What Happens When Modified Duty is Not Provided

A recent case in San Diego shows what happens when the adjuster and the employer do not provide Modified Duty. On August 8, 2013 San Diego District Attorney Bonnie Dumanis announced the guilty pleas of a daughter – father conspiracy to commit workers’ compensation fraud, grand theft and perjury.

Yolandi Kohrumel, age 35, and her father Anton Buitendag, age 65, were sentenced to one year in jail and 180 days in jail, respectively, by the San Diego Superior Court Judge Duane Moring. Restitution in the full amount the insurer, AIG, had been defrauded, of $1,558,653, was also ordered.

**Worker Claimed Multiple Complications From Injury**

Ms. Kohrumel started work as a store manager for a national office supply company in 2002. After 3 months on the job, Ms. Kohrumel claimed a box fell on her toe and broke her toe. In November, 2002, Ms. Kohrumel had surgery on her toe. Following the toe surgery, she was given crutches. Ms. Kohrumel claimed she could not use the crutches, and was provided a wheelchair. The news articles do not address why the third party administrator (TPA) adjuster agreed to a wheelchair instead of having a physical therapist assist the Ms. Kohrumel to learn how to properly use the crutches correctly. The news article also does not address why the claimant was provided a wheelchair instead of a knee walker for her injured toe.

Once Ms. Kohrumel had the wheelchair, she alleged she developed carpal tunnel syndrome from using the wheelchair. The news articles do not address whether or not the TPA adjuster had an Independent Medical Examination (IME) done to confirm the carpal tunnel syndrome claim. [In California IME doctors are called Agreed Medical Evaluators (AME) or if appointed by the Division of Workers’ Compensation, Qualified Medical Evaluators (QME)]. She was provided an electric wheelchair.

The news articles do not explain why neither the TPA adjuster nor the employer arranged for Ms. Kohrumel to work modified duty. Modified duty for a store manager should have been a no brainer, whether the employee was on crutches, using a knee walker, a standard wheel chair or an electric wheelchair.

Ms. Kohrumel then alleged she developed hypersensitivity to her feet, along with regional pain syndrome, depression and anxiety. The news articles also do not mention any AMEs or QMEs for the alleged hypersensitivity, regional pain syndrome, depression and anxiety. In defense of the TPA adjuster, all of Ms. Kohrumel’s doctors believed her subjective claims, or elected not to dispute them. Still, an AME or QME could have assisted the adjuster to dispute these additional claims.

**Injured Worker Was Receiving 25 Prescriptions From Various Doctors**

By 2004, Ms. Kohrumel, who represented herself, was receiving 25 prescriptions from her various doctors. She alleged she was unable to care for herself and needed 24 hour a day assistance, seven days a week. With the doctors stating Ms. Kohrumel was permanently disabled, the TPA adjuster agreed for Ms. Kohrumel’s husband to provide her the around the clock care. Her husband provided the care until his death in September, 2011. Following her husband’s death, Ms. Kohrumel requested her father, Mr. Buitendag, provide her the around the clock care, to which the adjuster agreed.

Mr. Buitendag felt his services for caring for his daughter were worth $500 per day, or over $182,000 per year. The TPA adjuster refused to pay the father because he was a foreigner, without a work visa. At this point, Ms. Kohrumel was represented by an attorney and started litigating the issue before the California Workers’ Compensation Appeals Board.

Ms. Kohrumel decided her residence, a two bedroom apartment, was not large enough for her wheelchair to navigate properly. The TPA adjuster hired a moving company to relocate Ms. Kohrumel and her father. The moving company was advised they would have to do everything as Ms. Kohrumel was wheel-chair bound.

**Fraud Uncovered Cost Total of $1,500,000**

The movers saw Ms. Kohrumel get out of her wheelchair for extended periods, to lift and move heavy boxes in her garage. She was able to move about without any limitations. The movers reported this to the TPA adjuster, who had the movers videotape Ms. Kohrumel as she stood for two hours picking up, moving and sorting through the boxes in her garage.

Investigators for the District Attorney’s Office served a search warrant on Ms. Kohrumel’s garage and found more than 20 boxes of unused prescription medications. The following day, Ms. Kohrumel agreed to enter guilty pleas on 8 felony counts, including grand theft, perjury, false documents and insurance fraud. Mr. Buitendag pleaded guilty to 3 felonies including attempted grand theft. The judge in addition to the jail time ordered Ms. Kohrumel to repay the $1,558,653 she had stolen from the insurance company.

Ms. Kohrumel was obviously a person who had no qualms about ripping off the workers’ compensation insurer and was apparently a fairly good con-man, as she fooled various doctors. However, if the employer and the adjuster had arranged for modified duty both before and after her toe surgery, would she be in jail today and would the insurer be out $1.5 million? There is no way to know for sure, but we know from experience that the sooner an injured employee is provided modified duty, the faster the claim will come to a conclusion, and the opportunity for symptom magnification is greatly diminished.