

**The 401-Week Income Replacement Limit and its
Effects on the Texas Workers' Compensation
System**

**Research and Oversight Council
On Workers' Compensation**

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Acknowledgments

EXECUTIVE SUMMARY

- Workers injured during the first quarter of 1991 began to reach the 401 limitation during the final quarter of 1998.
- The 401 week limitation that Texas utilizes falls between the time periods used in other states as limitations. The length of the average maximum, calculated across all states that have a restriction is 424.6 weeks.
- 57 claims, or 12.2 percent of the SIBs claims from the first quarter of 1991 reached the 401 week limitation.
- On average, claimants with 401 week claims are older than their SIBs counterparts. SIBs claimants are 39.7 years old, while those that hit the 401 week limit are 43.05.
- Women account for 24.5 percent of SIBs claims, however, within 401 week claims, women account for 37.2 percent.
- Workers who receive benefits for 401 weeks were employed for longer periods of time than their SIBs counterparts and had higher pre-injury wages.
- Injured workers with claims lasting the maximum 401-week duration had an average pre-injury weekly wage of \$412.86, while the average SIBs recipient had an average of \$346.96.
- Back injuries are involved in 54.7 percent of SIBs cases in general. For claims that include income benefits for 401 weeks, the percentage of claims involving back injuries is even higher: 62.1 percent.
- Occupational disease is less likely to be the source of disability in claims that reach the 401-week limit. Occupational disease accounts for approximately 6.07 percent of SIBs claims. In those claims that include 401 weeks of income replacement, occupational disease accounts for only 3.5 percent.
- The average impairment rating for those that reached the 401 limit is not significantly higher than their SIBs counterparts whose claims are not as long. The average impairment rating of those who have approached the 401 week limit is 23.3 percent. The average impairment rating of injured workers receiving SIBs who did not reach the 401-limit is 22.6 percent.

- Medical costs for those who have reached the 401-week limit are over twice as much as the average SIBs claim. The average total medical cost for those who reach the 401-week mark is \$121,863, while the total medical cost for the average SIBs claim is \$60,363.
- The average total indemnity cost for the 401-week group is \$80,232 and only \$50,820 for the average SIBs claim.
- Very few injured workers who have received income benefits for the full 401 time period have worked in any capacity. Those who have had some work were paid at very low levels.
- Survey data indicates that for those individuals who are no longer receiving SIBs and have not gone back to work, the majority had found alternative means to supplement their income. Thirty-three percent were receiving social security benefits, 21 percent were receiving financial assistance from family or friends, and 16.7 percent were receiving either food stamps, public assistance, or aid for dependent children.
- Although claims from 1991 have had a longer period of time to be contested, a larger percentage of 1991 claims have not been challenged when compared to claims from 1992, 1993, or 1994.

Introduction

Background

Workers' Compensation Claims in Texas have a limit of 401 weeks, or 7 years and 8.5 months, for income replacement benefits. Since the new law was implemented in January of 1991, injured workers receiving income replacement benefits first reached the 401 week limit in September of 1998. While there has been much speculation regarding the number of injured workers the limit will effect, little data has been presented to provide an answer.

While there are several reasons why the 401 week limit is important to investigate, the most important reason is probably cost. Injuries that result in longer-term claims cost more for all parties involved and are the most expensive claims in the workers' compensation system. Determining the impact of the limit is likely to be of interest to workers, as for many workers compensation benefits may be his or her only source of income. Insurance carriers are no doubt concerned with the cost of these claims. The objective of this report is to provide a analysis of the frequency and cost of those claims that reach the 401 week limit and evaluate how workers with these long-term claims will be impacted. Also included in these analyses is a comparison of 401-week claims to what could be considered "average" SIBs claims in terms of pre-injury employment information, return to work information, and disputes.

Report Organization

Part I of this report provides a brief overview of the 401 week limitation. Part II provides a comparison of Texas with workers' compensation laws in other states in terms of income replacement limits. Part III identifies the frequency of 401 claims in Texas in comparison to other types of claims. In part IV, 401 week claims are compared to SIBs claims in general to evaluate differences in claim characteristics. Part V provides a brief discussion of disputes among these long term claims and what impact they may have on the number of claims that hit the 401-week limit in the future.

