



CLIENT NEWSLETTER



THE LAW OFFICE OF RICKY D. GREEN, PLLC

January 31, 2012

Hello Reader. Our law office went to a Division brown bag session at the Division central office in Austin last Wednesday, January 25, 2012 at noon. The brown bag related to the new rules on overpayment/underpayment and the new rules on rescheduling benefit review conferences. James Dodds, workers' compensation staff counsel with the Division, presented the brown bag. After his presentation, Brent Hatch, Barbara McWilliams and Randy Steger answered some general questions.



DWC PRESENTATION ON UNDERPAYMENTS AND OVERPAYMENTS

The new rules regarding underpayment and overpayment of income benefits went into effect on January 1, 2012. They were developed by the Division in response to HB 2089. The Legislature required the Division to implement rules to allow carriers to make catch-up payments if there's underpayment of benefits and to recoup overpayment of income benefits from future benefits. The rules for underpayments are found in DWC Rule 126.15, and the rules for overpayments are found in DWC Rule 126.16.

If the carrier becomes aware of an underpayment, it must pay all accrued income benefits with interest within seven days of its determination. The carrier must notify the Division that it is catching the injured employee up on underpaid benefits. An insurance carrier can make a determination of an underpayment on its own or when it receives written notice from an injured employee. (Please see the attached sample notice provided by the Division.) If the carrier disagrees with the injured employee's notification of an underpayment, the carrier must send written notice of its determination to the injured employee. The claimant may then request dispute resolution. Furthermore, the Division can identify and take action on underpayments on its own motion.

If the carrier determines that there has been an overpayment, it may recoup the overpayment from future income benefits and does not have to request approval from the Division to seek recoupment of benefits. The carrier must notify the Division that it's recouping benefits. The carrier can start recouping an overpayment after (1) it sends written notification to the injured employee that it will recoup an overpayment, and (2) the carrier has made two income payments to the employee after it sent the written notification.

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The carrier can recoup against all benefits except death, burial or medical benefits, and can withhold up to 25% of income benefit payments (10% if the claimant is paying attorney's fees or paying back an advancement). The carrier cannot recoup more than the set 25% or 10% without an agreement from the claimant or dispute resolution decision from the Division. If the claimant does not agree that there was an overpayment, the claimant may seek dispute resolution. Finally, the Division may act on overpayments on its own motion.

For a more in depth discussion on this topic, please see our January 2, 2012 newsletter.

DWC PRESENTATION ON BRC RESCHEDULING PROCEDURES

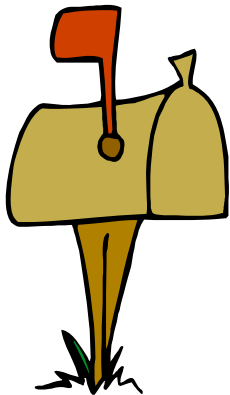
The new rules regarding Benefit Review Conference (BRC) rescheduling procedures went into effect on November 20, 2011. They were written by the Division in response to HB 2605. The Division was required by the Legislature to develop rules regarding requests to reschedule BRCs and failure to attend BRCs. The new rules are found in DWC Rules 141.2 and 141.3.



Rule 141.2 provides procedures for canceling or rescheduling BRCs. If the carrier or claimant receives notice of a BRC, it has 10 days to cancel or reset the hearing without having to provide good cause. This is the unrestricted period. After the unrestricted period, resets or cancellations will only be granted on a showing of good cause. If a party cancels a BRC and does not simultaneously reschedule the BRC, this will constitute a withdrawal of the issue. **WARNING** - *if the carrier files a DWC-45 Request for a BRC to stop the 90-day clock on the first certification of MMI/IR, then it must be ready to go to the BRC. If the carrier requests to cancel the BRC that is on the docket to stop the 90-day clock, then it must simultaneously request a BRC reset or face the penalty that the BRC cancellation will not stop the clock.*

Rule 141.3 provides procedures for failing to attend BRCs. If a party fails to appear at the BRC without good cause, the Benefit Review Officer (BRO) will hold the BRC as scheduled and may recommend an administrative violation. For BRCs requested after December 1, 2011, the BRO is authorized to automatically schedule a second BRC if a party misses the first one. If a party misses the second BRC, the attending party can send the case up to a CCH or just request the case be taken off the BRC docket. The non-attending party cannot have a third BRC, but can request a CCH.

It will be more difficult to get resets on all cases now and the Division will be looking for abuse in regards to resets. If a claimant does not attend a BRC, the carrier can request that a violation be issued or request an interlocutory order.



QUESTIONS? COMMENTS? Have questions or comments about any of the stories in the newsletter or general questions about a workers' compensation matter? Drop us a line at questions@rickydgreen.com, or give us a call at (512) 280-0055. We look forward to handling all of your workers' compensation needs.

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SAMPLE NOTICE - English

Notice of Underpayment of Income Benefits

Send form to workers' compensation insurance carrier

I. INJURED EMPLOYEE INFORMATION

1. Employee's Name (First, Middle, Last)		2. Employee's Social Security Number (last four digits) xxx-xx-	
3. Employee's Address (Street or PO Box, City State Zip)		4. Date of Injury (mm/dd/yyyy)	
5. Employee's Telephone Number ()		6. Employee's Email Address (Optional)	
7. Attorney/Representative's Name (if applicable)	8. Attorney/Representative's Address (Street or PO Box, City State Zip)		

II. EMPLOYER INFORMATION (at the time of the injury)

9. Employer's Name	10. Employer's Address (Street or PO Box, City State Zip)
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III. INSURANCE CARRIER INFORMATION

11. Insurance Carrier's Name	12. Insurance Carrier Claim Number
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IV. EMPLOYEE'S EXPLANATION REGARDING UNDERPAYMENT

13. Provide a detailed explanation which shows that the insurance carrier has not paid you the full amount of income benefits due. Attach any supporting documentation.	
14. Signature of Injured Employee or Injured Employee's Representative / Attorney	
15. Printed Name of Injured Employee or Injured Employee's Representative / Attorney	16. Date of Signature