

CFMEU

CONSTRUCTION

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Dear Mr Lean

New Return to Work Assistance

Please find enclosed the submission of the Construction Forestry Mining and Energy Union (New South Wales Branch).

Yours faithfully



Rita Mallia

State President

Introduction

The Construction Forestry Mining and Energy Union (CFMEU) welcomes the opportunity to make submissions to the State Insurance Regulatory Authority on the issue of 'Return to Work Assistance.' In addition to these submissions we also support the submissions and recommendations compiled by Unions NSW.

CFMEU represents approximately 16,000 members in the building and construction industry. The industry is characterised by heavy manual work, with workers working long hours, generally six days per week and in some cases far from home or in difficult environments. The safety and wellbeing of our members is our primary concern. The CFMEU is extremely committed to ensuring that where possible our members are working in safe environments. Despite the CFMEU efforts to ensure safety, accidents still happen and people can still get hurt.

The CFMEU says injured workers need to be properly looked after and compensated for their loss of earning capacity. At present, too often workers are simply treated as statistics and put through paper rehabilitation schemes for the sake of returning to work for a few months so that an employer can terminate their employment as soon as the boxes for "rehabilitation" and "return to work" are ticked. Such workers are left without hope of being given a job on the next project or finding real alternative long term work in another industry.

New programs

The CFMEU welcomes the addition of the "New employment assistance" and "Education and training assistance" programs. However, the programs cannot be successful without addressing the obstacles faced by injured workers attempting to return to work either with their old employer or with a new employer.

Injured workers face a number of obstacles in their return to work. The system contains a number of issues which result in many injured workers being denied appropriate rehabilitation. Insurers and employers together create the most insurmountable obstacles for injured workers to return to work.

The best way to illustrate the issues faced by our members is by way of example.

In March 2012, Stephen sustained a workplace injury to his back which will prevent Stephen returning to his chosen career of carpentry. Stephen was still an apprentice when he was injured at work.

Stephen applied for and was granted early completion of his carpentry apprenticeship with the assistance of his then employer. He had only just completed his apprenticeship and been a qualified carpenter for approximately one week when his former employment was terminated as a result of his injury.

Subsequent to his injury, Stephen has been unable to return to the work which he trained to do for the past four years causing great distress.

Stephen wanted retraining so that he could return to the industry he had spent 4 years training to enter. Unfortunately, Stephen's rehabilitation provider did not assist Stephen in finding a suitable training program. Stephen did his own research and found a TAFE course

Building and Construction Certificate IV. But the insurer refused to pay for the course which meant Stephen could not undertake the course.

Frustrated with the employer and the rehabilitation provider, Stephen decided to fund his own return to his studies in an area related to carpentry in order to be competitive in the workplace and to take advantage of his work experience and qualifications. Stephen initially applied for entry to a Land Surveying course. Unfortunately because of the high number of applicants, Stephen was not successful in gaining admission to this course, and this was confirmed in late January 2013.

In February 2013, Stephen commenced a Diploma in Building Surveying, which he initially funded himself. The course is via OTEN which means the course is completed from home and is self-paced.

It was only after Stephen's workers compensation solicitor approached the insurer that the insurer agreed to pay for this course as a part of Stephen's rehabilitation.

Stephen's example highlights the main problem experienced by injured workers wanting to return to work, their employer's unwillingness to continue their employment. It also highlights the apathy that insurers show towards retraining. Even when an injured worker finds an appropriate training course insurers are often unwilling to pay for the retraining.

Juan suffered a work related injury to his shoulder. His employer was a self insurer. After two years on workers compensation, Juan's employer terminated his employment.

Since the injury Juan has had multiple operations on both his left and right shoulders.

The insurer has not referred Juan to a rehabilitation provider. There have been no attempts to retrain him. The insurer has not even sent him to a job search agency. It is as if the insurer was just holding out until they could either discontinue his benefits or until he reached retirement age.