Data and methodology

Several sources of data were utilized for this study. Claims from the first quarter of 1991 were identified through the Texas Workers' Compensation Commission's (TWCC) research database. The majority of the analyses for this study resulted from comparisons of SIBs claims and 401 week claims with injury dates ranging from January 1st, 1991 through March 31st, 1991. Previous research completed by the Research and Oversight Council on Workers' Compensation has identified how short term claims differ from long term claims. However, in this study, analysis will be conducted on only the most severely injured workers, with relatively long claim histories. The average SIBs claim includes income benefits for approximately 5 years. These claims will be compared with the 401-week claims (7 year 8 months). These data were merged with two additional sources to answer specific research questions. The Detailed Claim Information System (DCI), developed and maintained by the Texas Department of Health was utilized to answer specific questions regarding claim costs. The DCI database includes workers' compensation claims with cost (medical+indemnity) totaling more than \$5,000.00. Employment history from 1991 through the first quarter of 1998 was obtained from Texas Workforce Commission, and provided quarterly income totals for the subjects in this study. Additional information regarding benefit types other than workers' compensation was obtained through a survey of SIBs recipients conducted by the Research and Oversight Council on Workers' Compensation (ROC) and the Texas Workers' Compensation Commission (TWCC). An attempt was made to contact each SIBs recipient by phone. Survey responses were obtained from 960 injured workers.

I. Overview of the 401-Week Limitation on Income Benefits

As part of the workers compensation reforms that were introduced January of 1991, the Texas Legislature implemented a system of income replacement benefits for injured workers. Although injured workers may receive medical benefits throughout the length of their disability, in general, injured workers are limited to 401 weeks of income replacement benefits, or seven years and 8.5 months. Because the reforms were implemented in January 1st, 1991, workers injured during the first quarter of 1991 began to reach the 401 limitation during the final quarter of 1998.

¹Most, if not all injured workers who have reached the 401-week limit have received SIBs during the latter stages of their claim. While it is conceivable that Impairment Income Benefits (IIBs) could potentially last for a period of time equal to 401 weeks, there have yet to be documented cases where this has occurred. Supplemental Income Benefits (SIBs) were intended to assist severely injured workers who continue to have a significant level of disability and have not been able to return to their pre-injury work status.

During 1998, the Texas Workers' Compensation Commission and the Research and Oversight Council on Workers' Compensation completed a survey of SIBs recipients to investigate the experiences of these workers in the workers' compensation system. Information gathered from this survey included questions regarding how much knowledge injured workers have of their benefits, their opinions of the Texas Workers' Compensation Commission and of their Insurance Carrier, the nature of benefits they had received from the Texas Rehabilitation Commission, and other sources of income replacement. From this study, it was found that 30.8 percent of SIBs recipients were unaware there was a 401 limit on income replacement benefits. In an effort to improve communication with injured workers regarding the 401 week limit,

¹ An exception to the 401-week limitation occurs for those who receive Lifetime Income Benefits (LIBs). LIBs are provided to those injured workers who have suffered from severe injury, which includes the loss of eyesight, the loss of an extremity, or injury to the head or spine that causes significant paralysis or severe brain dysfunction. While LIBs are a provision for these most severely injured workers, few injured workers receive these benefits. During the calendar year of 1991, 26 injured workers received LIBs benefits.

the Texas Workers' Compensation Commission adopted a rule implemented on October 1st, 1998 that all injured workers who might potentially be affected by the limit be notified by their insurance carrier.

II. Statewide Comparison of Benefit Limitations

Texas is not unique in its use of a limitation on income replacement benefits for workers' compensation claims. While some states have provisions for injured workers to be compensated for the duration of their disability, many states have limitations on income replacement in their workers' compensation system, either through a maximum dollar amount or through a limitation on the time period that income benefits are paid. In general, the 401 week limitation that Texas utilizes falls between the time periods used in other states as limitations. By comparison, Colorado has a maximum of 208 weeks, which was the shortest time period, and Wisconsin had a maximum of 1000 weeks, which was the longest. The length of the average maximum, calculated across all states that have a restriction is 424.6 weeks.

