

**SUBMISSION**

**INQUIRY INTO  
ASPECTS OF  
WORKERS' COMPENSATION**

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## INTRODUCTION:

I respond to your advertisement, published in the West Australian on 29 June 2002.

My interest in this matter is due to seeing people who have had, or who are, pursuing workers' compensation claims. As a psychiatrist, my experience and expertise in this field is largely related to the psychological issues involved. However, one cannot look at a person in this situation without having some understanding of what is happening, due to the processes which a claim of this nature necessitates.

As I work in Western Australia, the experience I have is largely coloured by the Act in that state. Some of the issues, however, are not simply related to one Act or one jurisdiction.

*“fraudulent claims ... factors that may encourage such behaviour”*

## ATTITUDES TO WORKERS' COMPENSATION:

This is an area which of course is not really covered by legislation. It can, and often does, have significant effects as to the outcome of a workers' compensation claim. Unfortunately, many of the attitudes are negative, which result in problems not only of settlement of the claim but also, in many cases, of the psychological issues being exacerbated.

From an employers' point of view, workers' compensation claims are doubtless an irritation, extra expense and frequently a cause of disruption to work schedules. Because of that, employers often find it difficult to see a claim of this nature in anything but a negative light. When that negative view is expressed openly and forcefully, as is often the case, it is my clear experience that things tend to deteriorate from a functional and psychological point of view.

Within the workforce at large there is also a considerable stigma about being on workers' compensation or having a workers' compensation claim. In some workplaces that is related to the fact that a claim will result in loss of bonus for a large group of workers. Besides that, however, there is within the community a fairly widespread belief that if a person is on a workers' compensation claim they are either unreliable, complaining unnecessarily or just simply trying to get something for nothing. Here again, those types of attitudes do not help the resolution of genuine claims.

From the workers point of view there is also a considerable loss of face and status to be on a workers' compensation claim. Those sorts of feelings frequently negatively impact upon the psychological process of the worker who has a claim.

The insurance industry's role in these attitudes can also be positive or negative. As a matter of business it is perfectly understandable that they wish to keep claims to a minimum. Aggressively opposing every aspect of a claim is a way which often results in exacerbation of symptoms and prolongation of the difficulties. This is, of course, the opposite to what the insurance companies would set out to achieve.

Insurance companies have a pivotal role in this system. That could be used very much to their advantage and to that of the whole scheme. They are in the ideal position to influence employers' and workers' attitudes in this regard. By their own example, and if they saw fit, education of those who insure with them could ensure much more positive attitudes to the whole workers' compensation area. That would be a positive gain for all concerned.

#### GENERAL ASSESSMENT:

One of the ongoing problems is the lack of uniform assessment in this area. Because of this, workers are often sent for repeated investigations and examinations. That frequently results in there being a number of opinions about a certain situation. Those opinions are often not particularly helpful in returning the worker to the workforce. They mainly assist in making the subsequent litigation more vigorous.

Another area where considerable time and effort is spent is in the area of surveillance of workers. Whilst undoubtedly that does demonstrate some who are not being entirely honest, in the main, however, it appears to supply evidence upon which very little weight can be placed. By its very nature, it is frequently brief and has a number of disjointed segments. That bears very little relationship to what would be expected of a worker in a full-time situation.

It would seem then that a panel of experts who could review a situation would probably result in a speedier and more precise estimation of disability. That then would make efforts at rehabilitation able to be undertaken more speedily than often is the case now, and with better goals.

#### ASSESSING PSYCHOLOGICAL INJURY:

It is not so long ago that the nature or, in fact, the relevance of any psychological injury to workers' compensation was questioned. Now, in all jurisdictions that I am aware of, these issues have been accepted as relevant.

Despite that, there appears to have been little effort put in, or thought given, to making a useful and reliable way of assessing psychological injury.

There have been various attempts made. Of course, one of the ones often referred to is taken from the Guidelines to the Evaluation of Permanent Impairment from the 4<sup>th</sup> Edition of the American Medical Association. Their chapter *Mental and Behavioural Disorders* outlines in some detail the difficulties of making that type of assessment. They come down in favour of the argument that percentages should not be allocated. Whilst there is good reason for that, it is not helpful in a jurisdiction like Western Australia where it is stipulated the impairment must be recorded as a percentage.

Also, when you review their examples in detail, it is noticeable that their work relates to those with major mental disorder, in the main. That is rather different from the psychological disorders that one usually sees under a workers' compensation claim.

The Department of Veterans' Affairs takes a somewhat different approach. They use a multi-axial assessment. They have ratings for subjective distress, manifold distress, functional effects, occupation, domestic situation, social interaction, leisure activities and current therapy. Ratings on each of those scales are then combined to give a final rating. That approach has much to commend it. However, it would almost certainly need some sort of modification to be useful in a workers' compensation situation.

More commonly used, in Western Australia at least, is the Social Security Act: Psychiatric Impairment Rating Scale. While that does give some guidelines to impairment ratings, it is not particularly helpful in the work situation. One of the glaring problems with that scale to be used in a workers' compensation situation, is the fact that work is not directly referred to in all of the stages in that scale. That limits its use in that specific area.

