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Workers' Compensation Court 60th Annual Report

Fiscal Year 2002:

July 1, 2001 through June 30, 2002



Nebraska Workers' Compensation Court 60th Annual Report

Fiscal Year 2002:

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Michael K. High,
Presiding Judge

Michael P. Cavel,
Judge

James R. Coe,
Judge

Lauren K. Van Norman,
Judge

Ronald L. Brown,
Judge

J. Michael Fitzgerald,
Judge

John R. Hoffert,
Judge

Glenn W. Morton,
Court Administrator

Kay E. Peterson,
Clerk of the Court

Letter of Transmittal

Lincoln, Nebraska
December 1, 2002

Honorable John V. Hendry
Chief Justice of the Nebraska Supreme Court

Honorable Mike Johanns
Governor of Nebraska

Honorable Curt Bromm
Speaker of the Nebraska Legislature

Dear Sirs:

We have the privilege of submitting herewith the Sixtieth Annual Report of the Nebraska Workers' Compensation Court, prepared in accordance with the provisions and requirements of Section 48-166, Revised Statutes of Nebraska.

Very truly yours,
NEBRASKA WORKERS' COMPENSATION COURT
By

Michael K. High
Presiding Judge

Table of Contents

Section	Title	Page
	Table of Contents	i
Section 1	General Information	1
	History, Mission, Organization	1
	Fiscal Year Activities	2
	Organizational Chart	4
	Profiles of the NWCC Judges	5
	Compensation Court Cash Fund	9
	Workers' Compensation Statistics Fund	10
	Trust Funds	11
	Cumulative Totals for Trust Funds	12
	Reported Injuries	13
	Fatal Injuries	14
	Weekly Income Benefits and Maximum Rates	15
	Litigated Case Summary	16
	Hearings and Review Hearings	17
	Summary of Settlements	18
Section 2	Legal	19
	Informal Dispute Resolution	19
Section 3	Coverage and Claims	23
	Medical Services Activities	23
	Compliance Activities	24
	Self-Insurance Activities	25
Section 4	Vocational Rehabilitation	27
	Certification of Counselors and Specialists	27
	Appointment of Counselors	27
	Vocational Rehabilitation Plans	28

Table of Contents

Section	Title	Page
Section 5	Public Information	29
	Information Line	29
	Internet Web Site	30
	Publications	30
	Workshops and Seminars	30
	Data Processing	31
	Record Searches	31
Section 6	Information Technology	33
	Fiscal Year Activities	33
	Electronic Data Interchange Initiative	33
Section 7	Nebraska Occupational Injury and Illness Survey	35
	Occupational Safety and Health Act	35
	Occupational Injury and Illness Survey	35
Section 8	Census of Fatal Occupational Injuries	37
	2001 Census of Fatal Occupational Injuries	37
	2001 Census Results	37
	Background of the Program	38

General Information

History

The Nebraska Workers' Compensation Act was first passed in 1913 and from then until 1917 the Act was administered by the several state district courts. In 1917, the Legislature created the Compensation Division in the Department of Labor and the commissioner of labor was designated compensation commissioner. The 1935 Legislature established the Workers' Compensation Court and transferred Compensation Division functions to the court. The authority and responsibilities of the court are found in Chapter 48, Article 1, of the Revised Statutes of Nebraska. By 1988, the workers' compensation bench had grown to seven judges who hear disputed cases throughout the state.

Mission

The mission of the Nebraska Workers' Compensation Court is to administer and enforce all provisions of the Nebraska Workers' Compensation Act, except those provisions that are committed to the courts of appellate jurisdiction.

Organization

The Nebraska Workers' Compensation Court is composed of seven judges who are initially appointed by the governor and who then remain on the bench for successive six-year terms upon approval of the electorate. Every two years, one of the judges is elected as presiding judge by the judges of the court. The presiding judge is responsible for the overall functioning of the court. Four judges are located in the State Capitol in Lincoln and three judges are located in the Hall of Justice in Omaha. A judge will travel to any county in the state where an accident occurred to hear a disputed case. A case is first heard by a single judge and, if appealed, the case is then heard by a review panel of three judges of the court. The review is based on the record created at the original hearing, and no new evidence may be introduced. The next level of appeal is to the Nebraska Court of Appeals and ultimately a case may go to the Nebraska Supreme Court.

The court staff is organized into seven operating sections with the court administrator holding overall administrative responsibility.

The **Adjudication Section** receives court filings, docket cases, schedules hearings and motions, corresponds with the parties, and issues opinions of the court.

The **Administration Section** is responsible for the business, financial, and personnel functions of the court, and also administers the Workers' Compensation Trust Fund. Under two federal grants the section conducts a federal survey of work-related injuries and illnesses and a data collection program for fatal injuries.

The **Legal Section** reviews settlement applications for adequacy and compliance with the law, conducts mediation conferences to facilitate informal resolution of workers' compensation disputes, informs injured workers, employers, and others of their rights and obligations under the law, provides legal advice to court staff, and monitors legislation for potential impact on the workers' compensation system.

The **Coverage and Claims Section** has responsibilities in three distinct areas. Compliance activities include enforcing insurance coverage requirements and enforcing the claims handling and reporting obligations of insurers and self insurers. Medical services activities include certifying and moni-

toring managed care plans, administering the independent medical examiner program, revising and maintaining the schedule of medical and hospital fees, and responding to inquiries related to medical issues. Self-insurance activities include reviewing applications for self-insurance, monitoring the financial status and payroll records of self-insured employers, and collecting fees and assessments from self-insured employers.

The ***Vocational Rehabilitation Section*** is responsible for reviewing and approving proposed vocational rehabilitation plans, certifying vocational rehabilitation counselors and job placement specialists, and appointing a vocational rehabilitation counselor if the parties cannot agree on the selection. The progress of injured workers in an approved plan is monitored, and all payments from the Workers' Compensation Trust Fund for plan expenses must be approved by the section.

The ***Public Information Section*** receives and processes all reports of injury and benefit payments, whether filed electronically or in paper format, and responds to requests for records and information. The section also maintains a toll-free information line, prepares court publications, develops educational workshops, and maintains the court's Web site.

The ***Information Technology Section*** is responsible for the computer network, programs, and databases of the court. The section develops and maintains the court's client/server system, develops computer programs and applications, coordinates information technology activities with vendors and other state agencies, and assists other court sections in meeting their goals through the use of technology.

Activities in Fiscal Year 2002

The court pursued several ongoing initiatives in FY 2002, including electronic filing of reports and other documents with the court.

All first reports of injury submitted by or on behalf of an insurer, self insured employer, or risk management pool must now be filed electronically in the form and manner prescribed by the court. Exceptions are made for those entities that submit a very small number of first reports in Nebraska. At the time of publication, 99.7 percent of all first reports of injury were being filed electronically.

Court rules previously provided that all compensation payment and expense reports (subsequent reports) submitted by or on behalf of an insurer, self insured employer, or risk management pool were also to be filed electronically beginning no later than July 1, 2002. However, due to the scope of this undertaking and the potential costs and danger of disruption to the workers' compensation system, this requirement was repealed effective April 25, 2002. Instead, electronic filing of subsequent reports is now voluntary, with approval of the court, and court staff are working diligently with individual claims administrators to convert their systems from paper to electronic filings. At the time of publication, 12.3 percent of all subsequent reports were being filed electronically.

