



# OIEC QUARTERLY REVIEW

July - September 2010 (Issue 19)

## Letter from the Public Counsel

Dear Friends:

We have entered a new fiscal year and the Office of Injured Employee Counsel (OIEC) has been evaluating its past year's performance while looking ahead toward our future goals. Although OIEC is funded from the maintenance tax rather than the State's General Revenue, we continue to strive for fiscal responsibility in keeping with our statutory mission. We have reviewed our initiatives, processes, and structure, and we will be focusing on those that best fit our mission within our resources.

In keeping with that commitment, we have merged our Ombudsman Assistant Program into our Customer Service Division. This will allow cross training and enhance our ability to deliver more qualified assistance. We hope to continue promoting from within whenever possible. We believe the comprehensive experience of the newly promoted employees will translate into shorter training time for the new positions, making their services more effective for the agency and our customers.

We have broadened our public outreach initiatives to reach our customers. One initiative has established an excellent line of communication with the Mexican Consulate. OIEC has prepared a program to deliver to Mexican Consulate employees who assist injured Mexican citizens working in Texas. The program will educate them in workers' compensation law and OIEC's availability to assist them.

To focus on the future, OIEC's leadership met for its three-day Annual Leadership Conference. Topics included budget issues, the agency reorganization, public outreach, and conflict resolution. As a result, agency leaders returned to their teams with new insights into these important areas of responsibility. They will use that insight as they focus on the agency's priorities over the next fiscal year.

Sincerely,

Norman Darwin, Public Counsel

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# OIEC Submits Fiscal Year 2012-2013 Legislative Appropriations Request

OIEC's funding is determined by the regular State appropriation process. In August of every even-numbered year, all state agencies submit a Legislative Appropriations Request (LAR) that describes their funding requirements for the next biennium. The LAR is sent to various legislative agencies and committees, including the Legislative Budget Board, the Governor's Office, and legislative appropriation committees of both houses of the Texas Legislature. Generally, an agency's LAR cannot be more than its current funding. OIEC's request for fiscal year (FY) 2012-2013 totals \$14,762,130, which is \$776,954 (five percent) less than the \$15,539,084 that OIEC was funded for FY 2010-2011.



OIEC's funding mechanism is unique in two ways. First, OIEC is administratively attached to the Texas Department of Insurance (TDI). More than 92 percent of OIEC's budget is dedicated to salaries because many items (such as consumables and facilities) are provided by TDI and paid out of its budget. Second, OIEC's funding mechanism is self-leveling and is funded from the same operating account as TDI. The Texas Legislature appropriates funds from General Revenue (GR) Dedicated Account 36 to various agencies that participate in or contribute to the regulation of insurance, prevention of insurance loss, and the administration of workers' compensation. Both the Texas Insurance Code and

Texas Labor Code require that the maintenance taxes be set with the intention of collecting the revenue needed to fund authorized expenditures from Fund 36.

In January 2010, the Governor, Lieutenant Governor, and Speaker of the House requested each state agency to submit a plan identifying savings totaling five percent for the FY 2010-2011 biennium. Legislative leadership exempted OIEC from the five percent FY 2010-2011 budget reduction due to its unique funding mechanism but required that its baseline FY 2012-2013 LAR include the five percent reduction.

Many agencies request exceptional items in their LARs. An exceptional item is an expense not included in the original budget request but is exceptional enough in nature to warrant further discussion. It is requested separately from the baseline amount. OIEC's baseline amount for this biennium had to include a five percent reduction of last biennium's budget, even though OIEC was exempted from the FY 2010-2011 actual budget reduction. As a result, OIEC requested exceptional items for the items that had to be removed to reach the five percent reduction in this biennium's baseline request, including:

- \$316,954 for salaries and wages [i.e., six full-time equivalents (FTEs)];
- \$310,000 for outreach materials, statutorily mandated licenses/renewals, and certifications/re-certifications (including Workers' Compensation Adjuster's Licenses, Texas State Bar Licenses, CPA License for OIEC's Internal Auditor, and Senior Professional in Human Resources recertification);
- \$80,000 for travel necessary for dispute resolution proceedings, docketing coverage, and training; and
- \$70,000 in professional fees and services (including but not limited to defensive driving courses for employees that frequently travel, Employee Assistance Program services, and speakers/presenters invited to agency conferences and trainings regarding technical information for medical and indemnity dispute resolution).

