Utilizing Surveillance

**Properly Conducted Surveillance Can Be Very Beneficial**

When fraud is suspected or the injured employee appears to be malingering, surveillance by private investigators is often utilized to obtain information that can be used to move the workers’ compensation claim to a conclusion. Surveillance properly conducted and documented can be very beneficial at settlement conferences, mediations and hearings.

**Surveillance is often used to:**

* Obtain photos or videos of the injured employee working either at another job, or is working around the home performing yard work, home maintenance, car maintenance, etc.
* Show the injured employee is not as disabled as claimed – for example, the injured employee uses a cane at each medical appointment but can go grocery shopping without the cane or other medical equipment.

The workers’ compensation claims adjuster should maintain an up to date knowledge of the status of the claim. Surveillance is not a substitute for proper claims management.

**Red Flags Indicating Need for Surveillance**

If the adjuster notes any red flags during the course of the claim, surveillance should be considered. Red flags indicating surveillance could be beneficial include:

* The injured employee is never at home when the adjuster calls
* The injured employee develops new complaints and symptoms weeks or months after the initial accident
* The length of recovery time is excessive for the nature or the extent of the injury
* There are rumors the employee is working elsewhere
* The employee is unwilling to attempt modified work/light work
* The employee’s spouse/partner is also collecting disability income of some type
* The physical therapy reports or the doctor office visit notes include comments that indicate the employee does not seem to be as injured as the employee claims
* The employee is receiving an excessive amount of narcotics

If the adjuster has been properly working the claim and is up to date on the medical status of the claim, and knows the claimant is not malingering, surveillance is usually not justifiable if there are no red flags.

**Need More than One Piece of Evidence to Help Prove Case**

Unfortunately, surveillance often has a low “success ratio”. This does not mean that surveillance was not justified, only that the surveillance did not occur at the same time the employee performed an activity that demonstrated the injury is not as bad as claimed.

When surveillance is successful, for example the private investigator gets 2 hours of video of the claimant shoveling deep snow off his sidewalk, driveway and neighbors walkway, it makes it much easier to settle the claimant’s low back injury claim. However, the adjuster should not act too quickly with the information obtained by surveillance.

When surveillance produces proof that the claimant is not injured as severely as claimed, further surveillance is needed. One video of the injured employee working or walking without his cane is very much subject to the argument that the claimant “was having a good day”, and the video does not show the claimant spending the next week in bed after shoveling the snow. To defeat the “one good day” rebuttal of the surveillance video, surveillance video or photos should be obtained on different days.

**Share Videos with Defense Counsel**

If defense counsel is involved in the claim, the video or photos should be shared with defense counsel. A decision should be made as to when the surveillance documentation will be used in the defense of the claim. The information obtained in surveillance is normally subject to discovery. Therefore, the adjuster and defense counsel should collaborate on the most productive time to make the information available to the employee and his/her attorney.

Surveillance companies are also utilized to perform civil and criminal background checks, obtain motor vehicle records, interview neighbors and friends to see if the employee has a history of prior medical issues related to the current injury claim, and obtain information on the employee’s education background and work background.

If you would like more information on the use of surveillance, please feel free to contact us.