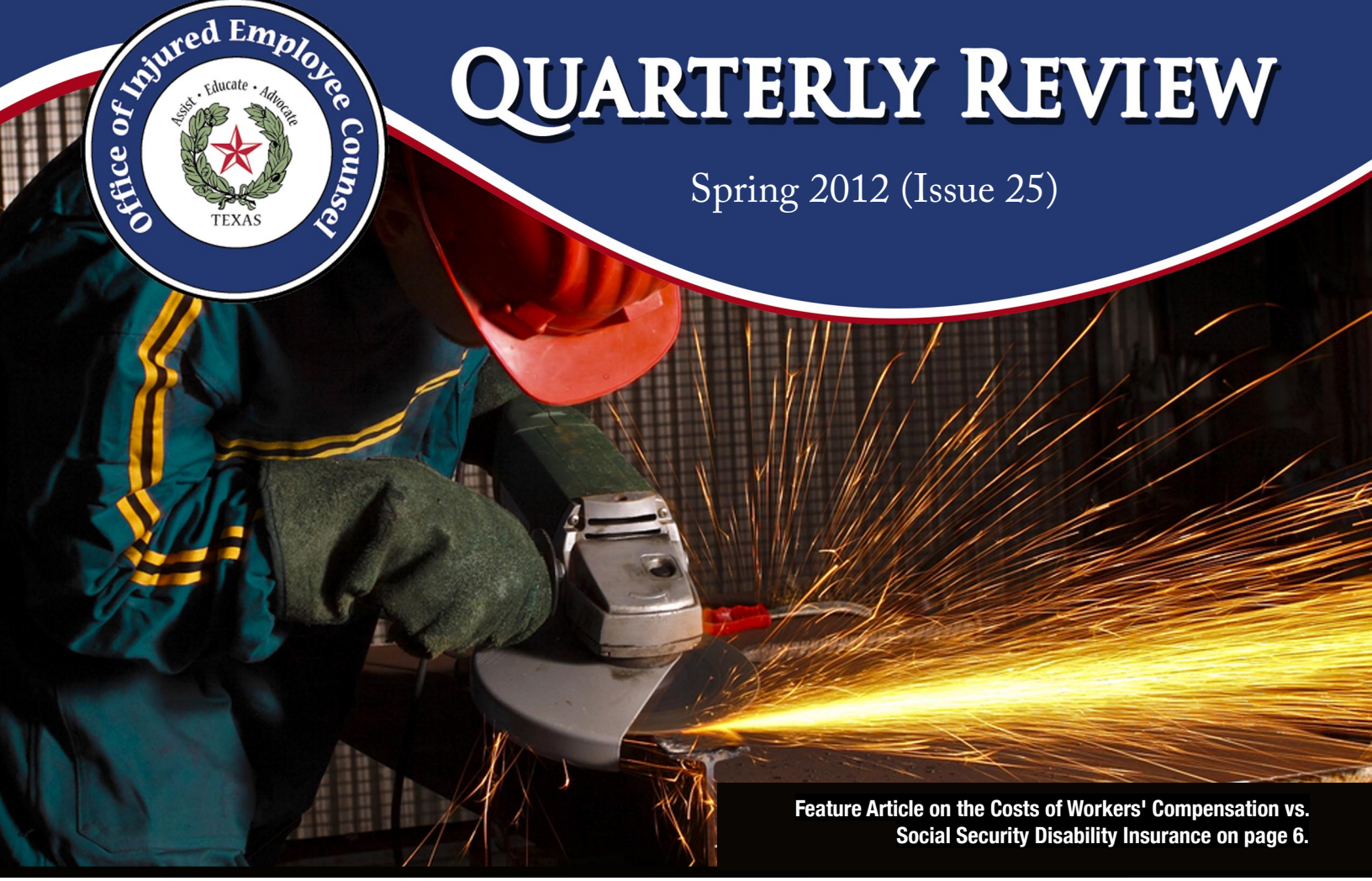
QUARTERLY REVIEW

Spring 2012 (Issue 25)



Feature Article on the Costs of Workers' Compensation vs. Social Security Disability Insurance on page 6.

