

WORKERS' COMPENSATION AND EMPLOYEE FRAUD

One of your employees, Mildred, is injured at work and will be off for a few weeks. Shortly after the injury the rumor mill begins to churn. A co-employee reports seeing Mildred at the mall. Someone else says she was dancing at a wedding, or was it a night club? Suspicion sets in – fraud is suspected. What should you as an employer do, and what will Builders Trust do?

Before answering that question let's take a look at the definition of fraud and typical workers' compensation fraud situations.

Simply put, **fraud is deliberate and intentional deceit**. What most of us would call good, old-fashioned cheating. Here are the three most common types of worker injury fraud that we see at Builders Trust.

- **Fraud that grows out of a legitimate injury**. An injured worker, after being off work for some amount of time, realizes that by exaggerating his symptoms, such as continuing to complain of pain, can delay return to work. This is often called malingering and is very difficult to identify, much less prove. Some workers don't heal fast, miss doctor appointments, have legitimate injuries to additional body parts not originally indicated and take a long time to reach return-to-work status. These can all be legitimate issues. Understandably, it can be very difficult for a doctor, or a claims adjuster, to make a determination on real issues, versus malingering and outright fraud.
- **Fraudulently working another job**. This is another common type of fraud where again, the employee may have started with a legitimate injury, but at some point went to work for a different employer. This employee is doubling up on his income by continuing to cash total disability checks while earning wages at a new job. If the new job pays in cash it becomes even easier for the worker to operate under the radar of the WC system. If the injured worker does not understand how the benefit system works and thus does not realize you can't work and receive total disability at the same time, this may not be fraud. Not every case of this type is fraud, but many workers in this category know they are committing deliberate and intentional deceit.

- **Faking a work-related injury.** Fraud is almost certainly committed when an injured worker attempts to stick the employer with an injury that is not work related, or just completely fakes an injury to gain benefits. Neither of these scenarios is common and they can be very hard to prove. Keep in mind that workplace injuries do not have to be witnessed to be valid and the determining testimony often comes from the doctor, who knows only what the alleged injured worker has told him.

While a Participant may be convinced that fraud is being committed, Builders Trust must operate within the state's workers' compensation system rules, statutes and courts. Also, what is sometimes perceived as fraud is not really fraud. For example, when an injured worker engages in activities of daily living the worker is probably not committing fraud. Carrying groceries from the car to the house, mowing the lawn and shopping at the mall are likely going to be found by a workers' compensation judge to be routine activities with no element of fraud.

So, when fraud is suspected, back to that question, "What should you as an employer do, and what will Builders Trust do?"

As an employer, gather solid information. For example, if a co-employee reports seeing an injured worker playing softball, press that employee for more specific information: what field, what was the date and time, what was the name of the team – was there a sponsor name on his jersey, etc? Last year a Participant reported one of his injured employees, who was receiving benefits, was spotted in a supply store wearing a uniform with another company's name on it. We called the company, confirmed employment and kicked off a fraud investigation.

From Builders Trust's standpoint it starts with examining all information sent in with the claim, staying in touch with the employer and conducting a good investigation. It continues through the life of the claim by watching for fraud indicators, or what we call red flags. For example, by carefully reading medical reports we may see doctor comments like "his finger nails are dirty and hands calloused" or "he says he has pain when climbing ladders." These are red-flag indicators that your injured worker may not be home rehabilitating, but has found other employment.

When suspicion is confirmed with solid information Builders Trust will hire private investigators that are bonded, insured and licensed to conduct confidential investigations. These investigations are expensive and not always fruitful, but can develop evidence to prove fraud. When quality evidence is obtained, such as proof of work while on total disability or video

of a worker engaged in prolonged activity that appears to be well above and beyond the doctor's restrictions, we may take the case to the injured worker and/or his attorney, as well as health care providers, mediators and judges, in an attempt to curtail workers' compensation benefits. For a judge to deny a worker benefits, we must put together a very solid case. However, when an outright claim denial is not possible, evidence gathered during investigations can often be used to negotiate a final settlement that is less costly than would otherwise be the case.

To help prevent fraud, Participants can hire trustworthy workers, stay in touch with injured employees to let them know they are appreciated and that you're looking forward to their return, offer early return-to-work and communicate with your claims adjuster. As owner Participants you are an important part of preventing and fighting fraud.