



STATE OF NEW MEXICO

Workers' Compensation Administration

ONE TEAM | ONE GOAL

A Better New Mexico for Workers and Employers

QUARTERLY BULLETIN

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MEETING NOTICE:

The Advisory Council on Workers' Compensation and Occupational Disease Disablement will meet at **9 a.m., June 2, at the WCA Headquarters, 2410 Centre SE, Albuquerque, NM.** Download the agenda at: <http://www.workerscomp.state.nm.us/advisory.php> 72 hours prior to the meeting.

Holiday Closure

The Workers' Compensation offices in Albuquerque and all its field offices will be closed on the following upcoming holidays:

Memorial Day, May 30
Independence Day, July 4

Workers' Memorial Day is April 28

By Aileen O'Catherine

April 28 is Workers' Memorial Day, a day set aside to commemorate workers who died or suffered from exposures to hazards at work. Workers' Memorial Day highlights the preventability of workplace injuries and illnesses and remembers those who were killed while fulfilling their workplace duties. Started by the AFL-CIO in 1970 to honor workers killed and injured on the job every year, Workers' Memorial Day is now recognized worldwide. Since 1989, trade unions in Europe, Africa, North and South America and Asia have organized events on this day. Many countries besides the United States recognize it as a national day, to include the United Kingdom, Peru and Taiwan.

According to the U.S. Bureau of Labor and Statistics, every year in the United States, more than 4,000 workers go off to work never to return home again. In New Mexico, there were 34 worker deaths reported to the Workers' Compensation Administration (WCA) in 2015.

Death on the job can happen for a variety of reasons. Sometimes even the best safety precautions fail and people make mistakes. Accidents happen on the road. Of the 34 fatalities, two were women. The oldest employee was 74 and the youngest was 19. Fifteen of the fatalities resulted from accidents in vehicles, one on an airplane. In one motor vehicle accident, a company lost three employees, two of whom were twin brothers. Other causes of death included a scaffold collapse and a gas explosion. Three police officers died in the line of duty.

Each worker who died was more than just a statistic. They were grandfathers, sons, daughters, co-workers, and friends who enjoyed fishing, cooking, swimming, and spending time with friends and family. They

lived in all corners of the state, from Farmington to Carlsbad and points in between.

According to news reports and published obituaries, David Rickner, 62, was an HVAC technician employed by the Central Consolidated School District. In the process of completing his G.E.D., Rickner loved fishing and NASCAR racing. Rickner died in a vehicle accident.

Shannon Tunnell was 33 when he died doing a job he loved. An aerial gunner for the U.S. Department of Agriculture (contracted through the University of New Mexico), he hunted coyotes that threatened cattle. The plane he was in went down near Raton, taking the life of the Clovis native and the pilot of the plane. Tunnell loved hunting and spending time with family and friends.

Marvin Scarber, known as "Pops," was 74 and working as a maintenance man for the Allsup's company. He was at an Allsup's gas pump in Hobbs when someone got into an altercation with him over shoveling snow. Scarber was hit on the head and soon became unresponsive. "We're kind of lost," his daughter Tammy Priest said about life without her father.

Robert Manzanares, 60, was a business partner with his brother Johnny in a small construction company based in Ribera that specializes in non-residential building. Robert Manzanares suffered a fatality when he was loading a compaction roller onto a trailer for transport. The roller lost traction and slid off the trailer, and though he tried to jump out of the way, Robert Manzanares was fatally hit. "It was such a shock. It was a freak accident," Johnny Manzanares said. "I do this all the time. He did this all the time. I guess it is worth it to take those few extra minutes to do things." Though it has been a year since Robert Manzanares died, his brother finds there are still many things to deal with. The

Gerald Stuyvesant, Second Director of the WCA

By Aileen O'Catherine

The WCA opened its doors to the public December 1, 1986. We will run a series of articles in each issue of the 2016 Quarterly Bulletin to commemorate 30 years as an agency.

When the Workers' Compensation Administration (WCA) was started in 1986, Martin Chavez spent months pulling together people and resources to begin the agency. The WCA's second director, Gerald Stuyvesant, not only continued that momentum, but he had to build on it and establish an agency with ties to its main stakeholders of workers, employers, insurers and attorneys.

The agency had difficulties at the start. When the New Mexico Legislature established the WCA, the trial lawyers sued, saying it was not constitutional to hear claims in any other venue than a judicial one. The tug of war ended when an amendment was put on the ballot, and the people of New Mexico decided in favor of an administrative court to hear work injury claims.