Court requirements for both first and subsequent reports are consistent with national standards for electronic reporting of workers' compensation information. Electronic filings consistent with national standards will have a significant impact on the ability of the court to monitor the performance of the workers' compensation system in Nebraska and compare it to other systems nationwide. Additional benefits include increased accuracy of the data and increased operational efficiency for both the court and filing entities.

Also related to electronic filings, the court has continued to develop internal systems and processes to prepare for future electronic filing of pleadings and other litigation documents. Plans are in place for converting the court's paper case files to electronic format, which will allow the judges, court

staff, and others to access the files much more quickly and conveniently. These changes also will put the court in position to accept electronic filings of litigation documents when such filings are otherwise permitted.

As a result of LB 417 from the 2002 regular session of the Nebraska Legislature, executive officers who own 25 percent or more of the common stock of the corporation will no longer automatically be considered employees of the corporation under the Nebraska Workers' Compensation Act. Instead, effective January 1, 2003, such officers must affirmatively elect to be covered by filing a written election with the workers' compensation insurer and the corporate secretary. Filing of the election with the court is not required. Also as a result of LB 417, such corporate officers who wish to avoid coverage need no longer affirmatively waive coverage by filing a corporate officer waiver form. Therefore, the court will no longer accept such forms effective January 1, 2003.

During FY 2002 the court's Schedule of Medical and Hospital Fees was reviewed and a complete revision was adopted. The revised schedule is effective for all payments made on and after June 15, 2002. New rules were adopted relating to self insurance, revising requirements and procedures for employers seeking approval to self insure their workers' compensation liability. Court policies regarding fulfillment of public record searches and related fees were revised during FY 2002, with the changes becoming effective August 1, 2002. This has greatly reduced the response time and cost of responding to such requests. The court continued to expand its Web site in FY 2002, and total visits increased 34.4 percent to 111,940.

Restoration at the State Capitol required temporary relocation of the court's Capitol offices. However, effective January 8, 2002, those offices have returned to the 12th and 13th floors of the Capitol. All Lincoln hearings are now being conducted at the Capitol, and all "in person" filings of pleadings and other litigation related documents are made at that location as well. All court mail, including litigation filings made by mail, shall be sent to the court's mailing address (P.O. Box 98908, Lincoln, NE, 68509-8908), which did not change during the relocation. All office phone numbers also remain the same, and did not change during the relocation.

In addition to the specific activities listed above for FY 2002, the court continues to perform other duties on a regular basis as noted above in the "Organization" section.

The activities of the court in FY 2002 are described in greater detail in the following pages of this Annual Report, together with basic statistics regarding injuries reported in FY 2002. Additional injury statistics and statistics regarding benefit payments will be included a separate statistical supplement to be published at a later date.

Judges

Photo Not Available.

Michael K. High, Presiding Judge

Office Address: State Capitol Building, Lincoln NE 68509-8908, phone (402) 471-3923, (800) 599-5155.

Date Appointed: January 8, 1998.

Biography: Graduate of University of Nebraska—Lincoln (B.S. in Agricultural Economics (1972); M.A. in Economics (1986)); University of Nebraska College of Law (J.D., 1986). Formerly: farmer and rancher (1972–1982); elected commissioner—Gosper County, Nebraska, Board of Commissioners (1978–1982); private law practice (1986–1998).

Judges

Photo Not Available.

Michael P. Cavel, Judge

Office Address: Hall of Justice, 1701 Farnam, Omaha NE 68183-0001, phone (402) 595-3900, (800) 599-5155.

Date Appointed: October 5, 1983.

Biography: Graduate of Creighton University, Omaha, Neb. (B.A.); Creighton University School of Law (J.D.). United States Army, 1968–71; private practice, 1971–1983; Midlands Big Brother of the Year, 1988.

Photo Not Available.

James R. Coe, Judge

Office Address: Hall of Justice, 1701 Farnam, Omaha NE 68183-0001, phone (402) 595-3900, (800) 599-5155.

Date Appointed: October 7, 1988.

Biography: Graduate of University of Nebraska–Lincoln (B.S. in Business Administration); University of Nebraska College of Law (J.D.). Partner of Carpenter, Rowen, Fitzgerald, and Coe, 1974–1988. Member of West Omaha (Neb.) Rotary Club; president of Dora Bingel Foundation.

Judges

Photo Not Available.

Laureen K. Van Norman, Judge

Office Address: State Capitol Building, Lincoln NE 68509-8908, phone (402) 471-3924, (800) 599-5155.

Date Appointed: July 6, 1993.

Biography: Graduate of University of Nebraska–Lincoln (B.A., social work); University of Nebraska College of Law (J.D.). Former Legal Counsel to the Nebraska Department of Labor. Nebraska State Bar Association: past Chair of Government Practice Committee; past member, Executive Board of Women and the Law Section; member, Supreme Court Gender Bias Task Force.

Photo Not Available.

Ronald L. Brown, Judge

Office Address: Hall of Justice, 1701 Farnam, Omaha NE 68183-0001, phone (402) 595-3900, (800) 599-5155.

Date Appointed: April 8, 1994.

Biography: Graduate of Dana College (B.S., cum laude); Creighton University School of Law (J.D.). Former occupations: Douglas County Assistant Public Defender, 1977–1978; Brown Law Offices, P.C., 1979–1989; Brown and Tripp, P.C., 1989–1994. Member of Nebraska State Bar Association, Nebraska Association of Trial Attorneys, Association of Trial Lawyers of America.

Judges

Photo Not Available.

J. Michael Fitzgerald, Judge

Office Address: State Capitol Building, Lincoln NE 68509-8908, phone (402) 471-3924, (800) 599-5155.

Date Appointed: April 12, 1996.

Biography: Graduate of University of Notre Dame (B.S. Business Administration); Georgetown University Law Center (J.D.); Creighton University (Certificate of Completion, Paramedic Training Program). Admitted to practice: Nebraska Supreme Court, United States District Court for the District of Nebraska, United States Court of Appeals for the Eighth Circuit, United States Tax Court. Employee-associate and stockholder partner: Matthews, Kelly, Cannon, and Carpenter, P.C., 1969–1977. Stockholder partner: Carpenter, Fitzgerald, and Coe, P.C., 1978–1983; Miller, Carpenter, Rowen, Fitzgerald, and Coe, P.C., 1983–1987; Carpenter, Rowen, Fitzgerald, and Coe, P.C., 1987–1988; Carpenter, Rowen, and Fitzgerald, P.C., 1988–present. Member of Nebraska State Bar Association, American Bar Association, American Trial Lawyers Association, Nebraska Trial Lawyers Association, Omaha Bar Association.

Photo Not Available.

John R. Hoffert, Judge

Office Address: State Capitol Building, Lincoln NE 68509-8908, phone (402) 471-3923, (800) 599-5155.

Date Appointed: October 4, 2001

Biography: Graduate of Western Illinois University (B.A., High Honors, Political Science); University of Nebraska College of Law (J.D. with Distinction). Associate/Partner: Knudsen, Berkheimer, Richardson & Endacott, LLP (1980-2001). United States Army (1970-1972). Past member: Legal Services of Southeast Nebraska, Board of Directors; Folsom Children's Zoo and Botanical Gardens, Board of Directors; Nebraska Association of Trial Attorneys; American Judicature Society and American Trial Lawyers Association.