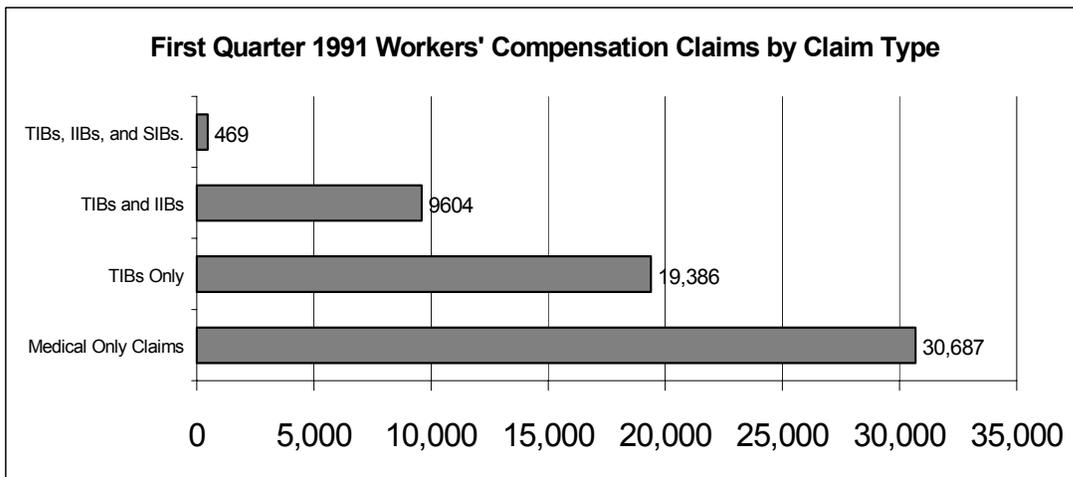
Table 1. Statewide comparison of benefit limitations.

Alabama	300	Montana	350
Arkansas	450	Nebraska	300
Colorado	208	New Hampshire	262
Connecticut	520	New Jersey	600
Delaware	300	New Mexico	500
Florida	364	North Carolina	300
Idaho	500	Oklahoma	500
Illinois	500	Pennsylvania	500
Iowa	500	South Carolina	340
Kansas	415	Tennessee	400
Kentucky	425	Texas	401
Louisiana	520	Utah	312
Maine	260	Vermont	330
Massachusetts	260	Virginia	500
Mississippi	450	West Virginia	336
Missouri	400	Wisconsin	1000

State Workers' Compensation Laws U.S. Department of Labor, Employment Standards Administration
Office of Workers' Compensation Programs.

III. Frequency of claims reaching the 401 Week Limit

In order to gain some perspective on how many individuals will be affected by the 401-week limitation, it may be helpful to first reference the total number of workers compensation claims that were made. Since only those claims from the first quarter of 1991 are closed in terms of income benefits, claims from this period will be used for these analyses. During the first quarter of 1991, 61,024 workers' compensation claims were filed. Of these, over half or 30,687 were medical only claims. Even within claims that have included income replacement, SIBs claims represent only 1.54 percent.

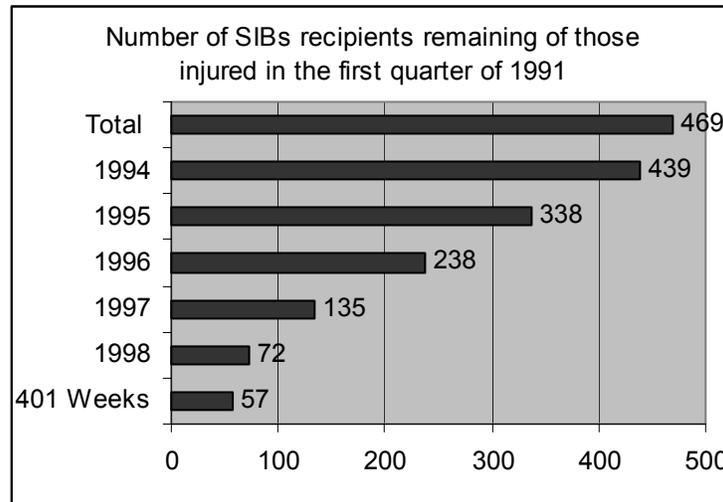


Source: Texas Workers' Compensation Commission research database as of October, 1998

Not included in the graph are death benefits (76) and lifetime Income Benefits (8).

