

Midwest Disability Work Comp, P.A., presents

# THE INJURED WORKERS' GUIDE TO WORKERS' COMPENSATION



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# **The Injured Workers' Guide to Workers' Compensation**

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## **Disclaimer**

Your employer's workers' compensation insurer handles many claims like yours every day. We know this because people like you call our offices every day and are shocked when we explain their rights to them.

We wrote this book for you. This book is for informational purposes only and should not be construed as legal advice. Receiving this book does not create or imply an attorney-client relationship between Midwest Disability, PA and the reader.

Each client and each set of facts is different and requires a skilled attorney to apply the law and advocate for the client. If you have any unanswered questions, we would be more than happy to discuss your case with you and help you decide whether you need an attorney.

## **Foreword**

Whether you choose to hire a workers' compensation law firm or not, knowing your rights is essential to your success in the system. For us, an educated client is the best kind of client.

All too often we see employers and workers' compensation insurers taking advantage of injured employees and leaving employees feeling they have no where to turn. You are not alone.

Our firm has represented thousands of workers' compensation clients and this book is the result of their commonly-asked questions and the mistakes we see most often. Many times, our clients feel they are at the mercy of these large insurance companies and are left with an ultimatum to take what is offered or get nothing at all.

You have rights and this book is designed to educate you about those rights.

## Meet the Authors



### **Stephen R. Quanrud**

Originally from North Dakota, Stephen moved to the Twin Cities to attend college. After graduating and prior to law school, he worked and lived in Shanghai, China, where he taught Math, Social Studies, and English at the local international schools.

Stephen is passionate about preventing his clients from being taken advantage of by large insurance companies. Workers' compensation is not a handout or welfare - it is the result of a compromise whereby employers avoid paying multi-million-dollar judgments due to negligence. Stephen takes his clients' entitlement to these benefits very seriously. He takes the time to understand each client's situation, present their options, and move forward with the client's best interests and wishes in mind.

In addition to Workers' Compensation and Long Term Disability, Stephen has a strong background in employment law, employee benefits, health law, and insurance. Because his clients rarely have just one legal issue, it is important to be well-versed in these closely related fields.

Stephen was selected to the Minnesota Rising Stars list in 2020 and 2021, which emphasizes his skill and success at all levels of litigation, including the Minnesota Supreme Court.

In Stephen's spare time, he enjoys archery, travel, mountain biking, CrossFit, and reading spy novels.



### **Katelyn R. Bounds**

Katelyn joined Midwest Disability Work Comp, P.A. in 2017 and has dedicated her practice to workers' compensation litigation as well as short term and long term disability disputes. She has experience representing injured employees in mediation, administrative conferences, hearings before a Compensation Judge and the Minnesota Supreme Court. She also focuses a portion of her practice on representing employees in ERISA and non-ERISA private disability appeals. Katelyn enjoys connecting with her clients and advocating for the benefits they deserve. She finds a collaborative approach and open communication keys to effective representation.

Katelyn moved to Minnesota in 2008 from Anchorage, Alaska. When she is not in the office or in the courtroom, you can find her in a hockey rink coaching girls hockey, traveling back home to Anchorage, or spending time with her yellow lab, Lemon.

## **Chapter One**

### **The One Thing You Should Never Allow the Workers' Compensation Insurer to Control**

After an injured employee reports a work injury to the employer, the employer and the workers' compensation insurer may try to control who the employee sees for medical treatment, dictate the treatment and restrictions, and force an employee back to work too soon. This can ultimately lead to the workers' compensation claim being denied before it even begins.

Insurance adjusters want you to think they are looking out for your interests. Unfortunately, this is frequently not the case. Insurance adjusters handle many cases and frequently make errors due to ignorance or inattention. Some will even purposely mislead and misinform you about the status of your case and about what benefits you are entitled to.

The more information you possess as to how the system works, the better off you will be. In this book, we outline a number of things you should and should not do when you have a claim.

You should never allow the workers' compensation insurer to control your case. You need to understand and stand up for your rights.

## **Chapter Two**

### **The 7 Biggest Mistakes That Can Wreck Your Workers' Compensation Claim**

#### **Biggest Mistake #1: Failing to report your work injury within 180 days.**

You are a hard worker and a valuable asset to your employer. You are not trying to manipulate the system. But now you have twisted the wrong way and felt a pop in your back. It hurts a bit, but you think you can work through it. You have seen what happens when other employees report work injuries and you do not want the hassle- you just want this to go away. What do you do?