Compensation Court Cash Fund

Fiscal Year 2002 (July 1, 2001 to June 30, 2002)

The Compensation Court Cash Fund was established in 1993 and the first assessment was deposited into the fund in 1994. The fund was created as part of reform legislation in 1993 and replaced the use of general funds. The Compensation Court Cash Fund provides for the expense of administering the Nebraska Workers' Compensation Act and for the payment of the salaries and expenses of the personnel of the Nebraska Workers' Compensation Court. The fund is financed by assessments against workers' compensation insurers, risk management pools, and self-insured employers. Contributions to the fund abate for one year whenever the balance of the fund equals or exceeds three times the amount expended and encumbered in the fiscal year just ending. The Nebraska Legislature appropriates a specific sum each year for operations of the Nebraska Workers' Compensation Court, to be funded from the Compensation Court Cash Fund. The appropriation for fiscal year 2002 was \$3,690,969.

BALANCE of fund on July 01, 2001:		\$8,191,939	
Revenue:			
Assessments		3,356,726	
Customer Deposits		6,583	
Interest		387,523	
Miscellaneous		359,396	
Total Revenue:			<u>4,110,228</u>
Expenditures:			
	Appropriation	Not Expended	Actual Expended
Court Admin.	3,259,588	197,716	3,061,872
Voc. Rehab. Admin.	308,024	0	308,024
Second Injury Admin.	9,830	1,719	8,111
Self-Insurance Admin.	77,844	0	77,844
Federal Grant Admin.	35,683	9,334	26,349
Totals	<u>3,690,969</u>	<u>208,769</u>	<u>3,482,200</u>
	Less Total Expenditures		<u>3,482,200</u>
BALANCE of fund on June 30, 2002:		\$8,819,967	

Workers' Compensation Statistics Fund

Fiscal Year 2002 (July 1, 2001 to June 30, 2002)

The court conducts a survey of work-related injuries and illnesses and a data collection program for fatal injuries pursuant to two grants from the U.S. Department of Labor—Bureau of Labor Statistics (BLS). The Survey of Occupational Injuries and Illnesses is mandated by the Occupational Safety and Health Act of 1970 (P.L. 91-596), and the court was designated as the agency in Nebraska to conduct this work in a letter of March 25, 1971 from Governor J.J. Exon to Secretary of Labor, J.D. Hudgson. In 1991, the court contracted for the additional responsibilities of conducting the Census of Fatal Occupational Injuries as designated by BLS.

Expenses for administering these two federal grants are split 50/50 between the State of Nebraska and BLS. The state share of expenditures is charged against the Compensation Court Cash Fund, and the federal share is charged against the Workers' Compensation Statistics Fund. Federal monies are requested on a monthly basis, dependent upon estimated expenditures for that month, and deposited into the Workers' Compensation Statistics Fund. The Nebraska Legislature appropriates a specific sum each year for expenditures from the Workers' Compensation Statistics Fund. The appropriation for fiscal year 2002 was \$27,855.

BALANCE of fund on July 01, 2001:				\$95
Revenue:				
	Intergovernmental Revenue		28,142	
	Total Revenue:			<u>28,237</u>
Expenditures:				
		Appropriation	Not Expended	Actual Expended
	Federal Grant Admin.	<u>27,855</u>	0	<u>27,855</u>
	Totals	<u>27,855</u>	0	<u>27,855</u>
	Less Total Expenditures			<u>27,855</u>
BALANCE of fund on June 30, 2002:				<u><u>\$382</u></u>

Trust Funds

Fiscal Year 2002 (July 1, 2001 to June 30, 2002)

The *Workers' Compensation Trust Fund* was established July 1, 2000 as part of LB 1221 from the 2000 session of the Nebraska Legislature. The purpose of the fund is to make second injury benefit payments in accordance with section 48-128 and vocational rehabilitation benefit payments in accordance with section 48-162.01, and for paying administrative expenses relating to the fund. The fund is financed by assessments against workers' compensation insurers, risk management pools, and self-insured employers. Assessments are made whenever the fund is projected to go below the statutory minimum level.

The *Second Injury Fund* was established in 1913 to encourage employers to hire employees with disabilities. Pursuant to section 48-128, employers could be relieved of liability for disability benefits resulting from an increased amount of disability due to the combination of a preexisting disability and a subsequent work-related injury. Instead, the additional disability was compensated out of the Second Injury Fund.

In 1997 the Nebraska Legislature passed LB 854 which eliminated these provisions for injuries occurring on or after December 1, 1997. The fund remained available for subsequent injuries occurring before that date. Effective July 1, 2000, the Second Injury Fund was eliminated with the creation of the Workers' Compensation Trust Fund. While the substantive requirements for second injury benefits remain the same, second injury benefit payments for injuries occurring before December 1, 1997 are now made from the Workers' Compensation Trust Fund.

The *Vocational Rehabilitation Trust Fund* was established in 1974 to provide assistance to injured workers eligible for retraining or job placement services. Pursuant to section 48-162.01, payments for tuition, room and board, transportation, books, supplies, and related costs were paid from the Vocational Rehabilitation Trust Fund, when a vocational rehabilitation plan had been approved by the court staff.

Effective July 1, 2000, the Vocational Rehabilitation Fund was eliminated with the creation of the Workers' Compensation Trust Fund. While the substantive requirements for vocational rehabilitation benefits remain the same, vocational rehabilitation training costs are now paid from the Workers' Compensation Trust Fund. The employer continues to pay temporary indemnity benefits during the course of a vocational rehabilitation plan, as well as expenses related to the development and implementation of the plan.

	Balance July 1, 2001	Interest/ Reimbursement/ Assessments	Total Assets	Benefit Costs	Admin. Costs	Balance June 30, 2002
Workers' Comp. Trust Fund	\$5,305,572	\$255,035	\$5,560,607	\$1,144,415	\$286,101	\$4,130,091
		\$0				
		\$0				

Cumulative Totals For Trust Funds

Disbursements (Benefit & Administrative Costs) Made From Trust Funds			
Date	Second Injury Trust Fund	Vocational Rehabilitation Fund	Workers' Compensation Trust Fund
June 30, 2002	N/A	N/A	\$1,430,516
June 30, 2001	N/A	N/A	\$1,549,078
June 30, 2000	* \$899,085	\$1,022,765	N/A
June 30, 1999	\$833,256	\$1,156,770	N/A
June 30, 1998	\$564,840	\$1,022,226	N/A
June 30, 1997	\$492,644	\$918,303	N/A
June 30, 1996	\$564,743	\$761,656	N/A
June 30, 1995	\$555,371	\$825,792	N/A
June 30, 1994	\$566,964	\$1,011,033	N/A
June 30, 1993	\$482,810	\$927,870	N/A

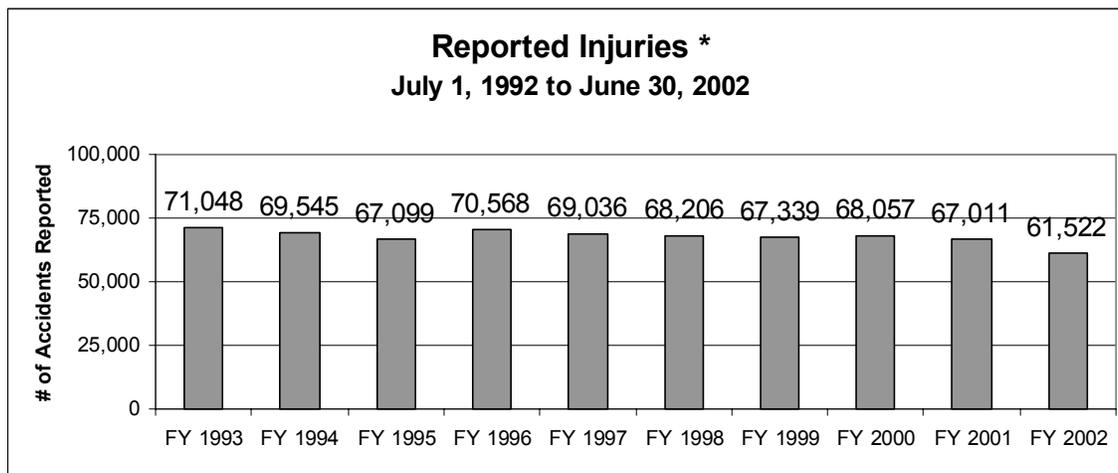
* Administrative costs of \$11,194 were not transferred from the Second Injury Fund to the Compensation Court Cash Fund for the year ending June 30, 2000, and as a result are not included in these figures. These costs were paid from the Compensation Court Cash Fund.