Overall, from general psychiatric and psychological reviews, there is plenty of evidence that useful rating scales can be created which are valid and reliable. Then, with a small amount of training, people can use them in a consistent manner.

In assessing psychological impairment in this situation, a scale that is reliable in this manner could be a great advance in resolving difficulties in this area.

### PERSONALITY IN THE WORKPLACE:

The assessment of personality is an issue of great debate. There is vast academic literature about how one should proceed with this, and if in fact it can be done reliably. Whilst it is relatively simple to describe various personality aspects of anybody, that is a far cry from fully delineating a person's personality. For instance, the academic debate is still far from decided whether personalities should be divided up into a number of well-demarcated categories or whether each person should be classified, according to their rating, on a number of different traits. That there is disagreement along these lines makes one cautious of listing personality as an important aspect in the workplace.

Despite that, there are two fairly consistent ways in which the issue is raised in workers' compensation claims. One is the question raised whether personality factors are influencing the person's presentation. This is usually done by the insurer or their agent in an effort to diminish a claim that is being made. Some others will boldly assert that the worker's personality is responsible, to a large degree, for the presentation seen subsequently to a workers' compensation claim being made.

Whilst both of those approaches doubtless have some validity, there are significant problems in suddenly wanting to employ such issues in a workers' compensation situation. Whilst personality factors may be assessed for some high performance jobs, the vast majority of the workforce is employed without regard to any of those factors, excepting in the broadest sense. In most employment situations the abilities, training, skills and previous work record are the features which are predominantly taken into account when hiring someone. It could be argued that personality factors influence all these aspects, and to a degree that is true. However, they are almost always ignored or treated as subsidiary in the normal process of employing workers. To then seek personality factors in the case of someone who has a workers' compensation claim seems to be illogical, to say the least.

Also, to take that type of approach to personality in a workers' compensation claim situation, frequently over-simplifies a complex situation. To give an example, a worker who is thorough and meticulous may be just the type of employee that is valued in some situations, particularly if this is to do with precise work such as estimating or financial management. Thus, those particular personality traits are a considerable attribute as far as the employer is concerned. That type of person, however, is very often not particularly resilient so that if they are then subject to some new and unexpected pressures, they often do not function very well.

Consequently, in a workplace situation, a person of that nature may fit into a job and function well for some time. In other words, be a considerable asset for the employer. Then, because of changes within themselves or the workplace, they may find it difficult to adapt. In other words, their personality has been a positive contribution up until the point of the change. Then, various aspects in their personality make for less satisfactory adjustment. Yet it is not unknown in the midst of workers' compensation claims for those positive aspects which have been useful up until this point to be ignored, and the less positive aspects to be magnified. That selective use of personality factors appears neither to be scientific nor fair.

***"... the adequacy, appropriateness and practicability of rehabilitation programs and their benefits".***

#### **REHABILITATION:**

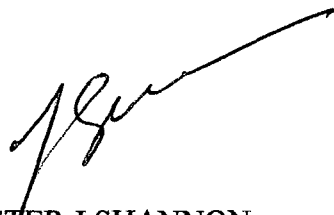
This is an area where more emphasis has been given over recent years. However, it seems pretty much that this is not done in a very constructive or coherent manner. A lot of what constitutes rehabilitation is getting a person into a workplace for a set number of hours a day or a week. When that is into a job for which they are trained, and especially when it is in the firm where they were originally working, this is often satisfactory and successful.

Major difficulties become apparent when the person cannot be returned to the type of work they were doing previously. Then, rehabilitation is frequently aimed at placing them in some other form of work which is relatively unskilled. Usually, it is in a situation where there is no likelihood of employment, even if they successfully become able to work for a significant amount of time per week. That usually results in the previously injured worker becoming more demoralised, as their efforts appear to be unlikely to gain them future employment.

This type of problem is particularly so in a relatively young worker who has a back injury. Frequently, they have been engaged in manual or labouring type work prior to the injury. They often have general skills in some particular work area. They also have frequently worked hard for a number of years and so have learnt the need for application and attendance, which are necessary for employment. Once they have a back injury, however, unless they have specific skills, employers almost universally are unlikely to re-employ them.

That raises the need for rehabilitation services to be also seen as training or retraining services. Often, these people are relatively young. If they are going to function usefully in the workplace they will probably need a new range of skills. Many are willing and able to learn new skills, providing they are given the opportunity for worthwhile training. Under the present guidelines new skills learning and retraining usually do not qualify as rehabilitation.

Until rehabilitation has a much wider scope, there is considerable likelihood that there will be ongoing problems in returning people to the workforce. That results in many people, who are willing to apply themselves, being unable to work. This type of need is accentuated by the fact that more and more jobs in our society are requiring specific training. Employers are less and less able to find positions for people who do not have substantial training in specific areas. All of this makes the need for additional training opportunities more pressing.



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