"I would say the first four or five years of the administration's existence we were mostly concerned with proving this was a good, fair and efficient venue for hearing workers' comp claims," said Stuyvesant about those early years. Proving the agency's worth and its

economic value was only part of the challenge though, as in 1987 and 1988, there were changes to the law.

By 1990, a major revision of the law was needed. Those changes resulted in the WCA we have today, complete with functions to oversee safety, enforcement and fraud.

"The Workers' Compensation Administration grew significantly through that period," said Stuyvesant. "I had the job of growing it and hiring lots of folks and getting it to its almost current form." Under his guiding hand, that growth took place from 1987 to mid-1995.

Stuyvesant had already retired from one career when he took the job as WCA director, and in many ways he was an ideal fit. Once he retired from a career in risk management with the military, he worked as director of safety and security at Presbyterian Hospital, which included oversight of workers' compensation. He then became director of risk management at Albuquerque Public Schools, and from there, director of risk management with the City of Albuquerque. It was while he was in that role that he became part of the WCA advisory committee for Martin Chavez, who had been appointed by then Gov. Toney Anaya to oversee the agency's startup. When Gov. Garrey Carruthers came into office, he appointed Stuyvesant as the WCA's director, and by that time, he had a feel for all the players in the workers' compensation arena.

To better help explain the new system to the public, Stuyvesant and staff conducted town halls around the state, sometimes with the Governor. Stuyves-



Gerald Stuyvesant visits with some of the WCA staff who worked under his directorship. Left to right: Victor Martinez, Sandra White, Gerald Stuyvesant, Staci Tullar and Chris Johnston.

ant spoke with groups on both sides of the issue to help forge an understanding of what workers' compensation was—and wasn't. "Many businesses didn't understand why their insurance rates went up when they had accidents, and why they went down when they worked safer," Stuyvesant said. There was a learning curve. Having been part of the group that helped write the 1990 law gave Stuyvesant credibility with stakeholders, as did his background in business and management. His was a voice they felt they could trust.

Along with explaining the agency to stakeholders, Stuyvesant faced the challenge of getting the insurance industry on board with changes in the law. Although insurers said they were using New Mexico statistics as the basis for their rates, Stuyvesant soon saw the industry didn't have enough interest in the state to really develop a statistical machine.

"We had no New Mexico-based insurance companies at the time selling

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NM Workers' Comp. Adm. Quarterly Bulletin

Darin A. Childers, Director
Diana Sandoval-Tapia, Public Information Officer
Aileen O'Catherine, Technical Writer

The Bulletin is published in January, April, July and October by the Public Information Office of the New Mexico Workers' Compensation Administration. The Bulletin is available free of charge. Send changes of address and requests to receive the Bulletin to Diana Sandoval in the Public Information Office, New Mexico Workers' Compensation Administration, diana.sandoval@state.nm.us.

Suggestions for articles are welcome; call Diana Sandoval-Tapia at (505) 841-6052. Recent issues of the Quarterly Bulletin can be viewed on the Internet at <http://workerscomp.state.nm.us/research/index.php>.

What is the Advisory Council?

The Advisory Council on Workers' Compensation and Occupational Disease Disablement is a task force created by statute, comprised of six members, three representing workers and three representing employers. The primary role of the Council is to advise the governor and legislature on the status of the workers' compensation system in New Mexico. The Advisory Council meets several times a year on an irregular schedule. Scheduled meetings of the Council are announced on the WCA website, <http://www.workerscomp.state.nm.us/advisory.php>

WCA Enforcement Bureau Secures Criminal Conviction, Indictment

By Aileen O’Catherine

The WCA Enforcement Bureau investigates 52 kinds of violations of the Workers’ Compensation Act and WCA Rules. The most prominent allegations that come to the bureau’s attention include fraud, bad faith and unfair claims practices. In all cases, the bureau thoroughly investigates and gathers evidence so that prosecution will be successful if the case is eventually brought to court. They do this no matter who the culprit may be.

The bureau recently secured a criminal conviction and an indictment in two separate fraud cases. One involved a worker who faked a debilitating injury. Another involved a lawyer who allegedly embezzled funds entrusted to his care.

As the prosecuting attorney for the WCA and State of New Mexico, Enforcement Bureau Chief Phyllis Bowman pushed for penalties as outlined by the law, and with the help of her staff, succeeded in bringing the criminals to justice.

Jonathon Muckleroy filed a workers’ compensation claim while a temporary employee for a staffing agency that sent him to work for an oil extraction firm at a site near Hobbs. Claiming he had inhaled chemical fumes that kept him from breathing or being able to do physical work, Muckleroy faked his injury from late 2010 until October, 2015.