Assessments Made for Trust Funds			
Date	Second Injury Trust Fund	Vocational Rehabilitation Fund	Workers' Compensation Trust Fund
June 30, 2002	N/A	N/A	\$0
June 30, 2001	N/A	N/A	* \$26,965
June 30, 2000	\$4,124,826	\$0	N/A
June 30, 1999	\$0	* (\$573)	N/A
June 30, 1998	\$0	\$3,639,445	N/A
June 30, 1997	\$0	\$0	N/A
June 30, 1996	\$0	\$0	N/A
June 30, 1995	\$0	\$0	N/A
June 30, 1994	\$0	* \$34,175	N/A
June 30, 1993	\$3,100,936	\$3,096,436	N/A

* Adjustment by the Department of Insurance on assessments paid in prior fiscal years.

Reported Injuries *

	Male	Female	Unknown	Total
July 1, 2001 to June 30, 2002	35,008	21,503	5,011	61,522
July 1, 2000 to June 30, 2001	39,238	24,100	3,673	67,011
July 1, 1999 to June 30, 2000	41,249	24,544	2,264	68,057
July 1, 1998 to June 30, 1999	41,126	24,734	1,479	67,339
July 1, 1997 to June 30, 1998	43,217	24,549	440	68,206
July 1, 1996 to June 30, 1997	44,059	24,971	6	69,036
July 1, 1995 to June 30, 1996	45,549	25,019	0	70,568
July 1, 1994 to June 30, 1995	43,667	23,424	8	67,099
July 1, 1993 to June 30, 1994	45,574	23,971	0	69,545
July 1, 1992 to June 30, 1993	46,759	24,289	0	71,048

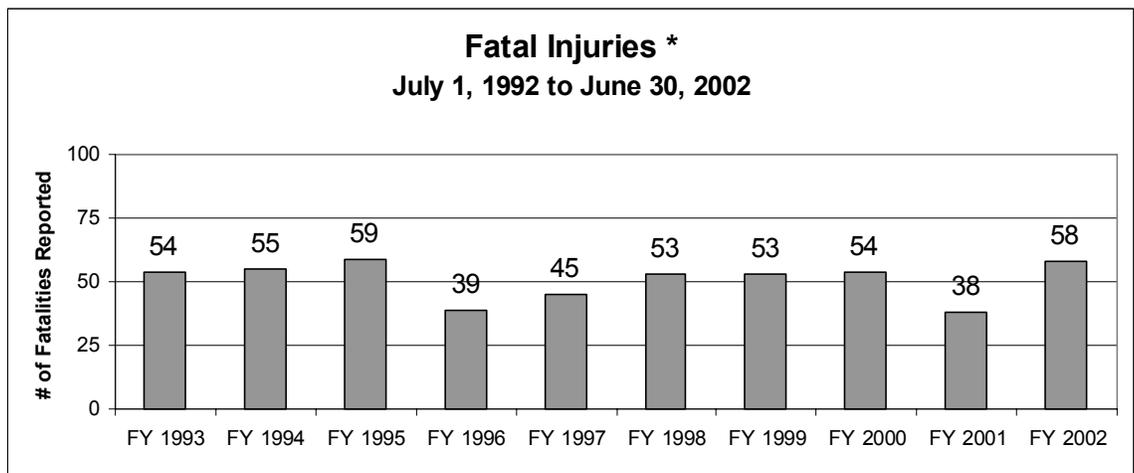


* Includes injuries reported in FY 2002 regardless of the year in which the injury occurred.

Includes injuries resulting from occupational disease.

Fatal Injuries *

	Male	Female	Total
July 1, 2001 to June 30, 2002	53	5	58
July 1, 2000 to June 30, 2001	38	0	38
July 1, 1999 to June 30, 2000	49	5	54
July 1, 1998 to June 30, 1999	48	5	53
July 1, 1997 to June 30, 1998	49	4	53
July 1, 1996 to June 30, 1997	41	4	45
July 1, 1995 to June 30, 1996	38	1	39
July 1, 1994 to June 30, 1995	56	3	59
July 1, 1993 to June 30, 1994	46	9	55
July 1, 1992 to June 30, 1993	48	6	54



* Includes fatal injuries reported in FY 2002 regardless of the year in which the injury occurred.
Includes deaths resulting from occupational disease.

Weekly Income Benefits and Maximum Rates

Under the Nebraska Workers' Compensation Act the basic rule regarding weekly income benefits for total disability is that the employee is entitled to two thirds of his or her average weekly wage, subject to maximum and minimum levels. Changes in the maximum or minimum rates apply to injuries occurring on or after the effective date, but not to injuries occurring before that date.

The maximum benefit level is set at 100 percent of the state average weekly wage, as determined by the Nebraska Workers' Compensation Court. The calculation excludes federal employees, and is made in accordance with section 48-121.02 of the Nebraska Revised Statutes. The court recently issued an order setting the maximum benefit level for calendar year 2003 at \$542. The minimum rate remains at \$49 as provided in section 48-121.01(2).

Injury Occurring Between:	Maximum	Minimum
1/1/2003	\$542	\$49
01/01/02 to 12/31/02	\$528	\$49
01/01/01 to 12/31/01	\$508	\$49
01/01/00 to 12/31/00	\$487	\$49
01/01/99 to 12/31/99	\$468	\$49
01/01/98 to 12/31/98	\$444	\$49
01/01/97 to 12/31/97	\$427	\$49
01/01/96 to 12/31/96	\$409	\$49
01/01/95 to 12/31/95	\$350	\$49
06/01/94 to 12/31/94	\$310	\$49
07/01/91 to 05/31/94	\$265	\$49
07/10/90 to 06/30/91	\$255	\$49
07/01/88 to 07/09/90	\$245	\$49

Litigated Case Summary ¹

Fiscal Year ²	Original Hearing Level		Review Hearing Level		Supreme Court/ Court of Appeals Level	
	2002	* 2001	2002	2001	2002	* 2001
Cases Pending at beginning of Fiscal Year	1,493	1,560	71	64	32	44
Petition or Appeal filed in Fiscal Year	1,391	1,376	121	133	51	44
Reopened	107	102	N/A	N/A	N/A	N/A
Total	2,991	3,038	192	197	83	88
Court Disposition						
Decisions Issued	414	424	99	92	43	49
Settlements	688	811	14	23	1	2
Other Dispositions ³	323	310	18	11	6	4
Total Dispositions	1,425	1,545	131	126	50	55
Total Pending	1,566	1,493	61	71	33	33

