



# **AGENCY OMBUDSMAN PROGRAM FOLLOW-UP REVIEW**

Audit Report # 2010-010

**By:**

**The Office of Injured Employee Counsel**

**INTERNAL AUDIT DIVISION**

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The Office of Injured Employee Counsel's (OIEC) mission is to assist, educate, and advocate on behalf of the injured employees of Texas. The agency fulfills its mission of assisting injured employees through its Ombudsman Program.

This audit was conducted to determine to what extent the Ombudsman Program policies, procedures, and directives are being followed and whether these procedures adequately reflect management's needs and requirements.

## **Scope and Methodology**

The scope of the audit included a sample of injured employees assisted by the agency from six of OIEC's field offices. The Data Reporting Group of the Texas Department of Insurance, Division of Workers' Compensation (DWC) prepares monthly and quarterly reports on the performance measures of the agency as required by the Legislative Budget Board. For this review the Texas Department of Insurance (TDI) Data Reporting Group selected a sample of approximately fifteen percent (15%) of the injured employees assisted in Benefit Review Conferences or Contested Case Hearings by the North Austin, Waco, Houston East, Houston West, Lufkin, and Bryan-College Station field offices from September 1, 2009 through March 31, 2010. A total of 113 Cases were selected in the sample. The working folders for these injured employees were reviewed in the field offices for inclusion of certain documents required by the agency's policies and procedures.

The folders were reviewed for inclusion of the following documents:

- Working Folder Checklist (Form OMB-04)
- Appointment letters for injured employees
- Indications of whether the injured employees kept the appointments
- Ombudsman Assistance Request (Forms OMB-02)
- Change of Ombudsman (Forms OMB-05), if applicable
- Copies or indications of reviews of Forms PLN1 or PLN11
- Copies or indications of reviews of Form DWC 041
- Identification of the assigned ombudsman by DRCD Inquiry Code "OMB"
- Indications of disputed issues identified by DRCD Inquiry Code "ODI"
- Indication of whether special accommodations were required
- Indications that the Benefit Review Conference handout was provided
- Indications that the Benefit Review Conference video was shown
- Indications that the Contested Case Hearing handout was provided
- Indications that the Appeals Panel handout was provided

The audit also included reviews of documents in the Working Folders, notes contained in the Dispute Resolution Information System (DRIS) automated database and the



electronic documents in DWC's automated system (TxComp) for electronic indications that some items, such as the Appointment Letters, were mailed to injured employees.

The Ombudsman Program requires Associate Directors to observe Ombudsman in Preparation Appointments, Benefit Review Conferences, or Contested Case Hearings twice each year. This requirement is detailed in the agency's Ombudsman Training Handbook and in the Texas Administrative Code, Title 28, Part 6, Subchapter B, Section 276.10 (b) (3). The Ombudsman Program Coordinator maintains a worksheet to track these observations along with other training and licensing information for each of the Ombudsmen. The audit included a review of a sample of the observations recorded for the Ombudsmen in the field offices visited and was traced to the documentation of the actual observations (Forms OMB-015, 016 and 017). Three exceptions were noted in this review.

The audit included a review of the agency's Constituent Assistance activities as required by Administrative Procedure 08-02. During FY 2010 (through May 31, 2010) a total of 43 inquiries from legislative offices or other government officials were recorded in the document directories specified in the procedure. A sample of these contacts was reviewed for compliance with this procedure. No exceptions were noted.

The scope included the review and assessment of written procedures governing the agency Ombudsman Program to determine whether these procedures adequately reflect management's needs and requirements, and whether the agency had procedures in place to assure compliance with applicable provisions of its enabling legislation and the Texas Labor Code, Chapter 404, Subchapter C, Section 404.103 and rules established under the Texas Administrative Code, Title 28 Part 2 (Texas Department of Insurance, Division of Workers' Compensation) and Part 6 (Office of Injured Employee Counsel).

This project was conducted in accordance with generally accepted government auditing standards and the *Standards for the Professional Practice of Internal Auditing* as set forth by the Institute of Internal Auditors.

## **Overall Conclusion**

Current administrative procedures and manuals for the positions of Ombudsman and Ombudsman Assistants present a fairly detailed and clear message concerning how injured employees are to be assisted in informal and formal dispute resolution proceedings.

The procedures could be improved by additions to the Ombudsman Handbook, new directives, additional training, and emphasis of existing directives.



Additionally, controls assuring compliance with existing procedures could be strengthened in key areas such as:

- Using DRIS Code “OMB” in each case to indicate which Ombudsman has been assigned to an injured employee’s case;
- Using DRIS Code “ODI” to identify disputed issues in each case;
- Using the Working Folder Checklist as a tool to assure inclusion of required documents in each working folder and to evidence that required tasks have been performed; and
- Assisting each injured employee to complete the Employees Claim for Compensation for a Work-Related Injury or Occupational Disease (Form DWC-041); or
- Actually filing the above-referenced form with DWC.