LETTER FROM THE PUBLIC COUNSEL

Dear Friends:

I would like to express my appreciation to the Insurance Council of Texas for their recent seminars on current workers' compensation issues. The speakers were insurance carrier attorneys and industry representatives, but their presentations addressed issues that are as important to injured employees as to their own.

During my discussions with them, I was interested to find out that the insurance carriers' concerns were virtually identical to those of OIEC. It was reassuring that reasonable people on both sides of the issues with reasonable motives could address the issues in a constructive way. Insurance carrier and injured employee attorneys are equally committed to representing the interests of their clients, but advocacy has its proper forums and it should be kept there and maintained in the same spirit that I observed at the seminar.

OIEC will begin work on its legislative agenda soon with the realization that recent court decisions have imposed complex legal concepts on stakeholders that will require interpretations that challenge the stakeholders' perceived interests. It is the adversarial pursuit of protecting those interests that makes the workers' compensation system work. The pursuit of the protection of those interests, however, requires a level playing field. OIEC has a statutory mandate to represent the interests of injured employees as a class and that contemplates effective representation.

We look forward to working with the stakeholders in the months ahead to ensure a fair and responsive workers' compensation system.

Sincerely,

Norman Darwin, Public Counsel

Drills Prepare OIEC Employees for Emergencies

Injured employees depend on OIEC to be available to assist them. Although rare, circumstances can occur that challenge OIEC's ability to deliver services during regular office hours. In the past, severe weather has typically been the cause. Whatever the potential cause, it is critical that OIEC has a plan in place to communicate with its employees and the public if something were to disrupt services, and more importantly, to resume services as soon as possible. OIEC does have such a plan, which also consists of conducting Emergency Preparedness Drills.

Two drills were held in January 2012. The first was held to verify call tree information for the agency's 156 employees. The call tree is a plan to quickly communicate a message to everyone in OIEC during non-working hours and is crucial during an emergency. The agency's business continuity planner activates the call tree by making the first call. Those contacted in turn contact others until everyone has been reached. For the call tree to be effective it must be tested to ensure everyone is aware of their role in the process and to identify missing or incorrect telephone numbers.

Staff was informed that the first drill would take place on January 11th between 5:00 p.m. and 9:00 p.m. to ensure that all telephone numbers were accurate and that there was no break in communication should a person not be able to be reached. At 6:05 p.m. that day, the business continuity planner activated the call tree. The drill lasted 50 minutes during which 94.2 percent of OIEC's employees were contacted (reached on first telephone call or by them returning the message). Staff was informed that the second drill would take place between January 17th and 20th. On January 20th at 6:55 p.m., the calling tree was again activated. The second drill lasted over 90 minutes during which 90.8 percent of OIEC's employees were contacted. Several employees could not be contacted during the first or second drill because they were on approved leave. These valuable exercises identified potential areas for improvement and gave all OIEC employees practice in what to expect in case of an actual emergency.

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Agency Benefits From Executive Management's Professional Development Opportunities

Several members of OIEC's Executive Management are taking on new challenges that will enrich their ability to lead the agency.

Executive Management Promotions. Anthony Walker has been promoted to Director of Customer Service effective May 1st. Mr. Walker has over 20 years of workers' compensation experience. He began his career working in labor relations and initiating workers' compensation claims at Bell Helicopter Textron until joining the Texas Workers' Compensation Commission (now TDI-DWC) in 1990. He worked in the Denton Field Office as an Ombudsman and then Field Office Manager before he moved to the Central Office to be a Senior Ombudsman. He was most recently an Associate Director in the Ombudsman Program. His strong experience will continue to benefit the agency in his new role. He will work closely with Nancy Larsen, the previous Director who is retiring in July, to facilitate a smooth leadership transition in Customer Service.

Mr. Walker's promotion left a vacancy in his previous position, and Vickie Uptmor has been selected to replace him as the new Ombudsman Program Associate Director. Ms. Uptmor began her career with the Texas Workers Compensation Commission during the implementation of the new Workers' Compensation Law in 1990. She has worked in the Waco Field Office as the Assistant Disability Determination Officer, Customer Assistance/Records Maintenance Supervisor, Ombudsman, and Field Office Manager. Ms. Uptmor has been an active Ombudsman for 14 years and has been an Ombudsman Supervisor since OIEC was created in 2006.