The answer is simple: ideally, you need to report your injury as soon as possible, preferably in writing, to the person designated by your employer to take such reports. However, the law in Minnesota gives you 180 days report the injury- do not wait this long.

The longer you wait to report the injury, the more likely your employer's workers' compensation insurer will be able to deny the injury happened or was related to work. Even if you do not believe you need medical treatment or miss time from work as a result of the injury, report it.

A large percentage of serious work injuries seem minor when they first happen but slowly get worse over time. Failing to report your work injury as soon as possible can result in the workers' compensation insurer denying your benefits.

#### **Biggest Mistake #2: Taking your employer's advice about your rights.**

You did the right thing by going to your supervisor and reporting your work injury, but your supervisor is being less than cooperative. Your supervisor tells you that you waited too long to report your injury, or it was your fault. Perhaps they tell you that you will get in trouble if you file for workers' compensation benefits, or give you a multitude of other reasons why you should not or cannot get workers' compensation benefits.

Even worse, sometimes you are told to lie and say your injury did not happen at work, or that you should file for short term disability benefits instead.

Unfortunately, these types of responses from an employer are not uncommon. Many employers do not want to report your injury to their workers' compensation insurer out of fear that their insurance rates will increase. Therefore, some employers will tell you anything to avoid reporting your injury.

Do not make the mistake of trying to be a "good employee." Verify the accuracy of what your employer is telling you by talking to a lawyer who specializes in workers' compensation law.

### **Biggest Mistake #3: Failing to seek timely medical treatment and documenting your injury as work-related.**

You hurt your back at work. But you need your job, so you tough it out and decide not to seek medical treatment right away. The pain keeps getting worse. Sleeping is difficult and over-the-counter pain medication is not working, so you decide to go to a medical provider for treatment. When you go, you hide the fact that this is a work injury. After a couple months of treatment you are still not better and are scared that you cannot do your job anymore. You finally decide to tell your medical provider that it happened at work.

You just committed two of the biggest and most common mistakes: failing to get timely treatment and failing to tell your medical provider at your first visit that the injury happened at work.

This is critical because once a medical provider knows that the injury happened at work, he or she must bill the workers' compensation insurer, not your private health insurer.

The workers' compensation insurer can now use this delay in seeking treatment and the failure to report the nature of the injury as evidence to deny your workers' compensation benefits.

#### **Biggest Mistake #4: Failing to follow your medical providers' instructions.**

You reported your work injury and you started seeing a doctor. The medical provider recommended diagnostic tests such as MRIs or EMGs, and has directed you to attend physical therapy. Maybe the pain medications ease your pain and you either do not have the time or just do not feel like treating.

This is a big mistake for a number of reasons. First, your injury and condition may not be fully and accurately diagnosed if you do not have the tests your medical provider ordered. Second, your injury may not heal if you do not follow your medical provider's treatment plan. Third, when you go back to see the medical provider, he or she will indicate in your records that you are non-compliant with your treatment, which will hurt your workers' compensation claim. Finally, and possibly most importantly, your non-compliance may make your medical provider believe that you are not injured. This may cause him or her to discharge you from treatment, release you back to work, and discontinue your pain medication. If that happens, you will have to return to work and the pain that was controlled by the pain medication may return. If you then attempt to go back to your medical provider, he or she may no longer be willing to treat you due to your prior non-compliance.

Bottom line: Follow your medical provider's instructions.

#### **Biggest Mistake #5: Trusting the workers' compensation insurer.**

You reported your injury. Your employer did the right thing and turned your claim over to the workers' compensation insurer. The insurer assigned an adjuster to handle your claim. You spoke to the adjuster who seems really nice and helpful. Therefore, you trust the adjuster and you do not think you need an attorney to get involved.

Big mistake.

Even though most insurance adjusters are honest, remember that they work for the insurance company. Adjusters are trained to earn your trust and persuade you to do what they tell you to do. Their job is to minimize the cost of your claim and get you back to work as soon as possible, even if you are not truly ready.

They have no legal obligation to tell you your rights. Even if they lie to you, which sometimes happens, you cannot sue them. Think about this before you decide to trust to the adjuster.

### **Biggest Mistake #6: Failing to get legal advice early in the process.**

Injured workers often presume that since they and their boss know that they got hurt at work, they are entitled to workers' compensation benefits. They also presume that the workers' compensation insurer is obligated to take care of them, so there is no need for legal advice.

