

“Workers Compensation Cases: why are some won and some lost?”



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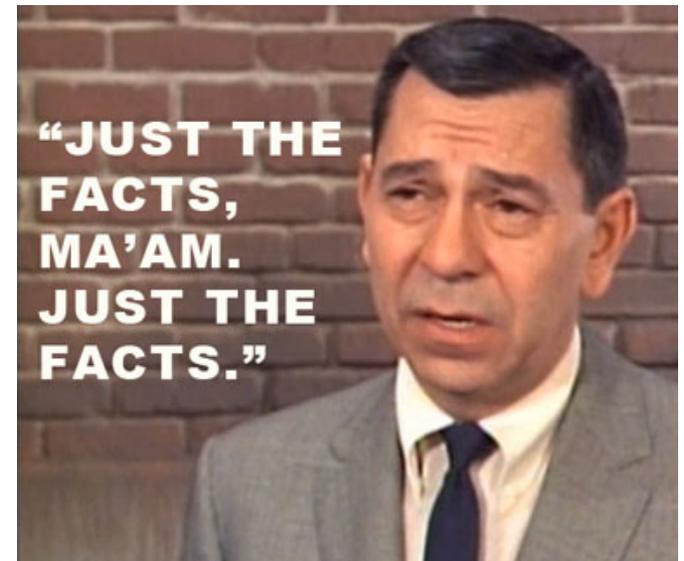
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I. PRELIMINARY FACTUAL INVESTIGATION

A. Sgt. Joe Friday, *“Just the facts, ma’am.”*

1. What happened?
2. Where did it happen?
3. How did it happen?
4. When did it happen?

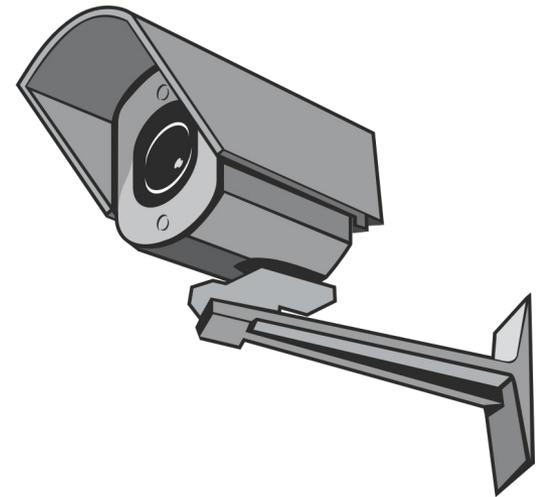


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- B. Find witnesses to the accident
1. Are there live witnesses?
 2. Are there video cameras watching the area?
 3. Everyone has a cell phone!



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- C. Prior reports of injury (frequent fliers)
 1. Is there a history of claims, workers compensation or otherwise?
 2. Have there been personal accommodations in the past?
 3. Are other lost time benefits available?



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Red flags to look for:

1. Friday injury, Monday report.
2. New job, old job or doesn't like the job.
3. Demotions and promotions.
4. Co-worker conflicts.
5. Home life issues.



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- E. Watch for alternative facts and inconsistencies:
1. Hard to follow the story.
 2. Inconsistent stories.
 3. Missing pieces of the story.
 4. Inconsistent dates and times.



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F. Facts win cases:

1. Tai Vu and Vu's van.
2. Street crossing to parking lot.
3. Side jobs – never home.
4. Home remodeling – building certificates.
5. Hazardous hobbies.



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II. MEDICAL INVESTIGATION

- A. Pre-existing conditions:
1. Did the injury aggravate, accelerate and precipitate a pre-existing condition?
 2. Was the same injury previously treated?
 3. Aggravation versus manifestation?
 4. What factual information did the medical provider include in the records?



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- B. Alternative causation:
1. History of underlying disease or injury.
 2. Recurrent symptoms tied to recurring condition.
 3. Hobbies, second jobs and home repair (non-work-related injuries).



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- C. Exaggeration of symptoms:
1. Medical testing.
 2. Symptom magnification is not fraud.
 3. What is malingering?



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- D. Could that job cause this injury?
1. Job descriptions and what they should include.
 2. Job videos and what to include.
 3. Involve the employee and the supervisor in the process.
 4. The use of an ergonomic evaluation and new technology.



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III. THE LITIGATION PROCESS



- A. What happens when a claim is denied?
 1. Good faith basis for denial.
 2. Employee sees a lawyer.
 3. How does the employee's lawyer get paid?
 4. File for hearing versus settlement approach.



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- B. What happens when an Application is filed?
1. Answer due in 21 days.
 2. Defense attorney files all medical and factual defenses.
 3. Identify missing pieces.
 4. Gather medical records.
 5. Interview potential witnesses.
 6. Pick quality experts (doctors, vocational counselors and private investigators).



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C. Deadlines:

1. Filing the COR.
2. Filing IME and IVE reports.
3. Filing all medical records.
4. Filing all employment and HR records.

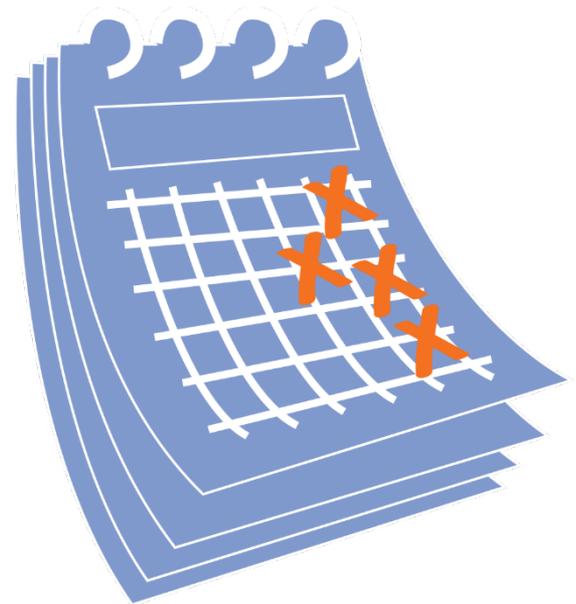


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- D. Details matter:
1. Wage rate.
 2. Return to work dates.
 3. Part-time and light duty.



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IV. THE HEARING PROCESS

- A. Know your judge:
 1. They are all lawyers.
 2. They are all hired by the State.
 3. Some have never practiced law.
 4. They all bring their personal beliefs to the hearing.



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- B. No theatrics necessary:
1. No openings or closings.
 2. No jury to impress.
 3. Professionalism is respected.
 4. Honey versus vinegar and the Golden Rule.



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C. Witnesses:

1. The employee is first.
2. Every witness is cross-examined.
3. If you have to testify...
4. Being there matters.
5. Surprise witnesses.



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- D. And the winner is . . .
1. A tie goes to the employee.
 2. The simplest story usually wins.
 3. Credibility matters, usually.
 4. Good surveillance is priceless / bad surveillance is useless.
 5. 90 days until you find out who won.



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- E. Appeals:
1. Currently to LIRC.
 2. As of July 31, 2017?
 3. Beyond the administrative process.
 4. Bad cases make bad law.



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Thank you!



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