WCA Investigator Justine Andrews pieced together a case that increasingly pointed toward fraud, and it took years for Bowman to put all the evidence in place. Working with the District Attorney’s office in her capacity as a special prosecutor, Bowman brought all resources to bear in proving Muckleroy was out to game the system.

In total, Muckleroy unlawfully received \$121,714.10. Along with faking an injury to receive medical and indemnity benefits, Muckleroy altered a return-to-work form his doctor had given him. The WCA filed four second degree felony counts against Muckleroy

in Lea County, and on March 1, 2016, Muckleroy pled guilty to two of the four counts. One was for forgery over \$20,000, which carries a maximum penalty of nine years, and another for making a false claim over \$20,000, which carries the same penalty. Sentencing is scheduled for June 27.

In a second case, Luis Quintana represented Jesus Herrera, a truck driver who sustained a serious head injury in an on-the-job accident, and who later died. As Herrera’s legal counsel, Quintana had volunteered to temporarily become recipient of benefits. This is a common practice that involves funds being disbursed and deposited into an account held separate from the attorney’s personal funds. For two years, Quintana deposited Herrera’s benefits into his own personal bank account and allegedly used them for unknown reasons. In February 2015, the WCA found Quintana in contempt of court and removed him as recipient of benefits for Herrera. Herrera’s widow became recipient of benefits that April.

Quintana had received more than \$50,000 in workers’ compensation checks and allegedly embezzled \$31,763.10 from the Herrera family. WCA Investigator Bob Pinon completed the investigation with assistance from the New Mexico Insurance Fraud Bureau, a financial analyst, two insurance carriers, and WCA records.

Once Quintana was held in contempt, WCA General Counsel filed a formal complaint with the state Disciplinary Board. The Disciplinary Board recommended Quintana be disbarred and the Supreme Court agreed, permanently disbarring him on May 11, 2015.

Working as a Special Assistant District Attorney, Bowman filed charges against Quintana, who was indicted by a



*Enforcement Bureau (l to r)
Front: Bureau Chief Phyllis Bowman, Investigator Bob Pinon. Rear: Paralegal Yvette Aguirre, Investigator Justine Andrews*

grand jury on March 17, 2016. He was charged with two counts of criminal fraud. The Quintana case is pending, and should be scheduled for trial soon.

“I’m pleased to see progress in our enforcement activities and hope these cases will serve as a deterrent to others,” said WCA Director Darin Childers.

Ensuring the integrity of the system depends on help from the public. Please contact the WCA if you suspect fraud has taken place.

Workers' Memorial Day (continued)

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business has to continue. "Life goes on," Manzanares said, "I'm too young to retire. I can't change things." Robert Manzanares was a husband, father, uncle and grandfather. He loved playing and coaching basketball. "He was super on the job," Johnny Manzanares said.

Workers' compensation insurance can't take away the pain and suffering of the families and co-workers of those who died in a work-related incident. It can, however, provide funds for dependents, and for funeral expenses.

The Workers' Compensation Association of New Mexico (Association) knows first-hand the long lasting effects of workplace fatalities. The Association established the Toby Wright Scholarship to provide college scholarships to the children of New Mexico

workers who have been killed while working, or who were catastrophically injured because of a workplace injury.

Brock Carter serves as the president of the Association's Foundation and manages scholarships for the fund. Over the years, Carter has witnessed the devastation a workplace death or debilitating injury can have upon a family.

"There's a lot more to it than just the financials, the work comp money and the scholarship money," he said.

Carter talked about a family whose father had died while working in the mines. The miner's daughter graduated #1 in her high school class and got her college degree with the help of scholarship funds. Her brother graduated #1 in his high school class, went on to college, and obtained a doctor-

ate in electrical engineering. He now works at Sandia Labs. "If they had 10 kids, we would do our best to help them," Carter said of the families.

When it comes to worker safety, the impact of an accident that results in a disabling injury or death has profound and lasting effects on the families left behind for an entire lifetime. "People don't realize the serious impact such an event can have upon the family," Carter said.

Tribute can be paid to workers on April 28 or any other day of the year at Workers' Memorial Park in Albuquerque, located at 1932-2004 San Mateo NE. Masses, candlelight vigils and other events will take place nationwide on Workers' Memorial Day.

Director Gerald Stuyvesant (continued)

Continued from page 2

workers' compensation insurance," he said. Getting the statistical bureau going, and developing data to show the insurance industry what workers' compensation really looked like in New Mexico helped to bring costs down. It was a challenge for Stuyvesant, as he wanted the insurance industry to be supportive, but he also saw that New Mexico had not been treated fairly for some time. "We were bad, but we were not as bad as they said we were," Stuyvesant said.

