

Second report from DLI dispute issue tracking study

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The Department of Labor and Industry (DLI) recently released *Minnesota workers' compensation dispute issue tracking study report 2: Vocational rehabilitation disputes*. The following summarizes the report; the full report is available on the DLI website at www.dli.mn.gov/RS/WcDispTrack.asp.¹

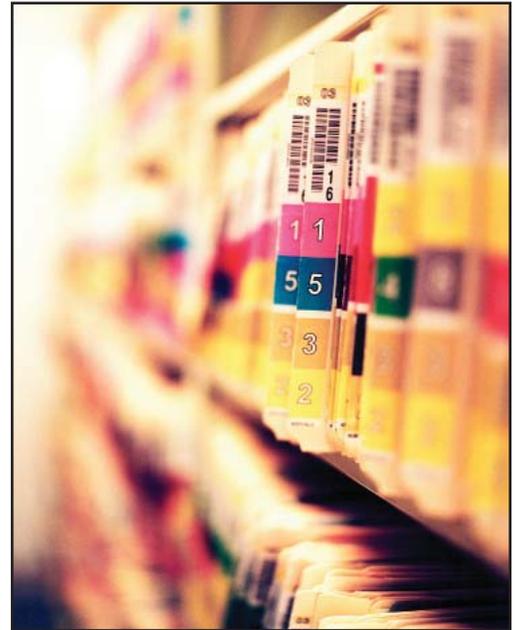
Although the DLI workers' compensation database contains a large amount of information to assist in the dispute-resolution process, it does not provide all of the data needed to monitor the performance of that process. In consideration of this, DLI began an issue-tracking project in the fall of 2006. The project has tracked individual dispute issues through the dispute-resolution system, using a database and coding structure separate from the main DLI database. The coded data comes primarily from imaged documents in the DLI database, but also from an electronic log of dispute-resolution activities. The project has tracked medical and rehabilitation disputes filed in 2003 and in 2007, and claim petition disputes filed in 2003.

The first report from the project dealt with medical disputes filed in 2003 and 2007. The second report deals with vocational rehabilitation disputes from the same years. It analyzes the paths taken by the issues in those disputes through the resolution process at DLI and the Office of Administrative Hearings (OAH). It also analyzes the time the issues take to travel these different paths.

Following are some of the main findings for the 2003 and 2007 rehabilitation disputes.

Dispute characteristics

- Some 73 percent of the 2003 disputes and 72 percent of the 2007 disputes involved sprains, strains, tears and pain. This compares with 54 to 60 percent of all workers' compensation paid indemnity claims for injury years 2003 through 2007. This difference is to be expected because this type of injury is often more difficult to verify than more objective injuries such as fractures and, thus, more prone to dispute.
- The most common services at issue in these disputes were eligibility for consultation and plan content.
- The most common point in dispute in these disputes was causation; the second most common was reasonableness and necessity.



¹The report is also available by calling (651) 284-5025. For alternative formats, call 1-800-342-5354 or TTY at (651) 297-4198.

Dispute resolution activity at DLI

- The percentage of rehabilitation disputes not certified rose from 24 percent to 34 percent between 2003 and 2007.² This increase is attributable to a larger percentage of disputes being resolved in the certification process.
- Among certified disputes,³ the percentage scheduled for an administrative conference at DLI increased from 55 percent to 73 percent between 2003 and 2007, while the percentage referred to OAH fell from 16 percent to 10 percent.
- The total number of disputes referred to OAH fell from 124 per 1,000 to 69 per 1,000 between 2003 and 2007. Most disputes referred in both years were referred because of concurrent litigation at OAH, and most of the decline in referrals between the two years was accounted for by a decline in referrals for that reason.
- For disputes with a conference scheduled at DLI, the median time from first rehabilitation request to scheduled conference date fell from 63 days to 49 days between 2003 and 2007.
- Sixteen percent of scheduled DLI conferences had re-sets for 2003, and 15 percent for 2007. There was a median of 28 days from the originally scheduled date to the re-set date for 2003, and 23 days for 2007.
- Where the scheduled DLI conference was not held, the median time from the rehabilitation request to the final dispute-resolution event was as follows.

For 2003 disputes:

- 58 days where the dispute was resolved informally at DLI.
- 118 days where the final event was an award on stipulation after action at DLI.
- 235 days where the final event was an award on stipulation after action at OAH.

For 2007 disputes:

- 45 days where the dispute was resolved informally at DLI.
- 94 days where the final event was an award on stipulation after action at DLI.
- 211 days where the final event was an award on stipulation after action at OAH.



²In a medical or vocational rehabilitation dispute, DLI must certify a dispute exists and informal intervention did not resolve the dispute before an attorney may charge for services (Minnesota Statutes §176.081, subd. 1(c)). The certification process is triggered by either a certification request or a medical or rehabilitation request. DLI specialists attempt to resolve the dispute informally during the certification process.

³In this analysis, disputes not certified because of pending litigation and disputes without a recorded certification decision are counted with certified disputes.

- Where DLI issued a decision-and-order after a conference, the median time from the rehabilitation request to the decision-and-order fell from 71 days for 2003 disputes to 62 days for 2007 disputes.
- When the employee was the prevailing party in a DLI decision-and-order for 2007, the employer filed an appeal 32 percent of the time. When the employer was the prevailing party, the employee appealed 64 percent of the time. These percentages were roughly the same for the 2003 disputes.
- For 2007 disputes with appeals from DLI decision-and-orders, the median time from rehabilitation request to final resolution was 220 days. For 25 percent of these disputes, the time was 347 days or longer. These timelines were roughly similar for the 2003 disputes.



