

2014: Year-End Special Edition

2014 has been a year that most WSIB professionals will remember for a very long time. This is the year in which we saw a significant erosion of the unfunded liability, a dramatic decline in NEL awards, claims duration dwindling but more so, an unprecedented amount of appeals. Accordingly, much was discussed in the media and the controversy seems to be what is really driving these "numbers".

This is the year Bill 99 (that came into effect in 1998) began to pay dividends for Ontario employers but more so the Board themselves have acknowledged that return to work initiatives have a significant impact to the workers recovery but more so, their bottom line. It would be very hard to find a company that has not received notification from the Board of a return to work specialist "knocking on their door" or a decision denying a worker lost-time benefits as their employer offered safe, suitable and sustainable modified work.

However for every action there is an equal and opposite reaction (Newton's third law of Physics). As discussed above, workers are appealing the decisions to deny or limit loss of earnings benefits in record numbers. It also appears that these workers are utilizing the services of injured worker representatives far more often than not. This applies to workers from both union and non-union companies.

"Employers should participate in every injured worker appeal."

A recent case provides a great example of how importantly an appeal can impact a company's NEER statement (NOTE: the financial impact would be severe for a CAD-7 (construction employer) as well)

The specifics of this appeal are as follows: A worker was participating in modified duties from a biceps strain when he suffered a further injury to his shoulder.

The employee had a series of disciplinary issues prior to the second workplace accident. The worker was terminated due to these issues two days after the second incident. The Case Manager (CM) supported the employer; however, this decision was overturned by the Appeals Resolution Officer (ARO).

The initial decision was from the Case Manager who recognized the employer had provided modified work up to the date of termination but allowed 2 weeks of loss of earnings benefits as it was determined the worker had achieved full recovery from his compensable strains. The CM also ruled that the worker was terminated for reasons unrelated to his workplace injury.

The employer did not participate in the appeal.

The Worker's Representative successfully argued two key points:

1. The Employer did not monitor the worker's modified activities
2. The Employer's own progressive disciplinary policies were not utilized in this case

With no contrary evidence, other than what was already in the case file, the ARO concluded that the Injured Worker was dismissed as a result of his workplace injuries. The impact to employer is substantial.

- The injured workers 2012 claim was reactivated
 - ▶ The claim costs increased from less than \$5,000 to in excess of \$ 60,000
 - NEER changed from a rebate of \$13,000 to a surcharge of more than \$15,000 – net negative NEER impact of \$28,000
- The WSIB awarded reinstatement benefits from the date of dismissal to the date this worker started his new employment
 - ▶ This will result in additional charges in respect of the company's 2012 NEER year
- The company will be levied a financial penalty for breaching its re-employment penalty
 - ▶ This penalty is separate from their NEER statement
 - ▶ The penalty is commensurate with the amount of Loss of Earnings benefits paid to the injured worker

By failing to participate the employer could not rebut the submissions by the worker representative. The employer had provided modified duties up to the date of the date of the accident. The total

Year-End Claims can be very costly!

Both NEER and CAD-7 employers must be wary of compensable claims that occur this time of year.

CAD-7: Workplace Injuries and Seasonal Layoffs

Many construction companies will slow down or cease operations as the weather turns colder. This will result in mass temporary layoffs with an expected recall date close to April 1, 2015

If a worker is injured close to the end of your season it is very important to return them to modified work before they are laid off. If it can be demonstrated that the worker is capable of performing the bulk of their pre-accident duties and are being laid-off because of the employment conditions, the WSIB will not allow/reinstate Loss of Earnings benefits.

However, if it is determined, that in spite of the general layoff, the worker is limited from finding new employment due to their diminished capacity the WSIB will award this worker loss of earnings benefits. This will result in a lost time claim against that company's CAD-7. This will cost a company a minimum of \$50,000 dollars (or more) against their next two CAD-7's.

NEER: December 15th is the most important day in the NEER year

If a worker receives Loss of Earnings benefits into 2015 this claim will remain "ACTIVE" on your NEER until January 1, 2016. This will have a very negative impact on your 2015 NEER and will essentially mean your company is providing a one-year interest free loan to the WSIB.

