Workers' compensation dispute and dispute-resolution trends

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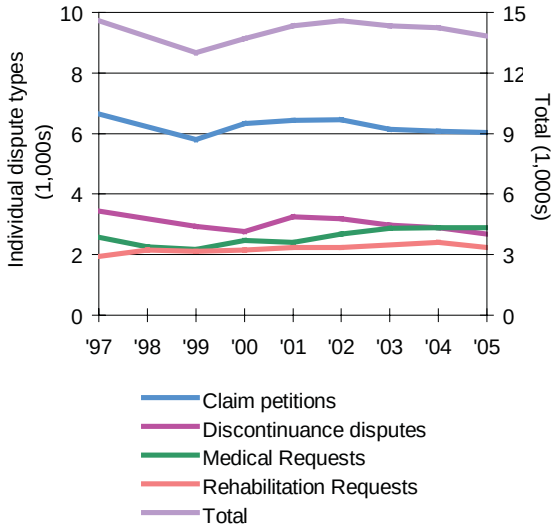
Research and Statistics

The annual *Workers' Compensation System Report*[1] includes trend statistics about dispute rates, the numbers of disputes and dispute-resolution activities. Dispute rates are of interest because they indicate the propensity of claims to have disputes. This article presents system report data about the numbers of disputes, which are of interest because they indicate the overall demand for dispute-resolution services at the Department of Labor and Industry (DLI), the Office of Administrative Hearings (OAH) and the Workers' Compensation Court of Appeals (WCCA). The article also presents data about the levels of dispute-resolution activities at DLI, OAH and WCCA. A glossary at the end of the article offers term definitions.

Figure 1
Disputes filed, calendar-years 1997-2005 [1]



Calender year filed	Claim petitions	Discon-tinuance disputes	Medical Requests	Rehabili-tation Requests	Total [2]
1997	6,650	3,430	2,580	1,940	14,590
2001	6,440	3,250	2,410	2,250	14,350
2002	6,460	3,190	2,690	2,240	14,580
2003	6,140	2,980	2,880	2,330	14,320
2004	6,070	2,890	2,900	2,400	14,250
2005	6,030	2,680	2,890	2,230	13,830

1. Data from DLI. Numbers rounded to nearest 10.
2. Total of the four dispute types shown here.

Numbers of disputes

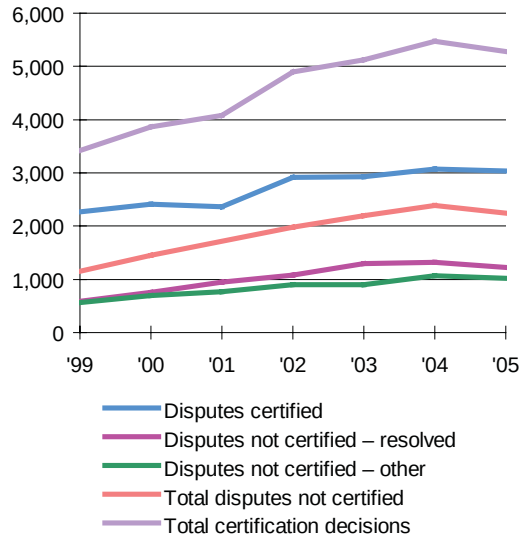
Figure 1 shows trends in the numbers of disputes received at DLI, featuring four major dispute types. Between calendar-years 1997 and 2005, the number of claim petitions fell from 6,650 to 6,030, while discontinuance disputes fell by 3,430 to 2,680. In contrast, medical and rehabilitation requests each rose by roughly 300 to 2,890 and 2,230, respectively. During the same period, total disputes fell from 14,590 to 13,830.[2]

In contrast to these numbers, the system report shows dispute *rates* increasing between 1997 and 2004 (and leveling off in 2005).[3] The difference occurs because the number of claims has been falling. The number of disputes is the product of the number of claims and the dispute rate (disputes per claim). From injury-year 1999 to 2005, the number of filed indemnity claims fell from 39,300 to 30,900.[4] The combination of a falling number of claims and increasing dispute rates produced the trends in Figure 1.

