



Dora
Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

**2009 Sunset Review:
Workers' Compensation
Classification Appeals Board**

October 15, 2009





Executive Director's Office
D. Rico Munn
Executive Director

Bill Ritter, Jr.
Governor

October 15, 2009

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado Workers' Compensation Classification Appeals Board (Board). I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2010 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Article 55 of Title 8, C.R.S. The report also discusses the effectiveness of the Board and staff in carrying out the intent of the statutes.

Sincerely,

D. Rico Munn
Executive Director





Bill Ritter, Jr.
Governor

D. Rico Munn
Executive Director

2009 Sunset Review: Workers' Compensation Classification Appeals Board

Summary

What Is Regulated?

The Workers' Compensation Classification Appeals Board (Board) represents a formal process for employers to appeal their workers' compensation classifications or experience modification factors.

Why Is It Regulated?

The Board provides an avenue for employers to contest their workers' compensation classification or their experience modification factor.

Who Is Regulated?

Any employer that possesses workers' compensation insurance for its employees may file an appeal to the Board.

How Is It Regulated?

The Board hears complaints related to employers' workers' compensation classification codes as well as their experience modification factors. An employer or insurance company can appeal the Board's decision to the Commissioner of Insurance.

What Does It Cost?

State employees are not responsible for administrative functions related to the Board. Therefore, there are no expenditures associated with the Board nor does the State allocate any full-time equivalent employees to the Board.

What Disciplinary Activity Is There?

The Board heard 18 appeals for classification disputes in fiscal years 03-04 through 07-08. There were four appeals of the Board's decisions to the Commissioner.

Where Do I Get the Full Report?

The full sunset review can be found on the Internet at: www.dora.state.co.us/opr/oprpublications.htm.

Key Recommendations

Continue the Workers' Compensation Classification Appeals Board for 11 years, until 2021.

The Board serves to protect employers by providing an avenue to appeal workers' compensation insurance disputes regarding an employer's classification code or experience modification factor. If an employer does not concur with an insurance company's classification of the business or employee(s) within the business or the calculation of the experience modification factor, the employer may file an appeal with the Board only after the employer has exhausted all appeal procedures offered by the insurance company. The Board provides a regulatory framework that offers protection by enabling employers to appeal their classification codes as well as their experience modification factors.

Major Contacts Made During This Review

Colorado Division of Insurance
National Council on Compensation Insurance
Pinnacol Assurance
Workers Compensation Education Association

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:
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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

¹ Criteria may be found at § 24-34-104, C.R.S.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

Regulation, then, has many positive and potentially negative consequences.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. To facilitate input from interested parties, anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.dora.state.co.us/pls/real/OPR_Review_Comments.Main.

The functions of the Colorado Workers' Compensation Classification Appeals Board (Board) relating to Article 55 of Title 8, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2010, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the current appeals process related to workers' compensation insurance should be continued for the protection of the public and to evaluate the performance of the Board. During this review, the Board must demonstrate that it serves to protect the public health, safety or welfare, and that the current appeals process for disputes with workers' compensation insurance offers protection to the public. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly.

Methodology

As part of this review, DORA staff interviewed Division of Insurance staff as well as members of the Board, reviewed Board decisions, interviewed National Council of Compensation Insurance staff and employers who appealed classifications to the Board, reviewed Colorado statutes, and reviewed the laws of other states.

Profile of the Profession

Workers' compensation insurance provides protection to workers in the event that they are injured or develop occupational diseases while performing job-related duties.

The Colorado Workers' Compensation Classification Appeals Board (Board), created in House Bill 96-1057, represents a formal process for employers to appeal their current workers' compensation classification or the calculation of their experience modification factor.

An employer's workers' compensation insurance premium is based on a variety of components, including the classification code assigned to the employer as well as the experience modification factor. These two components greatly influence the premium of a workers' compensation insurance policy.

One of the fundamental aspects of effectively pricing workers' compensation insurance is the system of classifying different workplace exposures into a system of codes, each one with a rate commensurate with the risk associated with that workplace exposure.² The National Council on Compensation Insurance (NCCI), a non-profit rating bureau funded by insurance companies, and insurance company executives make up a majority of its board members,³ publishes a "Scopes Manual" that details more than 600 job classifications.

There are two different types of workers' compensation classification codes: individual and governing (basic). Individual classification codes are determined by rating bureaus, such as the NCCI. The majority of states, including Colorado, utilize the NCCI classification system.