The use of DRIS Code “OMB” and of the Working Folder Checklist, assisting each injured employee to complete the Form DWC-041, and actually filing the form with DWC were suggestions noted in the previous examination and report issued July 15, 2009. Several of these were the subject of additional training and management directives.

Management agrees with all findings and recommendations in this audit and has developed a plan for corrective actions.

I would like to thank Brian White, Deputy Public Counsel, and all the Ombudsmen and Ombudsman Assistants in the field offices visited as well the Director, Associate Directors and Supervisors for their cooperation and assistance during the conduct of this audit.



## **DETAILED ISSUES AND MANAGEMENT RESPONSES**

### **Issue 1 – Working Folder Checklist**

The “Ombudsman Handbook” (June 2010 version, Section II C ¶4), the Working Folder contents give written procedures regarding the Working Folder Checklist and its use.

The Working Folder Checklist in two of the 113 Working Folders in the sample could not be located for review. Reasons for the absence of the Working Folder checklists were not determined.

Compliance with the use of this form is substantial.

#### **Recommendations:**

Management should revise procedures to include requirements for the use of the Working Folder checklist to ensure that all required procedures are performed and to document provision of handout materials and viewing of required videos. Management has a requirement that the Working Folder Checklist Form OMB-04, along with the Ombudsman Assistance Request Form OMB-02, and the Index be retained when ‘purging’ the Working Folder.

#### **Management Response:**

Management agrees and appreciates the helpful recommendation. Management is pleased with this outcome. Management agrees to include requirements for the use of the Working Folder Checklist to ensure that all required procedures are performed and to document provision of handout materials and viewing of required videos. The Director of the Ombudsman Program had a meeting with the Ombudsman Supervisors, Ombudsman Leads and the auditor to discuss the Working Folder Checklist findings on July 22, 2010. We are in the process of modifying the checklist form to comply with the procedure in the Ombudsman Handbook.

Further direction will be given to the staff upon approval of the revised Working Folder Checklist form.

### **Issue 2 – Ombudsman Assistance Request (Form OMB-02)**

Policy requires that all injured employees assisted in informal or formal dispute resolution proceedings sign an Ombudsman Assistance Request (Form OMB-02).

The Ombudsman Assistance Request Forms in 17 of the 113 working folders in the sample could not be located for review. Reasons for their absence were not determined.



**Recommendations:**

The required use of the Ombudsman Assistance Request (Form OMB-02), or the recently developed Ombudsman Waiver Request (Form OMB-09) should be emphasized in staff meetings and training.

**Management Response:**

Management is encouraged by the increase in compliance, but will continue to emphasize that the Ombudsman Assistance Request forms are required in each working folder. The Director of the Ombudsman Program had a meeting with the Ombudsman Supervisors, Ombudsman Leads and the auditor to discuss the Ombudsman Assistance Request form findings on July 22, 2010. Management believes this exercise served as additional training that will increase the staff's awareness of procedures and the importance of the Ombudsman Assistance Request form.

In addition, the Ombudsman Program is working closely with the Quality Assurance Program to improve compliance with this requirement.

**Issue 3 – Change of Ombudsman (Form OMB-05)**

Policy requires that an Ombudsman be assigned to each injured employee assisted by the agency. If the assigned Ombudsman is not available for an injured employee's proceeding or appointment, the injured employee can choose to have the proceeding rescheduled to a date on which the Ombudsman is available, or request another Ombudsman. Effective August 2008, the agency began requiring that if the injured employee elects to have another Ombudsman assigned, a Change of Ombudsman (Form OMB-05) should be completed, and signed by the injured employee.

Of cases in the sample in which Ombudsmen were changed after August 2008, seven did not include the required Change of Ombudsman (Form OMB-05). This is a significant improvement over the results in the previous report.

**Recommendations:**

Management should continue to emphasize the importance of the Change of Ombudsman form.



**Management Response:**

Management is pleased by the increase in compliance, but will continue to emphasize that the Change of Ombudsman form is required in each working folder where an Ombudsman has been changed.

**Issue 4 – Identification of Disputed Issues by Use of DRCD Inquiry Code “ODI”**

The agency issued a directive on July 14, 2009, to use a new DRCD Inquiry Code “ODI” to identify each disputed issue in a Workers’ Compensation claim. A total of 40 of the 113 cases sampled did not contain identification of disputed issues by using the DRCD Inquiry Code “ODI”.

**Recommendations:**

Management should continue to emphasize the importance of the DRCD Inquiry Code “ODI” for identification of disputed issues.

**Management Response:**

Management appreciates the recommendation and is working diligently to implement it. Management has issued a directive to begin the use of the Dispute Tracking Sheet effective September 1, 2009. The agency lacked a computer system to monitor disputed issues prior to a proceeding. The Dispute Tracking Sheet, in part, was created to identify and monitor each disputed issue in a Workers Compensation Claim.