There were many positives along with the challenges as director, such as getting the agency's funding source set up with the legislature so that it would be self-funded. The workers' compensation fee requires workers and employers to pay \$4.30 per employee per quarter, with \$2 paid by the employee and \$2.30 by the employer. The 30 cents more employers pay funds the Uninsured Employers' Fund, which was not part of the agency during Stuyvesant's time as director.

Stuyvesant's extensive experience in the area of self-insurance was instrumental in getting the self-insurance bureau of the WCA up and going. "It

is very difficult to truly assess a company for their ability to self-insure," Stuyvesant said. "It is even more difficult to assess a group for their ability to self-insure."

The WCA's self-insurance bureau has an exemplary record. Since it began, it has made sure every injured worker is provided with workers' compensation benefits, even if the employer has gone out of business or is no longer a self-insured organization.

While he was director, Stuyvesant established ties with associations that specialized in the area of workers' compensation, to include the Southern Association of Workers' Compensation Administrators, the Western Association of Workers' Compensation Boards, and the International Association of Industrial Accident Boards and Commissions. "I learned we all had common problems, but some of them had overcome those problems, so I learned from what they did." Having served as president for each association in turn allowed him to bring their conventions to New Mexico, which



helped enhance the agency's credibility in those challenging early years. He didn't do it alone, however, and credits his employees for allowing him to take those responsibilities on. "I was able to do it because I had good people who could really carry on the grunt work," he said.

There were many high points to Stuyvesant's directorship, but "getting that 1990 law through was the brightest spot," he said. Bringing together all sides to stand behind the legislation, especially the union representatives, was fulfilling. "Getting the unions to recognize it was in their interest if they wanted to prosper in New Mexico, to improve workers' compensation, was a tremendous bright spot," he said.

For Stuyvesant, being part of the evolution of workers' compensation in New Mexico was its own reward. "Being in at the beginning, if not the very beginning, of taking jurisdiction for workers' comp, and moving it through the first 10 years was exciting. One thing led to another. We constantly improved, and that was a great satisfaction."

Chris Johnston to Retire After 28 Years at the WCA

By Aileen O'Catherine

As the WCA celebrates its 30th birthday as an agency, Chris Johnston has memories of 28 ½ of those years. As the current Facilities Manager, Johnston oversees all aspects of the building, grounds, internal structure, inventory, maintenance and furniture for the Albuquerque facility and the field offices. He also manages a small staff. Johnston has worked continuously at the WCA longer than any other employee, and although there were 11 months at the WCA's beginning when he wasn't there, he has worked with nearly every person who has ever been at the agency. He has also worked with every WCA director except Martin Chavez.

In the early years, Johnston pitched in to do whatever was needed to keep the agency stable and growing. To start, he did payroll, billing and administrative services. As the WCA grew and hired financial and human resources personnel, he did all the purchasing. When plans were being made to construct a new building to house the agency, Johnston was asked to apply for the position of Facilities Manager. He has held that position for the past 21 years.

With the exception of the temporary office at the Tiwa Building during Martin Chavez's first months as director, Johnston has worked at each of the WCA's subsequent locations. When he

was hired, the agency was at 700 Fourth Street. When it moved from Fourth Street to 1820 Randolph, Johnston was in charge of getting everyone and everything moved. When Randolph grew too small, he moved some of the staff up the street to the secondary offices on Buena Vista. Finally, he helped everyone move to the agency's current location at 2410 Centre SE.

Johnston was instrumental in getting the permanent building opened, though there were some technical difficulties to start. The soil compaction wasn't right, so they dug down 30 feet where the building was to be located, treated the soil and put it back in. "It was too soft. You can see by the shifting sands out in our parking lot how it creates those large cracks," Johnston said. Getting each of the field offices started and maintained, from the first one in Lovington to the last one in Santa Fe, also kept him busy over the years.

What stood out for him from the WCA's early years was the rapid rate of growth. "When we really started to grow, it was like a rocket that flew straight up. Over the years it plateaued, and now it is really status quo," he said of the agency. It amazes him how many people he has worked with over the years, from staff to vendors, suppliers and contractors.

Though a great deal of knowledge



Chris Johnston

goes into his job, he is quick to give credit to others. "It's all about the people that I know. I have never thrown a phone number away, ever."

Chris Johnston will retire at the end of May, taking with him nearly 30 years of institutional knowledge, history, and memories. In addition to working with those who have been part of the agency, he has also worked with the many service technicians, salespeople, contractors, lawyers and others who work with and within the WCA. Thank you, Chris for all you have done these many years. You will be missed!