Dispute resolution activity at OAH for disputes referred from DLI

- For both 2003 and 2007, about two-thirds of the disputes first scheduled for hearing at OAH had an order for consolidation before the first scheduled proceeding; this was true for almost none of the disputes first scheduled for administrative conference and for none of those not scheduled for either type of proceeding at OAH. Causation issues had a higher prevalence among disputes first scheduled for conference than among those first scheduled for hearing or not scheduled for either type of proceeding.
- For 2003 disputes, the median time from rehabilitation request to first scheduled proceeding date was 72 days for disputes initially scheduled for an OAH administrative conference and 124 days for those initially scheduled for hearing. For 2007 disputes, these times were 68 days and 117 days, respectively.
- For 2003 disputes, 13 percent of scheduled OAH administrative conferences had re-sets; for 2007 disputes, 6 percent had re-sets.
- For 2003 disputes with an OAH decision-and-order after a conference, it occurred, at the median, three days after the conference and 65 days after the first rehabilitation request.⁴
- Of the disputes initially scheduled for an administrative conference at OAH, about 25 percent to 30 percent for each year were later scheduled for hearing (not counting appeals), usually after an order for consolidation. For both years, about a fifth of the disputes eventually scheduled for hearing (not counting appeals) had first been scheduled for administrative conference.



⁴There were too few sample cases for 2007 to produce comparable statistics for that year.

- Among 2003 disputes scheduled for hearing at OAH (not counting appeals), the median time from referral to OAH to the scheduled hearing date was 103 days where an administrative conference had not been scheduled first, and 153 days where it had.
- Twenty-two percent of scheduled OAH hearings (not counting appeals) had re-sets for 2003, and 16 percent for 2007. For the 2003 disputes, there was a median of 63 days from the originally scheduled date to the re-set date.⁵
- A findings-and-order was issued for roughly a quarter of the disputes scheduled for hearing for each year; for the remaining cases, the parties typically reached agreement, usually through an award on stipulation. Where the parties reached agreement in the 2003 disputes, this came, at the median, 337 days after the rehabilitation request.⁶



Correlation between scheduling of proceedings and timing of agreements

- A statistical analysis was performed to analyze the possible correlation between the scheduling of proceedings and the timing of agreements where the proceeding is canceled because of agreement of the parties. The analysis found that earlier scheduling of proceedings at DLI and OAH is associated with earlier resolution by the parties where the proceeding is canceled because of informal agreement or an award on stipulation. The agreement tends to occur about one day earlier for each day earlier the proceeding is scheduled to occur.

Observations

The data analysis in this report leads to the following observations.

- **Some disputes take substantially longer to reach resolution than others with seemingly the same sequence of events.** An effort should be made to determine how to reduce the time consumed in resolving these longer disputes.
- **Re-sets of proceedings at DLI and OAH add time to the process.** Consequently, their use should be limited as much as possible, using authority in rule. In 2005, DLI began approving re-sets of administrative conferences only upon showing of good cause.
- **For disputes that go to hearing at OAH, the time to hearing is substantially longer if an OAH administrative conference has been scheduled first.** Consequently, an effort should be made to determine which disputes, after being referred to OAH, are likely to ultimately go to hearing so they can be scheduled for hearing initially rather than incurring delays by being first scheduled for an administrative conference that does not occur.

⁵There were too few cases to compute this statistic for 2007.

⁶There were too few cases to compute this statistic for 2007 or to compute the amount of time to a findings-and-order for 2003.

- **Enhancements made by DLI in its dispute-resolution process between 2005 and 2007 have brought about major reductions in the time taken to resolve disputes.**
- **The data shows earlier scheduling of proceedings leads to earlier agreement where the parties reach resolution before the proceeding.** This is in addition to the expectation that earlier scheduling should bring about earlier decisions where the parties do not reach agreement. It adds to the value of scheduling proceedings as promptly as possible with sufficient time for the parties to prepare.



Two work comp rehabilitation forms revised, also available in Spanish

The Department of Labor and Industry recently updated two workers' compensation rehabilitation forms – Rehabilitation Rights and Responsibilities of the Injured Worker (IW05) and Rehabilitation Consultation Report (RC01). Rehabilitation providers should stop using prior versions of the forms as soon as possible.

The department thanks providers for implementing the new versions of these forms and working with us to better serve the stakeholders of Minnesota.

If you have questions about the changes or how to use these forms, contact Mike Hill by e-mail at mike.hill@state.mn.us or phone at (651) 284-5153.

To download the most current versions, go to www.dli.mn.gov/WC/Wcforms.asp. The Spanish versions have also been revised.



COMPACT: Dispute-resolution services

The Department of Labor and Industry's Benefit Management and Resolution unit presents a special edition of *COMPACT* in December, focused on workers' compensation dispute-resolution services and how stakeholders can best make use of them.

Topics included:

- customer assistance telephone services
- certification of disputes
- administrative conferences
- mediations



This special edition will also provide a historical perspective, statistical analyses and discussion of emerging issues and challenges, with a view toward moving forward together.