

# Lex and Verum

## The National Association of Workers' Compensation Judiciary



Number XXVIII, December 2011

### President's Message

By Hon. Ellen Lorenzen, President, NAWCJ

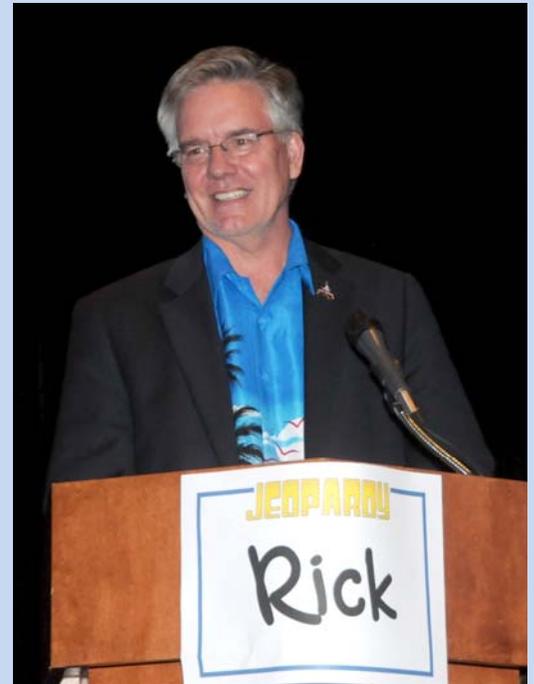
Corny as it sounds, I try to make a real effort at Thanksgiving to make a point of appreciating what I have. So here is what was going through my head as I cooked:

I am so grateful I have a job I really enjoy. In years gone by, I lived my days, litigating cases, running an office, supervising support staff, keeping an eye on the work product of associates, marketing new clients and trying to make both my malpractice carrier and my banker happy. As a result, I spent a lot of Sunday nights massaging that knot in my stomach. Now I get to take testimony, evaluate evidence, research precedent and write (which I love to do, although I will never write the great American novel). Not all my cases are fun, not all my decisions are easy. But I love what I do and that makes the hard days a lot easier to handle.

I get to work in a collegial atmosphere. Gone are the days when I faced unhappy meetings with partners to discuss who had not brought in any new clients or who had not billed enough hours or who was responsible for handling the difficult case or client. Now I am fortunate to have two other judges and three mediators in my office who cheerfully tolerate my barging into their offices and asking for help to make a forest out of all those trees. And I have 30 other judges in other office I can turn to for their input as well. I find it a real blessing to be able to have access to so many fine minds and trial notebooks. However, it does not stop with my fellow Florida judges. Now with NAWCJ, I have judges all across the country I can go to.

Lucky me, I work in an agency that fully supports the use of technology and provides me with great tech support. I am probably at the bottom of the list when it comes to people who understand computers (I once plugged my data cable into a phone jack and then had to call for help when I could not get on the network!) but my agency has made sure that I have very patient instructors who walk me through the steps to correct whatever problem I have created. When I asked if it were possible to get a voice activated dictation program, I was told, "Yes." When I asked if it were possible to put a second monitor in my office, I was told, "Yes." When I asked if it were possible to put a second monitor in my hearing room, I was told, "Yes." When I asked if I could have an I-Pad....well, I'm still grateful for the pad of paper with an eye on it that Judge Langham gave me.

I am thankful that both judges who are in charge of what I do understand the importance of judicial independence. Never have I felt pressured to decide an issue one way or the other by either Judge Cohen or Judge Langham.



Georgia Commissioner Richard Thompson won on Jeopardy at NAWCJ Judiciary College 2011

Continued, Page 2.

# “Second Fridays” Returns, Free Educational Programs from the NAWCJ

December 9, 2011 (12:00 p.m. Eastern)

Dr. Elizabeth H. Maples  
Harmony in the Workplace.

This presentation will provide simple, effective ways to apply positive change in the workplace. We will discuss tools to determine personality types and how to communicate and collaborate with people according to their personality type. You have identified a personality type – now what? Use effective tools to: listen effectively, communicate well and search for signs to create and promote harmony in the workplace.

January 13, 2012 (12:00 p.m. Eastern)

Dr. Ray Harbison  
Evidence Based Science for  
Causation Analysis

February 10, 2012 (12:00 p.m. Eastern)

Rafael Gonzalez  
The Center for Medicare Set-aside  
Medicare set-aside update

March 9, 2012 (12:00 p.m. Eastern)

Dr. Steve Boyd  
Effective public speaking

April 13, 2012 (12:00 p.m. Eastern)

David Dreszer, Esq.  
Cultural Diversity

Make plans today to  
tune-in

Dial 888.808.6959, conference 889675

*“President’s Message, from Page 1.*

Even when I wrote an order, early in my first appointment, taking on the practices of very prominent law firm, I never heard even the faintest suggestion from the then Deputy Chief Judge Stephens, who came under personal attack because of my ruling, that he wished I had talked to him before entering my order.

