

**ON THE WATERFRONT**  
**LONGSHORE QUARTERLY**

U. S. Department of Labor  
Longshore & Harbor Workers'  
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**DECEMBER 2005**

**Claims Examiners**

000-332\* Marianne Smith 8-8273\*  
333-665 Clyde Taylor 8-8278  
666-999 Ken Janicke 8-8276

\*Last (3) digits of OWCP #  
\*\*(206) 398-8273

**Workers' Comp Assistants**

000-499 Liddian Rivers 8-8274  
500-999 Bill Norcorss 8-8272

**Claims clerk ( and Mail & File)**

Vacant 8-8290

**Voc Rehabilitation Specialist**

Ed Cope 8-8231

**Case Create Clerk and Operator**

Dorothy Tyson 8-8280

**District Director**

Karen Staats 8-8277

**National Average Weekly Wage**

Effective October 1, 2005 the National Average Weekly Wage (national average earnings of production or nonsupervisory workers on private nonagricultural payrolls) increased to **\$536.82**. The maximum compensation rate became **\$1,073.64**, the minimum **\$268.41** and the increase was **2.53%**. All permanent total disability and related death cases should have been

Increased by this percentage effective October 1, 2005.

### **Changes at our National Office and Regional Office**

Jack Martone, Branch Chief, Financial Management and Insurance, is retiring in January 2006. His replacement is John Chamberlain, formerly of Signal Mutual. John assumed his new position effective December 5<sup>th</sup>.

Jack Martone will certainly be missed. He was a hardworking, take no survivors type, who was always honest, sometimes painfully so.

John Chamberlain as most people in the industry know comes to the office with a wealth of knowledge about the insurance industry, and the National Office feels fortunate to have him.

Peter LaLena and Linda Myer, both employed in the insurance section are also retiring effective January 2006.

Allen Feldman has replaced Donald Shire as the Associate Solicitor, Black Lund and Longshore Legal Services.

Michael Niss the Director of the Longshore Program returns to his Office on January 3<sup>rd</sup> after serving as the Acting Deputy Director for Office of Workers' Compensation Programs (OWCP) following the retirement of Diane Svenonius. Ms. Svenonius replacement is Nancy Flynn.

Ed Bounds, Regional Director of the Pacific District retired in September 2005. His replacement was Sharon Tyler who has served in various positions within OWCP and assumes the position with significant experience in workers' compensation.

### **Updates on the District Offices**

The New Orleans District Office (DO #6) has relocated to temporary quarters in a shopping mall in Metairie and is fully operational.

There current mailing address is:

**David Duhon, District Director  
U.S. Department of Labor  
OWCP/Longshore & Harbor  
Workers' Compensation  
4436 Veterans Blvd., Suite 17  
Metairie, LA 70006**

**Phone # (504) 457-6310**

They are requesting that only **Fed-EX** delivery be made to the above address and regular mail should continue to be sent to: **P.O. Box 87809, Houston, TX 77287** until further notice.

Effective December 30<sup>th</sup> the Jacksonville District Off (DO #6) will have a new address:

**Charles Lee, District Director  
U.S. Department of Labor  
OWCP/Longshore & Harbor  
Workers' Compensation  
400 W. Bay Street, Room 63A  
Jacksonville, FL 32202**

**Phone # (904) 357-4788**

For those who did not know, our DO in New York is responsible for claims for injury or death occurring in Iraq, Afghanistan, anywhere in the Middle East. The number of **Time Loss** injuries reported by that office last fiscal year (October 1, 2004 to September 30, 2005) was 6,502, whereas normally they would report 1600-1900. The increase is due to the injuries and death arising under the Defense Base Act (DBA), an extension of the Longshore Act, from the hostilities occurring in that part of the world. Under the DBA the employer/carriers can seek reimbursement for compensation and medical expenses for the claim under the War Hazards Compensation Act if the injury or death was due to a "war hazard." Those reimbursements are paid out of the compensation fund under the Federal Employees' Compensation Act.

### **District Office News**

Although our case create numbers are not as daunting, last fiscal year we reported a total of 2061 **Time Loss** injuries which was slightly higher than the preceding fiscal year. We received approximately 30,000 pieces of mail, administratively served 239 administrative low judge orders, reviewed 203 settlement applications and 83 second injury fund applications, conducted 26 informal conferences, issued 159 recommendations without a conference, prepared 55 schedule award compensation orders and 49 attorney fee orders and successfully rehabilitated 18 injured workers. This is in addition to other services we provide

This work is accomplished with a staff of eight – 3 claims examiners, 2 workers' compensation assistants, 1 claims clerk/mail & file clerk, 1 vocational rehabilitation specialist (who we share with DO #13), and one contract employee who is the case create clerk, telephone receptionist and contact for retrieving records for copying and reviewing.

Three claims examiners have approximately 862 **open** case files each out of a universe of 68384 files, open and closed within the district office. We will not even mention the number of files residing at the federal records center.