Big Mistake.

Insurers are private, for-profit businesses. They make money by taking insurance premiums from employers and they lose money by paying out money on claims like yours. They will do whatever they are legally permitted to do to avoid paying your claim.

As explained in #5 above, sometimes they will even do things that are unethical to avoid paying your claim. If they do, you cannot sue them for "bad faith." Knowing this, you should seek the advice of a workers' compensation attorney as soon as possible. The longer you wait, the more damage you could be doing to your claim. A workers' compensation attorney's obligation is to you and only you (but see #7 below). It is the job of the attorney to know the law and explain your rights to you.

## **Biggest Mistake #7: Failing to pick the right law firm to represent you.**

Many attorneys advertise that they handle workers' compensation claims. Although there are many issues to consider when picking a firm that is right for you, there are a few important questions that you should always ask, including how many years of experience the firm has in handling workers' compensation claims. Experience matters.

To litigate a claim, you will almost always need to have your treating doctor's report or testimony as evidence. Doctors can charge hundreds or even thousands of dollars per hour for this service. One question to ask a prospective law firm, is whether the law firm pays that cost or do they expect you to pay it, even though you are not working and have no income?

You may also want to ask whether the firm only represents injured workers or whether they represent insurers as well. It is permissible for lawyers to represent both insurance companies and injured workers, but it may raise questions in your mind as to where the attorney's loyalties lie. Just asking these few questions can quickly eliminate many firms whose advertising seems impressive.

## **Chapter Three**

### **What Is Workers' Compensation?**

The Minnesota Workers' Compensation Act is a no-fault insurance system designed to compensate injured workers for lost wages and medical expenses. A no-fault system means that it does not matter who caused the injury. Even if the worker caused his or her own injury accidentally, he or she is entitled to workers' compensation benefits. Therefore, if your employer tells you that your claim is being denied because your injury was "your own fault," he or she is either wrong or lying to you. The only recourse an employee has against his or her employer when injured on the job is through the Workers' Compensation Act. Even if the employer or a co-employee caused the injury through negligence, an injured worker cannot sue him or her for pain and suffering. This is called the "exclusivity provision" of the Act.

The Act was not designed to replace all of the wages lost by the injured worker, but only a percentage of those wages in a non-taxable form of weekly or bi-weekly checks. The Workers' Compensation Act does not provide any compensation for the pain and suffering the injury has caused. It pays for lost wages and medical bills for injuries and diseases that occur as a result of employment.

Every employer in Minnesota is required to carry workers' compensation insurance. Some employers are self-insured, which means that they pay benefits out of their own bank accounts. Through an amendment to the law, the state has established a fund to pay for claims where the employer has failed to carry workers' compensation insurance.

Your right to receive workers' compensation benefits begins the moment you are hired. The Workers' Compensation Act applies to all employees, regardless of the number of workers an employer has. Further, if you are a volunteer firefighter or rescue worker, you are also entitled to workers' compensation benefits for injuries you sustain while performing these these important volunteer services.

## **A. Suing Your Employer, Co-Employees, or Other “Third Persons”**

You cannot sue your employer or in most cases your co-employees if they cause your workplace injury, so long as your employer carried workers’ compensation insurance coverage. Employers who do not carry workers’ compensation insurance are violating the law and are subject to fines and individual liability.

You can sue a third party, someone who is not your employer or co-employee, if your work injury was caused in whole or in part by the third party. For example, if you are a truck driver and you are rear-ended by someone while performing your job, if you are a construction worker injured because of a defective scaffold, if you are a production worker who is injured by a machine not equipped with proper safety guards, if you fall on ice that is somewhere other than your employers’ premises, or if you are further injured by the medical malpractice of a doctor or hospital, you may have the ability to pursue a separate civil cause of action.

In these types of circumstances, you can pursue both a workers’ compensation claim and a civil lawsuit at the same time. If you receive money as a result of the third party lawsuit, the insurer is entitled to be paid back the workers’ compensation benefits you received. This is called a lien or “subrogation,” which will be discussed later in this booklet.

## **B. Injuries Covered by the Workers’ Compensation Act**

The Workers’ Compensation Act applies to any and all types of injuries or occupational diseases occurring during the course and scope of employment. The Act applies even if you have a pre-existing condition, known or unknown to you and your employer.