Center for Public Policy Dispute Resolution at the University of Texas Fellows Program. Associate Director of Communications and Outreach, Kathryn Harris, was nominated and accepted as a Fellow at the Center for Public Policy Dispute Resolution at the University of Texas. The Fellows Program seeks to increase the capacity of State and local leaders to implement effective public policy collaboration and dispute resolution processes. The resulting benefits include public cost-savings, increased efficiency of public administration, and enhanced quality of public services.

Ms. Harris earned a Bachelor's degree in Communications from Appalachian State University in Boone, North Carolina and a Master's degree in Counseling from St. Edward's University in Austin, Texas. Ms. Harris has completed the Senior Management Development, Strategic Planning and Performance Measures, and Change Management Programs at the Governor's Center for Management Development. She is a certified Mental Health First Aid Trainer and serves on the Executive Women in Texas Government Board of Directors as its Communications Director. As part of the Fellows Program, Ms. Harris will attend training in May with Mary Margaret Golten from CDR Associates in Boulder, Colorado, one of the nation's top dispute resolution practitioners.

Annual OIEC Leadership Conference. OIEC's Supervisors, Associate Directors, and Directors begin each year with the Annual OIEC Leadership Conference. On January 5th – 6th, management met to discuss business planning and team development opportunities. The conference highlight was the inspiring presentation, "What Great Leaders Do," by Jo Dale Guzman from the State Auditor's Office. Great leadership is known to inspire organizational greatness and OIEC's leaders gained information about promoting superior performance within the agency in order to provide the best possible services to OIEC customers. Each attendee learned how to inspire trust within the agency by clarifying purposes, unleashing talent, and aligning systems. Management also discussed the new agency-wide succession planning initiative (which is preparing OIEC to continue providing top-notch services to Texans despite the loss of employees due to upcoming retirements and other factors) and the Agency Business Plan (which details key agency initiatives in the next four years). This annual meeting ensured that OIEC's leaders are united and prepared to lead OIEC and its employees into the new year.

Communications Corner

The mission to educate its customers is achieved through the contributions of all OIEC program areas. The Communications and Outreach Program impacts this mission by assisting with external public speaking engagements, educational booths at events, and monthly presentations at each OIEC Field Office across the State. This fiscal year has been particularly busy, and OIEC has increased its presence and communicated with more customers.

Participation in events over the past six months included:

- Teacher Retirement System (TRS)
- Combined Law Enforcement Associations of Texas (CLEAT) convention
- Executive Women in Texas Government (EWTG) 25th Annual Professional Development Conference
- Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) Educational Conferences
- TDI-DWC Safety Summit
- Texas Orthopedic Association (TOA) Annual Meeting

Planned participation in events over the next three months to include:

Annual Texas Medical Convention. Agency representatives will have a booth at the convention to provide an opportunity for the medical community to learn about OIEC and its services.

Texas Workers' Defense Project and Univision's Cinco de Mayo celebration. Over 25,000 construction workers, construction companies, safety trainers, and community groups are expected to attend the Texas Workers' Defense Project's first annual Construction Workers Expo. Representatives from the Ombudsman Program will be there to explain OIEC's role in the workers' compensation system and the assistance it can provide to the injured employee.

Annual City of Austin Safety Conference. OIEC will host a booth and speak at this event that provides information to city employees.

Department of Assistive and Rehabilitative Services (DARS). OIEC has been invited to give a presentation at the DARS Office in McAllen. The agencies work closely together throughout the State to assist injured employees back to sustainable, productive work.

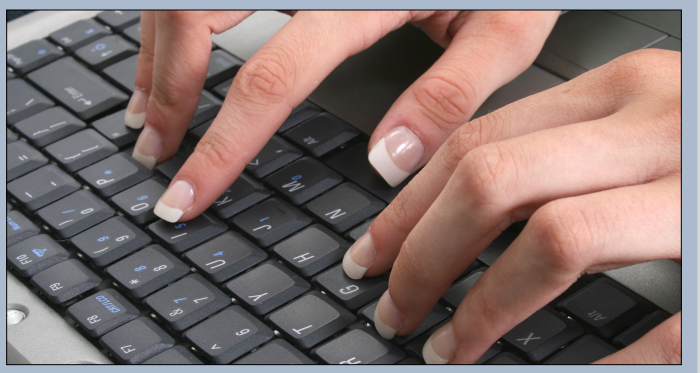
Annual Texas Funeral Directors Association (TFDA). Funeral directors will attend their annual conference, and OIEC will be hosting a booth to provide workers' compensation death and burial benefits information. Funeral directors are an invaluable link to the beneficiaries following a work-related fatality, and can inform their customers about OIEC when appropriate.

