

ADJUDICATOR – WINTER 2010



Top 20 Ways the IC Is Saving You Money

In a tough economy, Ohio families and businesses are tightening their belts to survive. At the Industrial Commission of Ohio (IC), we are no different. For the past two and a half years we have aggressively worked to save you and our Agency money. You can count on us to manage every dollar responsibly.

In recent years, the IC has consolidated and streamlined our operations, kept pace with technology, reduced our number of employees while maintaining the highest quality of service to the employers, injured workers, and citizens of the State of Ohio.



One of the ways the IC has cut costs was consolidating and reducing office space in the Columbus office.

We are progressively doing more with less as detailed in the following top 20 list of recent cost-cutting initiatives:

1. Through attrition and automation, decreased employment from 489 employees in July 2008 to 439 by the end of February 2011. This will result in a yearly payroll savings of \$3.2 million.
2. The IC's submitted budget to the Office of Budget and Management for FY-2013 was \$58.7m. This is less than our FY-2003 budget, which was \$59.7m. Thus, our budget has decreased over the last ten years.
3. Reduced office space in our Columbus headquarters resulting in a savings of \$803,871 in FY-2010, and \$785,968

in FY-2011. The savings in FY-2012 is estimated to be \$750,000, and in FY-2013 \$725,000.

4. Closed our Springfield office and consolidated operations into our Dayton office for a yearly savings of \$125,000. In the future, some positions that were in the Springfield office will be eliminated. Then, the total savings will be \$264,000 per year.
5. Closed our Canton office and consolidated it with our Akron office for a savings of \$334,000 per year. In the future, positions that were in Canton will be eliminated by attrition, which will increase the savings to \$550,000 per year.
6. Combined our Zanesville and Bridgeport office into one location in Cambridge for a savings of \$139,000 per year. In the future, positions previously in the Zanesville and Bridgeport will be eliminated by attrition, increasing the savings to \$328,000.
7. Closed our Hamilton office and combined it with our Cincinnati location for a yearly savings of \$133,000. In the future, some positions will be eliminated by attrition and the yearly cost savings will increase to \$320,000.
8. Instituted video hearings so that hearing officers do not have to travel to six remote sites, saving \$157,000 per year.
9. Overtime expenses were reduced from \$82,481 in FY-2008 to only \$21,644 in FY-2010. This represents a decrease of

- 73.7%. Overtime is only permitted to maintain the operation of our computer system.
10. Mandated carpooling and eliminated non-essential travel to save \$100,000 per year.
 11. Converted from standard to Voice over Internet Protocol (VoIP) telephone service resulting in a savings of \$100,000 per year. Existing telephone equipment was approaching "end of life" usefulness and not all employees had a phone, so we improved internal communication with this installation.
 12. Eliminated all use of temporary employees for a yearly savings of \$220,000.
 13. Moved the Dayton office to a new location with less square footage and a lower per square foot rent for a total yearly savings of \$78,800.
 14. Decreased our warehouse space for a yearly savings of \$42,000, and slashed the use of mobile telephones for a yearly savings of \$6,000.
 15. Initiated internal control of supplies and new procedures for issuing supplies for a yearly cost savings of \$60,000.
 16. During the last three years, the Industrial Commission has reduced our administrative rates charged to employers by an accumulative amount of \$10 million. This represents

- a 16.6% decrease in the rates charged to Ohio employers.
17. Implemented telephone interpreting services for most IC hearings, saving the Agency an estimated \$81,667 per year.
 18. Launched a customer service pool in the Agency. Instead of hiring a new customer service associate (CSA), staff members arranged the transfer of calls from Columbus to the Dayton office. CSA's in Dayton assumed the extra workload to make up for the vacancy in the Columbus office. In this case, the pool created a more efficient way of doing business and prevented layoffs.
 19. This publication went paperless, and we replaced our printed brochures with online printable Fact Sheets, saving thousands of dollars annually.
 20. Redesigned both our Intranet & Internet sites to better serve you and our employees. We built both sites from scratch using existing software and personnel.

These are just some of the ways that we are continuing to work for you. If you have any other cost-saving suggestions, we would love to hear them! Email askic@ic.state.oh.us, or call us toll free at 1-800-521-2691.

Giving Back to the Children of Injured Workers

Paying for college is a challenge for nearly any Ohio family. The challenge is even harder when a parent is killed or disabled in a workplace accident.