The governing classification is the overall classification of an employer (not the individual classifications within the employer), and is the classification that insurance companies use to assess the risk of an employer and ultimately determine the premium an employer must pay in order to receive workers' compensation insurance. So while an employer may have multiple individual classification codes, only the governing class is used in determining the workers' compensation insurance premium.⁴ For example, a janitor working at a manufacturing plant will be assigned to the overall manufacturing classification used by the plant, not to a janitorial classification.⁵ It is important to note that individual classifications within an employer ultimately determine the governing classification.

However, there are certain instances in which the governing classification system is not utilized, such as the construction field. This is due to the fact that an employer within the construction field contains diverse jobs that present different levels of risk or exposures to being injured. For example, an employer in the construction industry may be involved, to varying degrees, in constructing a high-rise office building. Duties may include land grading, steel erection, concrete work, plumbing, electrical, etc. Because the aforementioned duties have differing degrees of exposure to injury, each activity may be eligible for its own classification assignment.

² Advanced Insurance Management. *Workers Compensation Classifications*. Retrieved March 31, 2009, from <http://www.cutcomp.com/classification.htm>

³ Advanced Insurance Management. *Workers Compensation Classifications*. Retrieved March 31, 2009, from <http://www.cutcomp.com/classifications.htm>

⁴ Workers Compensation Consultants. *Workers Compensation Codes and Classifications*. Retrieved May 18, 2009, from <http://workcompconsultant.com/workers-compensation-codes.htm>

⁵ Advanced Insurance Management. *Workers Compensation Classifications*. Retrieved March 31, 2009, from <http://www.cutcomp.com/classifications.htm>

The experience modification factor is also used by insurance companies to determine the risk (likelihood) of an employer to file a workers' compensation claim. Importantly, an experience modification factor is not a comparison of a specific employer's past premiums with past losses.⁶ Instead, an experience modification factor is an adjustment factor calculated for an employer based on prior years' payroll and loss data, essentially comparing the loss data for that particular employer to average loss data for all other employers in that state who share the same classification.⁷

In order to use an experience modification factor as a tool to affect the premium paid to insurance companies for workers' compensation insurance, an employer must have the appropriate amount of time from which loss and payroll data are used to calculate the experience modification factor.⁸ Normally, the appropriate amount of time is three years, starting four years prior to the effective date of the experience modifier.⁹

The greater the frequency of claims made by an employer related to workers' compensation, the higher the premium the insurance company will charge for workers' compensation coverage. On the other hand, the fewer claims by an employer may result in a decreased or lower premium for workers' compensation insurance.

The State of Colorado, as well as the majority of states throughout the United States, utilizes NCCI to calculate and ultimately determine the experience modification factor for employers operating in Colorado. Some states, however, utilize other rating bureaus to calculate their experience modification factors, including bureaus that are administered through the state government.

⁶ Advanced Insurance Management. *Understanding your Experience Modification Factor*. Retrieved May 6, 2009, from <http://www.cutcomp.com/mod.htm>

⁷ Advanced Insurance Management. *Understanding your Experience Modification Factor*. Retrieved May 6, 2009, from <http://www.cutcomp.com/mod.htm>

⁸ Advanced Insurance Management. *Glossary of Workers' Compensation Insurance terms*. Retrieved March 10, 2009, from <http://www.cutcomp.com/workers.htm>

⁹ Advanced Insurance Management. *Glossary of Workers' Compensation Insurance terms*. Retrieved March 10, 2009, from <http://www.cutcomp.com/workers.htm>

Legal Framework

History of Regulation

In the late 1980s, workers' compensation insurance rates in Colorado were among the highest in the nation. This prompted the General Assembly to pass several measures designed to reduce rates and simplify the system. The most comprehensive of these measures was Senate Bill 91-218, an omnibus workers' compensation reform bill.

The Workers' Compensation Classification Appeals Board (Board) was created in 1996. Prior to the creation of the Board, an informal committee that was comprised entirely of members of the insurance industry heard appeals related to workers' compensation. In the event that employers did not agree with the decision of the informal committee, they could file an appeal with the Colorado Commissioner of Insurance (Commissioner).

Current Regulation

The Board is created in section 8-55-101, *et seq.*, Colorado Revised Statutes, (C.R.S), and the responsibility of the Board as well as the Board's composition is outlined in this statute.