As a part of the FY 2012-2013 LAR, agencies were also required to provide a supplemental schedule detailing how they would reduce their baseline request by an additional 10 percent. An additional 10 percent reduction would reduce OIEC's FY 2012-2013 appropriations by \$1,476,213. This would have a significant negative impact on the agency. The additional 10 percent budget reductions would result in a reduction-in-force of approximately 22.5 FTEs, which when coupled with the five percent reduction would result in a reduction-in-force of at least 28.5 FTEs. Travel would have to be reduced an additional \$100,000, which would further limit docketing coverage for dispute proceedings, Ombudsman observations, and agency training. It would also affect the agency's early intervention efforts in resolving disputes prior to an administrative proceeding. OIEC believes a *(continued on Page 2)*



## Legislative Appropriations Request (Continued)

decrease in OIEC's early intervention efforts would increase costs to Texas Department of Insurance, Division of Workers' Compensation's (TDI-DWC) and the State Office of Administrative Hearings' (SOAH) administrative dispute resolution process as more disputes would have to be adjudicated through their respective systems.

Preliminary legislative budget hearings have already begun, and the 82<sup>nd</sup> Session of the Texas Legislature begins in January 2011. The Legislature is mandated to balance the FY 2012-2013 Texas budget by September 1, 2011. Unfortunately, they are faced with a huge deficit that will make balancing the budget a challenge.

However, reducing OIEC's budget would have no fiscal impact on General Revenue. A reduction in appropriations would result in the maintenance tax being adjusted to collect less revenue. Legislative action would be necessary if additional revenue is required or to ensure the same level of funds necessary in certifying the amount of available revenue.

Should all the proposed budget cuts come to fruition, OIEC may face operational difficulties in the agency's 22 field offices and the four satellite offices located statewide. However, in light of the difficult economic climate, OIEC remains committed to fulfilling its mission to assist, educate, and advocate on behalf of the injured employees of Texas. ❖

## FY 2010 Annual Performance Measure Results

As part of the strategic planning process, agencies complete budget structures which include performance measures. Some highlights from the past year include:

- **Key measures.** OIEC had a significant improvement in meeting its key performance measure targets. In FY 2010, OIEC achieved 42 percent of the key performance measure targets, compared to FY 2009's achievement of 11 percent of the key measure targets.
- **All measures.** In FY 2010, OIEC achieved 56 percent of all measure (key and non-key) targets, which was the same percentage achieved in FY 2009.

For certain measures, OIEC does not have control over the variance of the targets. For example, the measure, "Number of Injured Employees Educated about their Rights and Responsibilities," depends on the number of injured employees who are sent the *Notice of Injured*

*Employee Rights and Responsibilities in the Workers' Compensation System* when they are injured. Due to the fewer injuries reported in FY 2010 than in previous years, OIEC was unable to meet this target.

A measure where OIEC experienced great success was in the "Number of Presentations Performed by OIEC." This is not a key measure; however, it is important that OIEC's customers have the opportunity to better understand OIEC's role and other aspects of the workers' compensation system through these presentations. The target for this measure was 65 presentations in FY 2010. OIEC exceeded expectations with 83 presentations.

Achieving these goals indicates higher levels of service for its customers. OIEC management and staff will continue to work toward the goal of meeting the performance measure targets for the next fiscal year. ❖

### Dispute Resolution

OIEC employees were very successful in resolving disputes prior to a TDI-DWC Benefit Dispute Resolution Proceeding. During FY 2010, OIEC resolved 58 percent of the 23,562 identified disputes!

## FY 2011

## Customer Satisfaction Survey



OIEC takes pride in the customer service it provides to the injured employees of Texas and has developed the FY 2011 Customer Satisfaction Survey to receive feedback about the quality of this service. The survey, available in English and Spanish, is to be taken by anyone that has had contact with OIEC in the past 12 months. This includes injured employees, beneficiaries, attorneys, adjusters, and health care providers.