Fiscal Year	2002	* 2001	2000	1999
Number of Motions Filed	2,362	2,156	1,630	1,569
Number of Motion Dispositions	2,045	1,923	1,377	1,355
Number of Motion Hearings	1,045	911	842	589

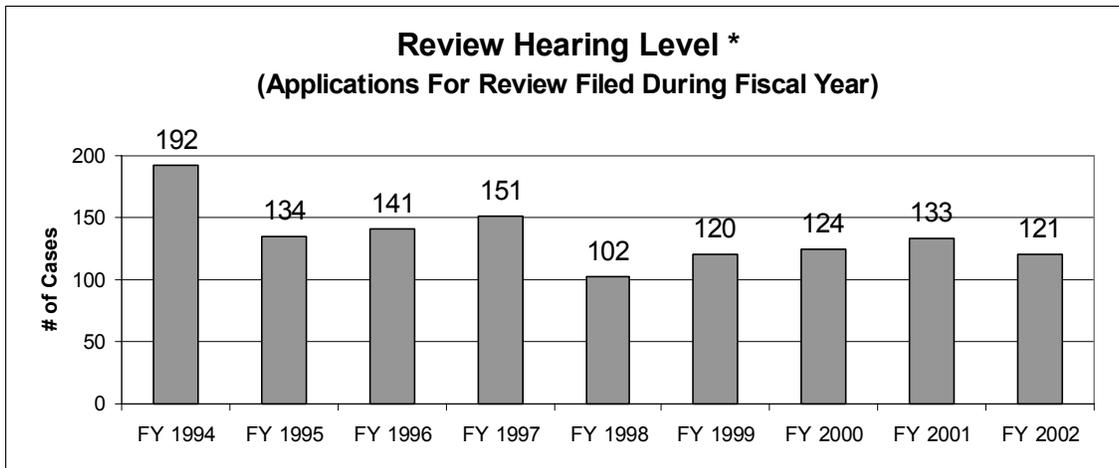
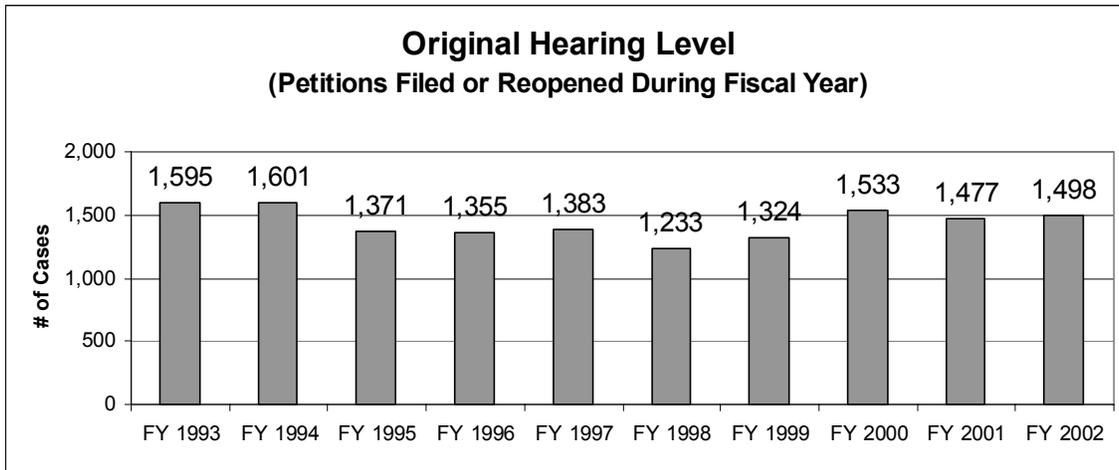
¹ Cases may appear more than once in any year if they are appealed.

² Fiscal Years run from July 1 through June 30.

³ Dismissals without hearings.

* Numbers adjusted as a result of corrections to data.

Hearings and Review Hearings

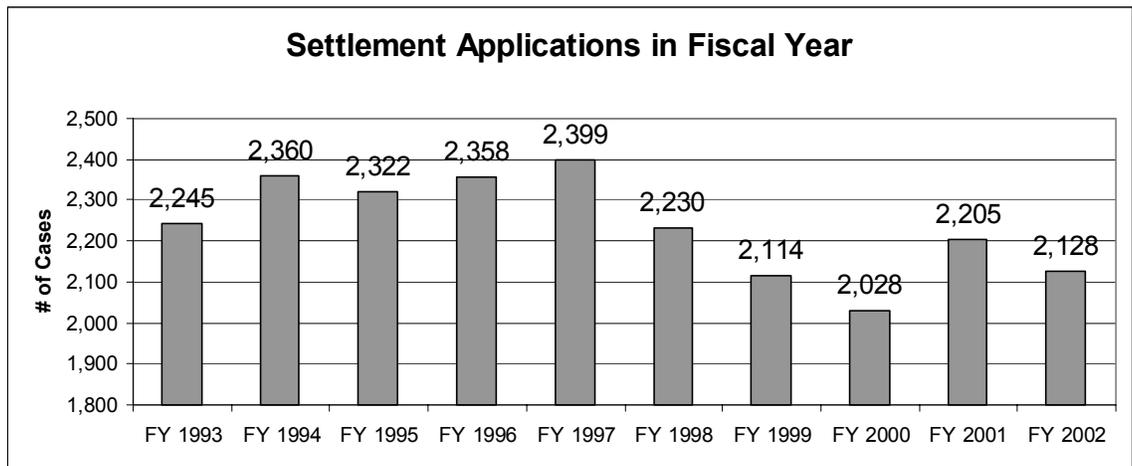


* Prior to Fiscal Year 1994, rehearings or a combination of rehearings and review hearings were held.

Summary of Settlements

Fiscal Year ¹	2002	2001	2000	1999	1998
Applications					
Applications Pending at Beginning of Fiscal Year	136	159	99	197	149
Applications Made in Fiscal Year	2,128	2,205	2,028	2,114	2,230
Total	2,264	2,364	2,127	2,311	2,379
Dispositions					
Applications Approved Without Litigation	1,377	1,366	1,321	1,615	1,457
Applications Approved at the Original Hearing Level	688	811	596	531	713
Applications Approved at Review Hearing Level	14	23	14	12	8
Applications Approved at the Sup. Crt./Crt. App. Level	1	2	0	4	0
Applications — Total Approved	2,080	2,202	1,931	2,162	N/A
Applications — Total Disapproved	42	26	37	48	N/A
Total	2,122	2,228	1,968	2,210	2,178
Applications Pending at End of Fiscal Year	142	136	159	101	201

¹ Fiscal years run from July 1 through June 30.



Legal

The Legal section of the Nebraska Workers' Compensation Court is responsible for reviewing lump sum settlements, facilitating informal dispute resolution, responding to inquiries from the public, providing legal advice to the court's administrative staff, and monitoring legislation for potential impact on the workers' compensation system. The section includes the court's general counsel, three staff attorneys, a mediation coordinator/legal assistant, and a legal secretary.

