

Ecklund & Associates SOP For AOE/COE Investigative Report & Investigation Procedures For SIU Workman's Compensation Investigations.

An AOE/COE (Arising Out of Employment / Course of Employment) investigation is a workers' compensation investigation to determine the facts surrounding an alleged injury to a worker on the job. The purpose of the investigation is to establish whether the employee's alleged injury was work-related and happened in the course and scope of employment, or whether the injury was non-industrial or affected by third parties. In the early stages of a workers' compensation claim, a thorough AOE/COE investigation is crucial in order to determine and document injury-related accident facts before evidence gets lost or memories deteriorate. It is important to document the claimant's alleged reported injury, along with statements by any witnesses, prior to possible coaching by third parties' workers' compensation attorneys. The term "investigation" is one of such breadth as to encompass all methods, procedures, and situations having to do with securing the information necessary to help process such insurance claims for payment or rejection, or to help the client in any given situation.

AOE/COE investigations may include:

- Reviewing assignment documents
- Reviewing the Workers' Compensation claims file/documents if appropriate
- An initial conference (in person/phone) with the adjuster to identify background information including work location and environment, standard duties and responsibilities, typical work routines, employment status and wage information
- Conducting background research including data search using restricted database information and confidential resource associates.
- Obtaining recorded statements from the injured worker, supervisors, department personnel representatives, coworkers, witnesses, and/or other involved parties
- Responding to any new information or issues that arise during the investigation with appropriate action, including follow-up questions and/or further investigation
- Providing prompt, clear and concise written reports and evidence documentation
- Providing regular status reports to the examiner by phone or in writing
- Providing all services in accordance with all applicable legal codes and statutes.

If subrogation issues are identified during the initial investigation (or fraud is suspected), a more thorough investigation will ensue. This effort may include the following procedures:

- Identifying all parties involved
- Identifying all insurance company(s) for all parties
- Obtaining written and signed statements from persons with material information regarding the claim
- Obtaining signed releases for medical and outside records
- Obtaining all medical, personnel records and/or civil court records.

The Workers' Compensation insurance company may request that Sub-rosa investigation be conducted to ascertain the nature and/or extent of a Workers' Compensation injury, or if there is reasonable suspicion of potential fraud. Such investigations include:

- Preliminary, demographic, and background research
- Active surveillance with frequent verbal reports to examiner
- Providing timely written reports and copies of video tapes and attaching any/all research documents
- Providing all services in accordance with all applicable legal codes and statutes. In all cases, written reports of activities should accompany invoices for services. Investigators may be required to testify and produce video/surveillance tapes at the Workers' Compensation Appeals Board, in depositions, and/or in Superior Court for criminal cases

Preparation

A compensation investigation ordinarily begins when our investigator receives an assignment or instructions to investigate a specific claim. He or she must quickly orient him/herself to all information that is available and that may have some bearing on the scope of his/her activities. The investigator for a self-insured employer will not usually be concerned with any information relative to insurance coverage on the claim, although many self-insured employers have reinsurance arrangements with insurance carriers that require some thought in that direction. However, since the majority of all compensation claims are handled through insurance carriers, one of the first steps for the investigator starting work on a claim is to familiarize him/herself with the compensation insurance coverage, which may be involved.

Obtaining Coverage Data from the Policy

It is important for the investigator to review the insurance contract or policy out of which the claim arises. Standardized policy language is something with which the investigator should be familiar, and his/her perusal of the insurance contract will usually be confined to an inspection of the underwriting file on the employer of the claimant to be investigated. This underwriting file will contain a "daily," which is a copy of all information typed onto the insurance contract form by the carrier when the policy was issued, as well as copy of all endorsements, which have been made a part of the insurance contract.

From this material, the investigator should obtain the policy number and the exact name and address of the insured employer, as it is written in the "named assured" clause. The carrier's adjuster should know whether the named assured is described as an individual, a partnership, or a corporation. The policy dates indicating the period of coverage should be noted. The adjuster should note whether there has been previous coverage by his/her carrier. If the same carrier has covered the employer in past years, the inception date of the carrier's first coverage and continuity up to the current coverage should be noted. The location of the assureds' operation described on the daily should be noted. Premium Rating Classification Numbers and their descriptive language should be noted.

All limiting and restricting endorsements, or language on the policy, should be noted. If it appears that their language may have some bearing upon the claim under consideration, the investigator should either know the language of such limiting and restricting endorsements or have copies of them available. The name and address of the broker or agent who caused the policy to be written for the assured by the carrier should be noted.