Not that this staffing situation is unique among district office = it is not. The point we are trying to make is that we need the employer/carriers and the claimants to recognize the workload volume and to make requests for assistance, recommendations, etc., reasonable and necessary.

From time to time we have had to explicitly identify each step required to submit a settlement application, second injury fund application, respond to attorney fees, request a conference or recommendation, file a Form LS-202 (Report of Injury), etc. For this year-ending production, we will highlight a few of those instructions or friendly reminders.

### **Employers**

Please read carefully §30(a) of the Act and § 702.132 of the regulations. Section 30(a) provides that **Within ten days from the date of injury which causes loss of one or more shifts of work, or**

**death or from the date that the employer has knowledge of a disease or infection in respect of such injury the employer shall send the Secretary a report.....**

Many employers still think of a time loss injury as one in which the claimant receives compensation and compensation is not paid for the first three days of time loss until the disability exceeds 14 days. However, a time loss injury is any injury resulting a loss of one or more **shifts** of work.

If you have a no time loss injury that subsequently results in time loss, when you send in the LS-202 you should attach a note indicating that it was originally a no time loss injury and now the claimant is losing time. This can also be accomplished by attaching **Form LS-210** (Employer's Supplementary Report of Accident or Occupational Disease), but most employers do not use these. If we received a report of injury indicating no time loss, we do not keep these unless they are hearing loss or a condition or injury that could result in permanent disability. This apparently confuses some employers who when we request at LS-202 ignore us the first two times and then advise us that it was sent several months ago, but again if it is sent in showing no time loss, it is not kept.

### **Attorneys**

Please include the OWCP District Office on ALL notices of representation. Both Privacy Act

And the Longshore Act (20 CFR § 702.131(a)) require a written notice of representation when an attorney is retained to represent any party. This includes attorneys who are retained by employers and carriers. Without notice of representation the OWCP is required by law to communicate directly with the party as if they remain unrepresented.

### **Self-Insured and Insurance Carriers**

With a small staff, the time we must spend in repeatedly requesting claims information adversely impacts our office performance, and the problem with dilatory responses to our request for records is becoming worse. At one time we had to tell insurance carriers to please not send a single one page medical report each day but send them weekly. Now we have to plead, threaten or cajole to get any information. **So please routinely provide the necessary claims information.**

Forms LS-207 (Notice of Controversion), LS-208 (Notice that compensation has been suspended or terminated), we need an original and 2 or three copies. There are penalties for late submission of Form LS-208. Last fiscal year we assessed and collected 30 checks for 4110 each due to late LS-208's.

### **Everybody**

Please write the correct OWCP claim number on your correspondence. If the number is incorrect your correspondence

will almost certainly be lost and the action you seek will be delayed.

Read your file before contacting the OWCP for assistance. Many of your questions can be answered by simply reviewing the information you already have.

Think about the issue is in dispute and what kind of assistance you want, BEFORE contacting the OWCP for help.

Should you wish an informal conference or recommendation based on the available record, please follow these steps BEFORE contacting the District Office for assistance: (1) Identify ALL of the issues that are in dispute;(2) Explain what efforts have been made to resolve the disputes informally with the opposing party;(3) Provide complete medical and vocational evidence supporting your position in each dispute (for example, if entitlement to time loss compensation is alleged, you should specify the inclusive dates of time loss, and provide copies of medical records authorizing time loss). Without specific issues and supporting evidence, the District Office is prevented from asking reasonable, legally defensible determination and cannot realistically assist the parties in resolving any disputes. Failure to provide the information the District Office needs to assist you will only serve to delay resolution of the claim.

Settlement applications- we need one copy of the exhibits, and a copy of the stipulations for each party.

Section 702.241 of the regulations details exactly what is required in the application with the exception of the information required if Medicare is involved.

Second injury fund applications do not need to be a medical biography of the injured employee. Section 702.321 of the regulations identifies all the information that is needed in the application. We receive section 8(f) applications that contain information that is irrelevant and unnecessary. Also we incurred some problems with how the applications were delivered and issued the following detained procedure:

1. This office will **not** accept applications submitted by facsimile.
2. An application that fails to include medical evidence (**referenced by page number or by tabs**) clearly showing that the claimant has attained medical stability will be returned as incomplete. (See Section 702.321(a)). If the deadline for submission of complete 8(f) application has passed when the application returned as **incomplete**, the Longshore Act provides that the application will also be considered as **untimely**, and will be defended by this Office accordingly. An exception to this would be if the matter has already been referred for hearing and the parties were allowed to submit an application after referral. The application will be reviewed as is and the Solicitor's Office will defend as necessary.