I also work in an agency that has its own funding source and is not dependent on tax revenues. Until two years ago, I never really appreciated how much easier it is for me to do my job because we have stable funding. It seems that almost every edition of the Florida Bar News has an article about the shortage of funding for the state court system and the latest emergency request that has been made to the legislature for short-term financing. While our agency lost employees this year because of budget cuts, I know the state court system has had it much worse and I thank the insurance carriers and self-insureds in the state of Florida who are not pushing hard to reduce their assessment even more than it has been in the past.

And, I am thankful to all of you. It is all too easy to become wrapped up in the day to day minutiae and never realize that there is a great big world out there. But all of you keep me grounded and remind me that what I am doing is part of a much bigger picture. We may not handle constitutional issues or cases taking away someone’s life or liberty. But, we do have an impact on a lot of individuals and on the flow of commerce and I truly appreciate being part of a national group which is trying to make that process work better for everyone involved. On that topic, NAWCJ sponsors monthly call-in programs, usually on the second Friday of each month. In December our speaker will be Dr. Elizabeth Maples who will talk to us about how to work well together. Even if we did not have staff to manage, we have to gently manage attorneys and their clients every day, so please try to call in for this one.

So I hope you all had as good a Thanksgiving as I had. As always, contact me at [Ellen\\_Lorenzen@DOAH.state.fl.us](mailto:Ellen_Lorenzen@DOAH.state.fl.us).



*The Florida Bar Workers’ compensation Section hosted all the judges for a luncheon at Judiciary College 2011*

# NIOSH on STRESS...At Work

The nature of work is changing at whirlwind speed. Perhaps now more than ever before, job stress poses a threat to the health of workers and, in turn, to the health organizations. Through its research program in job stress and through educational materials such as this booklet, the National Institute of Occupational Safety and Health (NIOSH) is committed to providing organizations with knowledge to reduce this threat. This publication highlights knowledge about the causes of stress at work and outlines steps that can be taken to prevent job stress.

## Stress in Today's Workplace

The longer he waited, the more David worried. For weeks he had been plagued by aching muscles, loss of appetite, restless sleep, and a complete sense of exhaustion. At first he tried to ignore these problems, but eventually he became so short tempered and irritable that his wife insisted he get a checkup. Now, sitting in the doctor's office and wondering what the verdict would be, he didn't even notice when Theresa took the seat beside him. They had been good friends when she worked in the front office at the plant, but he hadn't seen her since she left three years ago to take a job as a customer service representative. Her gentle poke in the ribs brought him around, and within minutes they were talking and gossiping as if she had never left.

"You got out just in time," he told her. "Since the reorganization, nobody feels safe. It used to be that as long as you did your work, you had a job. That's not for sure anymore. They expect the same production rates even though two guys are now doing the work of three. We're so backed up I'm working twelve-hour shifts six days a week. I swear I hear those machines humming in my sleep. Guys are calling in sick just to get a break. Morale is so bad they're talking about bringing in some consultants to figure out a better way to get the job done."

"Well, I really miss you guys," she said. "I'm afraid I jumped from the frying pan into the fire. In my new job, the computer routes the calls and they never stop. I even have to schedule my bathroom breaks. All I hear the whole day are complaints from unhappy customers. I try to be helpful and sympathetic, but I can't promise anything without getting my boss's approval. Most of the time I'm caught between what the customer wants and company policy. I'm not sure who I'm supposed to keep happy. The other reps are so uptight and tense they don't even talk to one another. We all go to our own little cubicles and stay there until quitting time. To make matters worse, my mother's health is deteriorating. If only I could use some of my sick time to look after her. No wonder I'm in here with migraine headaches and high blood pressure. A lot of the reps are seeing the employee assistance counselor and taking stress management classes, which seems to help. But sooner or later, someone will have to make some changes in the way the place is run."

## What Workers Say About Stress on the Job

40%

Percentage of workers who report their job is "very or extremely stressful." Survey by Northwestern National Life.

26%

Percentage of workers who report they are "often or very often burned out or stressed by their work. Survey by the Families and Work Institute.

29%

Percentage of workers who report they feel "quite a bit or extremely stressed at work." Survey by Yale University.

## Scope of Stress in the American Workplace

David's and Theresa's stories are unfortunate but not unusual. Job stress has become a common and costly problem in the American workplace, leaving few workers untouched. For example, studies report the following:

- One-fourth of employees view their jobs as the number one stressor in their lives.  
*-Northwestern National Life*
- Three-fourths of employees believe the worker has more on-the-job stress than a generation ago.  
*-Princeton Survey Research Associates*
- Problems at work are more strongly associated with health complaints than are any other life stressor-more so than even financial problems or family problems.  
*-St. Paul Fire and Marine Insurance Co.*

*Continued, Page 5.*

# NAWCJ Judicial College 2012

August 19 through 22, 2012

Up to Twenty-one Hours of Judicial Education available for only \$200.00!

