

History and development of DLI's dispute-resolution system

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Those who deal with the administration of Minnesota's Workers' Compensation Act are well aware disputes often arise in the course of administering a workers' compensation claim. Disputes about benefit entitlement issues are an inevitable consequence of three factors. First, the facts and circumstances of each case are unique and are sometimes not entirely clear. Second, workers' compensation benefits represent a significant expense to employers and a significant entitlement to employees. Third, because the benefits at stake are substantial, claims handlers and injured workers each have a strong incentive to advance their arguments to their respective advantage.

Historical overview

The need for an efficient and fair dispute-resolution system is readily apparent. In fact, the unsuitability of the dispute-resolution forum prior to the enactment of the Workmen's Compensation Act (which was a suit at common law) was one of the factors that spawned the enactment of workers' compensation laws in the first place.¹ As the United States moved from a predominantly agricultural nation to an industrialized nation, workplace injuries increased, resulting in a broad consensus that an alternative system for compensating victims of workplace injuries was needed.

Before the passage of workers' compensation laws, an injured worker had to sue his or her employer in district (or county) court. This was an expensive undertaking and the injured worker faced many hurdles in obtaining compensation, including needing to establish negligence and having to overcome the defense of contributory negligence. Employers, meanwhile, feared the possibility of a large verdict that could bankrupt a small-business enterprise. In 1913, Minnesota joined the dozens of other states that enacted workers' compensation laws in the early decades of the 20th century as a response to these issues.

With the Workmen's Compensation Act, employees gave up the right to sue their employers for workplace injuries, in return for the certainty of compensation without having to prove negligence or fault on the part of the employer. This agreement or "compact" between labor and industry formed the basis for the workers' compensation system (and is also the basis for the name of this publication).



¹Originally, the law was called the "Workmen's Compensation Act." In 1975, the term "workmen's" was changed to "workers'." For simplicity, "workers'" is used here, except when referring to the original act itself.

Disputes about benefit entitlement under the new law were initially still litigated in the civil court system. Although the process was undoubtedly simplified somewhat by the fact that common law claims and defenses no longer had to be litigated, it was soon recognized that a more efficient dispute-resolution system was needed. Minnesota's Department of Labor and Industries, as it was then known, took the leading role in informal resolution of benefit disputes as soon as the new Workmen's Compensation Act was enacted.

In 1920, when the Workmen's Compensation Act had reached the ripe old age of seven years, the department published a bulletin proclaiming, "the feature of the work upon which the department wishes to lay the greatest stress is the informal adjustment of differences."² In other words, the agency was taking a leading role in alternative dispute-resolution (ADR) as many as 90 years ago. This remains one of the department's major focuses to this day. A link to the original page describing early dispute-resolution functions in 1920 is provided below.

The Industrial Commission (consisting of three commissioners) was created in 1921 to replace a single commissioner to head the Department of Labor and Industries. Workers' compensation disputes would no longer be heard in civil courts. Instead, the Industrial Commission would hear all disputes of workers' compensation matters. An appeal could be taken from the commission's decision to the Minnesota Supreme Court. In 1925, the agency was renamed the Department of Labor and Industry (DLI), still under the direction of the Industrial Commission.

The Industrial Commission was abolished in 1967 and DLI was once again headed by a single commissioner. The administrative trial court function of the former Industrial Commission was taken over by a new entity within the Workmen's Compensation Division (WCD – a division within DLI) known as the Workmen's Compensation Commission (WCC) and consisting of the former Industrial Commission members.

In 1969, the position of compensation judge was created within WCD³ and, four years later, the WCC became exclusively an appellate court, hearing appeals from the determinations of the compensation judges⁴; its appellate decisions could still be appealed to the Minnesota Supreme Court. In 1976, WCC became known as the Workers' Compensation Court of Appeals (WCCA).

The 1970s and 1980s were a time of great innovation in dispute-resolution services. To make dispute resolution timelier and less costly, the concept of the administrative conference was developed in 1979 to resolve disputes arising out of the process of vocational rehabilitation. During the next four years, discontinuance conferences (then known as ".242 conferences") and medical conferences were added to the administrative conference process at DLI.

The philosophy underlying the administrative conference was that there were commonly "small" disputes of certain types that took an inordinate share of litigation time and expense, and these issues could be more efficiently dealt with in a less formal conference setting. Furthermore, these types of disputes required immediate attention. Rehabilitation and medial issues are "time-

²Sullivan, Oscar M. (1920). [Department of Labor and Industries Bulletin No. 17](#): Compilation of Court Decisions, Attorney General's Opinions and Department of Labor Advice Relative to the Workmen's Compensation Act from Date When Act was Effective to July 1920., p. 204.