For any claim that occurs between now and the New Year, it is critical that worker be placed into a modified work assignment as quickly as possible AND receives 100% of their normal wages even if they are only working partial days. This will prevent the WSIB from providing a loss of earnings cheque after December 15th. This also includes statutory holidays.

To discuss how to avoid these charges if you have an injury between now and the end of the year where you will be providing modified work for an extended period of time, please contact SE-GA.

Cost Relief from a Food Allergy

December
2014

Recently SE-GA gained 90% Second Injury Enhancement Fund Cost Relief for a company where one of their employees had an anaphylactic reaction in their lunch room. A second employee had brought a slice of pizza (with peppers) into the lunchroom and heated the pizza in the staff microwave. The employee had an allergic reaction to the odour of nightshade food.

The policy for 100% Cost Relief is to be granted when a prior non-work related condition is the cause of the accident; the common example is epilepsy.

While this should be considered a compensable workplace accident the underlying condition of allergies was the only cause of the accident. The WSIB determined the allergy was not the causal factor of the accident; instead the accident was caused by the peppers.

SE-GA is appealing this decision for 100% Cost Relief as this worker, due to the number of foods to which they are allergic, was very likely to eventually have an anaphylactic reaction.

WSIB NEWS in 2014

The end of the year means companies have received their 2014 CAD-7 and NEER statements detailing whether they have received a rebate or are required to pay a surcharge. If you have a question about your statement (especially if you would like to know how these statements play a significant role in determining your 2015 rebate/surcharge position) please feel free to contact our Office Manager Sonia at 416-463-7342 ext 4.

**The WSIB launched many new benefit policies effective November 1, 2014.
The affected policies are:**

Pre-existing Conditions: The new Pre-existing Conditions policy provides guidance to decision-makers and participants in the system about how to draw the work-related/non-work related line with claims that involve pre-existing conditions. It is intended to protect workers by setting a fair threshold for when benefits may end.

Permanent Impairments: A new Determining Permanent Impairment policy outlines the criteria that must be met in order to establish that a work-related permanent impairment exists. This new policy replaces and incorporates many of the concepts from the Determining Maximum Medical Recovery policy. The revised Determining the Degree of Permanent Impairment policy explains when and how non-work-related factors that impact the area of work-related impairment are factored out of the permanent impairment rating. This revised policy replaces and incorporates many of the concepts from the Effect of a Pre-existing Impairment policy.

Recurrences: The revised Recurrences policy outlines how entitlement to benefits is determined when a worker experiences a recurrence of a work-related injury/disease. It identifies clinical compatibility of the current condition with the original work-related injury/disease as the primary consideration in making this determination.

Aggravation Basis: The revised Aggravation Basis policy outlines that entitlement is considered for the acute phase of an injury when a minor work-related accident aggravates a significant pre-accident impairment. While process information and duplication were removed, no substantive changes were made to this policy.

Work Disruptions: The five existing Work Disruption policies were consolidated into two policies, one addressing temporary work disruptions and one addressing permanent work disruptions. The revised policies set out clear principles and guidance for decision-makers when determining whether a worker's additional loss of earnings during a work disruption results from the work-related injury/disease.

To understand how these policy changes affect your company please call SE-GA. Each claim is different and how it affects your CAD-7/NEER is dependent upon a number of factors.

2015 WSIB CAD-7 & NEER Seminars

Is your organization frustrated by surcharges, lesser than expected rebates and the overall high costs of your WSIB CAD-7 & NEER programs? SE-GA will be hosting "Understanding NEER" and "Understanding CAD-7" seminars throughout Ontario in 2015.

We will provide simple straightforward information on the keys to understanding how the WSIB determines the costs on your NEER and CAD-7 statements and what can you do to prevent a WSIB surcharge and dramatically increase your rebate!

Let SE-GA help you find the answers and let you focus on what's important; increased productivity and returning your employees back to work as quickly and safely as possible!

