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WORKERS' COMPENSATION SYSTEMS: DELAYS, INCOMPETENCE AND BIAS

“Workers’ compensation systems across the country are troubled,” according to a recent three-part *New York Times* investigative series on New York’s workers’ compensation system.”¹
Among the paper’s findings were:

THE SYSTEM IS WRACKED WITH SIGNIFICANT DELAYS IN CARE AND COMPENSATION THAT EXACERBATE SUFFERING AND DESPAIR

- Delays in getting claims resolved can “make the injured wait months or years for money and care. The delay can mean that injuries heal slowly or improperly. Mary Jeffords, the head of Injured Workers of New York, an advocacy group, says she knows of numerous disabled workers so ground down by the process that they begin to unravel. ‘I’ve talked to workers that held a gun to their head as we talked,’ she said.”
- Only a third of the licensed New York State doctors take compensation cases because of delays. Claimant lawyers and judges get paid through fees for each hearing, which creates a perverse incentive to keep the cases alive.
- These delays can cause outrageous suffering. For example:
 - Vicki Marquez, a retail sales associate injured her elbow while hauling clothes, but had to wait an entire year for the Compensation Board to allow her elbow surgery.
 - Richard Frank, a former forklift driver for the New York City Transit Authority, had been injured on the job and fought for care and compensation through the Workers’ Compensation system for four years before he died. It took another ten years for his widow to receive death benefits, when a judge finally ruled that his death was due in part “by the agency’s ‘unlawful coercion’ and ‘disgraceful conduct’ in resisting his claim.”
 - Carlos Pabon, a Parks Department manager and US Army veteran, hurt his back and neck after he was knocked down a flight of stairs. His case had been ongoing

¹ Kleinfield, N.R. and Greenhouse, Steven, “For Injured Workers, a Costly Legal Swap,” *New York Times*, March 31, 2009; Kleinfield, N.R. “Exams of Injured Workers Fuel Mutual Mistrust,” *New York Times*, April 1, 2009; Greenhouse, Steven, “In Workplace Injury System, Ill Will on All Sides,” *New York Times*, April 2, 2009. This fact sheet based primarily on “For Injured Workers, a Costly Legal Swap.”

for 11 years, and has been without any compensation since 2007. He was evicted from his home, the bank seized his car, he maxed out all of his credit cards, and pawned his jewelry. He and his family now live in a homeless shelter and are on welfare.

THE SYSTEM PRODUCES “QUESTIONABLE RULINGS” AND IS TAINTED BY ANTI-WORK BIAS

- In an effort to speed up cases, some are assigned to a claims examiner, not a judge. “The examiners are not required to have legal or medical training, or even a high school diploma, and lawyers and judges say their decisions often contain errors. Judges must review the rulings, but some admit it often gets done hastily.”
- While workers may wait months to have their claim heard, the hearing process itself is done at “lightning speed,” which smacks of unfairness. “Eight minutes is typical. A trial can run a half-hour to an hour. Some matters finish in a minute or two. Often workers don’t even get to speak.
- “Expert witnesses seemed biased to the point of caricature.”
- Rajcoomar Jagan, a construction worker who injured his leg after falling off a scaffold, waited three years to try to get compensated, but was denied all benefits – a “decision that stunned even some insurance company lawyers.”

THERE IS LITTLE ACCOUNTABILITY IN THE SYSTEM FOR EMPLOYERS OR INSURANCE COMPANIES WHO CHEAT WORKERS

- Fraud by employers is far worse of a problem than fraud by workers. “Experts believe far more money is siphoned by employers that illegally underpay premiums by underreporting the size of their work force or by doctors who fabricate bills.”
- “Fines for infractions are usually small, and some insurers ignore paying them for years without consequence.”

TAXPAYERS PAY FOR THE SYSTEM’S FAILURES

“[S]o many workers have been so frustrated or mistreated that they don’t even submit claims when they are injured. Instead, they improperly use regular medical coverage. Or they apply only for Social Security disability or welfare. Costs rightly borne by employers are then billed to the general public.”

WORKERS ARE UNFAIRLY BLAMED FOR EMPLOYER’S COSTS

Premiums for employers “have fallen over the last dozen years (though they vary enormously among employers), as have claims. But the perception reigns, driven in part by insurers, law enforcement and the news media, that the system is expensive because it is bloated with embroidered claims.”