³Minn. Laws of 1969, c. 276, § 2.

⁴Minn. Laws of 1973, c. 388, § 3, et. seq.

critical” in the sense it is harmful to the medical or vocational rehabilitation of an injured worker to wait for a trial to resolve a dispute about a proposed medical treatment or a proposed change in an employee’s rehabilitation plan. Time is of the essence in many such matters and a quick decision is needed to keep the employee’s recovery from foundering.

Originally, administrative conferences were handled by rehabilitation and medical specialists and settlement judges within WCD; now they are handled by mediator/arbitrators at DLI or, in the case of discontinuance conferences and certain other matters, compensation judges at the Office of Administrative Hearings (OAH)⁵.

Compensation judges continued to be housed at DLI until 1981, when they were moved to OAH. That same year, WCCA became an independent agency and continues to function as the workers’ compensation intermediate appellate court today. Appeals from WCCA decisions are taken to the Minnesota Supreme Court.

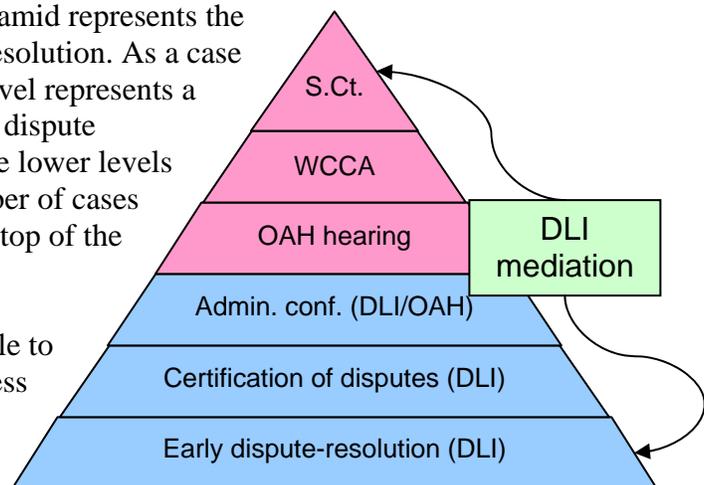
DLI initiated a mediation program within its Workers’ Compensation Division in 1983, which has expanded significantly and remains an important dispute-resolution service. In 1986, the settlement judge position was created within the division to preside over one-hour settlement conferences before the scheduled hearing date in litigated cases, to try to facilitate settlement of the matter before trial. In 1993, these judges also handled all discontinuance conferences (also known as “.239 conferences”). In 1998, the WCD settlement judges were transferred to OAH⁶. OAH added its own workers’ compensation mediation program in 2008.

Present system

Today, dispute resolution in the workers’ compensation system takes several different forms, ranging from formal litigation to informal alternative-dispute-resolution options.

In the graphic at right, the bottom of the pyramid represents the least costly and intensive phase of dispute resolution. As a case proceeds up the pyramid, each successive level represents a more costly and resource-intensive phase of dispute resolution.⁷ Most disputes are resolved in the lower levels of the pyramid; only a relatively small number of cases reach the appellate levels of litigation at the top of the pyramid.

Notice DLI’s mediation services are available to the parties at *any* stage of a dispute, regardless of whether a case is in litigation.



Minnesota’s system of workers’ compensation benefits is created and defined by statute and rule, and all such benefits should be

⁵OAH is an independent state agency, separate from DLI, formed in 1976 to adjudicate administrative disputes and proceedings.

⁶Minn. Laws of 1998, c. 366, §§ 80 and 81.

⁷In the graphic, ADR services are shown in blue; formal litigation is represented by pink and DLI mediation is green.

administered uniformly, regardless of who the employer is. On the other hand, Minnesota's privatized system of workers' compensation insurance means there are more than 100 insurers and other claim-handling entities administering payments of these benefits to injured employees. Therefore, DLI has the responsibility to ensure benefits are administered fairly, equitably and promptly. It does this through its regulatory function (establishing rules and ensuring compliance) and by providing a variety of dispute-resolution services. In that regard, M.S. §176.261 specifically requires the agency to make efforts to settle disputes "quickly and cooperatively ... whether or not a formal claim has been filed with the department."