If your company or association would like to host an Understanding CAD-7 or NEER seminar or "Lunch & Learn" please contact us at info@segaconsulting.com or if you would simply like to attend, we will be hosting sessions throughout the province in early 2015. Visit our seminar page for more information at: <http://segaconsulting.com/seminars/>

Human Nature

A Three Part Series on Reading People and Developing your Interviewing Skills, Keep your Eyes and Ears open!

"The better informed you are, the better you can pick up nuances from the person you are interviewing" Donna Brown

Part One..... We need to be more observant

Some people are intuitively good at reading others, granted there are those folks who, when as children, their very livelihood or sense of survival depended on them being able to read ambient environmental cues. "Has Daddy been drinking? Why did Mummy slam the door?" Picking up on those indicators was a warning of possible violent behaviour to come or simply being able to survive the night.

I got into law enforcement to help people. I was NOT a natural at reading people. I paid attention and soon patterns of behaviour were noticed. A flared nostril, a hand becoming a fist, balanced feet, drool, and a higher pitched voice meant trouble was coming my way. You only have to be punched in the face once –after that, you seem to pay closer attention as to how people act. At least I did. Soon that simple quiver in one's voice leaked a sneak peek into what was truly going on.

In order to catch a liar who could potentially become a hire we need to put more emphasis on our ability to read others. First let's look at the psychology of lying:

Why do people lie? Most reasons for lies and deception are: to avoid social awkwardness, jealousy, to gain rewards, embarrassment, to mislead, and of course let's not forget because you simply can –personal pleasure. (ie: psychopaths). The hardest thing about reading people is understanding the difference between a blatant lie- total fabrication, versus perception. For example when investigating a workplace harassment case was it harassment or was there a miscommunication/ misunderstanding? With our society becoming more global do we misunderstand gestures, emblems, and cultural differences? Although there are always two sides to a coin we need to consider: did we see things differently or did we perceive things differently? Always remember- "One's perception is one's reality". There are two things to consider when people lie 1) The Cognitive load: Can this person remember all the details of the lie? 2) The Emotional load: How does the person feel while telling the lies?

Next we talk about how our emotions work.

Part Two Emotions and body language

Background: Human emotions have developed over the millennia, part of our genome, our autonomic nervous system (ANS) : as a result of the natural process we call evolution. Our ANS acts as a control system, which largely functions below human consciousness, controlling such life sustaining processes as heart rate, respiration, perspiration, digestion and sexual arousal. In other words we are hard wired. We can learn to control these emotions with good training, and even then with limited result. Our ANS serves a purpose, emotions can help organize us individually, for survival and collectively to provide a signally mechanism to alert our cohorts not to drink that water, not to eat that meat, not to challenge that interloper. While our emotions are universal we are culturally trained to control them. The critical component in lie detection is this: since emotions are hard wired ,we express them before we are aware of them. That 1/25th of a second in which we can leak an emotion is commonly referred to as "micro expressions". Seven universal emotions are generally recognized: Anger, Contempt, Disgust, Fear, Happiness, Sadness, and Surprise. Each of these emotions are expressed the same throughout the world what triggers the emotion can change from culture to culture. Knowing how to identify these emotions even a subtle leakage could make or break your interview.

Nonverbal behaviour makes up 75 percent of communication. This could include ones clothing, hygiene, grooming habits, walking styles, hand gestures, hair styles, tattoos, jewellery, physical environment (the car you drive, the state of your housekeeping) cultural gestures and practices.

Things such as direct eye contact can be somewhat misleading if you don't know about cultural differences when looking at detecting deception. Hand gestures, handshakes, proxemics and vocals can also vary between different cultures. As an interviewer, making one hand gesture that is normal in North America could be extremely offensive to a person in the interview room- depending where they are from. Even showing the bottom of your shoes while interviewing could be a game changer.

Vocals are the first thing that can betray a person. We look at pitch, tone and rate of speech. Pitch can go higher during a lie, excitement, anger and fear. Rate of speech can increase during difficult responses. Tones are a dead giveaway on how someone is feeling.