Judiciary College 2012 is the product of extensive efforts of our Curriculum committee:

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Florida Office of Judges of Compensation Claims

Hon. Heather Leslie

D.C. Department of Employment Services

Hon. James Szablewicz

Virginia Workers' Compensation Commission



## Professor Terrell RETURNS!

We are privileged to have Timothy P. Terrell, a former Fulbright Scholar, and Professor of Law at Emory University as a key speaker at the NAWCJ Judiciary College 2012. Professor Terrell presented at the inaugural College to rave reviews. He brings the topic of effective judicial writing and drafting to life! He will lecture on writing and editing effectively, with particular emphasis on the trial order. He is a dynamic speaker and dedicated scholar of the law. His works include "Rethinking Professionalism" and "When Duty Calls" both published in the Emory Law Journal (1992); Thinking Like a Writer: A Lawyer's Guide to Effective Writing and Editing (Clark Boardman Company, 1992); "Transsovereignty: Separating Human Rights from Traditional Sovereignty and the Implications for the Ethics of International Law Practice," Fordham International Law Journal (1994); "A Tour of the Whine Country: The Challenge of Extending the Tenets of Lawyer Professionalism to Law Professors and Law Students," Washburn Law Journal (1994); "Ethics with an Attitude," Law and Contemporary Problems (1996); "Professionalism as Trust: The Unique Internal Legal Role of the Corporate General Counsel," Emory Law Journal (1997) and several articles on legal writing and editing for West Publishing Company's Perspective periodical.

*Save the Dates*

**August 19 through 22,  
2012**

## Bring on the Roundtables!

Judiciary College 2012 will include roundtable discussions on:

Appellate review of Comp Decisions

Introduction to Social Media

Effective Use of Judicial Technology

## More Information At:

[www.NAWCJ.org](http://www.NAWCJ.org)

[www.FWCiweb.org](http://www.FWCiweb.org)

# NAWCJ

## National Association of Worker's Compensation Judiciary

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"Stress at Work," from P.3

Fortunately, research on job stress has greatly expanded in recent years. But in spite of this attention, confusion remains about the causes, effects, and prevention of job stress. This article summarizes what is known about job stress and what can be done about it.

### What Is Job Stress?

Job stress can be defined as the harmful physical and emotional responses that occur when the requirements of the job do not match the capabilities, resources, or needs of the worker. Job stress can lead to poor health and even injury. The concept of job stress is often confused with challenge, but these concepts are not the same.

Challenge energizes us psychologically and physically, and it motivates us to learn new skills and master our jobs. When a challenge is met, we feel relaxed and satisfied. Thus, challenge is an important ingredient for healthy and productive work. The importance of challenge in our work lives is probably what people are referring to when they say "a little bit of stress is good for you.

But for David and Theresa, the situation is different-the challenge has turned into job demands that cannot be met, relaxation has turned to exhaustion, and a sense of satisfaction has turned into feelings of stress. In short, the stage is set for illness, injury, and job failure.

### What are the Causes of Job Stress?

Nearly everyone agrees that job stress results from the interaction of the worker and the conditions of work. Views differ, however, on the importance of *worker characteristics* versus *working conditions* as the primary cause of job stress. These differing viewpoints are important because they suggest different ways to prevent stress at work.

According to one school of thought, differences in individual characteristics such as personality and coping style are most important in predicting whether certain job conditions will result in stress-in other words, what is stressful for one person may not be a problem for someone else. This viewpoint leads to prevention strategies that focus on workers and ways to help them cope with demanding job conditions.

Although the importance of individual differences cannot be ignored, scientific evidence suggests that certain working conditions are stressful to most people. The excessive workload demands and conflicting expectations described in David's and Theresa's stories are good examples. Such evidence argues for a greater emphasis on working conditions as the key source of job stress, and for job redesign as a primary prevention strategy.

In 1960, a Michigan court upheld a compensation claim by an automotive assembly line worker who had difficulty keeping up with the pressures of the production line. To avoid falling behind, he tried to work on several assemblies at the same time and often got parts mixed up. As a result, he was subjected to repeated criticism from the foreman. Eventually he suffered a psychological breakdown.

By 1995, nearly one-half of the States allowed worker compensation claims for emotional disorders and disability due to stress on the job [note, however, that courts are reluctant to uphold claims for what can be considered ordinary working conditions or just hard work]. -1995 Workers Compensation Yearbook

### NIOSH Approach to Job Stress

On the basis of experience and research, NIOSH favors the view that working conditions play a primary role in causing job stress. However, the role of individual factors is not ignored.

According to the NIOSH view, exposure to stressful working conditions (called job stressors) can have a direct influence on worker safety and health. But as shown below, individual and other situational factors can intervene to strengthen or weaken this influence.

*Continued, Page 6.*

Theresa's need to care for her ill mother is an increasingly common example of an individual or situational factor that may intensify the effects of stressful working conditions. Examples of individual and situational factors that can help to reduce the effects of stressful working conditions include the following:

- Balance between work and family or personal life
- A support network of friends and coworkers
- A relaxed and positive outlook

### Job Conditions That May Lead to Stress

**The Design of Tasks.** Heavy workload, infrequent rest breaks, long work hours and shift work; hectic and routine tasks that have little inherent meaning, do not utilize workers' skills, and provide little sense of control.