Early dispute-resolution

The first level of the dispute-resolution pyramid above represents the department's efforts to informally resolve disputes before they become litigated issues. DLI's early dispute-resolution services are provided by the 15 mediators who staff the department's hot line⁸, fielding calls from injured workers, health care providers, employers, insurers, qualified rehabilitation consultants (QRCs) and others who are having difficulty or need assistance or information regarding some aspect of workers' compensation. The mediator staff provides information about the workers' compensation system, facilitates communication between the parties and intervenes to resolve situations that might otherwise grow into larger disputes. In 2009, the department fielded 16,073 such inquiries⁹.

Dispute certification

The next level of the dispute pyramid deals with dispute certification. DLI's dispute-certification process was established in 1996, in response to the newly enacted provisions of M.S. §176.081, Subd. 1 (c), requiring the department to certify a dispute exists before an employee's attorney can charge a fee on most litigated medical or rehabilitation issues. In response to a request for certification, mediators contact parties (claim handlers, employers, employees, health care providers, QRCs and attorneys) to ascertain whether a dispute genuinely exists and whether the matter can be resolved at that point. If a dispute exists and cannot be resolved, the matter is certified and the employee's attorney can charge for fees if the employee prevails in the dispute thereafter.

This program has proven very effective at keeping disputed matters from moving further up the pyramid, which ordinarily involves more litigation expense and delay in resolving issues. Of roughly 6,900 dispute-certification inquiries during 2009, 2,000 issues were resolved and another 1,330 were not certified for other reasons¹⁰ (usually because it was ascertained the issue was not genuinely disputed).

Administrative conference

The third level of the dispute pyramid is the administrative conference level. At DLI, there are administrative conferences for rehabilitation disputes and medical disputes where the amount in dispute is less than \$7,500; OAH conducts administrative conferences for discontinuance disputes and medical disputes of greater than \$7,500. Other medical and rehabilitation disputes

⁸The department's workers' compensation assistance line is directly accessed during business hours at (651) 284-5032 or 1-800-342-5354.

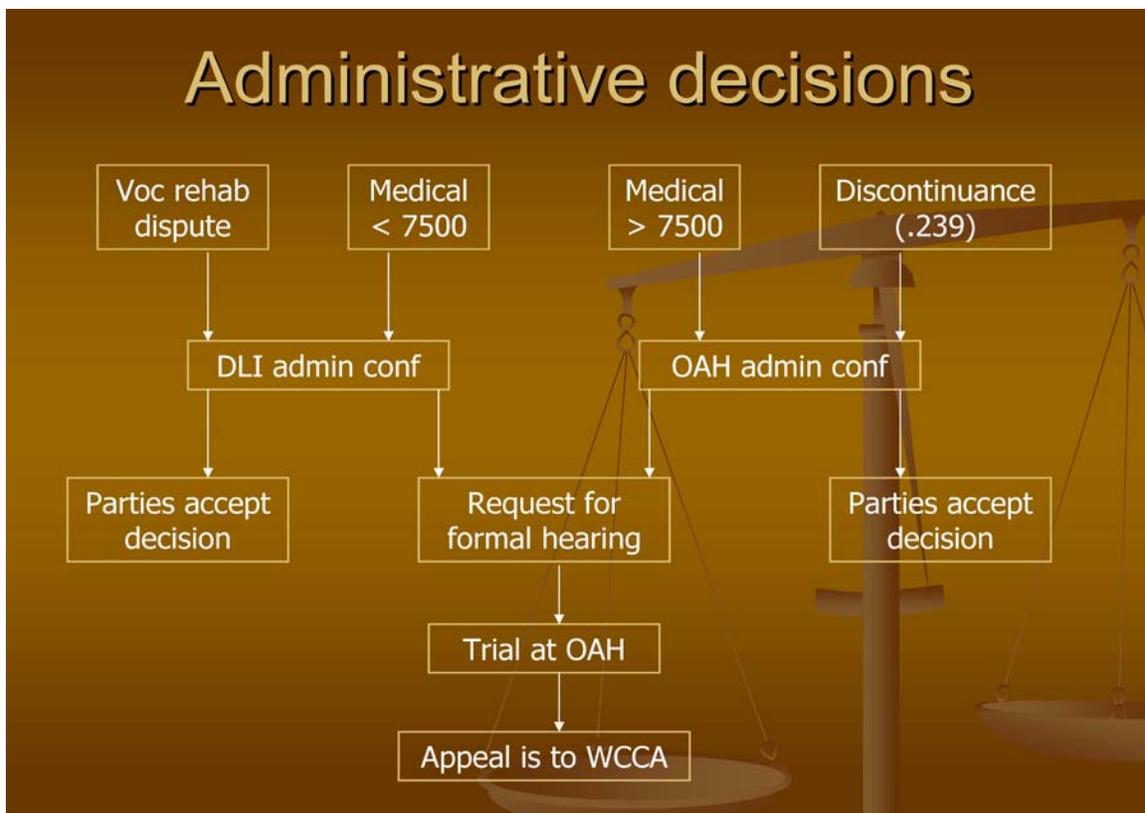
⁹Minnesota Department of Labor and Industry; Benefit Management and Resolution unit data for 2009.