The Board hears grievances brought by employers against insurers and Pinnacol Assurance concerning classification assignments and the calculation of the experience modification factor.¹⁰

The Board's composition consists of five voting members and one non-voting member. The voting members of the Board are appointed by the Commissioner from the following interests:¹¹

- Two members representing the insurance industry (both members cannot represent Pinnacol Assurance or the same insurance company); and
- Three members representing private employers.

The non-voting member of the Board must be a representative of a rating organization and serves as a technical resource to the Board.¹² In Colorado, the rating organization is the National Council on Compensation Insurance (NCCI).

Each member of the Board is limited to serving two, three-year terms,¹³ while the non-voting member may be reappointed without limitation.¹⁴

¹⁰ § 8-55-101(1), C.R.S.

¹¹ § 8-55-101(1)(a,c), C.R.S.

¹² § 8-55-101(1)(b), C.R.S.

¹³ § 8-55-101(2)(b), C.R.S.

¹⁴ § 8-55-101(2)(c), C.R.S.

If an employer files an appeal contesting its workers' compensation classification or experience modification factor, the employer must file written notice to the Board within 30 days after the employer has exhausted all appeal review procedures provided by the insurance company.¹⁵ Section 8-55-102, C.R.S., requires all insurance companies authorized to transact business in Colorado to provide employers a written copy or summary of their appeal procedures.

The Board is required to schedule a hearing within 30 days after receipt of an appeal by an employer.¹⁶ The Board is also required to provide written notice of a hearing to the appellant, the insurer and NCCI within 30 days after receipt of an appeal, but not less than 10 days prior to a hearing.¹⁷

A formal hearing can only be conducted if a quorum exists either in person or by teleconference, which is a simple majority of the voting members and must include two private sector members.¹⁸

Either party can file a written notice of an appeal of the Board's decision to the Commissioner within 30 days after the Board's decision.¹⁹ Upon receiving the written appeal of the Board's decision, the Commissioner must provide a written decision of the appeal within 30 days after the request for a review.²⁰

The secretary of the Board (the NCCI member) is responsible for the administrative functions of the Board, including, but not limited to:²¹

- Providing notice of hearing;
- Preparing agenda; and
- Arranging the facilities for each hearing.

¹⁵ § 8-55-102, C.R.S.

¹⁶ § 8-55-103(3)(a), C.R.S.

¹⁷ § 8-55-103(3)(b), C.R.S.

¹⁸ § 8-55-103(3)(c), C.R.S.

¹⁹ § 8-55-104(3), C.R.S.

²⁰ § 8-55-104(3), C.R.S.

²¹ § 8-55-103(4), C.R.S.

Program Description and Administration

The Workers' Compensation Classification Appeals Board (Board) was created to hear appeals from employers regarding either their classifications or their experience modification factors, both of which assist in determining the premium employers pay for workers' compensation insurance coverage. The actions imposed by the Board are considered final actions for administrative purposes and may only be appealed to the Commissioner of Insurance (Commissioner).

The Board is composed of five voting members and one non-voting member. The Commissioner appoints the voting members. Two of the voting members must be from the insurance industry, while the remaining three voting members are required to be from private employers. The one non-voting member associated with the Board must be a representative of a rating organization; Colorado utilizes the National Conference on Compensation Insurance (NCCI).

The Board, as highlighted in section 8-55-103(3), Colorado Revised Statutes, meets only as needed to hear appeals. During a hearing, the employer presents information related to its position as to the reason it believes that its business or employee(s) within its business has been misclassified or the calculation of its experience modification factor is incorrect.

Conversely, representatives from an insurance company provide information to the Board related to its justification related to the classification(s) or experience modification factor.

Upon hearing the information presented from both parties, the Board renders a decision whether to uphold or overturn a current classification or calculation of the experience modification factor.

Additionally, state employees are not responsible for administrative functions related to the Board. Instead, NCCI staff carries out all of the administrative functions, which include:²²

- Providing notice of a hearing;
- Preparing the agenda;
- Securing a facility for a hearing; and
- Preparing a memorandum after a hearing that includes the vote of the Board.

Because NCCI staff serves as the administrative liaison to the Board, the State of Colorado does not have any expenditures associated with the Board nor does the state allocate any full-time equivalent employees to the Board.

²² § 8-55-103(4), C.R.S.

