



QUARTERLY

FALL OCCUPATIONAL ILLNESS - WORKERS' COMPENSATION DOESN'T WORK

1977

An extensive survey conducted by the federal government recently found that one out of every four American workers is exposed on-the-job to some substance believed capable of causing death or disease. Approximately 1,000 people die from cancer every day in the United States and each year 900,000 new cases are diagnosed; many of these cases have job-related causes. (See CCAHS QUARTERLY "Cancer and Jobs," Summer 1975 for a more detailed examination of this relationship.) The National Institute for Occupational Safety and Health of the United States Public Health Service reports the discovery of 390,000 new cases of occupational disease every year. Yet, New York and other state workers' compensation listings of awards granted due to occupational disease do not reflect these statistics or new cases. To understand this apparent discrepancy the system of workers' compensation must be understood.

When the original state-run workers' compensation laws were passed, starting in 1910, they were heralded as being a fool-proof method of assessing employers for the injuries and disease which come upon employees "out of or in the course of employment." The keystone of workers' compensation was the principle that workers would forego their right to sue an employer for negligence and accept in its place another mechanism to determine just compensation for job-related injury and illnesses. Basic to this was the understanding that employees would not have to prove that the hazard was due to the employers' negligence, and the employer therefore would not be liable for negligence in the courts. Awards would be decided by a simple administrative procedure.

INCENTIVE: CLAIMS REJECTION

In theory, workers' compensation was created to aid employees afflicted with the effects of job-related illness and accidents. However, at the time the laws were passed knowledge concerning the linkage between illnesses and workplace conditions was still rudimentary; in fact workers' compensation was essentially limited to compensating workers for industrial-related injuries.

The program was set up to pay the cost of workers' medical and hospital care and to compensate for the loss of physical function. Additionally, injured workers would be paid weekly benefits similar to those of unemployment insurance, although for an indefinite period of time.

However, unlike unemployment insurance, workers' compensation is underwritten by private insurance companies who depend on the employers for their business. The fewer claims they have to pay, the lower the employers' insurance premiums will be. The more claims they challenge -- controvert -- the better they will be able to serve their clients -- the companies -- by assuring low premiums. These incentives combine to encourage insurance companies to challenge employees' claims -- thus causing a hearing to be called and preventing an award from being granted. The outcome of this hearing can be appealed. However, many workers are not aware that a right to appeal exists and those who are aware of this right are often intimidated or confused by the

NOTE - The title workmen's compensation has recently been changed to workers' compensation in recognition of the millions of women in the American work force.

system; others simply do not have the resources to retain the staff, including attorneys, or accumulate the data necessary to pursue their case through the administrative maze. If compensation is denied by the appeals board, the worker may be able to recover hospital and medical costs from union or labor-management health and welfare funds or from insurance programs. However, none of these programs will provide weekly living benefits or compensate for impaired physical functioning. The only other financial remedy remaining open to the worker is to sue the manufacturers of the problem-causing substance or equipment on a third-party product liability basis.

ACCIDENTS & DISEASE

In the case of industrial accidents the direct causal relationship to the work setting is usually obvious, and, in that employers' insurance companies do not routinely controvert and fight each claim, the system seems to work to some extent. Still, this does not mean that workers' compensation awards are an accurate indication of the amount of workplace injuries. Companies use all means available to keep workers' compensation injury claims at a minimum.

In the area of occupational disease the situation is extreme. Workers' compensation insurance companies almost always successfully controvert workers' attempts to receive awards for job-related illnesses. Until recently, the relationship between workplace conditions and illness was not widely recognized. Still today, discovering these relationships requires sophisticated -- expensive and technical -- research efforts. Further complicating this task is the fact that many job-related diseases do not manifest symptoms until many years after exposure to the offending substance. In this gray area of not-obviously-job-related illnesses, the insurance companies aggressively fight every worker's claim for compensation.

In fact, according to recent Bureau of Labor Statistics data compiled for the Occupational Safety and Health Administration of the Labor Department, only occupational dermatitis receives statistically significant awards from compensation boards! In some states dust diseases, silicosis, for example, are beginning to be recognized as work-related health problems. However, even in these states a worker usually has to be totally and permanently disabled before a compensation settlement is awarded.

All other job-related diseases, even those recognized by leading research and medical laboratories such as the National Institute for Occupational Safety and Health (NIOSH) of the Center for Disease Control (CDC), are treated by the state-run workers' compensation hearing boards as if they do not exist.