The survey is available online on the OIEC Web site at [www.oiec.state.tx.us](http://www.oiec.state.tx.us), or can be accessed through the direct link <http://oiec2011css.questionpro.com>. A paper copy can be obtained at any OIEC field office if a customer does not have Internet access.

Nearly 50 surveys were completed in September, which was the first month the survey was available to customers. If you have had contact with OIEC in the past 12 months, please complete the FY 2011 Customer Satisfaction Survey so OIEC can use the information to continue improving its services. ❖



# Organizational Structure Changes Strengthen OIEC

OIEC is making some exciting changes in its organizational structure and employee duties which will streamline and improve service delivery. This reorganization impacts the agency in four ways: additions to the Customer Service Management Team, transfer of Quality Assurance Program employees and functions, additional Ombudsman Associate positions, and transition of Ombudsman Assistants to the Customer Service Division.

The Ombudsman Program's organizational structure (which includes a Director, Associate Directors, Supervisors, and a Coordinator) has proven successful, and through this reorganization, the same structure is being established for the Customer Service Division as well. As a result, two Associate Directors and a Coordinator will be added to the Customer Service Program.



Quality Assurance Section employees and functions are being transferred to other agency divisions where they can be better utilized. The field office reviews that were conducted by Quality Assurance will now be handled by each program's Associate Director. This will allow the program managers to more closely observe the implementation of agency procedures and determine their effectiveness. It will also provide opportunities for ongoing, detailed performance reviews and a proactive approach to addressing any concerns.

Ombudsman Program case development and assistance in proceedings remain at the core of OIEC's mission and recent data makes evident the need for additional staff in this area. Nine Ombudsman Associate positions were posted internally for the following field offices: Beaumont, Dallas, Fort Worth, Houston East, Houston West, Lubbock, and Weslaco. The need for new positions in other locations is being evaluated based on workload and office space. The new Ombudsman Associates will be promoted to Ombudsmen when they complete their training.

Traditionally, there have been Ombudsman Assistants to help Ombudsmen with administrative items. Over the past few years, Ombudsman Assistants have taken on the increased responsibility to directly assist customers. As these duties have increased, it was a natural fit for the Ombudsman Assistants to transition to Customer Service Representatives. This transition will positively affect operations as the Ombudsman Assistants' and Customer Service Representatives' duties can be evenly spread among more people, allowing more time to focus on direct customer service delivery. The Ombudsman Assistants will be transferred to the Customer Service Program where, after training, they will be upgraded to Customer Service Representatives III.

The new structure is anticipated to become effective November 1, 2010. ❖

## Question of the Quarter

**Q:** I was recently hurt at work but was told that my employer doesn't have workers' compensation insurance. Is that possible? I thought it was required for all businesses to have it.

**A:** Actually, it is possible. Texas employers (except for public entities) may choose whether to provide workers' compensation insurance coverage for their employees. It is not mandatory. If you are unsure about whether you are covered by workers' compensation, there is specific employer coverage information on the TDI-DWC Web site at [www.tdi.state.tx.us/wc/indexwc.html](http://www.tdi.state.tx.us/wc/indexwc.html), or you can contact an OIEC Customer Service Representative at 1-866-393-6432. If your employer does carry workers' compensation insurance, OIEC can help you with questions or disputes you may have about your claim.

## Missouri City Field Office Changes

Benefit Review Conferences, Contested Case Hearings and appointments with the OIEC Ombudsman will continue at the Missouri City Field Office location as scheduled. However, effective November 1, 2010, all other walk-in customer service will be provided by appointment only. Injured employees should call 1-800-252-7031 or 1-866-393-6432 for assistance with their workers' compensation claim or to make an appointment. ❖



## OIEC Participates in Mexican Consulate Activities

Several staff members worked with the Mexican Consulate to provide information about the agency and the workers' compensation system.