One of the most common examples of this is back and neck injuries. If you have a bad back and then have a work injury that makes it worse, that is called an aggravation.

If you have an aggravation of a pre-existing condition, you are entitled to collect workers' compensation benefits from your employer. Therefore, if your employer or their insurer tells you that you are not entitled to workers' compensation because you had a pre-existing condition, he or she is either mistaken or lying to you.

If your injury or occupational disease results in your death, certain members of your family may be entitled to collect workers' compensation. For example, a widow or widower or other dependent who was dependent upon the injured worker at the time of death is allowed to collect certain benefits.

If you are injured either on your way to or coming home from work, your injury is normally not covered by the Act. However, if your job requires you to travel, you have no fixed place of employment, or you maintain a home office, then you may be covered. Also, if you are injured in a parking lot owned or provided by your employer, the injury may also be covered.

Certain mental or physiological conditions caused by the work environment (e.g. stress), which were not caused by or did not result in a physical injury, may not be covered as compensable injuries under the Act. However, the Act has been modified to cover a diagnosis of PTSD in certain circumstances.

### **C. Employees Covered by the Workers' Compensation Act**

Any employee who is injured in the state of Minnesota is covered under the Act. An employee is any person who performs services for another for money. It does not matter if the job is part-time or seasonal in nature. Members of volunteer organizations such as fire departments and rescue squads are considered employees as well, even though they are not paid employees.

Federal government workers, military personnel, railroad workers, maritime workers, and National Guard members are all covered under separate and different statutory compensation laws.

## **D. Occupational Illnesses or Diseases**

Workers exposed to certain toxic chemicals that cause cancer or other illnesses are covered by the Act. Injuries and illnesses covered by this part of the Act include: cancers caused by exposure to asbestos, coal, silica, hepatitis; diseases of the heart and lungs caused by exposure to heat and smoke; poisoning caused by methane, arsenic, mercury, or lead; and infections of the skin caused by chemical exposure. Also covered under the Act are injuries caused by exposure to other health hazards including loud noise, dust, fumes, etc.

If a worker's illness or disease was caused or contributed to by these work conditions, he or she is entitled to collect workers' compensation benefits.

If you feel that your medical condition was in any way related to your job, you need to discuss this with your doctor immediately. Ask your doctor if he or she agrees that your job caused your illness in whole or in part. If your doctor agrees, you must then provide your employer with immediate "notice" that your condition was caused by your job.

## **E. How Much Does Workers' Compensation Pay?**

Workers' compensation benefits normally pay two-thirds of an employee's gross Average Weekly Wage (AWW), up to a maximum amount.

If you are normally paid on a weekly or bi-weekly basis from your employer, your workers' compensation benefits should also be paid on a weekly or bi-weekly basis. Your workers' compensation check should be mailed directly to your home or by direct deposit. You do not have to physically travel to your employer or its insurance carrier to pick up your check. If you are told that you must pick up your check, you may decline.

An employer has 14 days from the date it is put on notice of your injury to either accept or deny your injury is work-related or disabling to you. You should therefore begin to receive checks within 14 days of the date you were last able to work, along with a Notice of Primary Liability Determination. If your claim is denied, you should contact a workers'

compensation attorney immediately to assist you in filing a lawsuit. If your employer does not pay you and you do not receive a Notice of Primary Liability Determination within 14 days, you can also file for penalties assessed to the employer or insurer.

### **F. Notice: Reporting Your Injury to Your Employer**

As soon as you are injured on the job, you should report the injury to your employer, even if the injury does not cause you to miss time from work. The notice should be given in writing, but if that is not possible, remember that you must report that you were injured and that your injury was caused by your job.

The injury must be reported to your supervisor or the person whose job it is to prepare injury reports. Telling your co-workers is not sufficient notice- you must tell your boss or supervisor.

You have up to 180 days to report your injury to your employer. The time begins from the date of your injury or the date you know or should have known of a work injury or disease. If you do not provide notice within 14 days, you will not be entitled to recover workers' compensation benefits until the date that you actually give notice, as long as notice is given within 180 days.

Failure to give notice within 30 days may negatively impact the amount you can receive and in almost no case will benefits be payable if notice is not given within 180 days.