That is why members of Ohio's workers' compensation community created a scholarship program to help these families. Last year, Kids' Chance of Ohio was launched to provide help for deserving kids.

"The scholarships are reserved for children who have a parent who has been rendered permanently and totally disabled, or has died in an Ohio workplace accident," said Kids' Chance of Ohio Executive Secretary Buz Minor.

Scholarships/grants are awarded based on the student's need and the amount of funds available to the Kids' Chance organization at the time. Additionally, the applicant must be between 16 and 25 years old to be eligible.

"The Kids' Chance of Ohio Board Members are drawn from across the workers' compensation spectrum and serve without compensation and at their own expense," Minor said. "Kids Chance is an opportunity for friends and professional colleagues to give something back."

Current annual scholarship/grant amounts range from \$500 to \$5000 (per either calendar year or academic year depending on the

specific circumstances pertaining to the individual applicant) and the funds are paid to the institution.

Scholarship awards can be used for the following types of institutions:

- Trade school/vocational school
- Industrial/Commercial training
- Junior college/community college
- College undergraduate
- College - graduate school

Scholarships may be used for both public and private educational institutions, both within and outside of the state of Ohio.

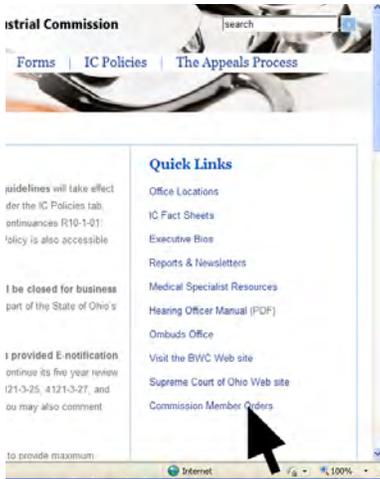
Scholarships may be used for the following:

- Tuition/Fees
- Books
- Room and board

Applicants for the Kids' Chance of Ohio scholarships can visit www.kidsofchanceohio.org for more information and to obtain the scholarship application.

Kids' Chance of Ohio is an equal opportunity organization. Scholarships are awarded without consideration of the applicant's gender, race, religion, nationality, or ethnic origin.

Industrial Commission Member Orders Are Now Online



Commission member orders are now accessible on the IC's Web site.

our customers by increasing transparency and access to workers' compensation information."

Now Ohioans can visit www.ohioic.com and read the past month's orders handed down by IC Commissioners. After logging onto the homepage, users may click on the Quick Links tab that reads "Commission Member Orders" to look through the Commission orders archive. The new application allows users to search by hearing date, injured worker name, claim number, or by a word or phrase in the order.

As part of our dedication to open government, the Industrial Commission of Ohio (IC) launched a new application in November 2010 that publishes IC Commissioners' orders online.

"Now, our customers will be able to quickly search for and view IC Commission member rulings online," said Chairperson Gary DiCeglio. "It's just one way that the IC has been working to better serve

"The search will be of orders issued from hearings held on or after October 10, 2010, but there will be an ongoing effort to post all IC member orders issued by the Commission from hearings held since July 1, 2009," DiCeglio said.

Although there are three levels at which a contested claim may be heard within the IC, only orders from the Commission level of the Agency will be published online. Orders from the district and staff hearing officers will not be posted on the site.

In order to ensure compliance with the State of Ohio's Public Records Act, the IC's Legal Department will review orders and redact confidential information. The hearing orders will not contain the following:

- Injured worker or employer addresses
- Employer risk numbers
- Names, addresses of the parties that receive the information
- Dates of birth and the names of minors in workplace death claims

"We hope that Ohio's injured workers, employers and representatives find this new application valuable and easy-to-use," DiCeglio said. "An open government is a government that works for the people."

Ohio Industrial Commission Launches Electronic Sign-In System



Visitors now sign in using the new electronic check-in system.

is over," said Director of Security Services Robert Booker.

Regular visitors to the IC may now opt to have security ID badges issued to them for expedited electronic check-in. Once their badge picture is taken, they'll be able to simply swipe and go!

"If you decide not to get a security badge, a computer sits next to the security guard and visitors will type in their name to check-in, and then use the computer to checkout when their visit

This new sign-in system will enhance security and convenience by allowing frequent customers to simply badge in and out of IC buildings. At the same time, it will provide a more efficient way to track who is in IC buildings in case of emergency. In addition, the IC's Information Technology Department designed the system, so there were no additional costs to get it up and running.