*Example:* David works to the point of exhaustion. Theresa is tied to the computer, allowing little room for flexibility, self-initiative, or rest.

**Management Style.** Lack of participation by workers in decision-making, poor communication in the organization, lack of family-friendly policies. *Example:* Theresa needs to get the boss's approval for everything, and the company is insensitive to her family needs.

**Interpersonal Relationships.** Poor social environment and lack of support or help from coworkers and supervisors. *Example:* Theresa's physical isolation reduces her opportunities to interact with other workers or receive help from them.

**Work Roles.** Conflicting or uncertain job expectations, too much responsibility, too many "hats to wear." *Example:* Theresa is often caught in a difficult situation trying to satisfy both the customer's needs and the company's expectations.

**Career Concerns.** Job insecurity and lack of opportunity for growth, advancement, or promotion; rapid changes for which workers are unprepared. *Example:* Since the reorganization at David's plant, everyone is worried about their future with the company and what will happen next.

**Environmental Conditions.** Unpleasant or dangerous physical conditions such as crowding, noise, air pollution, or ergonomic problems. *Example:* David is exposed to constant noise at work.

### Job Stress and Health

Stress sets off an alarm in the brain, which responds by preparing the body for defensive action. The nervous system is aroused and hormones are released to sharpen the senses, quicken the pulse, deepen respiration, and tense the muscles. This response (sometimes called the fight or flight response) is important because it helps us defend against threatening situations. The response is preprogrammed biologically. Everyone responds in much the same way, regardless of whether the stressful situation is at work or home.

Short-lived or infrequent episodes of stress pose little risk. But when stressful situations go unresolved, the body is kept in a constant state of activation, which increases the rate of wear and tear to biological systems. Ultimately, fatigue or damage results, and the ability of the body to repair and defend itself can become seriously compromised. As a result, the risk of injury or disease escalates.

In the past 20 years, many studies have looked at the relationship between job stress and a variety of ailments. Mood and sleep disturbances, upset stomach and headache, and disturbed relationships with family and friends are examples of stress-related problems that are quick to develop and are commonly seen in these studies. These early signs of job stress are usually easy to recognize. But the effects of job stress on chronic diseases are more difficult to see because chronic diseases take a long time to develop and can be influenced by many factors other than stress. Nonetheless, evidence is rapidly accumulating to suggest that stress plays an important role in several types of chronic health problems-especially cardiovascular disease, musculoskeletal disorders, and psychological disorders.

Health care expenditures are nearly 50% greater for workers who report high levels of stress.

*-Journal of Occupational and Environmental Medicine*

*Continued, Page 7.*

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## Say What!?!

**Lawyer:** "Doctor, did you say he was shot in the woods?"

**Witness:** "No, I said he was shot in the lumbar region."

*"Stress at Work," from P.6*

## Job Stress and Health: What the Research Tells Us

### Cardiovascular Disease

Many studies suggest that psychologically demanding jobs that allow employees little control over the work process increase the risk of cardiovascular disease.

### Musculoskeletal Disorders

On the basis of research by NIOSH and many other organizations, it is widely believed that job stress increases the risk for development of back and upper- extremity musculoskeletal disorders.

### Psychological Disorders

Several studies suggest that differences in rates of mental health problems (such as depression and burnout) for various occupations are due partly to differences in job stress levels. (Economic and lifestyle differences between occupations may also contribute to some of these problems.)

### Workplace Injury

Although more study is needed, there is a growing concern that stressful working conditions interfere with safe work practices and set the stage for injuries at work.

### Suicide, Cancer, Ulcers, and Impaired Immune Function

Some studies suggest a relationship between stressful working conditions and these health problems. However, more research is needed before firm conclusions can be drawn.

-Encyclopedia of Occupational Safety and Health

## Stress, Health, and Productivity

Some employers assume that stressful working conditions are a necessary evil-that companies must turn up the pressure on workers and set aside health concerns to remain productive and profitable in today's economy. But research findings challenge this belief. Studies show that stressful working conditions are actually associated with increased absenteeism, tardiness, and intentions by workers to quit their jobs-all of which have a negative effect on the bottom line. Recent studies of so-called healthy organizations suggest that policies benefiting worker health also benefit the bottom line. A healthy organization is defined as one that has low rates of illness, injury, and disability in its workforce and is also competitive in the marketplace.

NIOSH research has identified organizational characteristics associated with both healthy, low -stress work and high levels of productivity. Examples of these characteristics include the following:

- Recognition of employees for good work performance
- Opportunities for career development
- An organizational culture that values the individual worker
- Management actions that are consistent with organizational values

*Continued, Page.8.*

## Stress Prevention and Job Performance

St. Paul Fire and Marine Insurance Company conducted several studies on the effects of stress prevention programs in hospital settings. Program activities included (1) employee and management education on job stress, (2) changes in hospital policies and procedures to reduce organizational sources of stress, and (3) establishment of employee assistance programs.