Other staff who worked at the WCA under the term of Gerald Stuyvesant were Dana Chavez ('88), Wayne Farmer ('93), Sarada Gutierrez ('92), Sharron Johncox ('90), Terry Kramer ('93), Irene Lucero ('94), Victor Martinez ('93), Charlene Roberts ('92), Virginia Sanchez ('93), Staci Tullar ('92), Sandra White ('91), and Thomas White ('93).

When combined, these WCA staffers have provided the agency with 300 years of service!

IAIABC Forum Held in Santa Fe April 18 - 21

The International Association of Industrial Accidents Boards and Commissions, or IAIABC, held its 2016 Forum in Santa Fe April 18 - 21. The IAIABC is the largest trade association of workers' compensation jurisdictional agencies in North America. Both government agencies and private organizations providing workers' compensation coverage and benefits participate in the IAIABC. The organization provides information and

education on workers' compensation policy, administration and regulation.

At the Forum, Dr. Richard Adu-Asamoah of the WCA gave a talk on how the agency used research and data to determine pricing for medical marijuana. Other speakers included blogger Bob Wilson, who spoke on the impact of technology on workers' compensation, and representatives from the Department of Labor speaking on the topic of joint employment.

The IAIABC holds a large annual convention, and its smaller Forums focus on discussion, dialogue and problem solving. Attendees share ideas and collaborate to improve workers' compensation systems. At the Santa Fe Forum, the first IAIABC "National Conversation" took place, in which leaders from all sectors of the industry discussed public policy goals for workers' compensation and what can be improved.

Two Bills Passed in 30-Day Session

Well over a dozen bills directly related to workers' compensation were introduced during this year's 30-day legislative session. Of those introduced, two passed and were signed by Governor Susanna Martinez to become law.

SB 214 Workers' Compensation Benefits and Intoxication – Sen. Jacob Candelaria (D-Bernalillo-26).

SB 214 provides that workers' compensation indemnity benefits be reduced in proportion to the contribution of the worker's intoxication or drug use to the worker's injury or death. Injuries caused by the willfulness or intention of the worker are noncompensable. Reduction of benefits will be between 10 and 90 percent. Workers who refuse to submit to post-accident tests, or to release post-accident results to the employer receive no compensation. Employers who have knowledge of the worker's intoxication or influence, or who have not implemented a written drug- and alcohol-free workplace policy, cannot make a claim in reductions. Death payments are not affected for dependent benefits of a deceased worker. A nearly identical bill was introduced in the House by Rep. Dennis J. Roch, HB 63, which passed

in that chamber. The law takes effect May 18, 2016.

HB 168 & SB 254 as amended, Transportation Network Company Services – Rep. Monica Youngblood (R-Bernalillo-68) & Sen. Joseph Cervantes (D-Dona Ana-31).

HB 168 clarifies regulations that allow ridesharing companies to operate in New Mexico. The law takes effect May 18, 2016.

HM 78 Study Air Ambulance Transports – Rep. Debbie Rodela (D- Rio Arriba, Santa Fe & Taos-41).

The memorial requests the WCA participate in a study of the air ambulance industry in New Mexico. The memorial passed.

Additional bills introduced include:

HB 194 Employee Responsibility – Rep. Cathrynn Brown (R-Eddy-55).

HB 194 would have amended sections of the Workers' Compensation Act to clarify benefit entitlement when a worker is terminated for post-injury misconduct. HB 194 passed the House and was in the Senate Corporation & Transportation Committee at end of session.

HB 195 Medical Cannabis – Rep. Randal Crowder (R-Curry-64).

HB 195 would exempt employers and insurers from having to pay for medical cannabis for work comp claimants. HB 195 passed the House and action was postponed indefinitely when in the Senate Corporation & Transportation Committee.

HB 204 Death Benefits to Remarried First Responders – Rep. Patricio Ruiloba (D-Bernalillo-12).

HB 204 would have provided death benefits to a spouse of a first responder regardless of remarriage. HB 204 was in the House Rules & Order of Business Committee where action on it was postponed indefinitely.

SB 244 Workers Compensation, Farm and Ranch Laborers – Sen. Steven Neville (R-San Juan-2).

SB 244 sought to change the definition of farm and ranch laborers. SB 244 died in the Senate Judiciary Committee.

SM 92 Recognizing Accomplishments of Bonnie Stepleton – Sen. Jacob Candelaria (D-Bernalillo-26). WCA Mediation Bureau Chief Bonnie Stepleton has been recognized for her outstanding accomplishments in the legal community and for being chosen as a 2016 Justice Mary Walters honoree by the women's law caucus at the University of New Mexico School of Law.

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