There is no one "tell" that lets us know our person is honest or deceptive. As experienced interviewers we are always looking for "clusters". These are several things we observe that helps guide our questioning and establish our veracity assessment. There is NO Pinocchio effect, however, we can detect how someone is feeling and that in itself will always give you the upper hand in the interview room.

Part Three.....The Interview

December
2014

What has disappointed me greatly over the years is watching people lie, cheat, scam, harm and get away with it, profit from it, even get promoted doing it. There are a lot of wolves out there dressed as sheep. They come in all shapes, sizes, sexes, races and from all religions. Whether it's in Bagdad, the bedroom, or the boardroom reading people, keeping our eyes open and our hearing on high alert is a critical component about getting to the truth and being safe.

Part of conducting a good interview is to take the time to build rapport. Consider this our "intelligence gathering" time frame, it also gives us a "baseline" which means we can now compare changes in behaviour when the interviewee is asked the tough questions. If you don't take time to build rapport- you've wasted your time.

Most liars I've come across hate the word "I" it takes sole responsibility. Speech, is so important, it's not just how they say it –but what they actually say. Do they ever answer the question? Why are they now pausing, hemming, hawing, and repeating the question?

Experienced, well skilled, deceptive people don't worry about being caught. They can maintain direct eye contact, their vocals don't change much, their behaviour seems in line, very convincing however...there is something wrong and you can't quite put your finger on it. Is this the time you finally trust your instincts and follow that little voice that demands closer scrutiny of the interviewee? This part could really put strain on your skills sets. What type of interviewer are you? Are you the type of person someone feels comfortable telling secrets to?

I've always thought there are two qualities a good interviewer should possess. One is tenacity –keep your eye on the goal-don't get distracted or manipulated. The second is- patience. A good interviewer needs to let the interviewee talk and you need to listen.

Interviewing can be complicated and challenging at the best of times. Interviewing no matter for what reason: potential employee, internal investigation, a mother asking their child what happened, or simply trying to get to the truth, the interviewer needs to practice and constantly educate themselves in interviewing techniques, to consider cultural differences and always remember is it reality or perception? Did it really happen and did it happen that way? Do I believe and trust the person I am interviewing? Paying attention and improving your powers of observation could be the meaning of a successful outcome to an interview or your very survival. Don't ever be a victim and learn to trust your gut, follow your instincts.

And by the way if anyone ever tells you "they can always tell when someone is lying" most likely "they are lying" - no one is that good.

Donna Brown is a threat assessment expert, specialising in statement analysis, nonverbal communication and is an accredited international instructor on reading micro facial expressions. Ms. Brown has been dubbed the "Canadian body language expert" by the media. She is also a well-known author and has published numerous articles on the art of detecting deception, reading body language, cultural differences and understanding the psychological background of the deceptive mind.

With over 4 decades in law enforcement Ms. Brown engages her audiences with humour and relatable real-life stories while providing actionable training on micro facial expression identification and the use of reading non-verbal communication in predicting violent behaviour. Training with Ms. Brown provides an enjoyable and productive way to improve one's essential tool kit for success in threat-assessment. Donna's hard-hitting yet humorous direct approach when instructing has become extremely popular within the law enforcement and investigative world. Recently Human Resource professionals have signed on for her expertise on interviewing. "The better informed you are, the better you can pick up nuances from the person you are interviewing" Donna says "knowledge is power" and she's right. She is a highly sought after commodity, delivering riveting lectures/workshops on reading people, recognizing micro expressions, cultural differences and understanding the psychological background of the deceptive mind.

For more information or to contact Donna directly for speaking engagements, she can be reached at:

<http://www.analies.ca/> or donna.brown@analies.ca

WSIB is complicated and remains unmanaged risk for most companies. If you have questions about a specific claim or any WSIB issue reach to SE-GA at 1-866-973-7342 ext 4 for a no-charge initial consultation.

Have a Safe and Productive 2015!

As always, everyone's situation is different. The above is not intended to be legal advice for any particular situation and it is always prudent to seek professional legal advice before taking any decisions on one's own case.



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