As the above graph indicates, those who ultimately go on to receive SIBs account for less than one percent (.77%) of all workers compensation claims. Of those injured in January of 1991, reached the 401 week maximum in August of 1998. Four hundred and sixty nine workers were injured in the first quarter of 1991 and went on to receive SIBs. The graph below provides information regarding how long these SIBs claims were active. Of the SIBs claims that were due to injuries occurring in the first quarter of 1991, 439 remained active in 1994. By 1995, only 338 of the SIBs claims that were

due to first quarter 1991 injuries remained active. Only 57 claims, or 12.2 percent of the SIBs claims from the first quarter of 1991 reached the 401 week limitation.



Source: Texas Workers' Compensation Commission research database as of October, 1998.

IV. Analysis of 401 week claims

One of the goals of the present study is to investigate how claims that include income replacement benefits for the maximum of 401 weeks differ from other claims. For the purposes of this study, 401-week claims were compared with the claims that have included SIBs on the following dimensions: Demographic information, Pre-injury employment, type of injury, level of disability, claim costs, and return to work.

Demographic Data

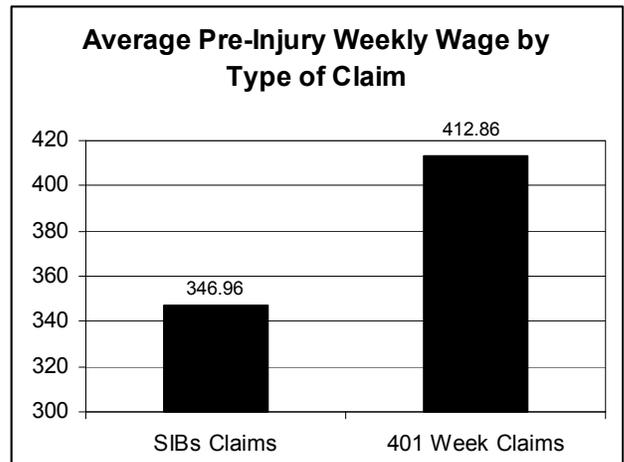
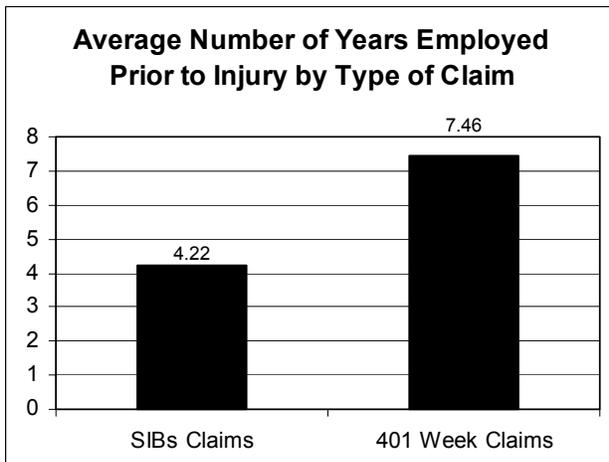
On average, claimants with the long-term, 401 week claims are older than their SIBs counterparts. SIBs claimants are 39.7 years old, while those that hit the 401 week limit are 43.05. This trend has been demonstrated in previous research as well.² Those with longer term claims tend to be older and have a harder time returning to work following a work related injury. Also noted among previous research is that among longer term claims, women account for a higher percentage of claims than for claims of shorter duration. Similar results were found in the present study. Women account

² Analysis of Closed Claims in the Texas Workers Compensation System (1998).

for 24.5 percent of SIBs claims, however, within 401 week claims, women account for 37.2 percent.

Pre-Injury Employment

Data from the Detailed Claim database, which includes workers compensation claims that have accrued more than \$5000.00 in total cost, provided information regarding employment data prior to injury. Workers who receive benefits for 401 weeks were employed for longer periods of time than their SIBs counterparts and had higher wages on average.



From Detailed Claim Information System by Texas Department of Insurance.

These findings are particularly interesting in view of previous ROC research that has indicated that injured workers with shorter claims tend to have higher pre-injury wages than injured workers with longer claims. In this study, injured workers who had claims open for the 401 week duration had an average Pre-injury weekly wage of \$412.86, while the average SIBs claim had a pre-injury weekly wage of \$346.96.