It should be noted that prior to filing an appeal with the Board, as required in statute, an employer must exhaust all appeal procedures offered by the insurance company.

Board Hearings

The Board is statutorily authorized to hear appeals related to an employer's workers' compensation classification or the calculation of the experience modification factor. An employer can only request an appeal to the Board after appeal procedures have been exhausted through the insurance company.

Table 1 highlights the total number of meetings held and appeals heard by the Board in fiscal years 03-04 through 07-08.

**Table 1
Total Number of Meetings and Appeals Heard by the Board in Fiscal Years 03-04
through 07-08**

Fiscal Year	Number of Board Meetings	Appeals Heard by the Board
03-04	1	3
04-05	1	2
05-06	1	4
06-07	2	4
07-08	2	5
Total	7	18

All of the appeals heard by the Board in fiscal years 03-04 through 07-08 were for classification disputes. For example, a non-profit employer appealed the classification codes assigned to his business. The non-profit owner argued that two classification codes assigned to his business for several years accurately reflect the nature of his business. However, the employer's insurance company assigned another classification code that it believed more closely captured the duties of the employer. In this case, the Board, after reviewing information provided by the employer and the insurance company, rendered a decision in favor of the insurance company, which was attempting to utilize a new classification code for the employer.

Table 2 highlights the Board's decisions regarding classification disputes between employers and insurance companies during fiscal years 03-04 through 07-08.

Table 2
Total Number of Board Decisions in Fiscal Years 03-04 through 07-08

Fiscal Year	Insurance Company's Position Upheld	Insurance Company's Decision Overturned	Insurance Company's Decision Both Upheld and Overturned*	Total Number of Appeals Heard
03-04	2	1	0	3
04-05	2	0	0	2
05-06	1	1	2	4
06-07	4	0	0	4
07-08	2	3	0	5
Total	11	5	2	18

* Employers appealed several classifications of the insurance company's decisions, and the Board upheld a portion of the appeals and overturned some.

In fiscal year 05-06, there were two instances in which the Board upheld and overturned an insurance company's decision related to classifications. One appeal was brought before the Board regarding film equipment. The employer contended that two classification codes used to describe the employer were incorrect. The first classification code, video and audio installation, was assigned to employees of the business who repair and service audio equipment. The employer did not agree with this classification and felt that a different classification, watch manufacture, which includes the repair and service of cameras, projectors and other precision photographic equipment, more accurately reflects the duties for employees who repair and service audio equipment.²³

After reviewing the job duties for both classifications, the Board voted to change the classification that was being applied to employees who repair and service audio equipment.

The employer also challenged the insurance company's classification for employees who work in the sales/rental equipment area. The insurance company classified these employees as a store hardware classification, which applies to employers who rent hand-held machinery or equipment.²⁴

²³ NCCI November 2005 meeting minutes.

²⁴ NCCI November 2005 meeting minutes.

The employer, on the other hand, contended that employees who work in the sales/rental equipment area were more closely analogous to the office clerical classification.

Upon reviewing information presented by both the employer and the insurance company, the Board upheld the insurance company's classification of employees who work in the sales/rental equipment area. The Board based its decision on the fact that in order to qualify for the office clerical classification, clerical duties must take place in an area that is physically separated from areas where products are displayed for sale and areas to which customers bring the products for purchase.²⁵ The Board contended that employees who work in the sales/rental equipment area do, in fact, sell equipment to customers, and therefore are properly classified.

An employer, insurance company or Pinnacol Assurance, who utilize the Board to hear disputes for either their classification or experience modification factor, can also appeal the Board's decision to the Commissioner within 30 days of the Board's decision. Table 3 delineates the total number of Board decisions appealed to the Commissioner for the fiscal years indicated as well as the Commissioner's decision to uphold or reverse the Board's decision.

Table 3
Total Number of Board Decisions Appealed to the Commissioner and the Commissioner's Decision in Fiscal Years 03-04 through 07-08

Fiscal Year	Number of Appeals to the Commissioner	Commissioner's Decision
03-04	1	Upheld
04-05	0	N/A
05-06	1	Overtured
06-07	1	Upheld
07-08	1	Upheld

The Commissioner upheld three of the four total appeals of the Board's decision in fiscal years 03-04 through 07-08. However, the Commissioner did overturn a Board decision in fiscal year 05-06. This appeal involved an employer who did not agree with the Board's decision related to its classification and requested that the Commissioner review the classification code that was applied to window installers. The Commissioner, after reviewing the case, reversed the Board's decision due to the fact the job duties of window installers were more closely analogous to a different classification code.