### **G. Medical Treatment for Your Work Injury**

The Workers' Compensation Act permits you to choose and, in some cases, change your health care provider. If you treat with a single provider twice for the same injury, that person is deemed to be your "primary" provider. You may change providers without authorization or approval once within the first 60 days of treatment. After that date, the change must be approved by the insurer, the Department of Labor and Industry, or a judge.

When receiving treatment for the injury, you must tell your doctor how the injury occurred, your job duties, and your physical limitations. The more information your doctor has about your work injury, the less likely it is that the workers' compensation insurer will delay payment.

## **H. Average Weekly Wage**

It is very common for the workers' compensation insurer to miscalculate the Average Weekly Wage (AWW). The amount of weekly wage loss benefits you are to be paid is based solely on your AWW at the time of the injury. Therefore, it is very important that you make sure your employer or the insurer made this calculation correctly.

Your Temporary Total Disability benefit (TTD) rate is two-thirds of your AWW up to a maximum set by law. There are also minimum compensation rates applicable to low wage earners. You do not need to pay income taxes on the workers' compensation benefits you receive.

Your AWW is the total of all gross wages (before taxes) from every employer that you are working for at the time of your injury. The figure also includes overtime, bonuses, incentives, tips (if reported to the IRS), board, lodging, and vacation pay. If you are paid a fixed amount per week, your AWW is your weekly gross wage; if you receive a fixed monthly income, multiply your monthly income by 12 and divide that number by 52.

If your compensation fluctuates from week to week, your AWW may be based on an average of the 26 weeks just prior to the injury. Sometimes, however, this amount will not be an accurate reflection of what you could have expected to earn had the injury not occurred. In these cases, you can file a petition to request a judge change the AWW and thereby the wage benefits you receive.

## **Chapter Four**

### **Types of Workers' Compensation Benefits**

#### **A. Total Disability Wage Benefits**

Temporary Total Disability (TTD) benefits are payable for as long as you are unable to work, up to a maximum controlled by law according to the date of injury. If, at the end of this period you are still unable to work, you may be eligible for Permanent Total Disability (PTD) benefits.

#### **B. Partial Disability Benefits**

Temporary Partial Disability (TPD) benefits are payable when you are making less money than your AWW because of your limitations related to the work injury. This is typically seen in situations where an injured worker returns to work in a light duty capacity either with the same employer or a new employer but continues to have work restrictions imposed by his or her doctor.

If this job pays less than your pre-injury AWW, you are entitled to be paid two-thirds of the difference between the two amounts. Partial disability wage benefits are payable up to a maximum controlled by law according to the date of injury.

#### **C. Permanent Partial Disability**

If, as a result of your work injury, you have a permanent loss of function in one or more body parts, you may be entitled to compensation for that loss, also known as Permanent Partial Disability (PPD). The Minnesota Disability Rules set forth percentage ratings for these impairments which are then applied against a compensation table. The higher the rating, the more compensation you are entitled to.

#### **D. Medical Expenses**

Your employer/insurer is required to pay for any reasonable and necessary medical care that you receive as a result of a work injury. This may also include costs of home or vehicle renovations to

accommodate a seriously injured worker. The workers' compensation treatment parameters provide guidance as to how long an employer and insurer is responsible for specific treatments, but there are no fixed limits. Generally, the longer the period of time between the injury and the treatment, the more likely a workers' compensation insurer will attempt to argue that the treatment is no longer related to the work injury.

### **E. Travel Expenses**

The workers' compensation insurer is responsible for paying mileage to and from doctor appointments, pharmacies and Independent Medical Examinations ("IME"). It is important for you to keep track of this mileage and submit it to the insurer for reimbursement.

### **F. Death Benefits**

If a worker dies as a result of an on-the-job injury or illness, the workers' family is entitled to receive up to \$15,000 in burial costs and the surviving dependents are entitled to collect ongoing compensation. The amount of death benefits payable to the surviving spouse and/or children is a percentage of the deceased worker's benefit.

## **Chapter Five**

### **Be Careful About Signing Workers' Compensation Documents**

There are many different types of workers' compensation documents. Signing the wrong document could result in your benefits being cut off for an extended period of time while you are still disabled.

It is important that you not sign any document that you do not fully and completely understand. Although most workers' compensation adjusters are attempting to be truthful when they explain documents they want to you to sign, others will attempt to mislead you.

Most importantly, remember that all insurance adjusters work for the insurance companies, not for you. Their job is to get you back to work as inexpensively for the insurer as possible. They have no allegiance to you and are not required to look out for your best interests. You should always seek the opinion of an attorney prior to signing any workers' compensation documents.