There will be many occasions when it is not practical or possible for the investigator to familiarize him/herself with all of the coverage details discussed above before beginning his/her investigation. In those situations, as much of the above coverage information as possible should be supplied to the investigator by verbal or written communication at the outset of the assignment, or as soon thereafter as possible, unless there is some good reason to refrain from that procedure.

Commencement & Development of Investigation: Ordinary Claims

Usually the investigator's study of the file in the office enables him/her to assemble the information pertinent to his/her investigation. As a rule, it is best to have copies of the file material or take the file contents along for reference, leaving the original file cover in the office. It is fundamental, in the important cases, that the employer or his/her representative be acquainted with the fact that an investigation is under way both from the standpoint of service to the employer and that of facilitating the inquiry. The first actual step in the investigation is usually to secure a statement from the injured person, setting forth all essential information, including the detailed story of injury, date, hour, and place of occurrence, the names of witnesses, if any, and any medical treatment already received. The investigation may then develop in accordance with facts obtained from the injured person, and usually leads to interviews with the employer or his/her representatives, and with various witnesses, for the purpose of checking the employee's story from all angles. Where needed, a payroll statement from the employer should be secured. The factual situation should be scanned for such possibilities as serious and willful misconduct of employer or employee, use of liquor as cause of the injury, self-inflicted injury, and that the injury may not have arisen out of and in the course of the employment.

Commencement & Development of Investigation: Claims to Be Litigated

Where the attorney or legal department has requested special investigation, or in a case that is obviously of such a character that litigation is likely, additional steps may be required of the investigator. In such cases, special care and attention should be devoted to securing measurements, photographs, signed statements from all parties involved, and other pertinent facts. It is often best to take statements from those who were at the scene of the accident, but deny seeing it, to forestall future quirks of memory. When investigating accidents involving possible subrogation features, especially in respect to automobile accidents, a technique should be developed which will cover every point of the case. The investigator should always ascertain (1) the license number of the third-party car, (2) the name of any personal liability carrier, and the policy limits, and (3) whether the third party was on a personal mission or was in the course of his/her employment for someone else.

Statements & Their Preparation

Statements are means of preserving in written form the information, which is in the possession of witnesses or other informants. Such documents not only provide the employer or insurance carrier with authentic case records, but they are valuable for other reasons. Witnesses are less likely change their stories once you have secured their signatures or recorded an interview. This documentation also provides a means of identifying perjury if it is committed in the course of a proceeding before the Workers' Compensation Appeals Board. Statements are taken whenever it seems important to have them. The majority of all statements will, of course, come from injured persons and central theme of such documents will be the injury itself. The other most common sources of statements are (1) claimants, (2) witnesses, (3) dependents or nearest relatives, and (4) employers or their representatives. It is always desirable to procure statements from the third-party tort-feasors, if obtainable.

Investigator's Report

Many claims adjusters and attorneys or other individuals requesting the investigation like to receive a summarizing report from the investigator, organized under captions in a specific format. Others may feel that captioned reports are unnecessary because they tend to create additional unnecessary work for the investigator, duplicating work, which can be organized and presented by the proper development of file material. The investigator will, of course, be guided by the methods indicated by his/her principals. Where a captioned report is desired, the investigator should present an orderly review of all the pertinent circumstances connected with the gathering of the information. If the investigator is required to express his/her own opinion as to liability, it should be stated along with a brief summary of the reasons upon which the opinion is based. While some reports must necessarily be more elaborate in character, it is not ordinarily considered good practice to repeat in detail too much of the information contained in the statements or documents contained in the file. As a rule, it is sufficient to bring out only the "high spots" in the statements and other documents, with the thought in mind that the adjuster or attorney will refer to such sources for complete details. Comments should be made, either in a captioned report or by file memoranda, regarding the credibility of the claimant and other witnesses, with some mention of their appearances and the desirability of their use in the event of a hearing before the Workers' Compensation Appeals Board. Where captioned reports are required, a format similar to the following may be followed:

- The Assured
- Insurance Coverage Data (if permitted)
- The Claimant (if not represented by counsel)
- Dependents (in fatal or potential death cases)
- Wage Information
- Injuries
- Medical Data (where permitted)
- Facts of Accident or Exposure
- Witnesses/Supervisor of the Claimant
- Subrogation
- Safety
- Discussion of Miscellaneous Factors Peculiar to the Case
- Outline of Unfinished Investigation
- Recommendations of Investigator

Investigators recommendations: