the progression was not always sequential. While more than 83.5% of the 84,640 cases submitting RFAs for those years have also submitted a PFB, well over half (55.3%) of the 13,983 cases submitting RFAs and *not* submitting PFBs had an least one recorded judge's order. Thus, 92.6% of cases submitting RFAs proceeded to the formal dispute resolution stage, with or without a PFB. The percent of lost-time cases with PFBs rose from one in five to one in four between

injury year 1995 and 1998. About 95% of these cases also have an RFA on file, though the RFA may not have been filed *prior to* submission of the PFB. Almost two-thirds of lost-time cases with judges' orders had both an RFA and a PFB, while one in four cases with orders were lacking both documents—possibly indicating lump-sum settlements not preceded by a dispute. Overall, one in three lost-time cases involved an RFA, a PFB, *or* a judge's order.

