



Workers' Compensation Longshore & Harbor

U.S. Department of Labor
David Groeneveld
District Director – Region 1

OWCP Web-Site

Offers a Wealth of Reference Information

- Contact Information
- Forms
- Benefit Guides
- Industry Notices
- Laws, Regulations and Procedures
- Employer Responsibilities
- Etc.

CASE - CREATE

- Industry Notice No. 166 – Fax Submission of Case-Create Forms & Change of Mailing Address for Central Case-Create ----Effective 03/01/2018
- Use fax #: **202-513-6814** --Case Create Fax Line -- This is the preferred method of sending a case-create document.
- LS 202 (Employer's First Report of Injury or Occupational Illness) --- An example of a case-create document that you fax
- Alternatively, case-create documents can be mailed to our Jacksonville, FL mailing address; NO LONGER TO N.Y.

FORM LS 207

Notice of Controversion

- Industry Notice No. 151
- Employer or Carrier Must Mail a Copy of the Form to the Injured Employee and to Employee's Legal Representative

NEW REVISED FORM LS 208

- Industry Notice No. 165, Effective Date 02/07/2018
- New Revised LS 208 (Now Referred to as 'Notice of Payments')
- LS 206 Form is now Eliminated. The New LS 208 Form Incorporates Relevant Sections of the Old LS 206 Form
- Ensure Form LS 208 is Completed with Accurate and Complete Information

WAIVER OF SERVICE

- Industry Notice No. 152 --Revision made to 20 C.F.R 702.349 (b)
- An Alternative Electronic Option for Service of Orders via E-Mail... Instead of Service by Certified Mail
- Forms to Implement Waiver Process
 - LS 801 - For Employers and/or Insurance Carriers
 - LS 802 - For Claimants and Authorized Representatives

Max & Min Comp Provisions

- Section 6 & 9 of the Act
- NAWW Has Historically Risen from Year to Year & this Determination Affects Max & Min Comp Rates
- The Rule Prescribes which Max Comp Rates Apply to any Particular Injury by Implementing the Supreme Court's Interpretation of the "Newly Awarded" phrase (i.e., Comp is "Newly Awarded" When Employee First Becomes Disabled, rather than when a Comp Order is Entered), and Interpretation of the "Currently Receiving" Phrase Adopted by Two Courts of Appeals (i.e., "Currently Receiving" Means Date Entitled to Comp. rather than Date it is Actually Paid)

CONTINUED....

- Reference: 04/19/2018 Letter from the Director, Div of Longshore
- Reference: Federal Register's Web-Site:
<http://www.dol.gov/owcp/dlhwc>
- Final Rule Clarifies the Dept's Interpretation of the Relevant Statutory Provisions. Provides Direction on How to Apply the Max & Min Provisions in a Case
- Generally, Employee's AWW at Time of Disabling Injury or death is Basis for Determining Amount of Comp.

Continued....

- OWCP had Proposed Rules to Implement the Act's Max & Min Comp Provisions. Some of these Provisions, which Cap the Amounts of Comp & Death Benefits had become the topic of litigation
- The Proposed Rules Intended to Clarify how the Department Interprets & Applies these Provisions

Continued....

- LHWCA also Sets a Ceiling & Floor for Weekly Comp Payments Based on the NAWW, as Determined Each FY by the Secretary of Labor
- Max Rate is Twice the Applicable Fiscal Year's NAWW, while the Min Rate is the Lower of 50% of the NAWW or Employee's Actual AWW
- Reference: 20 CFR Part 702
- Rule Effective Date: 05/21/2018
- Section 6 Allows for Adjustments to the Max & Min Comp Rates Based on the NAWW

Continued....

- Section 10(f) of the Act is Another Mechanism for Adjusting Comp so that their Value is not Eroded Over Time
- Benefits Payable for PTD or Death are Increased at the Beginning of Each FY by the Same % as any Increase in the NAWW, but No More than 5% Per Year
- Section 10(f) Applies to all Claimants Receiving Comp for PTD or Death, while Section 6 Applies Only to Those Whose Comp is Affected by Max/Min Rates

Civil Monetary Penalties

- Industry Notice No. 163 – Increase in Penalties
- Effective 01/02/2018

- Section 14(g): Failure to Report Termination of Payments....\$285.00 (FORM LS 208)
- Section 30(e): Penalty for Late Report of Injury or Death.....\$23,426.00 (Graduated up from a low penalty of \$500.00) (FORM LS 202)
- Section 49: Discrimination Against Employees who Bring Proceedings.....\$2,343.00 to 11,712.00

SEAPortal

- Industry Notice No.: 148
- It's an Electronic Portal Stakeholders may use to Submit Case-Related Documents – OWCP Sponsored Web-Based Application
- You Need an Internet Connection & Specific Information about a Claim (Claimant's Last Name; DOB; and DOI)
- Loaded in within 4 hours of submission
- Users can track when it has been uploaded
- SEAPortal does not Eliminate the Serving of Doc's

Continued.....