During the work capacity review process, WorkCover asked the insurer whether rehabilitation services had been provided to which the insurer responded no. WorkCover took this issue into account when it issued the merit review decision.

Juan's example highlights the unwillingness of self-insurers to provide rehabilitation services and retraining to its injured employees. Juan's insurer terminated his employment and terminated his weekly benefits without offering him an opportunity to retrain. He was left at the mercy of the labour market without any transferrable skills because the insurer chose not to consider retraining.

The culture of employers is further demonstrated when we look at the number of dismissals related to workers compensation injuries.

The CFMEU has seen an increase in terminations since the introduction of the 2012 amendments. Companies who have had a history of providing long term suitable employment for their injured workers have availed themselves of the opportunity to terminate those very same injured workers. The CFMEU has seen this effect with at least two major companies, each terminating up to a dozen injured workers. Not only do these injured workers lose their employment, but potentially they will lose their weekly

compensation as well.

In addition to the examples above, the CFMEU has seen an increase in members complaining that they have been terminated from their employment as a direct result of their workers compensation claim. The CFMEU estimates that 10.7% of all complaints of unfair dismissal that have been made to the CFMEU are in relation to a person being terminated as a direct result of their workers compensation claims since the amendments. This is a significant increase from previous years. Further this figure does not take into account injured workers who have been dismissed and have not made a complaint to the CFMEU about unfair dismissal.

Employers no longer feel obliged to keep injured workers employed. The scheme provides no incentive to employers and it is the employees who bear all the risk, especially when we consider that the insurer is not required to take into account the reason why a person is currently not engaged in some form of employment.

Insurers have a responsibility to ensure that rehabilitation is a useful and productive exercise. In reality rehabilitation providers are merely used as a de facto job search agency. Injured workers attend rehabilitation where they are provided with newspapers and computers to search for new employment. Often the injured worker will spend several hours just looking through job advertisements trying to find one that suits their capabilities. For construction workers very little retraining is undertaken.

While an injured worker has the right to choose their own rehabilitation provider, in reality many will be referred to a provider by their insurer. While rehabilitation providers are required to work in the best interests of the injured workers they also want to ensure that they continue to receive referrals from insurers. This is where the conflict lies.

The role of work capacity decisions

Work Capacity Decision provide an added obstacle which may be an unintended consequence of the scheme but one that definitely needs to be considered. The work capacity system does not require an insurer to send an injured worker for rehabilitation prior to making a decision to terminate the injured workers benefit. The only reference to rehabilitation in the process is a requirement for the decision to be in line with the injury management plan and a requirement that the decision itself detail any future support that the injured worker might be entitled.

A work capacity decision will detail the work that the insurer believes the injured worker is capable of performing thereby acting as a deterrent to retraining. Once the insurer decides an injured worker can perform work as an assembler because they have transferrable skills in the insurer's opinion, what benefit is there to the insurer to look into retraining.

Industry Based approach

In addition to the recommendations provided in the Unions NSW submissions, the CFMEU recommends that the primary goal for the proposed programs be to return the injured work to employment within the same industry as their pre-injury employment.

Many employers in the construction have raised the issue with the CFMEU stating that they can't provide the pre-injury duties but if the worker could be retrained for the industry they may be able to provide a different role once the retraining is complete.

The primary goal since the 2012 amendments has been to return the worker to any form of employment. It's arguable that insurers are not interested in return to work now that they have a powerful weapon in the work capacity process.

There are psychological benefits to retraining the injured worker for the same industry. They know the industry, they have built relationships in the industry, but more importantly they do not feel as though they have to downgrade their job just to meet administrative requirements.

The CFMEU supports an industry based retraining approach.

Conclusion

The CFMEU welcomes any programs that can assist injured workers return to the workplace. However, until the return to work obstacles are considered and addressed it is difficult to gauge just how successful these programs will be especially in the construction industry.

The CFMEU implores SIRA to consider the culture of insurers and employers when drafting any proposed regulation in this area.