In addition, management has designed and delivered several training sessions offering various scenarios whereby staff uses the Dispute Tracking Sheet. Management has developed a protocol where staff are monitored and reminded to use the Dispute Tracking Sheet and appropriate ODI Codes. Management believes this protocol ensures compliance with agency directives and that it should be used as a targeted training tool for staff who have some uncertainty about the ODI requirement.

**Issue 5 – Employee’s Claim for Compensation for a Work-Related Injury or Occupational Disease (Form DWC-041)**

In Texas, employees protect their rights by filing an Employee’s Claim for a Work-Related Injury or Occupational Disease (Form DWC-041) within one year of the date of injury or within one year from the date the employee knew or should have known the injury or disease was work related.





A total of 48 injured employee cases in the sample of injured employee files and the electronic documents in TxComp did not contain a facsimile of the Form DWC-041. In the other 65 cases there were copies of the form, either in the Working Folders or in the electronic documents in TxComp. Although staff urges the injured employees to file this form, and in many cases assists them in completing the form, many injured employees are not filing the form with DWC. In addition, several cases did not have indications on the Working Folder Checklist that the form had been reviewed.

Injured employees may not be following DWC rules.

Failure to submit the Form DWC-041 could weaken the injured employee's position in benefit disputes.

### **Recommendations:**

Management should require that Ombudsmen assist the injured employees in completing the Form DWC-041 and actually file the form on behalf of the injured employee by hand delivering it to staff in the DWC field office.

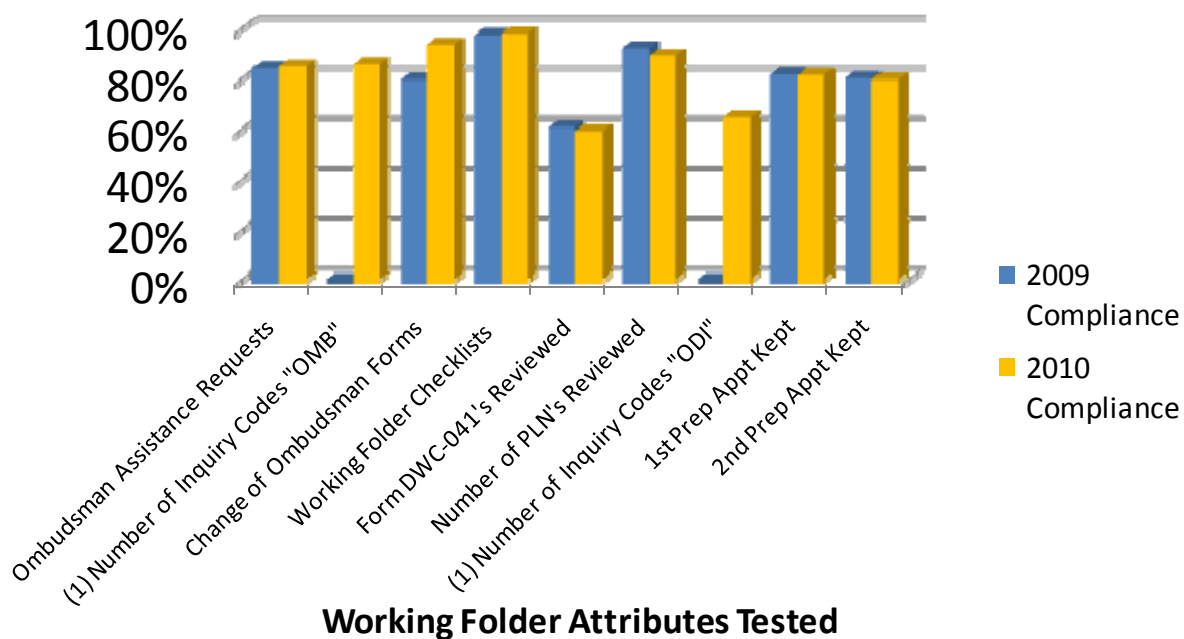
### **Management Response:**

Management appreciates the recommendation and is working diligently to improve the submission of Form DWC-041. As a result of the last audit, the Ombudsman Program had concerns about the disputed issues that could be raised by the carrier when filing a Form DWC-041 in every case. We are in the process of revising the Working Folder Checklist to include possible outcomes when reviewing whether the Form DWC-041 has been filed. At the annual OIEC Conference in June 2010, management met with the Ombudsman Program and discussed the effects of filing a Form DWC-041 in every case. As a result of several meetings, management has reviewed and modified the checklist to reflect the different outcomes when reviewing a Form DWC-041.



## APPENDIX 1

### Ombudsman Working Folder Compliance Rates



Note (1) The use of Inquiry Codes "OMB" and "ODI" were not required during the 2009