3. A statement in you application that you be allowed to *modify* your application upon receipt of pertinent medical records does not automatically extend the date for submission of an application.
4. An attempt by any party to leave the application with another federal agency on the same floor or in the same building the District 14 Longshore Office is **an untimely and insufficient deliver.**
5. Leaving an application in any public area of the Longshore Office's building – including but not limited to the sixth floor elevator lobby – is an **untimely and insufficient delivery.** Parties are advised that leaving an application in a public area of this building is considered an abandonment of documents, and exposes employer/carries and their counsel to the risk that the application will be dissembled or disposed of entirely by individuals not association with the Office. Moreover, any legal sufficient 8(f) application includes sensitive and confidential personal information regarding the claimant, so leaving an application in a public area open to view or removal by unauthorized person violates the provisions of the Privacy Act and exposes the employer/carrier and their counsel to **civil prosecution** by the claimant if his private information issued inappropriately.
6. Parties and their counsel should treat the delivery of an 8(f) application to this Office in much the same way as they would the

delivery of a compensation check to a claimant pursuant to an Administrative Law Judge Decision and Order, or as they would otherwise comply the legal requirements of effective **personal or business service.**

7. Parties are advised that, due to the number of staff in this District 14 Office, it is often the case that on non-holiday weekdays the Office's close of business occurs earlier than 5:00 pm. For purposes of delivery of any 8(f) application, all parties should assume that **this Office will close no later than 3:00 pm. Thus if parties desire a timely delivery of their 8(f) applications they should deliver it to this Office earlier than 3:00 pm on the day of the deadline provided.**

**Please keep in mind extensions of the date for filing the fully documented application are at the discretion of the District Director and if you wait until the very last moment to request an extension, you could very well find it will not be granted ,**

As part of the Department's requirement to meet their Government Performance and Results Act (GPRA) standards, we have measuring the time frames for resolving disputes locally versus time spent at the ALJ. All the parties benefit from prompt resolution at the District Office level versus the delays involved in scheduling a hearing before an Administrative Law Judge. Last fiscal year in this District Office, the average number days to resolve disputes at the OALJ level was 329. This encompasses the time that accrues from the date of referral until a decision and order is received. Such a delay does not benefit any party. In this District the average number of days to resolve a dispute was 122. Those are disputes resolved without a formal hearing.

Clearly the parties could resolve more disputes at the district office level. Of the 239 orders from the Office of Administrative Law Judges we served last fiscal year, 129 or 54% were settled at the OALJ level, most without a formal hearing. Another 33 were remanded because the parties had resolved the issues or the issues were not in posture for a formal hearing which means 68% of those referrals were not totally necessary.

I think that the **requirements for authorization to be self-insured or to write insurance under the Longshore Act** sum up the expectations:

**Comply with all statutory and regulatory obligations, including meeting timeliness for paying benefits and reporting information (§ 14 (a) – (j));**

**Utilize the informal dispute resolution mechanisms in good faith by bringing only issues that are ready for resolution (i.e. all documentation that is available) and sending representatives who are both prepared to and have authority to resolve issues:**

**Participate and cooperate with all efforts by professional and trade associations to self-police industry compliance;**

**Monitor and be held responsible for the performance to TPA (Third Party Administrator) in complying with statutory and regulatory obligations and in utilizing informal disputes resolutions at the District Office level.**

#### **Pertinent Decisions**

The US Court of Appeals for the Ninth Circuit affirmed a district court's order dismissing an action to enforce an award of attorney's fee and costs. Because the appeal of the underlying compensation order was still pending, the district court dismissed the claim for lack of subject matter jurisdiction.

Bruce Christensen v. Stevedoring Services of America, No. 04-35409, filed on December 7, 2005. An Administrative Law Judge awarded the injured worker compensation for permanent partial disability and an award for attorney's fees and costs. Both orders were appealed to the Benefits

Review Board (BRB). The defendants did not appeal either order. While the appeals were pending, the claimant sought to enforce the ALJ's award of attorney's fees in district court.

The defendants, thereafter, paid the award. However, the claimant continued to seek additional fees and cost due to the enforcement action. The district court granted summary judgment to defendants because it found that the underlying compensation award was not final give there had been an appeal to the BRB.

The Ninth Circuit set as the issue they must decide:

*We must decide whether a compensation award is "final" under the LHWCA when the defendant-employer against whom the award granted has not appealed the award, but the prevailing claimant has*

After a discussion of § 921 of the Act and § 928(a) and a discussion of the BRB decisions *Vonthronsohnhasu v. Ingalls Shipbuilding*, 24 BRBS 154, and *Bellmer v. Jones Oregon*, 32 BRBS 245, the Ninth Circuit concluded:

**Irrespective of the Board's rulings in these two cases and the Director's views, we conclude that the district court properly based its decision on the statute's plain language. Sections 921 and 928 do not distinguish between appeals by one party and another.**

**Section 921(a) says that a compensation order is final 30 days after it is filed, unless appealed. Section 928(a) provides that an award of attorney's fees and cost shall be paid after the compensation order becomes final. Given Christensen's appeal of the compensation order the ALJ's award was not "final" as the LHWCA requires. That the defendants did not appeal the compensation award does not alter the fact that Christensen did. And absent a final compensation award, the district court lacked jurisdiction to hear Christensen's enforcement action.**