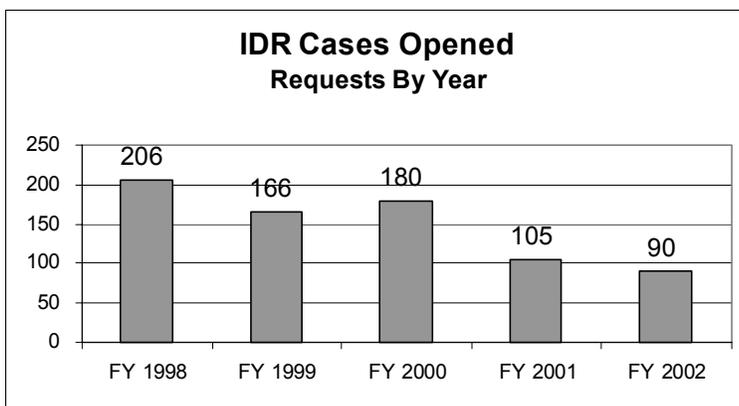
Statistics for lump sum settlements processed in FY 2002 (July 1, 2001 through June 30, 2002) can be found in section 1, page 18 of this annual report. Summaries of the Nebraska Supreme Court and Court of Appeals decisions may be found on the court's Web site (<http://www.nol.org/workcomp/about/casesummary.htm>).

Informal Dispute Resolution

Informal Dispute Resolution (IDR) is available to anyone with an interest in a workers' compensation dispute. The process is voluntary and the guidelines for IDR are found in Rule 48. It provides a dispute resolution mechanism for health care providers, vocational rehabilitation counselors, and others who would otherwise have no standing before the court. Attorneys may participate, but parties to the dispute do not have to be represented. The court may also order IDR and, in fact, disputes involving a change in the treating physician must be submitted for IDR before a motion or petition can be filed. IDR is attempted in all litigated cases in which a party is unrepresented.

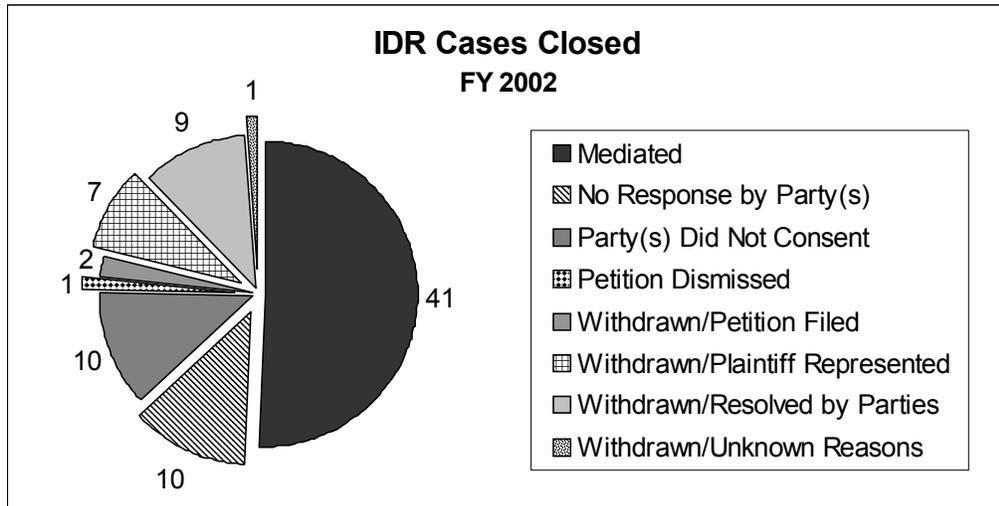
The court's IDR process focuses on interest-based mediation. This means that one of the court's professionally trained mediators assists the parties in reaching a resolution of the dispute that satisfies the underlying interests of the parties. The mediator does not make decisions nor evaluate the case on behalf of either party. Mediation can be an empowering process because it assumes that the participants can decide what is best for themselves rather than a mediator or a judge. Many IDR inquiries can be resolved without the need for a mediation conference simply through information and education provided by the mediation coordinator.

The court currently has four attorney-mediators on staff. All of the mediators and the mediation coordinator are trained in the basic skills of mediation through a nationally recognized 30-hour training program through the Office of Dispute Resolution in Lincoln, Nebraska. Advancement of mediation skills is encouraged, and as opportunities arise the mediators receive additional training.



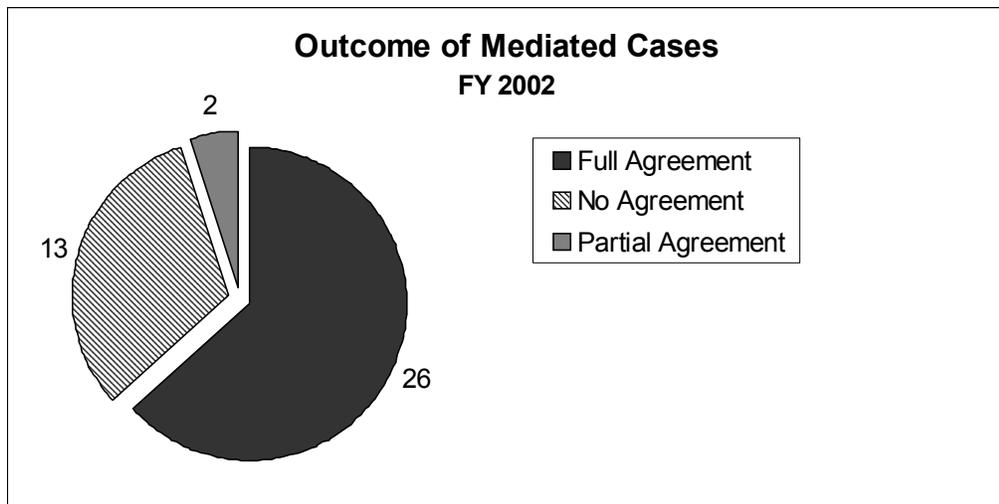
Closed Cases

The mediation coordinator evaluates all requests to determine whether the issues are appropriate for IDR under workers' compensation laws and rules. Sometimes they are not. In nine of the 81 cases closed in FY 2002, the parties came to an agreement while still in the intake process with communication facilitated by the mediation coordinator. Mediation through the court is voluntary; in 10 cases, or 12 percent of all closed cases, one party declined to participate or did not respond to the request. Cases may be closed for a variety of other reasons as shown in the following chart.



Mediated Cases

Of the 81 cases closed in FY 2002, 41 met in a mediation conference either in person or over the telephone. Of those 41 cases, 68 percent reached full or partial agreement.



IDR Evaluation Statistics

The parties who have used mediation for their disputes continue to give high marks to the mediators and the mediation process. A total of 14 people completed a post-mediation evaluation in fiscal year 2002. Of these:

- 79 percent “Agree” or “Strongly Agree” that they were satisfied with mediation;
- 77 percent “Agree” or “Strongly Agree” that they would rather resolve disputes like the one mediated through mediation instead of going to court;
- 92 percent “Agree” or “Strongly Agree” that the mediation process was fair;
- 93 percent “Agree” or “Strongly Agree” that the issues important to them were identified and discussed in the mediation process.

Coverage and Claims

This section includes a manager, a medical services specialist, two compliance examiners, a workers' compensation auditor, a program assistant, and a secretary. Section responsibilities are divided into three categories: medical services; compliance; and self-insurance.

Medical Services Activities

Section staff respond to inquiries from a variety of sources concerning the application and use of the court's Schedule of Medical and Hospital Fees, managed care, the Independent Medical Examiner program, the choice of physician rule, and other questions relating to medical, surgical, and hospital services under the Nebraska Workers' Compensation Act.

