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2019 Statutory Review Committee – Workers' Compensation System
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To whom it may concern:

I am submitting this review letter to the 2019 Statutory Review Committee of the Workers' Compensation system to provide some valuable insight to aid improvements to the system. I hope the following info will be taken into consideration to help make the system more efficient and less stressful for all parties involved. My knowledge of the system is limited and can only relate to my personal experience and interactions with the system thus far.

Brief History

On February 7, 2019 I sustained a full rupture heel injury to my Left Achilles Tendon while in the course of my work duties. This particular injury occurred during a career change and I was only employed with my current employer for a short period of time before injury. My career transition involved a 6 month training program after which my salary would increase substantially. Due to the severe nature of my injury I was released from my training program. For the purposes of calculating my long-term compensation rate, historical salary information and current salary information was forwarded to WPNL upon request from the Client Service Assistant (CSA). During this time I had many conversations with my CSA by phone. We had spoken at length about my situation and I explained that both my past employment history along with my future career path carry a significantly higher wage than the temporary training position,. This injury did not allow me to complete my training and therefore had a detrimental financial impact for me.

On May 9, 2019 I was advised my long-term wage loss benefit would remain unchanged and would be based on my temporary low training wage, despite all the supporting evidence I provided to WPNL. This arbitrary decision by WPNL has lead me to avail of both internal review and external review processes and is still not resolved as of today Sept 30, 2020 even though WPNL has a clear directive from the Chief Review Commissioner in her final decision. WPNL continues to neglect the implementation of the Commissioner's directive. Overall this long review process has been extraordinarily stressful and time consuming for me, and has led to unacceptable delays in compensation to which I am legally entitled.

Review Processes

13 week compensation rate review (Client Service Assistant)

On April 3, 2019 I was given notice that a 13-week compensation rate review was due on my claim, and I was requested by WPNL to provide wage confirmation for the 12 months prior to the period of loss of earnings. In addition to this I also provided Future Potential earnings, based on the salary I would earn after 6 months training completion.

I was surprised when I received the letter on May 9, 2019 from my Client Service Assistant stating that my rate will remain unchanged, since I had provided clear evidence of higher wages both before and after my temporary training assignment, a situation which is clearly covered in Section 76 of the Act and policy EL-01-5. Within this letter there was zero reference to the evidence I provided or any reasonable argument as to why a rate increase was declined. It is my understanding that when a client service assistant is in the process of weighing evidence, that the decision makers must assess and weigh all relevant evidence and that it shall be decided on the balance of probabilities. The Policy Manuel also states that the decision maker will provide a rationale for his/her decision. The Client Service Assistant failed to weigh the evidence or even provide me with any contrasting evidence or rationale, which resulted in an unfair and arbitrary decision by WPNL. I followed up with the CSA by phone to get some clarity on this decision, during the call I was still provided with no reason and was simply told "I recommend that you appeal" and that " You have the right to appeal".

It seems to be apparent that this low standard of decision making will evidently will result in more workload for the internal review office, external review office and also the workers advisor office. I had to avail of all these resources simply because EN-20, EN-22 and Section 60 of the Act were not implemented by the CSA initially. This will also extend the wait times of the worker to receive adequate compensation. It also creates undo financial burden on the system.

Recommendations

- Implement a mandatory framework of the decision letter which include
 1. Evidence in favour of the worker/employer and Evidence in contrast to worker/employer
 2. A section explaining rationale and how the evidence was weighted.
- In addition to the "right to appeal" located on the last page of the decision letter I would recommend adding the contact information for the Worker/Employer Advisor and how they may assist you on your claim. This will assist workers in getting support for the appeals process.
- Reduce the mandatory 13 week wait period for long-term assessments to 8 weeks so benefits can be received quicker

Internal Review

On July 11th, 2019 I received the final decision from the Internal review specialist. In the document, she outlined several different policies and legislation that she believed applied to my claim. With respect to Section 80 (the 12 months earnings preceding my injury) the Internal review specialist came to the conclusion that she agreed with the client service assistant citing no evidence or exceptional circumstance to justify not taking into account my previous earnings. The Internal review specialist simply stated that " The Client service assistant felt your earnings at time of injury were fair and

reasonable wages upon which to set a longer term rate". This is not evidence, it is someone's subjective view point. This shows that the decision was made arbitrarily with no factual evidence to support it.