In one study, the frequency of medication errors declined by 50% after prevention activities were implemented in a 700-bed hospital. In a second study, there was a 70% reduction in malpractice claims in 22 hospitals that implemented stress prevention activities. In contrast, there was no reduction in claims in a matched group of 22 hospitals that did not implement stress prevention activities. *-Journal of Applied Psychology*

According to data from the Bureau of Labor Statistics, workers who must take time off work because of stress, anxiety, or a related disorder will be off the job for about 20 days. *-Bureau of Labor Statistics*

## What Can Be Done About Job Stress?

The examples of Theresa and David illustrate two different approaches for dealing with stress at work.

**Stress Management.** Theresa's company is providing stress management training and an employee assistance program (EAP) to improve the ability of workers to cope with difficult work situations. Nearly one-half of large companies in the United States provide some type of stress management training for their workforces. Stress management programs teach workers about the nature and sources of stress, the effects of stress on health, and personal skills to reduce stress—for example, time management or relaxation exercises. (EAPs provide individual counseling for employees with both work and personal problems.) Stress management training may rapidly reduce stress symptoms such as anxiety and sleep disturbances; it also has the advantage of being inexpensive and easy to implement. However, stress management programs have two major disadvantages:

- The beneficial effects on stress symptoms are often short-lived.
- They often ignore important root causes of stress because they focus on the worker and not the environment.

**Organizational Change.** In contrast to stress management training and EAP programs, David's company is trying to reduce job stress by bringing in a consultant to recommend ways to improve working conditions. This approach is the most direct way to reduce stress at work. It involves the identification of stressful aspects of work (e.g., excessive workload, conflicting expectations) and the design of strategies to reduce or eliminate the identified stressors. The advantage of this approach is that it deals directly with the root causes of stress at work. However, managers are sometimes uncomfortable with this approach because it can involve changes in work routines or production schedules, or changes in the organizational structure. As a general rule, actions to reduce job stress should give top priority to organizational change to improve working conditions. But even the most conscientious efforts to improve working conditions are unlikely to eliminate stress completely for all workers. For this reason, a combination of organizational change and stress management is often the most useful approach for preventing stress at work.

## How to Change the Organization to Prevent Job Stress

- Ensure that the workload is in line with workers' capabilities and resources.
- Design jobs to provide meaning, stimulation, and opportunities for workers to use their skills.
- Clearly define workers' roles and responsibilities.
- Give workers opportunities to participate in decisions and actions affecting their jobs.
- Improve communications—reduce uncertainty about career development and future employment prospects.
- Provide opportunities for social interaction among workers.
- Establish work schedules that are compatible with demands and responsibilities outside the job.

*-American Psychologist*

## Preventing Job Stress - Getting Started

No standardized approaches or simple "how to" manuals exist for developing a stress prevention program. Program design and appropriate solutions will be influenced by several factors—the size and complexity of the organization, available resources, and especially the unique types of stress problems faced by the organization. In David's company, for example, the main problem is work overload. Theresa, on the other hand, is bothered by difficult interactions with the public and an inflexible work schedule.

*Continued, Page.9.*

Although it is not possible to give a universal prescription for preventing stress at work, it is possible to offer guidelines on the process of stress prevention in organizations. In all situations, the process for stress prevention programs involves three distinct steps: problem identification, intervention, and evaluation. These steps are outlined beginning on page 17. For this process to succeed, organizations need to be adequately prepared. At a minimum, preparation for a stress prevention program should include the following:

- Building general awareness about job stress (causes, costs, and control)
- Securing top management commitment and support for the program
- Incorporating employee input and involvement in all phases of the program
- Establishing the technical capacity to conduct the program (e.g., specialized training for in-house staff or use of job stress consultants)

Bringing workers or workers and managers together in a committee or problem-solving group may be an especially useful approach for developing a stress prevention program. Research has shown these participatory efforts to be effective in dealing with ergonomic problems in the workplace, partly because they capitalize on workers' firsthand knowledge of hazards encountered in their jobs. However, when forming such working groups, care must be taken to be sure that they are in compliance with current labor laws.

## Steps Toward Prevention

Low morale, health and job complaints, and employee turnover often provide the first signs of job stress. But sometimes there are no clues, especially if employees are fearful of losing their jobs. Lack of obvious or widespread signs is not a good reason to dismiss concerns about job stress or minimize the importance of a prevention program.

**Step 1 — Identify the Problem.** The best method to explore the scope and source of a suspected stress problem in an organization depends partly on the size of the organization and the available resources. Group discussions among managers, labor representatives, and employees can provide rich sources of information. Such discussions may be all that is needed to track down and remedy stress problems in a small company. In a larger organization, such discussions can be used to help design formal surveys for gathering input about stressful job conditions from large numbers of employees.

- Hold group discussions with employees.
- Design an employee survey.
- Measure employee perceptions of job conditions, stress, health, and satisfaction.
- Collect objective data.
- Analyze data to identify problem locations and stressful job conditions.

*Continued, Page10.*

## Upcoming Conferences:

The 19th annual California Division of Workers' Compensation educational conference, February 23-24, 2012, Los Angeles CA and March 5-6, 2012 Oakland, CA.

[http://www.dir.ca.gov/DWC/educonf18/DWC\\_EducationalConference.html](http://www.dir.ca.gov/DWC/educonf18/DWC_EducationalConference.html)

Workers' Compensation Committee 2012 Midwinter Seminar and Conference, March 8-10, 2012, Westin Riverwalk, San Antonio, Texas.

<http://apps.americanbar.org/dch/committee.cfm?com=L122000>

31st Annual New Mexico Workers' Compensation Association Conference, , Albuquerque, NM, May 16-18, 2012, \$tba.  
[http://www.wcaofnm.com/Annual\\_Events-2012\\_Annual\\_Conference/c23\\_28/p40/2012\\_Annual\\_Conference\\_MEMBER\\_Registration/product\\_info.html?osCsid=84fd829fdcb45d5cfd52c1e93cdc9ad0](http://www.wcaofnm.com/Annual_Events-2012_Annual_Conference/c23_28/p40/2012_Annual_Conference_MEMBER_Registration/product_info.html?osCsid=84fd829fdcb45d5cfd52c1e93cdc9ad0)

64th Annual SAWCA Convention, Homestead, Hot Springs, Virginia, July 9-13, 2012, \$tba.

<http://store.sawca.com/>

These programs are not sponsored or endorsed by the NAWCJ, but are noted here for information.

## Some Thoughts:

“There are no failures – just experiences and your reactions to them”

Tom Krause

“In matters of truth and justice, there is no difference between large and small problems, for issues concerning the treatment of people are all the same.”

Albert Einstein

Regardless of the method used to collect data, information should be obtained about employee perceptions of their job conditions and perceived levels of stress, health, and satisfaction. The list of job conditions that may lead to stress and the warning signs and effects of stress provide good starting points for deciding what information to collect.

Objective measures such as absenteeism, illness and turnover rates, or performance problems can also be examined to gauge the presence and scope of job stress. However, these measures are only rough indicators of job stress-at best. Data from discussions, surveys, and other sources should be summarized and analyzed to answer questions about the location of a stress problem and job conditions that may be responsible—for example, are problems present throughout the organization or confined to single departments or specific jobs? Survey design, data analysis, and other aspects of a stress prevention program may require the help of experts from a local university or consulting firm. However, overall authority for the prevention program should remain in the organization.

**Step 2 — Design and Implement Interventions.** Once the sources of stress at work have been identified and the scope of the problem is understood, the stage is set for design and implementation of an intervention strategy. In small organizations, the informal discussions that helped identify stress problems may also produce fruitful ideas for prevention. In large organizations, a more formal process may be needed. Frequently, a team is asked to develop recommendations based on analysis of data from Step 1 and consultation with outside experts.

- Target source of stress for change.
- Propose and prioritize intervention strategies.
- Communicate planned interventions to employees.
- Implement Interventions.

Certain problems, such as a hostile work environment, may be pervasive in the organization and require company-wide interventions. Other problems such as excessive workload may exist only in some departments and thus require more narrow solutions such as redesign of the way a job is performed. Still other problems may be specific to certain employees and resistant to any kind of organizational change, calling instead for stress management or employee assistance interventions. Some interventions might be implemented rapidly (e.g., improved communication, stress management training), but others may require additional time to put into place (e.g., redesign of a manufacturing process).

**Step 3 — Evaluate the Interventions.** Evaluation is an essential step in the intervention process. Evaluation is necessary to determine whether the intervention is producing desired effects and whether changes in direction are needed. Time frames for evaluating interventions should be established. Interventions involving organizational change should receive both short- and long-term scrutiny. Short-term evaluations might be done quarterly to provide an early indication of program effectiveness or possible need for redirection. Many interventions produce initial effects that do not persist. Long-term evaluations are often conducted annually and are necessary to determine whether interventions produce lasting effects.

Evaluations should focus on the same types of information collected during the problem identification phase of the intervention, including information from employees about working conditions, levels of perceived stress, health problems, and satisfaction. Employee perceptions are usually the most sensitive measure of stressful working conditions and often provide the first indication of intervention effectiveness. Adding objective measures such as absenteeism and health care costs may also be useful. However, the effects of job stress interventions on such measures tend to be less clear-cut and can take a long time to appear.

The job stress prevention process does not end with evaluation. Rather, job stress prevention should be seen as a continuous process that uses evaluation data to refine or redirect the intervention strategy.

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The foregoing was originally published by the National Institute for Occupational Safety and Health, “NIOSH,” as Publication No. 99-101. The publication was prepared by a NIOSH working group: Steven Sauter - Lawrence Murphy - Michael Colligan - Naomi Swanson - Joseph Hurrell, Jr. - Frederick Scharf, Jr. - Raymond Sinclair Paula Grubb - Linda Goldenhar - Toni Alterman - Janet Johnston - Anne Hamilton - Julie Tisdale.