Fee Schedule

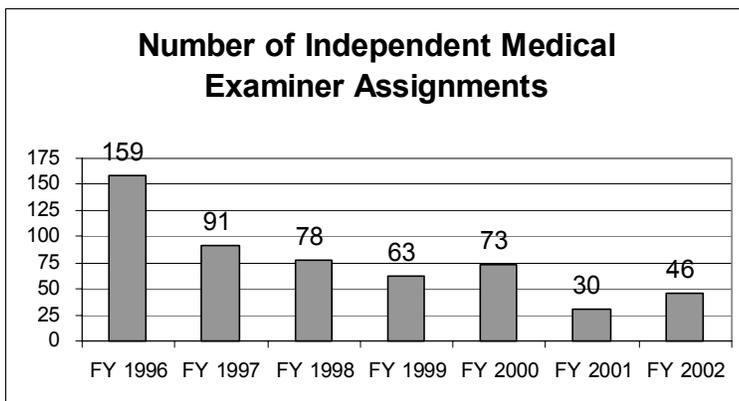
Section 48-120 of the Act requires the court to review the Schedule of Medical and Hospital Fees at least biennially and make appropriate changes when necessary. During FY 2002, the schedule was reviewed and a complete revision was adopted at a public hearing held April 25, 2002. The revised schedule is effective for all payments made on and after June 15, 2002.

Independent Medical Examiner (IME) System

Once a dispute arises regarding the medical condition of the employee or related issues, either side may request a finding by an independent medical examiner. The IME system was designed to give the parties an additional means of resolving disputes outside the judicial process.

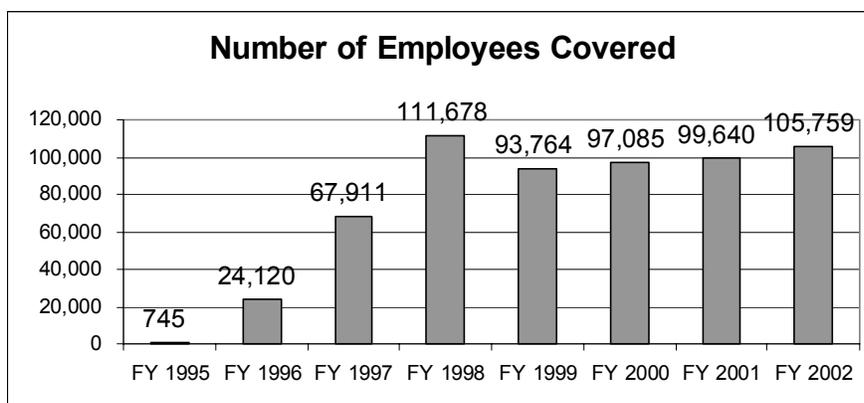
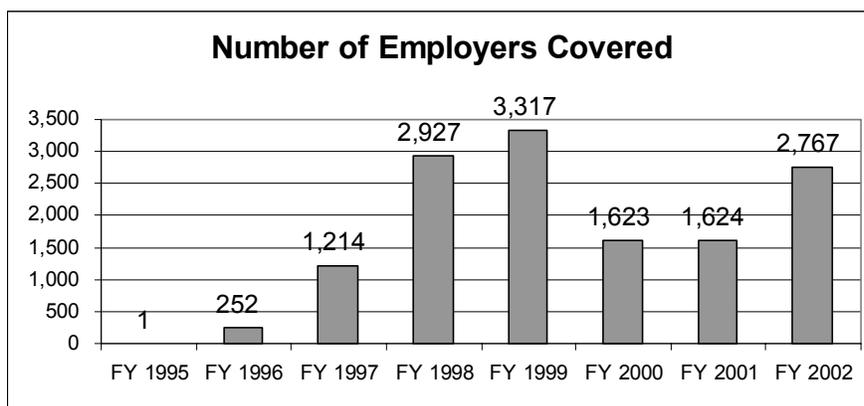
To serve as an Independent Medical Examiner for the court, physicians must complete an application and be approved by the judges of the court. Currently there are 234 physicians on the court's list of Independent Medical Examiners.

The number of requests for assignment of an IME was up slightly during FY 2002, and 46 assignments were made compared to 30 during FY 2001. The number of requests from employees and their attorneys remained the same, but employers submitted 22 requests as opposed to nine the year prior. The graph below shows assignments since the system began in 1996.



Managed Care Plans for Workers' Compensation

A table showing current information about managed care plans certified for workers' compensation is available on the court's Web site (<http://www.nol.org/workcomp/misc/mcp.pdf>). No new applications were submitted during FY 2002. On June 30, 2002 there were 2,767 employers and 105,759 employees covered by the certified managed care plans. Bar graphs showing the trend in covered employers and employees follow.



Compliance Activities

One of the primary enforcement activities of the section is to identify employers who do not have insurance coverage as required under the Nebraska Workers' Compensation Act. Compliance examiners first attempt to bring the uninsured employer into compliance; however, if the efforts of the staff do not result in compliance the case is referred to the Attorney General's office for further action.

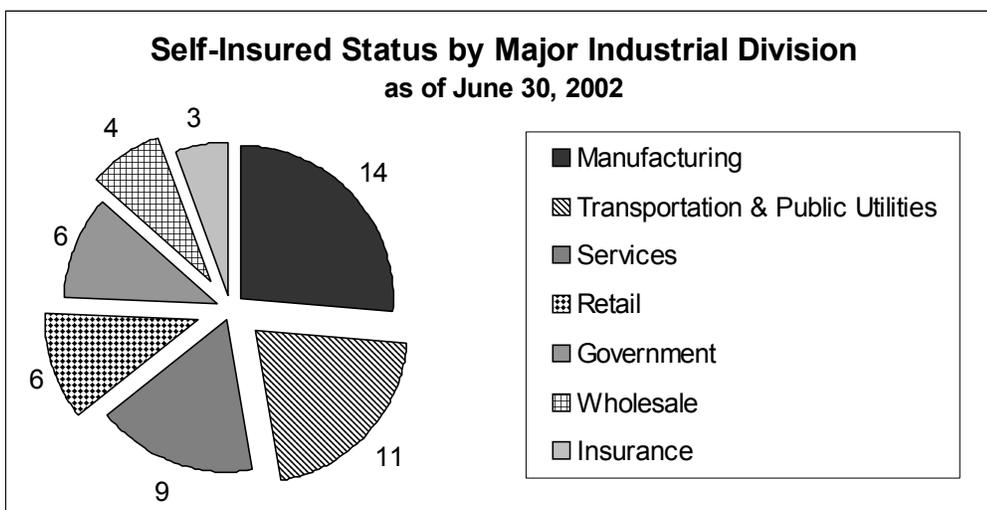
Insurance carriers, risk management pools, and self-insured employers are also required to comply with obligations under the Act, including the obligation to report injuries and payments in accordance with the Act and the Court's Rules of Procedure. Coverage and Claims staff enforce those reporting requirements, requesting missing injury reports and monitoring for their receipt, clarifying discrepancies on existing reports and obtaining missing information. The section has devoted an increasing amount of time on the court's Electronic Data Interchange (EDI) initiative. Section staff have worked with Public Information and Information Technology staff on compliance issues, testing, editing for errors, and planning for future EDI activities.

Compliance examiners respond to a large volume of phone inquiries from a variety of sources. Issues frequently addressed include: insurance carrier identification and contact information; benefit calculation questions; payment explanation; delay in receiving benefits; and general rights and obligations questions. Often, callers identify situations where employers are uninsured, injury reports are not being filed, and insurers, employers, or risk management pools are not complying with other obligations under the Act. Staff investigate the specific cases, encourage voluntary compliance, and take appropriate legal action when necessary. Compliance personnel made over 5,000 contacts in FY 2002, requiring various levels of service.