- Q: Can I Submit a Form to Have a New Case Created Using the SEAPortal?
- A: No. Claim Forms for New Injuries Must be submitted to Longshore's Case-Create Unit, Either by a Dedicated Case-Create Fax # or by Mail
- Q: Can I Submit any Kind of Document via SEAPortal?
- A: Yes. Once a Case Number has been Assigned, all Case-Related doc's can be submitted through SEAPortal

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- Q: When will the Claims Examiner be able to See the Document Sent via SEAPortal?
- A: Generally, within 4 Hours.

- Q: What if I Make a Mistake and Enter into SEAPortal the Incorrect D.O.B of the Claimant?
- A: The Document will not get Uploaded Into the File via SEAPortal. All Request Information Must be Entered Accurately.

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- An Observation:

Periodically, we Find Priority Requests (**i.e.** Conference Requests, Requests for Subpoenas, etc.) Intermingled with Other Documents (**i.e.** Medical Records, misc. documents, etc) that were submitted via SEAPortal.

RECOMMENDATION: Priority Requests should be Stand-Alone Submissions. This Lessens the Chance of the Request Getting Lost in a Sea of Misc. Documents.

DISTRICT DIRECTOR'S ROLE IN SUPERVISING MEDICAL CARE

- Reference: 33 U.S.C. 907; Section 7 of the Act;
- 20 C.F.R. Section 702.407
- Employers are Responsible for Reasonable and Necessary Medical Services for an Eligible Employee's Work-Related Injury
- Informal Conferences are Held in Medical Dispute Claims with the Goal of Reaching Resolution. Disputes as to Whether or not "Treatment was Reasonable and Necessary" are "Factual Matters" within the OALJ's Authority to Resolve (*Weikert v. Universal Mar Corp*, 36 Ben Rev. Bd Serv. (MB) 38, 2002 WL 539950 (Mar 21, 2002)).

Continued....

- Supervision Includes:

- .Requirement for Periodic Medical Reports

- .Determination of the Necessity, Character, & Sufficiency of any Medical Care Furnished or to be Furnished the Employee

- .Determination of whether Change of Physicians, Hospitals Providing Treatment should be Changed

Continued....

Supervision Includes.....

- .Evaluation of Medical Questions Arising under the Act, with Respect to Nature & Extent & the Medical Care Required for it
- .Preliminary Determination of Disputes Concerning whether Charges for Medical Care Exceed those Permitted Under the Act

Continued.....

- While the DD has Discretionary Authority to Supervise an Employee's Care, the OALJ has the Authority to Resolve Factual Disputes which Arise Over Non-Discretionary Matters (*Wiekert v. Universal Maritime Service Corp, 36 BRBS 38 (2002)*)
- The Informal Conference is the Venue for Attempting to Resolve Medical Issues. Sometimes Resolutions are Reached, Sometimes Orders are Issued in Non-Factual Matters (**i.e.** Change in Physician) or Based Upon Parties' Stipulations...In Other Instances, if the Remaining Issue is of a Factual Nature, it may get Referred to the OALJ for a Formal Hearing & Decision

Pharmacy Issue

41 BRBS 69 (2007)

- This case originated in District 1 (Boston) --
Published Decision by the BRB
- Following Informal Conference, DD's
Recommendation was that Employer Had Met It's
Obligation Under Section 7, DD Noting that
Managing that Obligation is a Responsibility of the
Employer
- Claimant then Sought a Formal Hearing Before the
OALJ. Subsequently, Case was Remanded Back to
the DD, the Judge Noting that the DD has the
Authority to Address Medical Issues When No Fact
Disputes are Raised

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- Claimant Appealed Remand Order to the BRB Contending They Were Entitled to Their Free Choice of Pharmacy Under Section 7(b) of the Act
- The BRB Noted that Nothing in Section 7(b) Provides Claimants with the Right to Select a Pharmacy or a Provider for Prescription Medication
- Upon Remand from the BRB, the DD Filed & Served his Order Giving the Employer the Obligation to Furnish Medicines, in Accordance with Section 7 of the Act

Hearing Aids Supply Issue

BRB No. 16-0690

- Published Decision by the Benefits Review Board in October, 2017
- Concerns the Issue as to Whether the Employer as the Right to Choose the Audiologist
- Employer Asserted that Claimant Should Not be Permitted to Dictate Where Hearing Aids are Purchased

Continued.....

- Claimant's Medical Care is Performed by the District Director (*33 U.S.C. 907(b),(c); 20 C.F.R. 702.401*) – Issue Here Does Not Involve a Factual Matter for the OALJ
- Audiologists are Not Among those Defined as a “Physician” Such that a Claimant has the Right to His Free Choice
- As with Pharmacists, Claimants do Not Have a Statutory or Regulatory Right to Choose Their Own Audiologists



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