Injustice anywhere is a threat to justice everywhere.

Martin Luther King Jr., *Letter from Birmingham Jail*, April 16, 1963

# U.S. Debt Reduction and the Impact on Workers' Compensation Programs

Jon L. Gelman

The "Super Committee" of the US Congress is mandated to set forth a proposal for debt reduction by November 30, 2012. Some of the proposals may impact the nations' workers' compensation in a big way.

The proposals include extending premium raises for Parts B and D; changing the retirement age from 65 to 67; establishing a permanent "Doc Fix" and lower medical provider costs; lower the costs for durable goods and establish a cost limiting structure for prescription drugs. All of these suggested recommendations will potentially trigger changes in workers' compensation benefits and administrative procedures.

As more dollars are sought from entitlement programs to shore up the national debt, the integrated benefit program of workers' compensation will require modification as to the amount and duration of benefits as well as the cost.

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# Florida First District Court of Appeal Issues Decision in Keeton, the Oral Argument at Judiciary College 2012

Attendees at the National Judiciary College 2012 attended the oral argument in Keeton v. Kentucky Fried Chicken, a dispute regarding conflicting medical evidence and the controversial Florida mandate that medical conflicts will be resolved by an "expert medical advisor," or "EMA."

The provision has been a significant complication for the litigation process in Florida. The Judge of Compensation Claims lacks discretion in whether to appoint an EMA, so long as the medical conflict is brought to the Judge's attention in a timely manner. Originally, this statutory provision was envisioned as a method to scientifically break the tie between medical providers, presumably one for the carrier or employer and one for the injured worker.

The conflict in Keeton, however, was between the authorized treating physician (chosen by the employer) and an independent medical examiner likewise selected by the employer. The injured worker argued that this was not a "conflict" as contemplated by the statute, as both of these providers were on the employer's side of the case.

The trial judge held the application of mandatory appointment of an EMA was explicit and unambiguous, and ordered the EMA. The Court held oral argument at the NAWCJ College 2012 and affirmed. The opinion is here.

<http://opinions.1dca.org/written/opinions2011/11-16-2011/10-5789.pdf>

## Workers' Comp Resources

National Association of Workers' Compensation  
Judiciary  
[www.NAWJC.org](http://www.NAWJC.org)

Judge Tom Talks  
<http://judgetom.blogspot.com/>

Florida Workers' Compensation Institute  
[www.fwciweb.org](http://www.fwciweb.org)

Judge Torrey  
<http://www.davetorrey.info/>

WorkCompCentral  
[www.workcompcentral.com](http://www.workcompcentral.com)

Florida Mediation Institute  
[www.freewebs.com/mediationinstitute/](http://www.freewebs.com/mediationinstitute/)

# California -- Panel Questions Painkillers' Affect on Permanent Disability and Work Restrictions:

California State Compensation Insurance Fund is disputing a panel decision calling for parties to develop the record on whether an applicant's hefty painkiller dosage could impact her permanent disability and work restrictions.

The case of *Vilma Tentnowski v. Perotti & Carrade (SCIF)* revolves around the question of whether the parties have enough evidence to decipher how the applicant's daily use of prescription painkillers is affecting her ability to work.

An Oct. 3 panel decision remanded the case back to the workers' compensation judge to allow the two agreed medical evaluators (AMEs) on the case to further analyze and comment upon the effects of Tentnowski's prescriptions upon her permanent disability, work restrictions, and psychiatric disability. Commissioner Deidra Lowe dissented against Commissioners Ronnie Caplane and Alfonso Moresi, contending that the evidentiary record had enough evidence on that issue to affirm the workers' compensation judge's 95% permanent disability award to Tentnowski.

Since then, attorneys at State Compensation Insurance Fund have "reconned the recon," by filing a petition for reconsideration of the panel decision that is somewhat similar to Lowe's dissent. Emily Gorin, a spokesperson for State Fund, said the insurer anticipates a decision by Dec. 23. The controversial question of whether the record needs further development emanated from the medical reports filed by Dr. Mark Shelub and Dr. Stephen S. Schneider, the two AMEs on the case. Shelub, an orthopedist, recommended restrictions that led to an 86% PD rating from the Disability Evaluation Unit (DEU). Schneider, a psychiatrist, diagnosed a 39% psychiatric disability. After apportionment, the workers' compensation judge concluded that Tentnowski had a 95% PPD rating.

Tentnowski petitioned for reconsideration, challenging her PD rating, temporary total disability rate, and attorney fee commutation. On reconsideration, the WCAB pointed out that Shelub's 2009 medical report describing the applicant's work restrictions did not state how Tentnowski's prescriptions affected her work restrictions. Yet, in a December 2008 report, Shelub opined that Tentnowski's high dosages of Oxycontin would bar her from working a 40-hour week.