"Electronic sign-in will save money by reducing paper costs," said IC Executive Director Christa Deegan. "It has been very successful in Columbus and we are now rolling out the sign-in process to our 11 other offices across the state."

If you have not yet had your badge picture taken and would like to arrange a date and time to do so, contact Security Services Director Robert Booker at rbooker@ic.state.oh.us.

Procedural Change Shaves Time from Commission Appeal Process

It is as simple as issuing a letter instead of an interlocutory order, but this small change will provide earlier notification to parties that an appeal from a staff hearing officer order to the Commission has been accepted for hearing. It will also reduce the time needed to schedule a Commission Level hearing.

Parties that have filed third level appeals to the Industrial Commission will now receive a "Notice of Acceptance of Appeal for Hearing" letter instead of an interlocutory order in claims where an appeal is accepted for hearing by the Commission. The process change will result in earlier notification because parties will no

longer have to wait to receive an interlocutory order. The change began May 13, 2010.

The notification will state whether the appeal is to be heard by the Commissioners or a deputy of the Commission. The same information that was in the interlocutory order will be provided to parties in the Notice of Acceptance of Appeal for Hearing. Parties to the claim will continue to be properly notified of the time and place of hearing in compliance with the requirements contained in R.C. 4121.36.

Amended *Hearing Officer Manual* Policies

August 2, 2010:

Memo E7 Processing Applications for Compensation Pursuant to O.R.C. 4123.57(A) When Allowance Question Is in Court

The Industrial Commission shall not process a C-92 Application during the pendency of the employer's appeal of the original allowance in Court under O.R.C. 4123.512. However, should the injured worker dismiss the complaint with the consent of the employer pursuant to Civil Rule 41 (A), the C-92 Application shall be processed during the pendency of the employer's appeal filed under O.R.C. 4123.512. If a question of an additional allowance is in Court, there is jurisdiction to process a C-92 Application as it relates to the original conditions allowed in the claim that are not being contested in Court.

Please see *Hearing Officer Manual* policy I5 regarding the processing of other compensation and medical benefit issues during the pendency of the original allowance or additional allowance in court.

NOTE: 1962 O.A.G. No. 2794 and O.R.C. 4123.512(H)

August 2, 2010 :

Memo I5 Processing Compensation and Medical Benefits Issues in Claims When an Original Allowance or Additional Allowance Issue Is in Court

The chart to the right delineates how compensation and medical benefits issues should be handled and processed when an employer's appeal is pending in Court. Column one identifies the compensation or medical benefit issue. Column two indicates whether or not the compensation or medical benefit issue can be considered for adjudication when the original allowance issue is on appeal to Court pursuant to O.R.C. 4123.512. Column three indicates whether or not the compensation or medical benefit issue can be considered for adjudication when an additional allowance issue is on appeal to Court pursuant to O.R.C. 4123.512.

NOTE: *Hearing Officer Manual* policy E7 also addresses related issues.

Yes indicates – Process or adjudicate the request for compensation or benefits

No indicates – Do not process or adjudicate the request for compensation or benefits

Issue in Question	Original Allowance and R.C. 4123.512 Appeals to Court	Additional Allowance and R.C. 4123.512 Appeals to Court
Temporary Total Disability	Yes	Yes
Permanent Total Disability	Yes	Yes
Medical Expenses	Yes	Yes
Permanent Partial Disability	No, except if the complaint is dismissed with the consent of the employer under Civil Rule 41 (A)	No, except if request is based on the original allowance or if the complaint is dismissed with the consent of the employer under Civil Rule 41(A)
Scheduled Loss	No	No, except if request is based on the original allowance
Impairment of Earning Capacity	No	No, except if request is based on the original allowance
Wage Loss Compensation	Yes	Yes
Motion for Additional Condition	Yes	Yes
Living Maintenance	Yes	Yes
Living Maintenance Wage Loss	Yes	Yes
Handicap Reimbursement (CHP-4)	Yes	Yes
Violation of a Specific Safety Requirement	Yes	Yes

August 2, 2010

Memo K1 Allowance – Dismissal Order v. Merits

(A) In allowance determinations, once the parties have discussed the merits at issue, the allowance should be either allowed or denied. The published order should contain express allowance or denial language. Decisions may not, in order to comply with O.R.C. 4123.511, be held for additional evidence to be submitted after the hearing.

