

ADVISORY NO. 211

**TOPIC: PROBLEMS ENCOUNTERED WITH COMMISSION
REFUSAL TO SET HEARINGS**

As you may know, the insurance industry has a major concern over the TWCC delays in the setting of BRC hearings. This has prompted FO&L to research the problem. The research included review of a large number of submitted TWCC-45s, discussion with several TWCC Field Office personnel and feedback from the Austin Commission Office. The bottom line is there has been a major shift in policy at the Commission. You must now convince a Commission employee you are entitled to a hearing, in effect making a case on the form TWCC-45 and benefits may continue without merit unless you are successful. Each individual Commission office is given wide latitude in deciding if a hearing will be granted. You should document requests where you think benefits are not due and you are paying them and have your insured employer write to us so we can decide if it requires special intervention of an Employer Commissioner. The rights of employers are not being served by this policy. Other findings of this research revealed:

Nearly 85% of the submitted TWCC-45s had one or more omissions and/or deficiencies including:

- Missing TWCC #
- Blank Field Office location
- Disputed issue(s) undefined, poorly stated, or unsupported with documentation
- Lack of evidence in attempting to resolve the issue(s)
- TWCC-45 form unsigned by the adjuster

(We are now calling you before we file the request for correction.)

It was found that the Field Office Claims Service sets aside these deficient TWCC-45s until they can be corrected or verified by contacting the adjuster, the claimant or the Designated Doctor for the necessary information. This resulted in process delays averaging 3 to 4 weeks in addition to the normal process time and often results in no action at all! TWCC has admitted they are having serious human resource problems because of the large "wave" of SIBs and Designated Doctor disputes requesting a BRC.

Based on FO&L's monitoring system, 34% of the BRC requests tracked were 40 or more days old.

For BRC requests submitted in the 4th quarter of 1996, the analysis indicated an average 23% of the requests were set in the first 30 days with 77% still pending at the end of 30 days.

FO&L knew a problem existed as feedback from the Field Offices was curtailed to update the status of the requests. On some occasions, communication was direct between the Field Office and the adjuster without information to FO&L. On other occasions there were no TWCC responses to the request for a status report.

FO&L is taking the following three aggressive steps to help solve the BRC request delay problem.

1. We are contacting all carriers to make them aware of the results of the research data on the TWCC-45 problems and offering suggestions on steps the adjusters can take to improve the quality of submitted TWCC-45s.

The suggestions will include among others:

Complete carefully and correctly all parts of the TWCC-45.

Improve the statement and definition of the dispute(s).

Document the efforts to resolve the issue(s).

Provide the necessary support documentation with the TWCC-45 at the time of submittal.

2. Our firm will monitor each TWCC-45 you send us for tracking for omissions and will attempt to contact the adjuster the same day received, with suggestions for improvements before sending the TWCC-45 to the Field Office.

3. FO&L will revise the BRC request monitoring system to provide:

A. A more “user friendly” and less time consuming Status Request Letter to the Field Office and a copy to the Adjuster .

B. A positive contact with the adjuster for feedback (including a phone call if necessary) on all requests over 30 days old (to assure the request is still valid). The Field Office and the Adjuster will be updated with any new information on the open BRC requests.

C. A list of all requests over 40 days old to each Field Office (after verification with the adjusters). In the absence of a response from the 2nd Status Request Letter to the TWCC Field Office, we will seek the Office Managers’ help in getting a status report and resolving the reason for the setting delay. We have secured the help of the Austin Commission on this.

D. Other technical input and help for the adjusters on techniques to improve the BRC requests (i.e., review and use of TWCC Dispute Codes, documenting good faith effort to resolve the issue(s), and make the adjuster aware of the documentation the Commission requires filed with the TWCC-45).

E. Personal contact in each TWCC office by an attorney on problem settings.

Our charge for all these services is \$55.00 per case.

FO&L will continue to seek help from the Commission and its Field Offices to assist the carriers in receiving timely settings for all BRC requests. We invite comments, suggestions and any other input that will be helpful to the process.