²⁵ NCCI November 2005 meeting minutes.

Analysis and Recommendations

Recommendation 1 – Continue the Workers’ Compensation Classification Appeals Board for 11 years, until 2021.

The first sunset criterion asks whether regulation is necessary to protect the public from harm. The Workers’ Compensation Classification Appeals Board (Board) serves to protect employers by providing an avenue to appeal workers’ compensation insurance disputes regarding an employer’s classification code or experience modification factor. There are two types of classification codes: individual and governing, both of which are eligible for review by the Board. Individual classifications include various personnel employed by an employer. For example, an employer could have three administrative staff and two janitors. The administrative staff has its own classification and the janitors have a different job classification.

The governing classification is the overall classification of an employer.

Individual and governing classification codes are determined by rating bureaus such as the National Council on Compensation Insurance (NCCI). The NCCI publishes a “Scopes Manual” that details more than 600 job classifications. The purpose of classifications is to group similar risks or exposures of filing a claim into a specific classification, which greatly influences the premium an employer pays for workers’ compensation insurance.

Additionally, the experience modification factor is a mechanism utilized by insurance companies to determine an employer’s risk (likelihood) of filing a workers’ compensation claim. The experience modification factor compares the loss data (claims) for all other employers in Colorado that share the same classification. This assists insurance companies in assessing the risk of an employer filing a workers’ compensation claim, which also influences the insurance premium an employer must pay to possess workers’ compensation insurance. Generally, the greater the frequency of claims by an employer, the higher the premium an insurance company will charge for workers’ compensation coverage. Conversely, fewer claims by an employer may result in a decreased or lower premium for workers’ compensation insurance.

If an employer does not concur with an insurance company’s classification of the business or employee(s) within the business or the calculation of the experience modification factor, the employer may file an appeal with the Board only after the employer has exhausted all appeal procedures offered by the insurance company. Section 8-55-102, Colorado Revised Statutes, requires all insurance companies authorized to transact business in Colorado to provide employers a written copy or summary of their appeal procedures.

In an attempt to obtain information related to the effectiveness of the Board including the current appeal process, the Department of Regulatory Agencies (DORA) staff surveyed 368 businesses throughout Colorado. DORA staff received 64 responses (17 percent) to the survey. The entire survey can be found in Appendix A on page 15.

The first question in the survey asked whether the employer was aware that the Board exists. Nearly 70 percent of respondents (39 employers) were not aware that the Board exists. One possible explanation is the current workers' compensation insurance market regarding premiums is stable; that is, the rates for premiums have been stagnant and employers have not experienced fluctuations in workers' compensation insurance premiums. Consequently, it is reasonable to conclude that employers have not needed to utilize the Board. This is evidenced by the fact that the Board heard very few appeals (18) in fiscal years 03-04 through 07-08.

Another question in the survey asked whether employers were satisfied with their current workers' compensation classification(s). The responses to the survey indicate that the overwhelming majority of respondents (nearly 90 percent) were satisfied with their current workers' compensation classification(s). The fact that nearly 90 percent of respondents were satisfied with their current workers' compensation classification could further explain why there were few appeals heard by the Board in fiscal years 03-04 through 07-08.

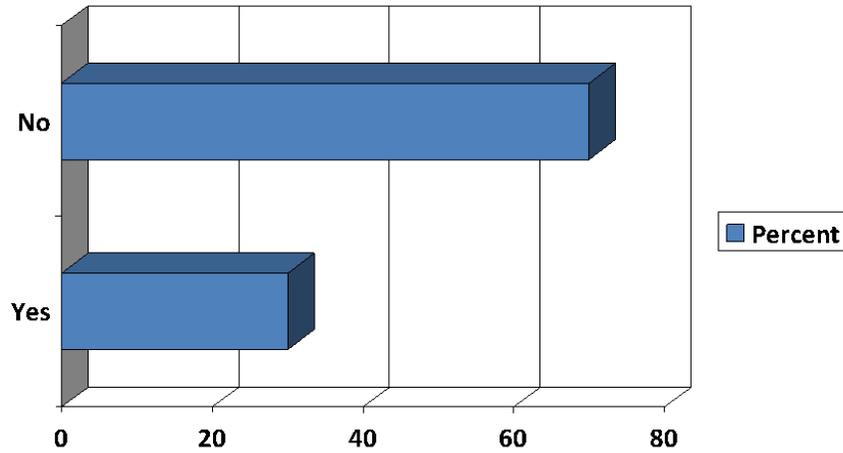
It should be noted that during fiscal years 03-04 through 07-08, the Board did not hear any appeals related to the experience modification factor; however, the previous sunset review of the Board (2000) completed by DORA reported that there were four experience modification factor appeals from June 1997 through March 2000. The experience modification factor is an important component in determining an employer's workers' compensation insurance premium. As such, enabling an employer to continue to file appeals to the Board if it believes that an insurance company has calculated the experience modification factor incorrectly serves to provide protection to employers.