When allowing a claim, the hearing officer shall provide a written description of the diagnosis or condition which is being allowed in the claim. In addition, the name of the physician authoring the report and the date of the report shall be included. The hearing officer shall not include the ICD-9-CM code for the condition(s) being allowed in his or her order.

(B) Should a party which appealed an order of the administrator or a district hearing officer request dismissal of that appeal prior to hearing, the hearing officer shall grant the requested dismissal. If the request for dismissal is made after a discussion of the merits of the appeal, the hearing officer must deny dismissal of the appeal.

If a party who has filed an application, motion, or other request for action in a claim wants to dismiss that request, that party may do so prior to an initial hearing on the merits. Once a hearing on the merits has commenced, the underlying application, motion, or other request for action in a claim cannot be dismissed.

(C) If a party requests the allowance of a symptom rather than a condition, that request should be dismissed rather than disallowed.

In allowance determinations, do not use terms such as “dismissed with prejudice” or “dismissed without prejudice” in your orders.

This policy does not affect the hearing officer’s responsibility to determine if the action involves agreement as to handicap relief or unenforceable prior waiver of right to compensation.

NOTE: O.R.C. 4123.343, O.R.C. 4123.54, O.R.C. 4123.80

Supreme Court Case Updates

Voluntary abandonment is not foreclosed as a defense when the employer fails to submit an employee handbook into record

In *State ex rel. Galligan v. Indus. Comm.*, 124 Ohio St.3d 233, 2010-Ohio-3 (Decided January 6, 2010), the injured worker was terminated following her third violation of a work policy prohibiting employees from sleeping on the job. A month after her termination the injured worker filed a motion for temporary total disability (TTD) benefits. The Commission denied compensation, finding that pursuant to *State ex rel. Louisiana-Pacific Corp. v. Indus. Comm.* (1995), 72 Ohio St.3d 401, 650 N.E.2d 469, her discharge constituted voluntary abandonment of employment based on the injured worker’s disciplinary file which contained evidence that she was on notice that sleeping at her security post was violation of company policy, as well as documentation indicating that any further violation of any work rule would result in termination. The injured worker asserted the employer’s failure to submit its handbook into record prevented a *Louisiana-Pacific* analysis because it was not possible for the Commission to determine whether the written work rules clearly defined the prohibited conduct.

The Court found no abuse of discretion and held that there is no per se rule foreclosing voluntary abandonment as a defense when the employer does not enter the employee handbook into the record. The Court found that under these facts, there was enough evidence the Commission could rely upon to find that the employer’s discharge constituted voluntary abandonment because evidence in the record established that the infraction the injured worker was terminated for was a known company policy.

A brief period of employment within a period of TTD compensation does not automatically require a finding of overpayment of all compensation paid subsequent to that period

In *State ex rel. Goodwin v. Indus. Comm.*, 124 Ohio St.3d 334, 2010-Ohio-166 (Decided January 28, 2010), the BWC filed a motion requesting the Commission to find TTD compensation had been overpaid based on 33 hours of work the injured worker had done in a one week period at the YMCA. The Commission granted the BWC’s motion finding overpayment starting from the first day worked and through the time TTD had continued to be paid following the injured worker’s period of employment. The injured worker argued that his situation was more similar to the facts contained in *State ex rel. Griffith v. Indus. Comm.*, 109 Ohio St.3d 479, 2006-Ohio-2992, 849 N.E.2d 28, than the case relied upon by the Commission, *State ex rel. Ellis v. Indus. Comm.* (2001), 92 Ohio St.3d 508, 751 N.E.2d 1015.

The Court agreed with the injured worker that this case was more similar to *Griffith* because there was no material misrepresentation and there was no massive fraud because the injured worker had only worked for one week, and there was no evidence that during that time the injured worker had engaged in activities that were inconsistent with his medical restrictions. The Court held that temporary total disability compensation can be paid when an injured worker is not working and medical evidence corroborates the injured worker’s physical incapability of returning to his former position of employment. The Court further held that an injured worker cannot receive wages and TTD compensation for that same time period regardless of the timing of the TTD compensation check.