Monthly OIEC Field Office Presentations. These educational presentations are held monthly in each of the local OIEC Field Offices. Injured employees, employers, health care providers, attorneys, and others interested in workers' compensation will find this information helpful. Upcoming presentations will be held at noon on May 18th, June 29th, and July 27th.

If you would like OIEC to speak at your event or would like to be notified about OIEC events and educational opportunities, please send an email to OIECInbox@oiec.state.tx.us.

Question of the Quarter

Q: I have been recently diagnosed with carpal tunnel syndrome. Since it develops over time, what would be my date of injury?



A: A compensable injury can usually be traced to a specific work-related incident but can also be an occupational disease. An occupational disease is a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. Carpal tunnel syndrome is a repetitive trauma injury in that it develops slowly over time until it eventually builds up and reveals itself.

Essential in the determination of whether a compensable injury occurred is the time and place of the injury. For a repetitive trauma injury there must be repetitious, physically traumatic activities that occurred while on the job, and there must be a causal connection between those activities and the harm or injury. Because this happens over time, the date of injury may be difficult to determine but it is generally the date that the injured employee knew, or should have known, that the injury was work-related. This is often the date the condition is diagnosed by a doctor but not always.

If you have any questions about date of injury, please call OIEC for assistance at 1-866-393-6432.

Case Study: Dispute of Impairment Rating

Mr. S injured his cervical spine and right shoulder as a result of a fall in May 2008. He underwent surgery to treat both his neck and shoulder. He also has a reduced range of motion in both of these areas. Mr. S was examined by a designated doctor, Dr. S, and subsequently by Dr. O—a Required Medical Examination (RME) doctor. Both doctors agreed that Mr. S sustained a compensable injury and that he reached maximum medical improvement; however, they each assigned different impairment ratings. Dr. S assigned an impairment rating of 23% while Dr. O only assigned a 13% impairment rating. In Mr. S's dispute, the question of the correct impairment rating hinged around whether or not it was proper to include radiculopathy in the calculation of the impairment. More specifically, there was a question as to whether there must be a total loss of relevant reflexes or merely a partial loss of relevant reflexes to satisfy the AMA Guides' requirements for the inclusion of radiculopathy in an impairment rating.

The 4th Edition of the American Medical Association (AMA) Guides uses the following description and verification for radiculopathy:

> The patient has significant signs of radiculopathy, such as loss of relevant reflex(es), or measured unilateral atrophy of greater than 2 cm above or below the knee, compared to measurements on the contralateral side at the same location. The impairment may be verified by electrodiagnostic findings (3/102).

At the contested case hearing (where Mr. S was assisted by Ombudsman Peggy Brewer from the Houston West Field Office), the reports of Drs. S and O were examined to reveal their individual interpretations of the verification for radiculopathy. Dr. S believed that a total loss of relevant reflexes was not necessary to include radiculopathy in the impairment rating while Dr. O's testimony clearly showed that he believed that a total loss was necessary to consider radiculopathy in the impairment rating. The hearing officer found that "the precise question presented appears to constitute a matter of first impression, as neither the Guides nor the Appeals Panel has specifically stated that a total loss of relevant reflexes is or is not required in order to place an individual in DRE Category III." She also noted that while the language used in the description and verification was somewhat ambiguous, there was an analogous use of the phrase "loss of" found under the description for Category VIII that clearly delineated "loss" from "total loss." In other words, the absence of phrase "total loss of" in the description for radiculopathy strongly implies that the AMA Guides does not require a total loss of relevant reflexes for radiculopathy to be included in an impairment rating. Furthermore, an example on page 103 of the AMA Guides further supports Dr. S's position that the term "loss of" is used in the AMA Guides to mean "partial loss of."

Without a controlling authority as to the meaning of the word "loss", the hearing officer gave the opinion of the designated doctor presumptive weight and granted Mr. S an impairment rating of 23 percent. The insurance carrier appealed and the appeals panel decided the case in favor of Mr. S. In fact, the appeals panel found a mathematical error in the calculation of Mr. S's impairment rating which, when corrected, resulted in a final impairment rating of 24 percent. The appeals panel also noted that this question had been raised before (see APDs 091039 and 040924, decided 9/14/09 and 6/14/04, respectively).

By the Numbers

- **1,079,298** customers have been assisted since 2006.
- Over **38,000** injured employees have been assisted through the administrative dispute resolution system since 2006.
- The average cost saved per injured employee is **$1,829.00** when assisted by an Ombudsman.
- **55%** of Ombudsmen staff speak Spanish fluently.
- **100%** of published rules that impact injured employees are analyzed by OIEC.

"In a hearing, an injured employee is **four times** more likely to prevail with Ombudsman assistance than appearing alone."
— Sunset Advisory Commission Report 2010

Employee Spotlight: Nancy Larsen

Nancy Larsen was born in Peoria, Illinois. She was the only child to parents who were also raised in Peoria. When she was eight years old, she moved to Glen Ellyn—a suburb of Chicago where she participated in both the school and church choirs. Outside of school, Nancy played baseball and was especially fond of winter sports, especially speed skating. For a long time, her parents had a vacation cottage in Wisconsin and that gave her the chance to enjoy both winter and summer sports.

Nancy met her future husband, Wally, at a party through a mutual friend. Their friend introduced Nancy to Wally as "the one for you." After getting married, Wally worked in his family's bakery business in Illinois for a few years before going into sales and advertising for newspapers and trade magazines. Around the same time, Nancy had the first of her three children. As the children got older, Nancy began working as a temporary employee for various businesses. At the same time, Wally accepted a job in Fort Worth as the vice president of a publishing company. Nancy worked for a time at Coldwell Banker and then went to work as the office manager with Wally's company. During this time, Nancy developed computer skills, which would put her ahead of the curve for computer literacy in office environments.

In 1991, Nancy changed careers and went to work for Norman Darwin. She served as Mr. Darwin's legal assistant in the workers' compensation section of his practice. In that role, Nancy helped Mr. Darwin develop a workers' compensation index and handled a multitude of client interactions. Following the creation of OIEC, Nancy joined Mr. Darwin at OIEC as the agency's executive assistant. During OIEC's first year, Nancy traveled to every field office and familiarized herself with the role of the ombudsmen. Following the creation of the Customer Service Program, Nancy was selected as its Director. She developed many of the processes for the program and developed a training program along with Mr. Darwin for all incoming customer service representatives.

Nancy will retire at the end of July. She has plans to return to Illinois with Wally and travel. She would like to see Europe—possibly by ship—play golf, volunteer at the hospital, and spend as much time as possible with her four grandchildren. Nancy leaves behind a staff of which she is most proud. She feels that one of the greatest strengths of her team is the ability to empathize with injured employees. Nancy will leave behind a legacy of advocacy, both for her staff and the injured employee.

SPECIAL FEATURE:

Decline in Workers' Compensation Benefits Increases Burden on Social Security Disability Insurance

Workers' compensation has proved to be the oldest and most durable social insurance program in the United States. Since its inception a century ago, workers' compensation in the United States has been under the authority of the states, only. No federal laws exist that directly impact the regulation or standards of workers' compensation. Critics of this model of workers' compensation have long pointed to the inequities in benefits provided to injured workers, the coverage of employers and employees, and the rules used to determine eligibility for benefits that exist from state to state. At certain points in history, especially in times of great expansion in federal social insurance programs (New Deal era and Great Society period, specifically), critics of the state-run system have called for the federalization of workers' compensation; however, any effort to federalize workers' compensation either lacked the political willpower or, where there was the willpower, the need to federalize workers' compensation didn't fulfill the purpose of the social insurance program being considered.

In the decades after World War II, the ratio of workers' compensation benefits to wages steadily declined. In addition, the rate of accidents per year including deaths in the workplace increased into the millions. As a result, the call to reform workers' compensation laws spread through the U.S. Congress. In 1970, the Occupational Safety and Health Act was signed into law by President Nixon. For

the first time since the turn of the century, the federal government revised the laws governing workplace safety. While the formation of the Occupational Safety and Health Administration (OSHA) was not a direct attempt to federalize workers' compensation, it did lay the groundwork for the creation of the National Commission on State Workmen's Compensation Laws. In 1972 the Commission issued a comprehensive evaluation of the state-run workers' compensation system. In its report[1], the Commission described the state workers' compensation programs as "in general neither adequate nor equitable." This and other findings of the Commission spurred what could be described as a reformation period for workers' compensation. Over the next five years, state workers' compensation laws were modified to comply with the Commission's recommendations. However, compliance rates virtually plateaued by the end of the 1970's, and by the 1990's, many states had revised their workers' compensation laws to restrict eligibility for benefits by excluding many common medical diagnoses and enacting more rigid evidentiary standards. Over time, the lack of uniformity in workers' compensation from state to state has provided much incentive for employers to find ways to attract new business and industry by adjusting workers' compensation benefits to make themselves more competitive. Many critics have argued that over time this lack of a single standard is likely to create a "race to the bottom" where lower workers' compensation benefits mean lower operating costs to employers[2].

For all the arguments for federalizing workers' compensation, the system has remained much the way it has always been. However, at various times in its history, the Federal Government has initiated "test cases" in administering workers' compensation. While not part of an overall scheme to absorb workers' compensation, one of the most notable examples is the Federal Victims Compensation Fund (to compensate the victims of 9/11). That case largely illustrates the fact that the existing workers' compensation scheme was deemed unable to handle the task of duly compensating those affected—a telling commentary on both the existing levels of workers' compensation benefits and, accordingly, the fear that should existing workers' compensation carriers handle the claims, an adverse public relations event was inevitable and perhaps even more costly, financially. Nevertheless, there is clearly little action in the U.S. Congress to reform workers' compensation as a result of this experiment in "federal" workers' compensation.

Workers' compensation is only the second largest source of cash and medical benefits for disabled workers; the first is Social Security Disability Insurance (SSDI). As its name implies, SSDI is a federal program to assist disabled beneficiaries until they return to work, die, or qualify for social security old age benefits. Workers' compensation and SSDI have differing, and non-exclusive standards of eligibility. In other words, someone injured on the job may be eligible for both benefits, neither benefit, or one or the other benefit. Therefore, SSDI and workers' compensation benefits have been coordinated since 1965. By default, SSDI benefits are reduced and workers' compensation benefits are paid in full; and the combination of the two cannot exceed 80% of a claimant's preinjury wages. Before the law was changed, some states adopted laws which allowed workers' compensation rates to be reduced in lieu of SSDI reductions. This was known as "reverse offset."

While the payout of benefits can be coordinated and controlled fairly well, the criteria used to establish eligibility cannot. Because the adequacy and parity of workers' compensation benefits has been in steady decline for at least two decades, there is mounting evidence that SSDI is paying benefits to workers' who were injured in the course and scope of their employment but were not able to qualify for workers' compensation benefits. If the disparity in workers' compensation benefits from state to state didn't provide the urgency for the federal government to absorb workers' compensation, perhaps there will be greater concern in light of the evidence supporting this claim.

One of the principle authorities on this subject is John F. Burton, PhD. Dr. Burton was the Chairman of the aforementioned National Commission on State Workmen's Compensation Laws. In November of 2010, he testified before the U.S. House of Representatives Subcommittee on Workforce Protections about the relationship between workers' compensation and SSDI[3]. Dr. Burton's purpose in testifying before the Subcommittee was to expose the results of the research that he and his colleague, Xuguang Guo, had conducted showing the possible shifting of costs from workers' compensation to SSDI; including supporting evidence of the frequency and severity of that cost-shifting. In his testimony, Burton identified four unique ways in which SSDI bears the costs of state workers' compensation programs: (1) reverse offset laws; (2) ability to qualify for SSDI but not workers' compensation for a work-related injury; (3) decreases in one program increases demand for the other; and (4) the reliance on experience ratings to set workers' compensation premiums.