Earlier this year, the Mexican Consulate in Dallas requested an in-depth presentation for their counselors. Regional Staff Attorney Ann Reeves and Customer Service Director Nancy Larsen provided a detailed presentation about workers' compensation benefits, disputes, and processes, as well as the role of OIEC and the assistance it can provide.

OIEC also participated in the Mexican Consulate's Labor Rights Week activities held the first week of September 2010. The purpose of Labor Rights Week is to educate the community about their labor rights.

Various local, state, and federal agencies set up information booths and delivered brief presentations about their agencies' missions and the rights and responsibilities under the state and federal laws. OIEC conducted several

presentations throughout the week at the Consulate itself and at the alternate Mobil Consulate location ("Consulate on Wheels").

OIEC employees, Ombudsman Supervisor Jesus

Ortiz, Ombudsman Sandra Frausto-Gomez, and Ombudsman Assistant Vanessa Alabi, participated in Houston. Regional Staff Attorney Jose Luis Cuellar participated in the Dallas Metro Area. Altogether they conducted 19 presentations with a total of about 1,500 people attending. They also provided nearly 1,200 outreach folders and brochures to customers.

OIEC appreciates the invitation to participate in this educational event and hopes that the information will be helpful to its customers. ❖

## Emphasis on Leadership Continues



Communication, training, and information sharing are key components in the success of OIEC management and the agency as a whole. Public Counsel Norman Darwin has made the Annual Leadership Conference a priority to ensure managers have the information and training they need to succeed.

This year was no exception. Program Coordinators, Supervisors, and Executive Management traveled to Corpus Christi for the two-day conference. Agency-specific presentations included:

- OIEC's accomplishments for FY 2010 and FY 2011 goals;
- Employee Relations issues (including Personnel Performance Development, grievances, complaints, questions for the Ethics Committee, and American with Disabilities Act Accommodations); and
- Quality Assurance FY 2010 accomplishments (including field office reviews and results) and goals for the future in light of the upcoming reorganization.

The highlight was the presentation by Dr. Betty Gilmore, the Training Program Director at the Center for Public Policy Dispute Resolution at The University of Texas Law School. Her presentation provided insight into improving conflict management and relationships. She focused on motivation, intention, and behavior and how they affect actions. In particular, she discussed motivation under two conditions: when things are going well and during conflict.

The written and interactive exercises provided insight into each person's personality as they determined their Motivational Value System, identified by blue, red, green, or purple. This value system serves as the basis for choosing behavior, focusing attention, and perceiving one's self and others. The exercise was a lasting success as even today attendees will announce, "You're red," or "No, I'm blue!"

Dr. Gilmore's presentation was initially geared toward management and improving internal employee interactions, but the role play exercise took a serious tone when the group discussed the topic of injured employees' fears and concerns. Each participant shared a personal experience about a customer who expressed fear, pain, and frustration that resulted from their work-related injury. Dr. Gilmore was able to provide the attendees with potential solutions to take back to their staff and help them better handle these difficult circumstances.

Individual employee growth is critical to the success of OIEC as a whole. The 2010 Leadership Conference provided the team with new skills and information that will help them become better managers for their employees. With strong management and staff, OIEC is in an excellent position to achieve their FY 2011 goals. ❖



## Early Intervention Customer Service Successes



An injured employee's average weekly wage (generally, the average weekly amount they were earning when they were injured) is the basis for calculating any income benefits to which they are

entitled. Therefore, it is critical that the average weekly wage be correct so that all benefits are calculated and paid correctly. Even a small error can add up to a large amount over time, as was made evident in two recent Fort Worth Field Office claims handled by the OIEC Customer Service Representatives (CSR).

In the first case, an injured employee believed his average weekly wage was too low. During the early intervention process, the insurance carrier's adjuster told the CSR that he had not received a wage statement (used to determine average weekly wage) from the employer. The CSR was able to verify that the wage statement had been submitted immediately after the injury was reported. Given this information, the adjuster tracked down the document, adjusted the average weekly wage, and adjusted the temporary income benefit rate. The result: an increased rate of temporary income benefits from \$300 a week to more than \$500 per week! The future income benefits will now be accurate and the adjuster issued a substantial check for the past amount due the injured employee.