Loss-of-use award cannot be based solely upon a physical therapist report

In *State ex rel. Cambridge Home Health Care, Inc. v. Indus. Comm.*, 124 Ohio St.3d 477, 2010-Ohio-651 (Decided March 3, 2010), the injured worker's claim was allowed for a right wrist sprain with arthritis. She later moved for scheduled-loss compensation under R.C. 4123.57(B) for the loss of use of her hand. In support, she submitted a functional-capacities evaluation prepared by a physical therapist. The report noted that the injured worker's right hand was incapable of performing maneuvers that required dexterity or repetition. A hearing officer awarded the injured worker 175 weeks of compensation under R.C. 4123.57(B) for the total loss of use of her right hand. The hearing officer based that award solely on the report of the physical therapist.

The Court issued a limited writ of mandamus that vacated the Commission's order and ordered the Commission to further consider the injured worker's motion and to issue a new order. The Court indicated that a loss-of-use award must be based, at least in part, on a licensed physician's report and that it may never be solely based on a report by a physical therapist.

AWW/FWW calculation can include wages from two concurrently worked jobs prior to the date of injury

In *State ex rel. FedEx Ground Package Sys., Inc. v. Indus. Comm.*, 126 Ohio St.3d 37, 2010-Ohio-2451 (Decided June 8, 2010), the injured worker sustained injury while employed at FedEx, a self-insured employer, where he worked part-time. The injured worker also worked part-time for another company where he made considerably more money. FedEx based his AWW and FWW solely on his earnings at FedEx and the injured worker filed a motion with the Commission to reset his average and full weekly wages based on his combined earnings from both employers. The Commission granted the injured worker's motion. The employer argued that pursuant to *State ex rel. Smith v. Indus. Comm.* (1933), 127 Ohio St. 217, 187 N.E. 768, the Commission should only include concurrent wages when the claimant's second job is in similar employment.

The Court determined that FedEx's reliance on *Smith* was misplaced because that decision was based on an outdated version of R.C. 4123.61. The Court agreed with the Commission's position that the hearing officer erred in using the special-circumstances provision, but that the amount set was correct because the standard calculation contained in R.C. 4123.61 already demands inclusion of all wages earned in the year prior to injury without stating any qualifying or exclusionary factors. The Court also rejected the employer's argument that the inclusion of concurrent wages is inherently unfair. First, it is not unfair to compensate the injured worker for a work injury that has caused a disability that prevents him from working at both jobs. Second, the General Assembly did not consider the inclusion of two sets of wages to be unfair when it drafted the relevant statutes. Finally, the Court found no abuse of discretion by the Commission regarding the calculation of the FWW by relying on the calculation directions set forth in Joint Resolution No. R80-7-48.

Commission's use of pre-injury visual acuity as baseline in determining the level of disability resulting from an eye injury was not an abuse of discretion

In *State ex rel. La-Z-Boy Furniture Galleries v. Thomas*, 126 Ohio St.3d 134, 2010-Ohio-3215 (Decided July 13, 2010), the injured worker had a history of keratoconus and had had a corneal transplant in his left eye in 2005. Prior to receiving the implant the injured worker's vision was 20/200, after the implant his vision was 20/50. Subsequently, the injured worker sustained an eye injury, losing the transplanted cornea, and causing his vision to revert to 20/200. The injured worker underwent a second surgery to replace the corneal implant restoring his vision to 20/50. The injured worker filed a motion requesting an award for loss of vision. The Commission granted the award.

The Court held that the Industrial Commission has discretion to establish an injured worker's pre-injury visual baseline as that which exists after pre-injury corrective surgery for purposes of calculating a loss of vision award when an individual has had corrective surgery both before and after an industrial injury. The Court reasoned that, if a pre-injury correction predates an injury, it would be unfair to utilize the visual acuity that existed before the corrective surgery as the baseline for the calculation of an award, since the individual has enjoyed the improved vision for a period of time. The Court rejected the Court of Appeals reliance on *State ex rel. Waddle v. Indus. Comm.* (1993), 67 Ohio St.3d 452, 619 N.E.2d 1018, since it would have left the Commission with no pre-injury figure against which to measure the post-injury vision.

What Do You Think of the *Adjudicator*?

We're continuing to beef up the content of the *Adjudicator* to provide you with more detailed information about the Agency's successes during the past year. Now, we want to know what you think about our annual newsletter. Please take a moment and fill out our confidential survey at: www.surveymonkey.com/s/GXJDJXM. Thank you for taking the time to share your opinion with us!