It is unclear why there were zero appeals filed to the Board related to concerns with the calculation of the experience modification factor; however, because there have been appeals in the past, it is important for the Board to maintain its authority to continue to hear experience modification factor appeals in the future.

Finally, both of the appealable factors (classification and experience modification factor) greatly influence the premium an employer pays for workers' compensation insurance; therefore, the Board provides a regulatory framework that offers protection by enabling employers to appeal classification assignments or the calculation of experience modification factors. It is unclear what factors (including the creation of the Board) have contributed to the current stable workers' compensation insurance market regarding premiums, but the absence of the Board could leave employers susceptible to insurance companies overcharging them for workers' compensation insurance coverage. In order to provide an avenue for businesses to appeal workers' compensation classifications or the calculation of their experience modification factor, the General Assembly should continue the Board for 11 years, until 2021.

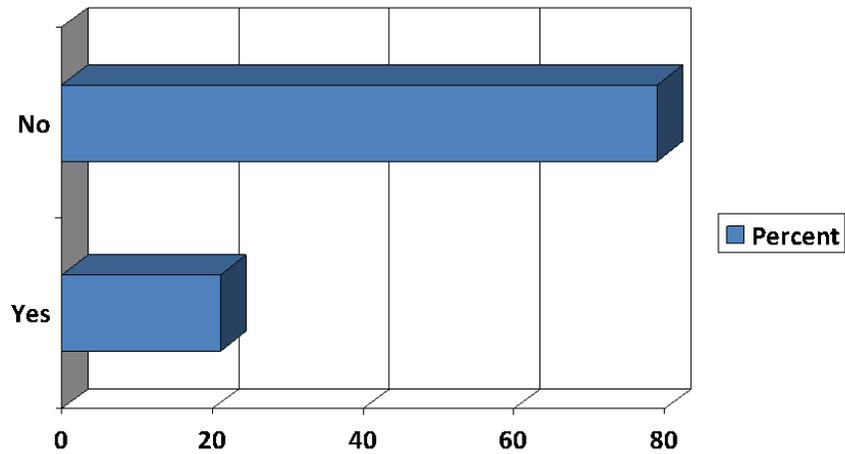
Appendix A – DORA Survey of Businesses

Are you aware of Colorado's Workers' Compensation Classification Appeals Board?



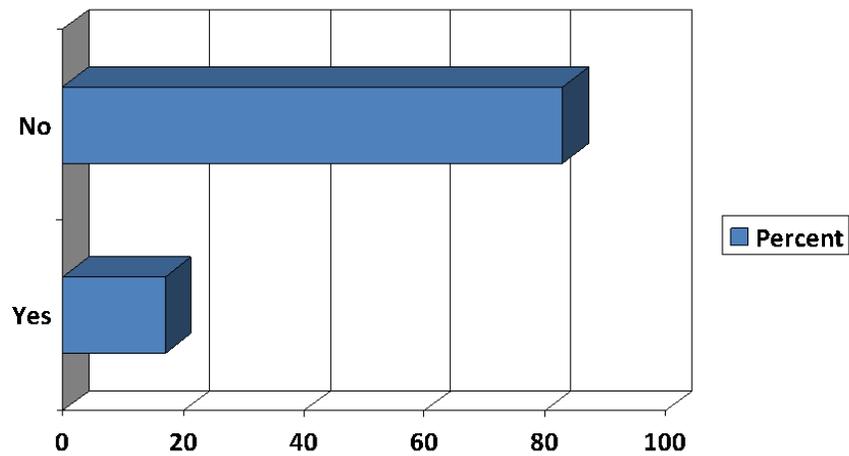
	Count	% Sample Answered	% Sample Asked	% Sample Total
Yes	17	30.4%	26.6%	26.6%
No	39	69.6%	60.9%	60.9%
Not Answered	8	N/A	12.5%	12.5%
Not Asked	0	N/A	N/A	0.0%
Total	64	100%	100%	100%

Do you know the purpose and function of the Board?