## **Chapter Six**

### **What to Do When You Return to Work**

In the event you have recovered from your injuries sufficiently enough to permit your return to work at your regular job or in a restricted light duty, it is very important that you not sign any document presented to you by your employer. Have these documents reviewed by an attorney.

If you are only able to return to work at a modified job with physical restrictions, make sure your boss is aware of the specific restrictions. If your treating doctor releases you to perform that modified job, you are required to make a good faith attempt at the modified job. This means that you should make every reasonable attempt to do the assigned job. If that job results in you feeling increased pain, notify your doctor immediately and follow his or her restrictions regarding continuing that job.

If your treating doctor recommends that you stop performing the modified job, you should obtain a written note saying so and provide it to your employer. Make sure you keep a copy of the note.

If an IME doctor says you can return to a modified duty job, but your treating doctor says you cannot perform such a job, it is very likely that your employer will ignore what your treating doctor says and rely upon the opinion of the IME doctor. In such a situation, you should consult with an attorney as soon as possible.

## **Chapter Seven**

### **Filing Petitions, Attorneys' Fees, and the Hearing Process**

#### **A. Filing Petitions and Attorneys' Fees**

Filing a Claim Petition with the Office of Administrative Hearings begins the legal process of adjudicating workers' compensation claims. If your claim has been denied, you need to file a Claim Petition. If you are filing for the payment of medical expenses only, you may file a medical request under certain circumstances. If you receive paperwork filed against you (e.g. a Notice of Intent to Discontinue Benefits or "NOID"), you should immediately contact an experienced workers' compensation attorney.

Selecting an attorney to represent you is an important decision. Not all attorneys are alike. Ask the attorney with whom you are speaking how much of his or her practice is devoted to representing injured workers.

You should never be charged a fee unless an attorney is successful in representing you. You should not have to pay an initial consultation fee. Your attorney should also be willing to advance the costs of litigation for you. Under the Workers' Compensation Act, counsel fees are earned on a contingency fee basis limited to twenty percent (20%) of the amount recovered.

#### **B. The Claim Process**

After the claim is initiated, the parties will generally conduct discovery. This includes gathering medical records, employment records, a deposition, and usually an independent medical exam. This involves a lot of scheduling and paperwork which can be confusing and burdensome, but which can be handled relatively easily by a competent attorney and his or her staff. This process is tedious and usually takes several months to complete.

Approximately six months after filing the Claim Petition, there will be a settlement conference scheduled. If settlement cannot be reached, the matter will be set for a hearing. Workers' compensation hearings are held at one of six locations, depending on the location of the parties and where the injury took place. At that time, you and your attorney, along with any witnesses you call, will present testimony and evidence in support of your claim. The employer and insurer will attempt to cast doubt on your claim by cross-examining you and your witness, and presenting contrary evidence including the independent medical examiner's report and/or deposition transcript. After all of the evidence has been received, the compensation judge will make a determination.

### **C. Settlement**

You have the right to settle your workers' compensation claim (with a judge's approval) for a single lump sum payment. You may settle your wage loss benefits only, your medical benefits, or both. Usually the insurer will want to settle both if they are able. The settlement amount is primarily based upon the nature of your injury, your age, and what your wage benefit rate payments are. There is no compensation for the pain and suffering you endured as a result of the injury.

Any decision to settle your case should be discussed with your family and an experienced workers' compensation attorney.

## **Chapter Eight**

### **Social Security Disability Benefits**

In addition to receiving workers' compensation benefits, you may also be eligible to receive Social Security Disability benefits.

If you have been out of work for at least 12 months or are expected to be out of work for 12 months and cannot perform any substantial gainful employment, you may file a Social Security Disability claim.

Social Security takes into consideration your age, education, and all of your medical impairments, even those that are not work related. You can collect both Social Security Disability and workers' compensation benefits at the same time, but the amount of Social Security benefits you receive will be reduced by the workers' compensation benefits you receive.

If you are receiving both workers' compensation and Social Security Disability benefits, and you negotiate a settlement of your workers' compensation claim, the Social Security Administration gets a credit against future payments as a result of your settlement.