Dispute certification at BMR

Figure 2 shows trends in dispute-certification activity at DLI Benefit Management and Resolution (BMR). From 1997 to 2005, total certification decisions rose from 3,420 to 5,280. This partly reflects an increase in certification requests during the same period, from 1,260 to 3,230 (not shown in figure). It also reflects the increases in medical and rehabilitation requests (Figure 1), since these are treated as requests for certification if not accompanied by a certification request. Figure 2 also shows that the numbers of disputes certified and not certified increased along with the total number of certification decisions. The percentage of cases in which a dispute was certified fell from 66 to 58

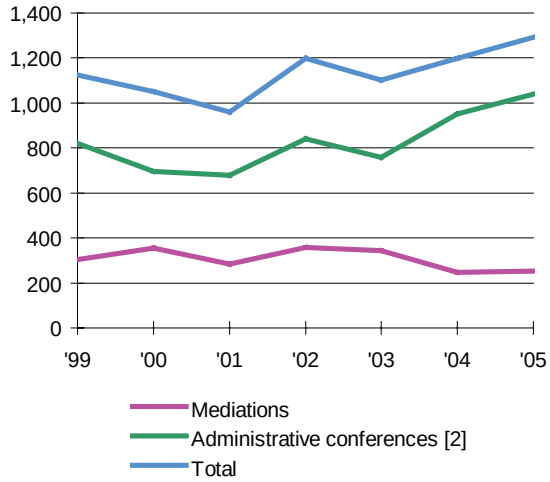
Figure 2
Dispute certification activity at DLI Benefit Management and Resolution, calendar-years 1999-2005 [1]



Calendar year	Disputes certified	Disputes not certified			Total cerfication decisions
		Resolved	Other reasons	Total not certified	
1999	2,270	590	570	1,150	3,420
2001	2,370	950	770	1,720	4,090
2002	2,920	1,080	900	1,980	4,890
2003	2,930	1,300	910	2,200	5,130
2004	3,080	1,320	1,070	2,390	5,470
2005	3,040	1,220	1,020	2,240	5,280

1. Data from DLI. Data not available before 1999. Numbers rounded to nearest 10.

Figure 3
Mediations and administrative conferences at DLI Benefit Management and Resolution, calendar-years 1999-2005 [1]



Calendar year	Mediations	Administrative conferences [2]	Total
1999	300	820	1,130
2001	280	680	960
2002	360	840	1,200
2003	340	760	1,100
2004	250	950	1,200
2005	250	1,040	1,290

1. Data from DLI. Data not available before 1999. Numbers rounded to nearest 10.
2. Includes conferences where agreement was reached.

percent over the period shown. For the entire period, in a majority of the cases where a dispute was not certified, the noncertification occurred because the dispute was resolved.

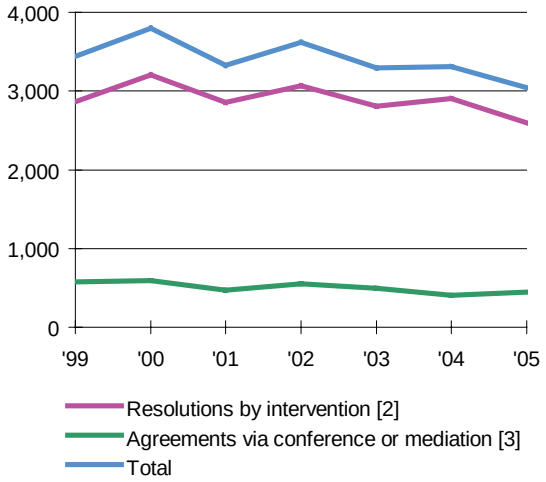
Mediations and administrative conferences at BMR

As shown in Figure 3, administrative conferences are more common than mediations at BMR. (At administrative conferences, the BMR specialist usually tries to achieve agreement between the parties.) Also, the number of administrative conferences increased from 820 in 1999 to 1,040 in 2005, while the number of mediations declined. A total of 1,290 conferences and mediations occurred in 2005. DLI has recently been increasing its efforts to encourage dispute parties to use mediation.

Resolutions at BMR

As shown in Figure 4, BMR achieved more than 3,000 resolutions by agreement each year from 1999 through 2005, although this number declined during the period shown. Most of these were resolutions by intervention (see note in figure). The remainder were agreements via mediation or conference.