¹⁰*Minnesota Workers' Compensation System Report, 2008*; DLI Policy Development, Research and Statistics (2010).

are sometimes referred to OAH for an administrative conference when it makes sense to do so (such as when there is an OAH hearing on a related issue at nearly the same time as DLI would schedule its proceeding).

Administrative conferences at DLI are one-hour informal conferences at which the mediator attempts to resolve a medical or rehabilitation issue. To have a conference scheduled, a party files a request for assistance form. At the conference, the parties are first given an opportunity to relate their position about the dispute and offer any supporting documentation. The mediator will then make an attempt to move the parties to a voluntary resolution of the issue. If an agreement is not possible, a decision and order is issued. In this event, the mediator is actually acting as an arbitrator, conducting what is essentially a nonbinding arbitration. In keeping with the informal nature of these proceedings, no recording or transcript is kept.

Regardless of whether the conference was at DLI with a mediator or at OAH with a compensation judge, if a party disagrees with the decision, a formal hearing before a compensation judge at OAH may be requested within 30 days after issuance of the decision. The formal hearing will be a “de novo” evidentiary hearing, meaning the original findings in the decision and order are not binding on any party.



The purpose of the administrative conference process is to give all parties ready access to a simple, speedy and inexpensive dispute-resolution forum. The process is designed to allow the parties to participate without an attorney, though parties often have an attorney present to help them in representing their interests. This process is far faster than formal litigation; for medical

disputes initiated in 2007, the median time from filing a request for assistance to receiving a decision and order for administrative conferences at DLI was 65 days¹¹.

Mediation

DLI's mediation service rounds out the agency's ADR offerings. As mentioned earlier, DLI's mediation program dates back to 1983. Since then, the program has grown and – today – DLI's mediation services are widely used by parties to workers' compensation cases, from small issues to global settlements of complex and multi-party litigated claims. DLI's experienced staff of mediators includes former workers' compensation trial attorneys (both claimant and defense) and former judges (workers' compensation and district court), as well as people with nursing, vocational rehabilitation and claims adjusting backgrounds. DLI mediations have more than doubled in 10 years, from 290 in 1999 to 750 mediations in 2009¹².

Mediation is a powerful dispute-resolution tool. The dynamics involved when a neutral third-party mediator assists the parties in evaluating and framing their settlement position results in a very high success rate. Most DLI mediations result in successful settlements. The agreement can be memorialized by a mediation award, drafted by the mediator within days of the mediation session (or even at the mediation session, if the parties require it) or the parties may elect to memorialize their agreement by submitting a stipulation to OAH at a later date.

As in the case of its administrative conference process, DLI aims to make its mediation service easy to use and accessible to all parties. To make it easy for parties to participate, mediation sessions can be arranged within days or even hours of a request. Sessions can be conducted in person at DLI's St. Paul offices, at other metro or outstate locations, by telephone or videoconference.

Conclusion

Since the inception of the Workmen's Compensation Act in 1913, alternative-dispute-resolution services have been a primary focus of DLI. Now, and as it was 90 years ago, it remains true that "the feature upon which the department wishes to lay its greatest stress is the informal adjustment of differences"¹³. Now, as then, the reason for this effort is "... much [can] be saved in litigation expense and ill feeling" by the department's efforts to bring disputes to an informal resolution at the earliest possible time. DLI is continually refining and improving its ADR services to meet the present-day statutory mandate¹⁴ that "the department must make efforts to settle problems of employees and employers ... quickly and cooperatively."

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¹¹DLI Policy Development, Research and Statistics, "Minnesota workers' compensation dispute issue tracking study, report 1," May 2009.

¹²*Minnesota Workers' Compensation System Report, 2008*; (supra).

¹³Sullivan, Oscar M. (1920). [Department of Labor and Industries Bulletin No. 17](#): (supra), p. 204.

¹⁴See Minnesota Statutes §176.261.