Further, if you are receiving Medicaid or Medicare or are eligible to receive such benefits, you may be required to establish a "set aside trust" out of your workers' compensation settlement. This means you will have to put some of your settlement proceeds into a separate account and pay future medical bills related to the work injury out of this account. Once these funds are exhausted, Medicaid or Medicare will be responsible to pay for future ongoing treatment as long as you remain eligible.

## **Chapter Nine**

### **5 Keys to a Successful Workers' Compensation Claim**

We put this section at the end of the book for a reason. By the time you get to this part of the book, you will understand the keys to a successful claim and should be able to write this section. To some extent, the 5 keys are merely the inverse of the biggest mistakes that can destroy your claim.

#### **The First Key: Report Your Injury to Your Employer**

It is sometimes uncomfortable to go to your supervisor or employer and report that you got hurt at work, but it is absolutely the first thing you must do, presuming you have not been taken for immediate medical care. Do not rely upon your co-workers or someone else to report your injury- you must do it.

If you fail to report your injury in a timely manner, it can be a basis for the workers' compensation insurer to deny your claim. When you report your injury, make sure you tell your employer about every body part affected by the injury. Ask for a copy of the written incident report.

#### **The 2nd Key: Report Your Work Injury to Every Medical Provider You See**

Whether you seek immediate treatment for your work injury in an emergency room, or it is a few weeks or even a few months later, you must fully explain how and when the injury occurred. One of the first things the workers' compensation insurer will do is review the medical records of each and every medical provider you see. If it is not indicated in all the medical providers' notes that the injury happened at work, the insurance carrier may attempt to deny your claim. Do not wait for the medical provider to ask you if the injury happened at work, and do not presume that the medical provider knows your injury happened at work. Tell every new medical provider you see that you are there for treatment of a work injury.

### **The 3rd Key: Follow Your Medical Providers' Instructions to the Letter**

Your doctor may order diagnostic studies such as, MRIs, EMGs, or other types of tests. It is very important that you get these tests performed if they are ordered. These tests are ordered because the medical provider is trying to determine the full extent of your injury, so that he or she can administer the proper medical care to help improve your condition.

These tests are very helpful in proving your workers' compensation claim. The insurance adjuster may try to convince you that you only have a sprain or strain, but an objective diagnostic test will show the true extent of your injury. If you do not go for those tests when directed by your medical provider, you may be stuck with the insurance adjuster's characterization of the injury even though the injury is actually far more serious.

In addition to tests, your medical provider may order physical therapy. If you do not attend the therapy, the insurer will try to convince a workers' compensation judge that the injury is not really that serious, even if it is.

The bottom line: follow your medical providers' instructions. If you do not agree with the instructions, address the issue with the medical provider – do not discontinue treatment on your own.

### **The 4th Key: Don't Rely on Advice from Your Employer or the Insurance Company Adjuster**

Your employer is in business to make money. Your employer makes money when you are a productive worker and loses money when you are out of work due to a work injury. Many injured workers believe that a workers' compensation insurer exists to look out for their best interest. But the insurer is a private, for-profit business that makes money by getting insurance premiums from your employer, and loses money when it pays your medical bills and lost wages. Therefore, both your employer and its insurer have a big financial incentive to get you off of workers' compensation and back to work as soon as possible. Knowing that both of them have this incentive, do you really want to

rely on what they tell you about your rights or what you are entitled to? Do not do it. Talk to a lawyer at no cost.

### **The 5th Key: Get Answers to Your Questions from an Experienced Attorney**

Workers' compensation is a highly complex area of law with many confusing procedures and forms. It is very unlikely you will be able to successfully handle your claim using "common sense" or just relying on the "truth." Although these concepts are at the heart of any legal matter, you should not rely exclusively upon them – if you do, you may fall into one of the many potential traps that await any person unfamiliar with the workers' compensation system.

There are many attorneys who advertise that they handle workers' compensation claims. There are a few important questions that can quickly eliminate firms from consideration, including how many years' experience the firm has in handling workers' compensation claims. You should also ask about the costs and expenses of litigating a claim. Often it is necessary to have your treating doctor's deposition submitted as evidence. Doctors usually charge several thousand dollars for a deposition. Does the firm you are considering hiring pay that cost or do they expect you to pay it, even though you are not working and have no income?

Another question you may want to ask is whether the firm represents workers' compensation insurers. You would be surprised by how many firms represent injured workers, employers, and insurance companies. Where do their loyalties lie? Just asking these few questions can quickly eliminate from consideration many firms whose advertising seems impressive but whose credentials are not.

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