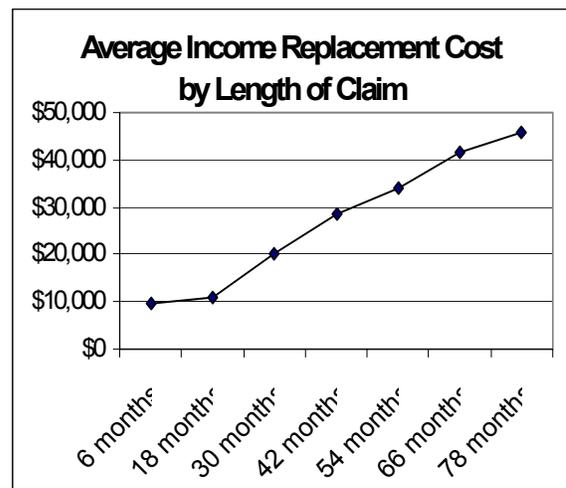
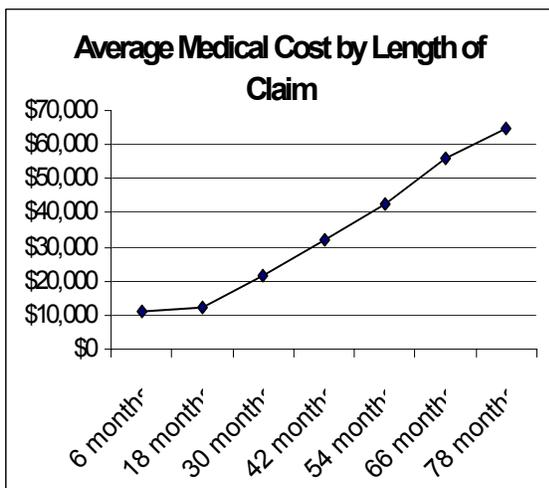
Type of Injury and level of disability

Consistent with previous data, this study shows that injuries to the lower back are more common among long-term claims. Injuries to the back were identified in 22 percent of short duration claims, defined as one year or less. 41 percent of long duration, defined as four or more years were caused by injuries to the back. For those most severely injured workers, injuries to the back are even more common. Back injuries are involved in 54.7 percent of SIBs cases in general. For claims that include

income benefits for 401 weeks, the percentage of claims involving back injuries is even higher: 62.1 percent. Consistent with the above information regarding the increased frequency of back injuries, occupational disease is less likely to be the source of disability in claims that reach the 401-week limit. Occupational disease accounts for approximately 6.07 percent of SIBs claims. In those claims that include 401 weeks of income replacement, occupational disease accounts for only 3.5 percent.

In spite of these differences of injury type, in terms of the level of impairment, there is little difference between those injured workers who “go the distance” and those that do not. It is generally true that injured workers who have higher impairment ratings also have claims that are longer. However, data from this study indicates that the average impairment rating for those that reached the 401 limit is not significantly higher than their SIBs counterparts whose claims are not as long. The average impairment rating of those who have approached the 401 week limit is 23.3 percent. The average impairment rating of injured workers receiving SIBs who did not reach the 401-limit is 22.6 percent. These data suggests that either those who have received income benefits the longest are not necessarily more impaired than those whose claims are shorter or that the present system utilized for determining impairment is unable to measure meaningful differences in impairment severity.