STATISTICS: NUMBER GAMES

Even the meager data afforded by successful workers' compensation claims for job-related illnesses are of little statistical use. The numbers are not accurate since insurance companies and employers seek to keep down work-related illness awards by settling out-of-court (especially when the claim seems sure to be upheld). Why would any company agree to give its own money to a worker when they pay insurance companies to cover just such an eventuality? Because most companies don't want documentation to accumulate which suggests that, individually or collectively, industry is a cause of job-related illness and disease. That type of finding might force government to take more drastic steps to protect workers.

A recent University of Washington study documented that out of a group of 600 workers in six different production plants, over one-third of the workers' illnesses were job-related. For that same group of workers Washington State workers' compensation statistics reflected only 3% of the occupational diseases reported by the study.

Similarly, workers in textile mills never receive workers' compensation for byssinosis, a disease resulting from exposure to cotton dust. In fact, when seven North Carolina textile workers who had contracted byssinosis were about to be awarded compensation, the company, which until then had been fighting the workers' claims, offered them out-of-court settlements far exceeding those they probably would have received through workers' compensation. Thus, the company can still point to the award records to prove that byssinosis does not exist. Indeed, industrial representatives often do just this in congressional testimony.

STATISTICS: NO CONCLUSIVE BASIS

Rather than being "no-fault" insurance, workers' compensation is a highly adversarial arena in which workers face employers and their insurance carriers to fight for compensation awards. The statistical outcomes of this fight are no more objective than the process itself. Unfortunately, legislative bodies and others interested in OSHA problems depend on these data to document the breadth of work-related illness and injury. The level of appropriations and expenditures of money approved for enforcement or expansion of coverage (e.g. to previously exempted categories of employees such as public employees and farms with ten or fewer employees), of OSHA type programs is often based on conclusions drawn from this limited and misleading data.

The future of controlling occupational hazards is thus being broadly impacted by conclusions drawn from severely understated data!

CONFLUENCE OF PROBLEMS

The unfortunate adversarial nature of workers' compensation boards must be added to related compensation problems: lack of national standards among the 50 states; long backlogs of payments to claimants and doctors; and small financial awards which fail to reflect inflation rates and Bureau of Labor Statistics figures on acceptable living standards. Related to these problems is the serious trouble being experienced by union and labor-management health and welfare funds which are absorbing the claims made by workers who either do not seek or are denied workers' compensation awards.

SHORT RUN REFORM POSSIBILITIES

There are several reforms which if immediately implemented could ameliorate some of the problems in the current workers' compensation programs.

First, a workers' compensation, state-wide, "hot-line" could serve to help workers and physicians in identifying compensable job-related illnesses. With such a system up-to-date information concerning disease symptoms, diagnostic categories, compensation standards, rules, regulations, etc. could be made widely available.

Additionally, to insure that all legitimate occupational health claims are honored by each state's workers' compensation office, newly constituted expert occupational health panels should be assembled in each of the 50 states. To guarantee their impartiality, these panels should be composed of physicians, trained in occupational medicine, and representatives of labor and industry groups.

These expert panels would serve a dual purpose. First they would be responsible to keep abreast of all new safety and health standards promulgated by the Occupational Safety and Health Administration and research conducted by the National Institute for Occupational Safety and Health, the Environmental Protection Agency

(particularly since this agency is in charge of the implementation and research under the Toxic Substances Control Act), and the National Cancer Institute. They would inform compensation bureaus on all new developments in the area of job-related hazards which cause illness and would provide consultant services to workers' compensation physicians who frequently are not versed in the symptoms and treatment of occupational health problems. The second purpose of these expert panels would be to serve as an appeals board for those who believe they have been unfairly denied compensation at the lower administrative level.

Finally, with the establishment -- currently being proposed -- of federal workers' compensation standards, a national expert health board could be established which would hear cases on appeal from all the state programs. This panel of occupational health experts would also coordinate and provide technical assistance to the 50 separate state panels.

These short-run reforms in the workers' compensation system are urgently required and should immediately be instituted.

FULL REFORM NEEDED

To correct all the deficiencies and inequities in the workers' compensation program one national system of workers' compensation on a true "no-fault" basis -- using the existing federal workers' compensation payment schedules (often three times the states' rates) and totally covering all occupational health problems -- is needed.

A "no-fault" workers' compensation system, combined with strict enforcement of OSHA standards and open recognition of and intensive research into the relationship between the work environment and health problems can begin to control workplace hazards while assuring the equitable compensation of injured workers.