As mentioned previously, reverse offset laws were adopted by 15 states in order to circumvent a federal law that established that in cases where a claimant receives both workers' compensation and SSDI benefits, workers' compensation benefits must be paid in full and SSDI benefits must be reduced, if necessary, so that the combination of the two benefits does not exceed 80% of the claimant's preinjury wages. Therefore, a reverse offset law indicates that SSDI must be paid in full and workers' compensation benefits adjusted, accordingly. In a sense, in states with reverse offset laws, SSDI is forced to cover lost wages for workers when entitlement to workers' compensation has plainly been established.

There is evidence supporting the claim that the SSDI program is paying benefits to claimants who were injured in the course and scope of their employment but were not able to qualify for workers' compensation benefits. In a sample of persons aged 51 to 61 in 1992 who claimed a work-related injury, only 12.3 percent received workers' compensation benefits while 29 percent received SSDI[4]. Not surprisingly, Guo and Burton's research also found an increase in the application rates for SSDI in periods when workers' compensation benefits declined relative to a claimant's average weekly wage[5]. This increase in application rates for SSDI was also compounded during periods when states tightened their eligibility rules for workers' compensation benefits. Adjusted for the growth of an aging population, and the increase of the female workforce, Guo and Burton estimated that the reduction of workers' compensation benefits due to restricted eligibility rules resulted in an increase of 3 to 4 percent in the growth of SSDI applications during the 1990s[6].

The mechanisms controlling SSDI applications and workers' compensation claims can also be viewed in economic terms; whereby decreases in one program stimulate demand for the other. In this sense, benefits between the two programs follow the laws of supply and demand like any other good or service. This pattern can be seen over a period of 25 years, beginning in the mid to late 1980s, whereby workers' compensation benefits vs. SSDI benefits are inversely proportional. However, Burton also notes that this relationship "has received little attention by researchers and is not well understood."[7] In fact, Burton must concede this point about the bulk of his findings. Critics of these findings have also been quick to capitalize on the tenuous relationship between the rates of SSDI applications versus the levels of workers' compensation benefits. Melissa McInerney and Kosali Simon, in an unreviewed article entitled "The Effect of State Workers' Compensation Program Changes on the Use of Federal Social Security Disability Insurance," conclude that changes to the laws governing workers' compensation had no meaningful connection to the rise in application rates for SSDI beyond a mere temporal relationship.[8]

One final area of workers' compensation that may impact SSDI according to Burton's research is the reliance on experience ratings to determine workers' compensation premiums. Experience ratings work on the principle that the more or less a firm claims in workers' compensation benefits compared to other firms in its industry, the more or less it must pay in insurance premiums, respectively. The idea behind experience ratings is to encourage employers to improve the safety of their business in order to obtain a more favorable premium rate. In addition, experience ratings are used by insurance companies to plan how much could be paid in benefits for a potential policy holder. However, experience ratings also have the effect of encouraging employers to mitigate potential claims within their company by any number of methods. One example is requiring employees—frequently in the petroleum industry—to sign an affidavit on a daily basis indicating that they have not sustained an injury in the course and scope of their employment for that day. Employers may also reward employees, as a group, after a certain number of days pass without an on-the-job injury. In effect, employees are discouraged from filing a claim for fear that their coworkers will not see a financial reward, and employers reap a lower workers' compensation premium. And if workers are discouraged from filing a workers' compensation claim, they may be left with no recourse other than SSDI.

The current state of workers' compensation bears many similarities to the period preceding the formation of the National Commission on State Workmen's Compensation Laws. During that time, the Commission acknowledged that state governments would face a substantial obstacle in trying to balance the need for regulation of workers' compensation with the desire to encourage an environment of profitability and mobility for employers. From a policy perspective, many states have addressed this concern by increasing the standards of evidence necessary to claim benefits while simultaneously capping the amount that can be received in benefits. Other strategies have included reviews of long-standing tenets of workers' compensation. California, for example, no longer follows the adage "the employer takes the worker as he finds him." In other words, California law had long

held that if a worker with a previous medical condition suffered a work-related injury that was the result of some interaction of a previous medical condition, the employer was still responsible for all of the consequences of the present injury. California now limits the degree to which a workers' compensation carrier will be responsible for these kinds of injuries. Florida and New York have also adopted this policy.