The WCAB panel noted that Tentnowski's physicians have since increased her prescriptions to 32 milligrams of Exalgo (hydromorphone) a day, and Dilaudid every two hours. "In order to clarify the issue of permanent disability, we conclude that further development of the medical record is necessary to allow Dr. Shelub to issue a supplemental report which addresses applicant's current medication usage, and the effect of that issue, if any, on Dr. Shelub's opinion of applicant's restrictions and permanent disability," Commissioner Moresi wrote. "Since the workers' compensation judge also relied on AME Schneider to determine psychiatric disability, Dr. Schneider likewise should be given an opportunity to comment on applicant's medication usage, and its effect, if any, on Dr. Schneider's assessment of her psychiatric disability."

Lowe's dissent stated that she disagreed that the medical record required further development, because Shelub's reports indicated that he had accounted for the amount of Oxycontin Tentnowski was regularly using at the time of the reports. Lowe also highlighted the fact that Schneider had also documented the applicant's prescription medications. "Since Dr. Schneider's Feb. 2, 2010, report took into account all of applicant's medications, and since this is the report the workers' compensation judge relied upon to determine psychiatric disability, there is no need for further development of the medical record regarding applicant's medication usage," Lowe wrote. "In summary, Dr. Schneider did not state that the effects of applicant's medications are disabling, but he did note that when applicant took the battery of psychological tests, she never manifested concentration, attention or comprehension problems."

State Fund filed a petition for reconsideration of the WCAB's decision on Oct. 24, and proffered three arguments:

- The record is complete and needs no further development.
- Labor Code 5502(d)(3) supersedes the WCAB's duty to develop the record, and required Tentnowski to show that evidence obtained after the master settlement conference was either not available, or could not have been discovered via due diligence.
- In the event that reconsideration is inappropriate, removal would be a suitable alternative.



# Experts Debate if Fee Schedules Best for Holding Drug Costs:

By Peter Mantius, Correspondent

BOSTON -- The state of Washington has held prescription drug costs to less than 6.5% of total medical costs by applying an aggressive reimbursement fee schedule and promoting the use of generics, the pharmacy manager of Washington's Department of Labor & Industries said on Wednesday. But state mandates requiring the use of generics and drug reimbursement fee schedules aren't the most potent public policy steps available for states seeking to limit prescription drug costs, according to Eileen Auen, chairwoman of PMSI, a Florida-based cost-containment company.

Auen said her company has found that strict controls on physician dispensing of drugs are a better bet for effective cost-cutting. Auen and Jaymie Mai, the Washington state official, presented their views on the opening day of the Workers' Compensation Research Institute's annual conference, which concludes today.

Mai said Washington's state Legislature enacted a prescription drug program in 2003. The state requires generics to be used when they are chemically the same as more expensive brand-name drugs. Even when no generic substitute is available, the program encourages the use of "preferred" generics with similar effects, based on the findings of a panel of experts. As a result, Mai said, brand-name drugs represent only 6% of reimbursements in Washington, well under half the median rate for 17 states studied by WCRI in 2005 and 2006.

In addition, only one brand-name drug made the Top 20 list of most reimbursed drugs in Washington. Washington also pays lower reimbursements than most other states. Mai said the "typical state" reimburses brand-name and generic drugs at the average wholesale price (plus a dispensing fee). Washington cuts 10% off that AWP price. Mai said the pharmaceutical industry has taken notice and tried to work around the program. "There have been challenges to our prescription drug program," she said. Industry reps have produced "preprinted prescription pads ... bussed in patients, written to legislators. We've see it all."

But Auen said the steps Mai touted have not shown to be particularly effective nationwide. She said 34 states have generic mandates, while 16 do not. A mandate "is not a bad thing, it just doesn't impact the outcome" because pharmacies have their own incentives to dispense generics. "Whether or not a state has a generic mandate doesn't really matter," Auen said. Tough fee schedules aren't cost-cutting magic bullets either, Auen said. The six states that have imposed pharmaceutical fee schedules have widely different average costs per prescription. Washington is the lowest of the six at \$85, the fourth-best average in the country. But four of the other states with fee schedules rank from 26 to 41 in average cost per prescription.

New York, for example, has an average prescription cost of \$145, and it ranks 41 nationally. California, Massachusetts and Montana also have imposed pharmacy fee schedules. Auen said states would do better pursuing public policies that restrict physician dispensing of prescription drugs. She said only seven states have passed laws that do that, but several others are considering it.

In Florida, Gov. Rick Scott signed legislation in June that bans physician dispensing of opioids. The legislation met with heavy resistance, Auen said. Mai said the state of Washington has relatively low rates of drug dispensing by physicians because "we won't pay beyond cost." "There is no incentive for physicians to dispense," he said.

The foregoing two pages are reprinted from Workcompcentral.com. The National Association of Workers' Compensation Judiciary acknowledges and thanks Workcompcentral.com for their commitment to the education of and collegiality among the various adjudicators of workers' compensation disputes across the country. Their gracious and continual support of the NAWCJ is appreciated.

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