In the second case, the injured employee had initially received temporary income benefits of \$300 per week. The benefits were increased to nearly \$500 per week when the employer discontinued paying for insurance, which affected the average weekly wage. When the injured employee reached maximum medical improvement and an impairment rating was assessed, the adjuster began paying the impairment income benefits at the initial \$300 per week amount. When the injured employee questioned this, the adjuster stated it was the law. As part of the early intervention process, the CSR asked the adjuster to provide the particular law that supported the reduction in the impairment income benefits. After he researched the issue, the adjuster contacted the CSR and admitted he had made an error. As a result, he issued a payment for the past amount due and adjusted the amount of the checks to be paid in the future.

In each of these cases the CSR was able to obtain a quick resolution that provided substantial financial relief to the injured employee. ❖

## Case Study: Entitlement to Surgery

This case is unique in that it represents a rare instance when the decision of the Independent Review Organization (IRO) to deny surgery was overruled. Mr. R was an equipment operator. In 2003, he injured his low back from being jarred on a bumpy road. He was diagnosed with an L5-S1 disc herniation for which he underwent a microdiscectomy and, thereafter, returned to heavy work for the employer.

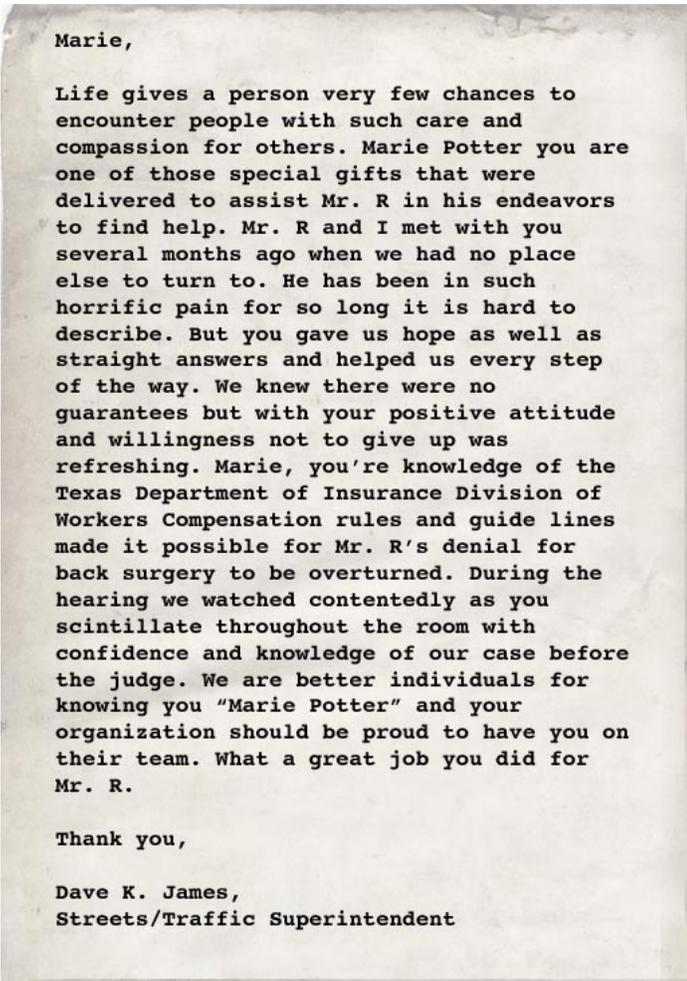
He developed numbness and tingling in his left foot and underwent an EMG in April 2004. The results of the EMG were normal; however, it was noted that the EMG did not test the affected muscles. The report also didn't note any other sensory loss, atrophy, or wasting. Mr. R's symptoms continued and a second EMG was performed, and the findings were consistent with S1 radiculopathy. An MRI was performed and the carrier peer reviewer concluded that Mr. R's condition was related to the original, compensable injury and that either a disc replacement procedure or discectomy and fusion were indicated for Mr. R's condition. Flexion and extension x-rays were performed and the results did not indicate any instability in Mr. R's spine. A microdiscectomy was proposed to alleviate Mr. R's radiculopathy. An MRI performed in 2009 showed S1 nerve root involvement, and Mr. R's surgeon stated that the proposed discectomy would be to treat Mr. R's radicular symptomology.