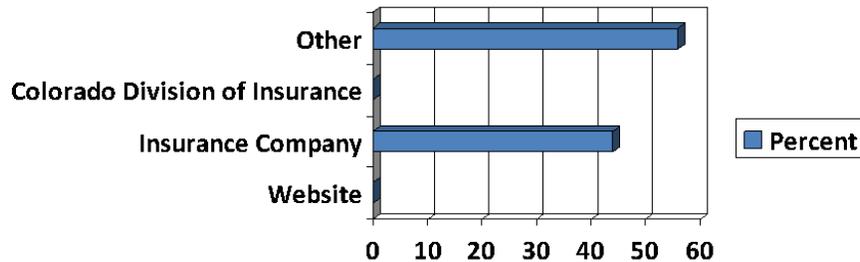
	Count	% Sample Answered	% Sample Asked	% Sample Total
Yes	12	21.4%	18.8%	18.8%
No	44	78.6%	68.8%	68.8%
Not Answered	8	N/A	12.5%	12.5%
Not Asked	0	N/A	N/A	0.0%
Total	64	100%	100%	100%

Are you aware of the current appeals process related to workers' compensation classifications?



	Count	% Sample Answered	% Sample Asked	% Sample Total
Yes	11	17.5%	17.2%	17.2%
No	52	82.5%	81.3%	81.3%
Not Answered	1	N/A	1.6%	1.6%
Not Asked	0	N/A	N/A	0.0%
Total	64	100%	100%	100%

If so, how did you become aware of the appeals process



	Count	% Sample Answered	% Sample Asked	% Sample Total
Website	0	0.0%	0.0%	0.0%
Insurance Company	4	44.4%	6.3%	6.3%
Colorado Division of Insurance	0	0.0%	0.0%	0.0%
Other	5	55.6%	7.8%	7.8%
Not Answered	55	N/A	85.9%	85.9%
Not Asked	0	N/A	N/A	0.0%
Total	64	100%	100%	100%

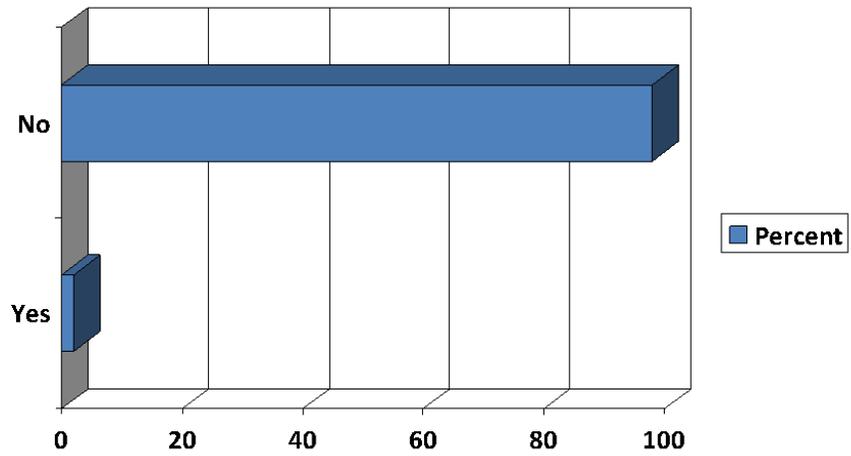
Question 3(c): If so, how did you become aware of the appeals process

