WACCA INTERVIEW WITH ALJ NANCY L. SCHNEIDERS:

Nancy L. Schneiders graduated cum laude from Ripon College in 1978 with a B.A. in Economics and Politics and Government. She graduated from Marquette Law School in 1981. Since 1981, she has been an Administrative Law Judge with the Worker's Compensation Division of the Wisconsin Department of Workforce Development (DWD), working primarily out of the Milwaukee office. She has been a frequent speaker on worker's compensation related topics. Her audiences have included the State Bar of Wisconsin, employee/union and employer/insurer groups.

1. What problems or issues do you as an ALJ have concerning fees when a compromise is submitted?

I personally have not seen many problems concerning fees when a compromise is submitted. However, I frequently see the applicant's attorney claiming reimbursement for significant costs of litigation without attaching a listing of those costs. Most ALJ's require such a list. The failure of the applicant's attorney to submit a list of costs with the compromise results in unnecessary delays in processing of the compromise.

2. Are you seeing applicants hiring their own "IME" in addition to treating physicians? Any comment on this practice or the lack of it.

Yes, I have seen more applicant's hiring their own "IME's". I can understand the need to do this in situations where the treating physician will not or cannot answer the crucial questions on causation, extent of disability, need for treatment, etc. However, if the treating physician is credible and answers the necessary questions—the cost of obtaining an IME by the applicant is probably unnecessary.

3. Any problems with way subro carriers are handled, suggestions for improvement? Wouldn't it be better to have the subro carrier represented? Do you see subro issues preventing settlements?

I have seen an increase in "hold harmless" agreements and negotiated settlements with subrogated carriers in compromise agreements. Occasionally, a non-industrial health insurer/health fund is unwilling to negotiate—resulting in the need to try the case. Personally, I

would much rather try a case than have the non-industrial health insurer/health fund added as a party to our hearings.

4. I would like to ask Judge Schneiders to give her honest appraisal of how she prefers to see expert evidence come in. For instance, is there any value to having the vocational experts testify live?

Generally, medical/vocational evidence is adequately submitted via written reports. There are some exceptions to the general rule.

First, live medical testimony is extremely useful in cases with particularly complex or novel medical issues or where new treatment modalities are in dispute.

Second, live vocational expert testimony is helpful when circumstances change close to the time of the hearing. For example, if the applicant accepts a job/refuses a job offer/loses a job.

Finally, when vocational retraining is being claimed, I expect the DVR counselor or private rehabilitation counselor to be present at hearing to testify in person.

5. Does she prefer excerpted records or would she rather see the whole record and then have certain pages highlighted?

Regarding hospital records, I prefer relevant excerpts only. I prefer a full set of the treating physician's office notes. In neither case do I want any portions highlighted by the attorney.

6. When is it important for her to have the doctor live?

(See Answer #4).

7. Are there any more discovery mechanisms or procedures you feel would be helpful from an ALJ's standpoint? Some type of limited interrogatories or limited use of depositions?

I am not a big proponent of additional discovery procedures. We conduct administrative hearings which are supposed to be quicker and less complicated than civil trials. In my opinion, requiring more discovery would be counterproductive to the efficiency of our hearings.

8. Do you think the mandatory listing of witnesses X number of days before a hearing would be helpful to either settlement or efficiency of the hearing?

(See Answer #7).

9. Do you see a need for mandatory exchange of witnesses?

(See Answer #7).

10. Is mediation something you feel would be helpful? Do you ever see it being mandatory as is the case in most civil actions?

I do not see mediation becoming mandatory in worker's comp cases.

At hearing, after determining the concessions, issues and positions of the parties, I frequently encourage the attorneys to give settlement "one more shot". While I may point out the strengths/weaknesses in the parties' cases, I do not get involved in the specifics of the settlement negotiations.

11. Have the Medicare Set Aside rules had an impact on the disposition of cases? For instance, are more cases going to hearing because of the set aside rules?

It is hard to quantify whether more cases are going to hearing because of Medicare Set Aside rules. I have noticed that attorneys have gotten very creative in drafting settlements that take into consideration MSA rules.

12. Are conceded and paid medical expenses supposed to be listed on the Medical Treatment Statement?

My preference would be that only disputed medical expenses be listed on the WKC-3 form.

13. Does the Department have an "official" view as to the right of an applicant to view surveillance tape before hearing? Does it make a difference if the tape was shown to the treating and/or defense medical exam doc? What is her view?

I am not aware of any "official" Department position as to the right of an applicant to view surveillance evidence prior to hearing.

It is the Department's position that a copy of any surveillance tape/DVD must be available for the applicant at hearing.

14. Are there any specific reasons or instances you can give us where you might not or have not approved all or part of (compromise) settlement.

First and foremost, there must be a bona fide dispute in order for a case to be compromisable. (See DWD 80.03(3), Wis. Adm. Code).

I have rejected compromises in cases where the PPD differential was insignificant and where future treatment/surgery was recommended.

15.` Your biggest complaint or issue about the preparation of presentation of the case by either side. For instance, on the morning of the hearing what do you see as the biggest failing by either side to date, other than not talking about settling.

My biggest complaint is an attorney's failure to know his/her case.

I expect the applicant's attorney to state, with specificity, his/her client's: date of injury; theory of injury; nature (i.e., diagnosis) and extent (TTD, TPD and/or PPD—functional and/or loss of earning capacity) of disability; medical expense claim; and any other claims. If asked, I expect the applicant's attorney to be able to identify the medical or other evidence that supports the applicant's claim(s).

I have similar expectations of the respondent's attorney. He/she must be able to communicate the insurer's concessions—including the conceded periods and amounts of compensation paid. The respondent's attorney is also expected to articulate the insurer's defense(s) and identify the supporting evidence.

16. Do you customarily tell the parties to give settlement one more shot, or do you assume that the parties are ready to go to hearing or otherwise they would not be there?

(See Answer #10).

17. Do you ever impart to one side or another your view of the case if they are still talking settlement?

(See Answer #10).

18. Does anyone submit pre trial briefs? Would the ALJs like them? Do any ALJs ask the parties before the hearing to submit briefs on either factual or legal issues?

Submission of pre-trial briefs occurs very rarely. Generally, if I feel briefs are necessary, I will ask the attorneys to submit them post-hearing.

19. I continue to receive requests for representation on conceded cases and on cases in which only or primarily medical expense is in

issue. Though I usually give tons of free advice, I turn down representation because of the fee rules. Is there any support to change the rules to allow attorney fees beyond peanuts for services in conceded cases? In cases which involve only or primarily medical expense?

I know of no movement to change the rules regarding attorney fees on medical expenses. I suggest any proposals be discussed with the labor representatives on the Worker's Compensation Advisory Council.

20. "Why do many worker's compensation representatives discourage the application for social security disability benefits? Often the injured worker would benefit from the monthly monies and Medicare."

I am unaware of any widespread practice of worker's compensation representatives discouraging their clients from applying for social security disability benefits. In fact, I see more applicants receiving SSD benefits than ever.

21. What witnesses don't you want to see or need to hear from at a hearing?

(See Answer #4).

D I S C L A I M E R

The answers set forth above constitute my opinions and do not necessarily reflect the official position of the Worker's Compensation Division. - Nancy L. Schneiders, Administrative Law Judge