Figure 4
Resolutions by agreement at DLI Benefit Management and Resolution, calendar-years 1999-2005 [1]



Calendar year	Resolutions by intervention [2]	Agreements via mediation or conference [3]	Total
1999	2,860	570	3,440
2001	2,860	470	3,330
2002	3,070	550	3,620
2003	2,810	490	3,300
2004	2,900	410	3,310
2005	2,590	450	3,040

1. Data from DLI. Data not available before 1999. Numbers rounded to nearest 10.
2. These are instances in which a BMR specialist, through phone or walk-in contact or correspondence, resolved a dispute prior to a mediation or conference. Many of these resolutions occur through the dispute certification process.
3. These include mediation awards and other agreements.

Figure 5
Total resolutions at DLI Benefit Management and Resolution, calendar-years 1999-2005 [1]

Calendar year	Resolutions by agreement [2]		Resolutions by decision and order		Total
	Number	Pctg.	Number	Pctg.	
1999	3,440	86%	550	14%	3,990
2001	3,330	88	470	12	3,800
2002	3,620	84	670	16	4,290
2003	3,300	84	640	16	3,940
2004	3,310	81	760	19	4,070
2005	3,040	79	800	21	3,840

1. Data from DLI. Data not available before 1999. Numbers rounded to nearest 10.
2. From Figure 4.

Figure 5 shows BMR achieved about 4,000 resolutions each year from 1999 through 2005. Most of these were resolutions by agreement (from Figure 4). The remainder were decision-and-orders. In contrast with resolutions by agreement, decision-and-orders increased during the period shown, from 550 in 1999 to 800 in 2005. Most decision-and-orders stem from conferences where the parties did not reach agreement. A small number are "nonconference decision-and-orders," written by a BMR specialist where a conference was deemed unnecessary.

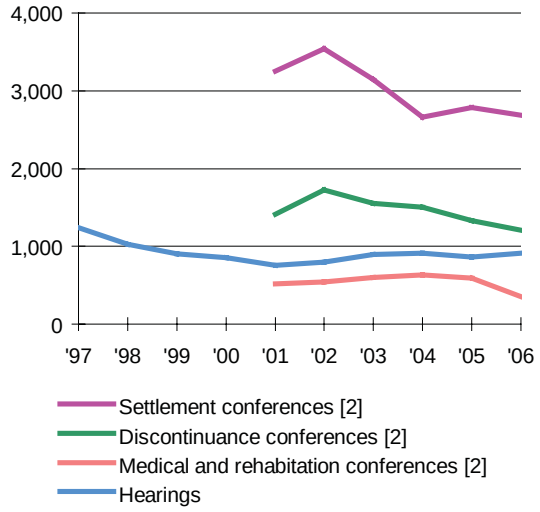
Resolutions at OAH and WCCA

As shown in Figure 6, OAH hearings declined from 1997 through 2001, but then increased through 2003 and held steady thereafter. By contrast, settlement conferences, discontinuance conferences, and medical and rehabilitation conferences at OAH all declined between 2001 and 2006 (although medical and rehabilitation conferences had increased through 2004).

As shown in Figure 7, the number of cases received at WCCA fell from 386 in 1997 to 196 in 2006. During the same period, these cases also fell from 31 percent of OAH hearings to 22 percent.

Figure 6

Dispute resolution activity at the Office of Administrative Hearings, fiscal-years 1997-2006 [1]

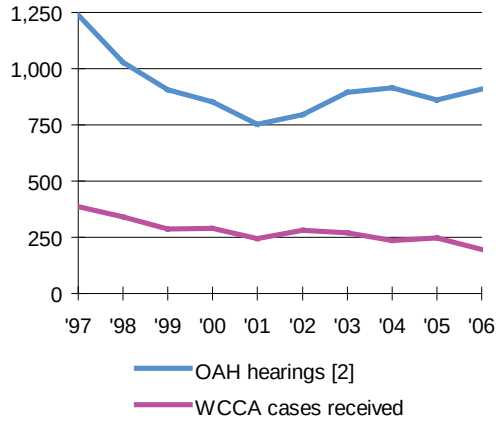


Fiscal year	Settlement conferences [2]	Discontinuance conferences [2]	Medical and rehab conferences [2]	Hearings
1997				1,240
2001	3,254	1,415	516	753
2002	3,537	1,726	544	795
2003	3,143	1,551	601	895
2004	2,661	1,506	633	914
2005	2,784	1,328	595	860
2006	2,687	1,211	356	910

1. Data from OAH.
2. Not available before 2001.

Figure 7

Hearings at the Office of Administrative Hearings and cases received at the Workers' Compensation Court of Appeals, fiscal-years 1997-2006 [1]



Fiscal year	OAH hearings [2]	WCCA cases received [3]	WCCA cases as percentage of OAH hearings
1997	1,240	386	31%
2001	753	245	33
2002	795	282	35
2003	895	271	30
2004	914	236	26
2005	860	247	29
2006	910	196	22

1. Data from OAH and WCCA.
2. From Figure 6.
3. Includes cases with and without hearings. Both types of cases are usually disposed of by decisions but sometimes by settlement. Statistics are unavailable on the number of hearings at WCCA. Currently, about 75 percent of cases received have hearings. This percentage has risen over time.