One of the founding principles of workers' compensation in this country is the idea that workers' compensation is a no-fault system, and that the costs related to insurance premiums should be passed on to the consumer like any other cost of production. The policy changes of the last decade, especially, have abandoned this latter principle for fear that rising premium costs would cause employers to relocate business to another state or country with lower premium costs. In the current political environment, any effort to resolve this by federalizing workers' compensation is highly unlikely; however, this is a time when all federal programs are being evaluated for cost savings, and there is some potential to improve workers' compensation through this scrutiny. As an alternative to sweeping change, it is conceivable that modest federal standards for workers' compensation could be enacted. One way to couch this proposal to adversaries of federal intervention would be to highlight the burden that SSDI likely shares in paying on workers' compensation claims. Therefore, a proposal to reform workers' compensation would likely appear as an effort to save tax dollars—not as an effort to increase parity across state laws. Burton also suggests that Congress could enact federal standards that would require states to provide adequate permanent disability benefits using less restrictive causation standards. Congress could also enact legislation changing the manner in which cash benefits are applied for under SSDI similar to the way in which the Medicare Secondary Payer Act works. Under the Medicare Secondary Payer Act, certain workers' compensation claims must set aside funds that might otherwise be shifted to Medicare.

One such effort to reform workers' compensation at the federal level was the Federal Workers' Compensation Modernization and Improvement Act (HR2465). Under that resolution, which was authored by a bipartisan committee, many cost-saving strategies were developed —none of which favored cutting benefits for injured workers as an appropriate way to balance the federal budget. In fact, the bill provides for vast increases in certain types of benefits while also netting $500 million in potential savings over 10 years[9]. This is accomplished mostly through reductions in administrative costs and better coordination between retirement funds and workers' compensation. The bill is currently under review by the Committee on Homeland Security and Government Affairs. While this resolution only concerns Federal employees, states could take the initiative and model reform legislation after it. It is also possible that if costs continue to shift from workers' compensation to other benefit programs (especially federal programs) the Federal Government will mandate that states reform their workers' compensation laws. Under this scenario, injured employees are perhaps more likely to realize unfavorable reforms as state lawmakers will view a Federal mandate as punitive in nature.

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[1] *National Commission on State Workmen's Compensation Laws: 1972*. [The *Report* can be downloaded from www.workerscompresources.com]

[2] Christopher Howard, *The Welfare State Nobody Knows: Debunking Myths About U.S. Social Policy* (Princeton Univ. Press 2007).

[3] *Workers' Compensation: Recent Developments and the Relationship with Social Security Disability Insurance: Before the H. Committee on Education and Labor, Subcommittee on Workforce Protections,* 111th Cong. (2010)(statement of John F. Burton, Jr., Professor Emeritus, Rutgers and Cornell Universities).

[4] Robert T. Reville and Robert F. Schoeni. 2003/2004. *The Fraction of Disability Caused at Work.* Social Security Bulletin, Vol. 65, No.4:3-17.

[5] Guo and John F. Burton, Jr. 2008. *The Relationship Between Workers' Compensation and Disability Insurance.* In Adrienne E. Eaton, ed. Proceedings of the 60th Annual Meeting of the Labor and Employment Relations Association. Champlain, IL: Labor and Employment Relations Association.

[6] Ibid.

[7] Sengupta, Virginia Reno, and John F. Burton, Jr. 2010, *Workers' Compensation: Benefits, Coverage, and Costs, 2008.* Washington, DC: National Academy of Social Insurance.

[8] McInerney and Kosali Simon. 2010. *The Effect of State Workers' Compensation Program Changes on the Use of Federal Social Security Disability Insurance.* [Article currently under review].

[9] *Examining the Federal Workers' Compensation Program for Injured Employees: Hearing Before the US Senate Committee on Homeland Security and Governmental Affairs, Subcommittees on Oversight of Government Management, the Federal Workforce, and the District of Columbia,* 112th Cong. (2011)(Statement of Gary Steinberg, Acting Director of the Office of Workers' Compensation Programs).