As the basis for its denial, the IRO claimed that Mr. R did not meet the selection criteria as recommended in the *Official Disability Guidelines (ODG)*. While it could be argued that under the 4<sup>th</sup> edition of the *American Medical Association Guides to the Evaluation of Permanent Impairment (AMA Guides)*, Mr. R didn't prove radiculopathy at L5-S1 because there was an absence of atrophy, the *ODG* referenced the 5<sup>th</sup> edition and not the 4<sup>th</sup> edition of the *AMA Guides*. Therefore, the record was held open and the 5<sup>th</sup> Edition of the *AMA Guides* was submitted into evidence. The IRO reviewer maintained the denial, stating that no consistent objective findings of radiculopathy were shown to satisfy the *ODG*.

Mr. R was referred to Dr. W for pain consultation. Dr. W's report found that Mr. R walked with antalgic gait, left foot drag, severe left-side low back pain with decreased flexion and severe pain on extension of the low back, weakness and decreased strength in the left lower extremity, and decreased left Achilles tendon reflex. The S-1 radiculopathy was confirmed by two EMG studies.

Based on the findings of Dr. W, a qualified medical expert, and the evidence of Mr. R's S1 radiculopathy, the *ODG* and *AMA Guides* (5<sup>th</sup> Ed.) clearly indicate that a microdiscectomy is health care reasonably necessary for the compensable injury. The decision of the IRO to deny surgery was overturned by the Hearing Officer and a new decision was rendered that Mr. R was entitled to lumbosacral L5-S1 microdiscectomy. ❖



Above is a letter of appreciation that the Ombudsman received after assisting the injured employee from the case study.

## Employee Spotlight: Alicia Fuentes

Until she was 18, Alicia Fuentes spent every summer working with her parents as a migrant farmer. At the end of every April, they left for Minnesota, Wyoming, South Dakota, or Florida, for a month at a time, to work in the sugar beet or soy fields. She worked for her parents, for herself, and for her two younger siblings, who for a long time were too young to work. Alicia felt she came from a tradition of caring for family and, at 10 years old, she

could have no idea the scope of this tradition, or how her family's trajectory would later hinge around her.

Alicia was born in Cadereyta, Mexico, a city half-an-hour east of Monterrey at the base of a wave of mountains called the Sierra Madre Oriental. When she was five, she immigrated to the United States and settled with her parents, aunts, and uncles in Mission, Texas. She still lives in Mission with her father, three children, two step-children, and one grandson. Much of her family remained in Mexico and, until two years ago, she made frequent visits to her hometown. The violence of Los Zetas Cartel has touched many of Alicia's family and friends. She has explained to her children that the roads that lead from the Texas border to Cadereyta are often too dangerous to travel.

She has also explained how difficult it was growing up working as a migrant worker. Alicia enjoyed playing volleyball but was never able to fully participate. She confided that a secret dream of hers was to be an Olympic gymnast. She describes herself as an open-hearted person whose life has been largely defined by her dedication to helping people, inside and outside of her family.

After high school, Alicia went to a vocational school and earned a degree in office administration. Her first office job was with the McAllen Medical Center where she served both the Chief Executive Officer and Chief Financial Officer. Following a restructuring of the hospital, she sought a more secure line of work with the State. She began working for Texas Workers' Compensation Commission (now TDI-DWC) in a data entry position. Later she joined OIEC and has moved up to a Customer Service Representative IV position in Weslaco.



Alicia relied heavily on her mother to help her raise her children and grandchildren. When her mother passed away, Alicia was overwhelmed. She said that her mother had spoiled her and that, along with the emotional void that was left after her mother died, there was an overwhelming responsibility to work and raise three children. But she said she can adapt to anything. Alicia's father continues to work as a migrant laborer and has taken her two sons to work in an Illinois cornfield. Only one enjoyed the back-breaking labor. Alicia and her family have taken great pains to provide a life with opportunity for the next generation. ❖