Conclusion

DLI is using this and other data to reduce disputes, align resources, improve performance and shorten the dispute-resolution process.

[1] The *Minnesota Workers' Compensation System Report, 2004* is available at www.doli.state.mn.us/pdf/wcfact04.pdf or by calling the Department of Labor and Industry at (651) 284-5025.
[2] By contrast, the *System Report* shows *increasing* dispute *rates* since 1997 because of the falling number of claims (the denominator of the dispute rate).
[3] The 2005 *Minnesota Workers' Compensation System Report* will be published shortly.
[4] These are projected to full claim maturity.

Glossary of terms used in preceding information

Administrative conference – An expedited, informal proceeding where parties present and discuss viewpoints in a dispute. If agreement is not achieved, a "decision and order" is issued that is binding unless a request for formal hearing is filed. There are administrative conferences for medical issues presented on a Medical Request form, vocational rehabilitation issues presented on a Rehabilitation Request form and for discontinuance disputes presented by a claimant's request for an administrative conference. Currently, medical conferences are conducted at DLI Benefit Management and Resolution (BMR) if the disputed amount is $7,500 or less. However, some medical disputes involving $7,500 or less may be referred to the Office of Administrative Hearings (OAH) if other litigation on the claim is already pending there or if they involve surgery or a highly complicated issue. Rehabilitation conferences are usually conducted at BMR, though sometimes at OAH. Discontinuance conferences are conducted at OAH.

Benefit Management and Resolution (BMR) – A unit in DLI that (among other activities) provides information and clarification about workers' compensation statutes, rules and procedures; carries out a variety of dispute-prevention activities; conducts informal dispute-resolution activities, including mediations; and holds administrative conferences about some issues.

Claim petition – A form by which the injured worker contests a denial of primary liability or requests an award of indemnity, medical or rehabilitation benefits. In response to a claim petition, the Office of Administrative Hearings generally schedules a settlement conference or formal hearing.

Discontinuance dispute – A dispute about the discontinuance of wage-loss benefits, most often initiated when the claimant (usually by phone) requests an administrative conference in response to the insurer's declared intention to discontinue temporary total or temporary partial benefits. The conference is held at the Office of Administrative Hearings (OAH). A discontinuance dispute may also be presented on the claimant's Objection to Discontinuance form or the insurer's petition to discontinue benefits, either of which triggers a hearing at OAH.

Discontinuance of wage-loss benefits – The insurer may propose to discontinue wage-loss benefits (temporary total, temporary partial or permanent total disability) if it believes one of the legal conditions for discontinuance have been met. See "Notice of Intention to Discontinue," "Request for Administrative Conference," "Objection to Discontinuance" and "petition to discontinue benefits."

Dispute certification – A process required by statute in which, in a medical or rehabilitation dispute, DLI Benefit Management and Resolution (BMR) must certify a dispute exists and informal intervention did not resolve the dispute before an attorney may charge for services. BMR specialists attempt to resolve the dispute informally during the certification process.

Filed indemnity claim – A claim for indemnity benefits, whether ultimately paid or not. Indemnity benefits are paid to the injured or ill worker or survivors to compensate for wage loss, functional impairment or death. These benefits include temporary total disability, temporary partial disability, permanent partial disability and permanent total disability benefits; supplementary benefits; dependents' benefits; and, in insurance industry accounting, vocational rehabilitation benefits.

Hearing – A formal proceeding about a disputed issue or issues in a workers' compensation claim, held at the Office of Administrative Hearings (OAH), after which the judge issues a decision that is binding unless appealed. OAH conducts formal hearings about disputes presented on claim petitions and other petitions where resolution through a settlement conference is not possible. OAH also conducts hearings about some discontinuance disputes (those where there is an Objection to Discontinuance form or a petition to discontinue benefits), disputes referred by DLI Benefit Management and Resolution (BMR) because they do not seem amenable to less formal resolution, and disputes about miscellaneous issues such as attorney fees. OAH also conducts hearings de novo when a party disagrees with an administrative-conference or nonconference decision and order from either BMR or OAH.