Claim Costs

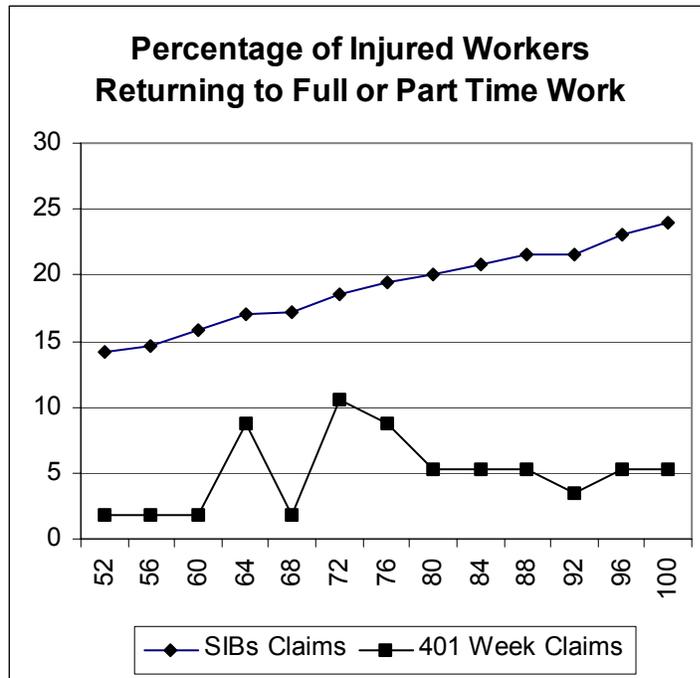


From Detailed Claim Information System by Texas Department of Insurance.

The above graphs provide a reference point for evaluating the relative costs of 401-week claims. As common sense would suggest, the longer a claim remains active, the more costly it is in terms of medical costs and income replacement costs. The previous discussion indicates that impairment ratings do not vary significantly between those SIBs recipients who reach the 401-week limitation and those who do not. However, there are significant differences in the cost of these claims. Medical costs for those who have reached the 401-week limit are over twice as much as the average SIBs claim. The average total medical cost for those who reach the 401-week mark is \$121,863, while the total medical cost for the average SIBs claim is \$60,363. As can be expected, there are large differences in income replacement costs between these groups as well. The average total indemnity cost for the 401-week group is \$80,232 and only \$50,820 for the average SIBs claim. These medical and indemnity costs associated with these 401 week claims, while extremely expensive, are perhaps not surprising given that they are likely to be the highest priced claims in the Texas workers' compensation system. It is probably also important to consider that medical expenses for some of these claims may continue to increase, since there is no time or monetary limit for medical expenses.

Return to Work

As might be expected, for those who have received income benefits for the 401-week duration, return to work is extremely low. By definition, these individuals have not returned to work at 80 percent or above their pre-injury wage, but as the graph below indicates, very few return to any employment. For those that do, their salary is minimal. Average earned income for those who are working averages \$107.77 per week.



Texas Workforce Commission data and the Texas Workers' Compensation Commission Administrative Database.

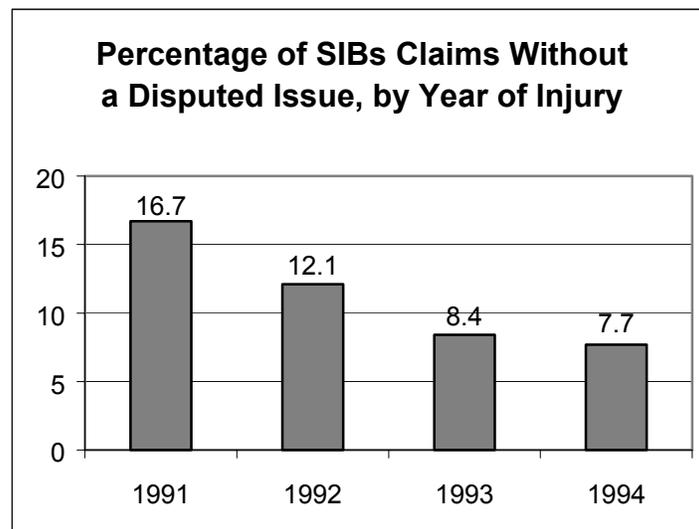
The above graph shows that over time, the percentage of injured workers returning to full or part-time work continues to increase over time. These data also indicate that even those SIBs recipients who do not receive the maximum 401 weeks of income benefits, the percentage returning to work is quite low.

The data utilized for the analysis of claims information was compiled in October 1998. Since only a very small percentage of injured workers had reached the 401 week mark at this time, little is known about what will happen to these individuals after their income benefits are terminated due to the 401 week deadline. However, a study completed in 1998 by the ROC provided information about return to work patterns of those most seriously injured and alternative types of income replacement once they are no longer eligible for workers' compensation benefits. For this study, SIBs recipients were surveyed to identify their experiences with the workers' compensation system in Texas. Of those surveyed, 61 percent were still receiving SIBs. Of the remaining 39

percent who were no longer receiving SIBs, approximately 69 percent had not gone back to work. The majority of these individuals had found alternative means to supplement their income. Thirty-three percent were receiving social security benefits, 21 percent were receiving financial assistance from family or friends, and 16.7 percent were receiving either food stamps, public assistance, or aid for dependent children. Given that most individuals surveyed who are no longer receiving SIBs are also unemployed, it is likely that those who reach the 401 week limit will also require similar assistance once they are no longer eligible for workers' compensation.