This is also supported by the chief review commissioner's analysis in the external review decision paragraph (23) which states "In reviewing WPNL decision, I am not satisfied the internal review specialist considered both the circumstances and the legislative provision correctly". Additionally paragraph (24) which states "Though there are references in the internal review decision to other aspects of the worker's argument, I find, as the worker submitted, these have not been addressed by WPNL. From my review I am unable to determine how other sections of the legislation were considered and applied to the claim by WPNL".

Recommendations

- Must provide clear reasoning and articulation of why evidence is not being considered or evaluated in their decisions, and explanation of which sections of the legislation are being applied. This will help workers to proceed with appeals processes.
- Add to the "Request for Internal Review Form" an option to avail of interviews, meetings as stated in the policy AP-01 to support workers in complex cases.
- Implement a mandatory internal review or "second check" process for complex cases. WPNL views the Internal Review function as a quality assurance mechanism therefore it would make sense to run complex claims through the internal review process for a compliance check before the original decision is given to the Worker/Employer. Why would WPNL render a decision from the 13 week review not knowing if it is in compliance with The Act or policy? Quality assurance programs are intended to be implemented on the front end so people receive the best possible product or service.

Recommended Process:

13 week rate review → Internal review for compliance → Worker/employer gets Decision

In this example the Client Service Assistant gathers all relevant evidence to make judgment calls based on credibility, nature and quality of that evidence and makes a decision on the balance of probabilities. The internal review confirms that the evidence was weighted fairly and is in compliance with both the Act and policy. Worker/Employer receives a well delivered decision with properly supported evidence and a sufficient rationale for their decision. Any errors in application of the act/policy of the CSA will be corrected up front, preventing unnecessary workload and delays for all involved.

Current Process:

13 week rate review → Worker/Employer gets decision → Internal review for compliance

In this situation, I received a decision from CSA with zero supporting evidence or rationale, not within the balance of probabilities, and not supported by the Act or policy. I then have to appeal within 30 days. Then I must wait an additional 45 days to get a decision rendered from Internal review to make it compliant with the Act and policy. This process is inefficient and adds unnecessary wait times to receive benefits.

External Review

November 26,2019 I received the WHSCRD decision and my claim was approved in part.

Recommendations

- Reducing wait times in this area is critical. Although my external review ran quite smoothly, the time to get a hearing was approx 4 months and I only got in at that time due to a cancellation. Delays in appeals processes result in major financial burden on the workers.

As has been reported in the media, the wait time for an external review hearing can be 18 months or more. Even with my relatively short wait time of 4 months, the overall delay in receiving fair compensation is significant. I submitted my request for an external review in August 2019, and the commissioner's favourable decision was delivered December 2019. The retroactive payment I was given as a result was not paid out until May 2020, an unbelievable and unacceptable 5 months after her decision was made. From the date of injury until I received adequate compensation that was fair and equitable, and in compliance with the Act and policy was 453 days.

Other Recommendations

- Mandatory call backs. I have left excessive amounts of voicemail messages over the last 18 months to numerous WPNL staff with no response. This certainly contributes to the frustration and delay in dealing with compensation issues, and is unprofessional.
- Mandatory WHSCRD decision Implementation. As of today Sept 30, 2020 WPNL continues to deny a clear directive from the Chief Review Commissioner put forth in my external decision. Currently I am in the 6th month of trying to get WPNL to fully implement this decision. The CSA actually sent me a letter that denied the Chief Review Commissioner decision's and tried to send me back to the internal review division. As part of the external review, there should be a clear process communicated to the worker about what to do if WPNL refuses to implement the decision or unjustly delays its implementation.

While I am thankful to have the protection of the Worker's Compensation Program, overall this process has been incredibly slow, frustrating, and stressful for me. Thankfully my family is in a solid place financially, however there are many, many families in NL who would simply not be able to keep a roof over their heads with a delay in compensation lasting over 15 months. I urge the statutory review committee to take into consideration these recommendations and improve the system for injured workers. I thank each of you for your time and effort in this important work.

Respectfully submitted,

Jarratt Carter