Intervention – An instance in which DLI Benefit Management and Resolution (BMR) provides information or assistance to prevent a potential dispute, or communicates with the parties to resolve a dispute and/or determine whether a dispute should be certified. A dispute resolution through intervention may occur either during or after the dispute certification process. (This is distinct from the process of intervention under Minnesota Statutes § 176.361 where an interested person intervenes to become a party in a case.)

Mediation – A voluntary, informal proceeding conducted by DLI Benefit Management and Resolution to facilitate agreement among the parties in a dispute. If agreement is reached, its terms are formally recorded. A mediation occurs when one party requests it and the others agree to participate. This often takes place after attempts at resolution by phone and correspondence have failed.

Medical dispute – A dispute about a medical issue, such as choice of providers, nature and timing of treatments or appropriate payments to providers.

Medical Request – A form by which a party to a medical dispute requests assistance from DLI in resolving the dispute. The request may lead to mediation or other efforts toward informal resolution by DLI Benefit Management and Resolution (BMR) or to an administrative conference at BMR or the Office of Administrative Hearings (see administrative conference).

Nonconference decision and order – A decision issued by DLI Benefit Management and Resolution, without an administrative conference, about a dispute for which it has administrative conference authority (see "administrative conference"), when it has sufficient information without conducting a conference. The decision is binding unless a request for formal hearing is filed, after which a hearing is held at the Office of Administrative Hearings.

Notice of Intention to Discontinue (NOID) – A form by which the insurer informs the worker of its intention to discontinue temporary total disability or temporary partial disability benefits. In contrast with a petition to discontinue benefits, the NOID brings about benefit termination if the worker does not contest it.

Objection to Discontinuance – A form by which the injured worker requests a formal hearing to contest a discontinuance of wage-loss benefits (temporary total, temporary partial or permanent total disability) proposed by the insurer by means of a Notice of Intention to Discontinue or a petition to discontinue benefits. The hearing is at the Office of Administrative Hearings.

Office of Administrative Hearings (OAH) – An executive branch body that conducts hearings about administrative law cases. One section is responsible for workers' compensation cases; it conducts administrative conferences, settlement conferences and hearings.

Petition to discontinue benefits – A document by which the insurer requests a formal hearing at the Office of Administrative Hearings to allow a discontinuance of wage-loss benefits (temporary total disability (TTD), temporary partial disability (TPD) or permanent total disability (PTD)). However, if PTD has been previously adjudicated or administratively determined by department rules, the Workers' Compensation Court of Appeals hears the case.

Primary liability – The overall liability of the insurer for any costs associated with a claim after the injury is determined to be compensable. An insurer may deny primary liability (deny the injury is compensable) if it has reason to believe the injury did not arise out of and in the course of employment or is not covered by the Minnesota workers' compensation law.

Rehabilitation Request – A form by which a party to a vocational rehabilitation dispute requests assistance from the Department of Labor and Industry (DLI) in resolving the dispute. The request may lead to mediation or other efforts toward informal resolution by DLI Benefit Management and Resolution (BMR) or to an administrative conference, usually at BMR but occasionally at the Office of Administrative Hearings.

Request for Administrative Conference – A form by which the injured worker requests an administrative conference to contest a discontinuance of wage-loss benefits (temporary total, temporary partial or permanent total disability) proposed by the insurer on the Notice of Intention to Discontinue form. Requests for a discontinuance conference are usually done by phone.

Settlement conference – A proceeding at the Office of Administrative Hearings to resolve issues when it appears possible to do so without a formal hearing. If a settlement is reached, it typically includes an agreement by the claimant to release the employer and insurer from future liability for the claim other than for medical treatment.

Vocational rehabilitation (VR) dispute – A dispute about a VR issue, such as whether the employee should be evaluated for VR eligibility, whether he or she is eligible, whether certain VR plan provisions are appropriate or whether the employee is cooperating with the plan.

Workers' Compensation Court of Appeals (WCCA) – An executive branch body that hears appeals of workers' compensation decisions from the Office of Administrative Hearings. Decisions of the WCCA may be appealed to the Minnesota Supreme Court.