V 401 week claims and disputes

While this study was able to present information on those injured workers who have now reached the 401-week limit on income replacement benefits, the question remains whether the percentage of SIBs claims that “go the distance” will remain constant. One factor that has the potential to highly impact whether SIBs claims remain active is whether they are disputed. Previous studies completed by the ROC have indicated that SIBs claims have a very high likelihood of being disputed, and many have multiple quarters disputed.³



Data from the Texas Workers' Compensation Commission Administrative Database.

³ Supplemental Income Benefits: Statistical Update and Survey Results

Data from this study suggests that as time has passed since the new law went into effect, the likelihood of a claim being disputed has increased. As the above graph indicates, even though claims from 1991 have had a longer period of time to be contested, a larger percentage of 1991 claims have not been challenged when compared to claims from 1992, 1993, or 1994.

VI. Conclusion

Overall this study found that there are relatively few individuals who continue to receive income replacement benefits through the 401-week limitation. Despite their low frequency, they are considerably more expensive, both in terms of medical and indemnity costs. It is noted, however, that the most dramatic differences found between those that continue to receive benefits for the full 401 weeks and those that don't are in medical costs, even though differences in indemnity costs are substantial.

Surprisingly, impairment ratings do not appear to differ significantly between the average SIBs claim and those that remain active for the 401-week duration. The question must be asked whether the impairment rating system that is presently in place adequately measures impairment ratings as they are used in the Texas workers' compensation system, particularly since they do not appear to be good predictors of length of impairment among the most severely injured. Since little difference was found in impairment ratings for those that "go the distance", if it could be said that impairment ratings are an accurate measure of the ability to return to work, then some other phenomena must account for whether someone continues to receive benefits or losses benefits.

Data suggests that individuals who have been denied or are no longer receiving SIBs continue to have difficulty returning to work even after several years of not receiving benefits. It is likely that those that are become ineligible to receive SIBs due to the 401-week limit will have similar, if not more severe, problems returning to meaningful employment. This information combined with the fact that a very small percentage of few injured workers are eligible for Lifetime Income Benefits, begs the question as to whether Texas provides adequate resources for those most severely injured workers in the compensation system.

Furthermore, little has been done in the Texas workers' compensation system to prepare those facing the 401-week deadline once their benefits cease. While there are methods in place to inform those who are facing the 401 deadline that they will no longer be eligible for income benefits, there are no formal mechanisms in place to assist these injured workers with the transition to alternative types of disability benefits. Even providing brief interviews or publications regarding what options might be available to them "post-workers compensation" may be of great benefit those exiting the system and still unable to work.

Previous studies have shown that negotiating the workers' compensation system is extremely difficult for the average injured worker.⁴ This is particularly true during the SIBs stage, when injured workers must re-apply for benefits on a quarterly basis, and where claims can be disputed on a quarterly basis. During the SIBs stage, claimants have a much higher probability of facing disputes than during TIBs or IIBs. Along with the severity of injury, it is likely that education, knowledge of the workers' compensation system, support in completing required paperwork, and simple perseverance may have as much to do with the ability to maintain SIBs throughout the course of one's claim.

Probably because of the expense involved with these claims, the odds are good that they will be disputed at least once. The chances that a SIBs claim will be disputed has increased since 1991, which may have the overall effect of reducing the number of claims in the workers' compensation system that reach the 401-week limit. Since individuals are now reaching the 401 limit for the first time, it will be interesting to investigate whether the relative frequency of 401-week claims increases or decreases over time. Additionally, future studies may include outcome studies on those injured workers who have been affected by the 401 limit and evaluate return to work success or alternative income replacement after their workers' compensation indemnity benefits have terminated.

⁴ Data from the Texas Workers' Compensation Commission Administrative Database.