Item	Frequency	Percent
Unique Responses	3	100.0%
Total	3	100%

- JUST NOW
- By having used the process
- trainings and gained knowledge

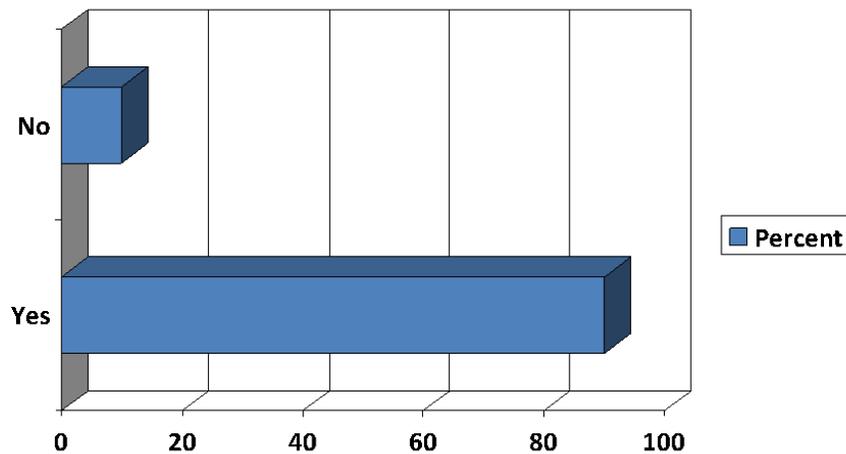
Not Answered: 61

Have you ever utilized the appeals process?



	Count	% Sample Answered	% Sample Asked	% Sample Total
Yes	1	1.8%	1.6%	1.6%
No	55	98.2%	85.9%	85.9%
Not Answered	8	N/A	12.5%	12.5%
Not Asked	0	N/A	N/A	0.0%
Total	64	100%	100%	100%

Are you satisfied with your current workers' compensation classification(s)?



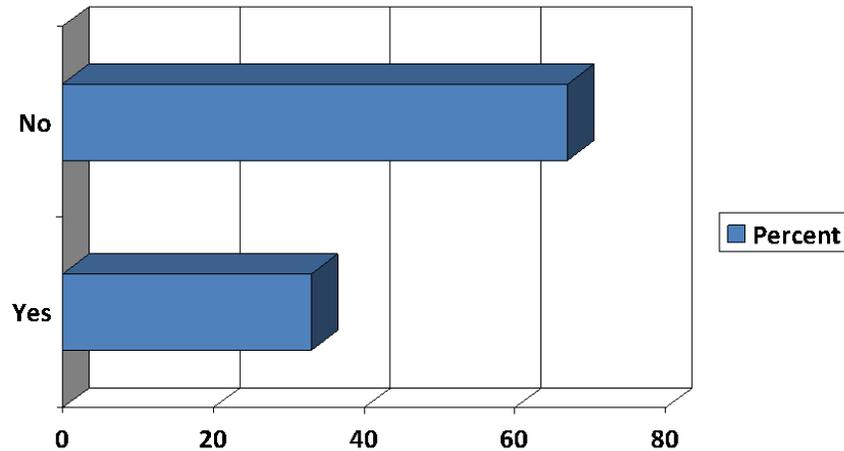
	Count	% Sample Answered	% Sample Asked	% Sample Total
Yes	44	89.8%	68.8%	68.8%
No	5	10.2%	7.8%	7.8%
Not Answered	15	N/A	23.4%	23.4%
Not Asked	0	N/A	N/A	0.0%
Total	64	100%	100%	100%

Question 5(b): If not, why?

- Not enough break down, too broad.
- N/A, both employees are owners and have filed for exemption
- small construction business owner has to be classified as part-time field work.

Not Answered: 61

Has your insurance company provided information regarding Colorado's workers' compensation classification appeals process?



	Count	% Sample Answered	% Sample Asked	% Sample Total
Yes	17	33.3%	26.6%	26.6%
No	34	66.7%	53.1%	53.1%
Not Answered	13	N/A	20.3%	20.3%
Not Asked	0	N/A	N/A	0.0%
Total	64	100%	100%	100%

Question 7: Please provide additional comments in the space provided.

- Although we did not have an issue with classification, it is good to have an agency to review the insurance companies. It is possible that such issues may increase as the agency goes into sunset.
- I believe so - but do not think I followed up on it as it was not an issue.
- Probably, unless it is right in front of me, I don't pay much attention. Too little time.
- I am not sure if our insurance agency provided us with the appeals information.
- Our company utilizes a Professional Employment Organization called Employer Services Group that provides us with worker's compensation through The Hartford.
- I don't know anything about it.
- If they did, I didn't know it.
- I have not needed to file any claims, so I have not educated myself on the appeals process.
- My company is a one employee shop; I am the only employee. Therefore, I have no need nor knowledge of the current workers' compensation program. Due to this lack of need and lack of knowledge I cannot answer questions 5 and 6.
- If so, I cannot find any information on the process.

Not Answered: 54