Self-Insurance Activities

The Coverage and Claims section is responsible for reviewing applications for individual self-insurance, determining and collecting fees and assessments, and monitoring those employers who have been granted the privilege of self-insurance for continued ability to meet their financial obligations under the Nebraska Workers' Compensation Act. Self-insurance privileges are subject to periodic review and renewal. During FY 2002, new rules establishing procedures and requirements for employers wanting to self-insure and for approval by the court were drafted, adopted, and implemented. In addition, a long-planned program for periodic on-site audit of the payroll records of approved self-insurers was instituted, and the first two audits were completed.

At the beginning of each calendar year, the court calculates and collects from employers self-insured for the prior calendar year necessary assessments for the state's General Fund, the Compensation Court Cash Fund, and the Workers' Compensation Trust Fund. The assessments are based on the number and classification of employees, payroll, and benefits paid during the previous calendar year. Because much of the information about self-insurers in Nebraska is kept on a calendar year basis, the statistics reported do not always coincide with the end of the court's fiscal year. It is important to note this distinction in the graphics that follow. As of June 30, 2002 there were 53 employers approved for self-insurance. For calendar year 2002 tax and assessment purposes, there were 62 self-insurers (employers who were self-insured for all or part of calendar year 2001). The State of Nebraska is self-insured by statute and is not included in any of the statistics that follow.



Self-Insurance Status By Calendar Year

Calendar Year	# of Self-Insurers	# of Employees	Gross Payroll
2001	62	139,419	3,914,599,183
2000	62	148,113	3,785,487,567
1999	64	136,136	3,785,362,521
1998	68	130,134	3,908,884,324
1997	76	123,282	3,095,073,558
1996	89	137,640	3,441,007,693
1995	92	130,854	3,268,057,718
1994	85	122,475	3,044,621,915
1993	83	117,073	2,743,717,174
1992	74	103,970	2,369,261,914

Note: The 2002 figures are not available at this time.

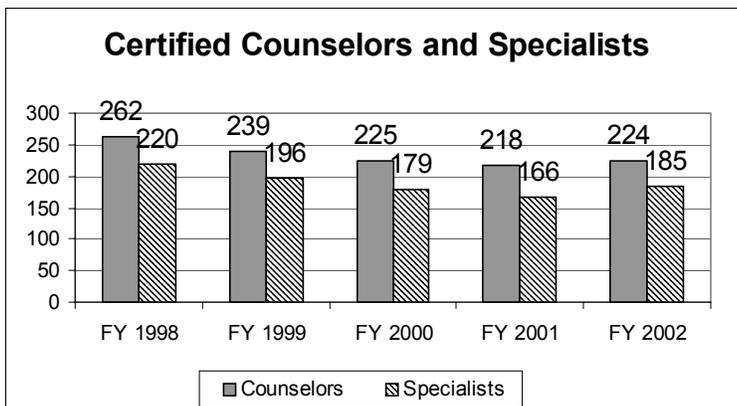
Vocational Rehabilitation

A manager, three vocational rehabilitation specialists, and two support staff are responsible for duties associated with vocational rehabilitation services to which an employee may be entitled under the Nebraska Workers' Compensation Act. The goal of vocational rehabilitation is to return an injured worker to suitable, gainful employment after an injury covered under the Act. A wide variety of services are available, from coordinating return to the pre-injury job with the employer to a period of formal retraining.

The duties of the section can be divided into three broad categories: certifying vocational rehabilitation counselors and job placement specialists; appointing counselors when parties cannot agree; and, reviewing, approving, and monitoring vocational rehabilitation plans.

Certification of Counselors and Specialists

Vocational rehabilitation services can only be provided to injured workers by individuals who have been certified by the court. Rules 39-41 contain the requirements for certification. On June 30, 2002 there were 224 vocational rehabilitation counselors and 185 job placement specialists on the directory maintained by the court. Of these, 127 counselors and 88 job placement specialists were located in Nebraska.



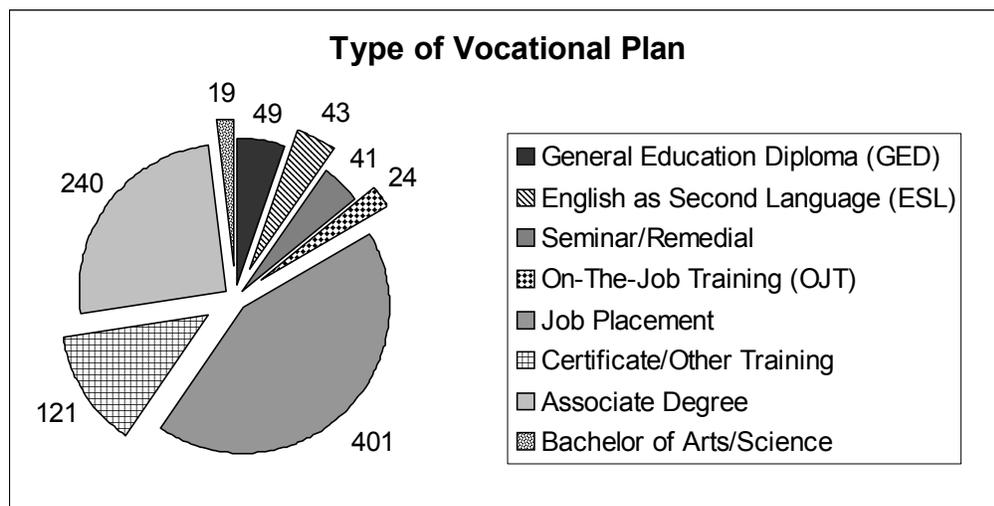
Appointment of Counselors

When an injured worker claims entitlement to vocational rehabilitation services, the employee and the employer (or the employer's insurer) must try to agree on a vocational rehabilitation counselor to evaluate the employee and provide needed services. If they can't agree, one of them can ask the court to appoint a counselor from the directory. Of the 598 cases requiring a vocational rehabilitation counselor in FY 2002, the court appointed 204 from its directory and the parties were able to agree upon a counselor in the other 394 cases.

When a vocational rehabilitation counselor is agreed upon or appointed, a vocational rehabilitation case is established. On June 30, 2002 there were 1,163 open cases. A total of 746 cases were closed for a variety of reasons during FY 2002 (training completed, employee returned to work, claim settled, etc.).

Vocational Rehabilitation Plans

Once it is determined that an employee may be entitled to vocational rehabilitation services in order to return to suitable, gainful employment the employee is evaluated and, if necessary, a vocational rehabilitation plan is developed. The level of services to be provided is based on a hierarchy outlined in Section 48-162.01 of the Nebraska Workers' Compensation Act. These services range from coordinating a return to the pre-injury job with the pre-injury employer to a plan of formal retraining.



A vocational rehabilitation plan of some type is involved in a majority of the cases monitored by the section. The following chart shows the type of plan involved in 938 cases either closed during FY 2002 or currently being monitored.

When an employee is in a court-approved vocational rehabilitation plan, the following costs are paid by the Workers' Compensation Trust Fund administered by the court: tuition; books; tools; other appropriate fees and costs; board, lodging, and/or travel in some circumstances. In addition, salaries, other benefits, and expenses incurred by the court for the purposes of vocational rehabilitation are paid from the fund. Total disbursements from the trust fund for vocational rehabilitation purposes are shown in Section 1, page 11 of this Annual Report.

Vocational rehabilitation counselor fees for the evaluation of the employee, development and implementation of a vocational rehabilitation plan, and preparation of a loss of earning power evaluation are paid by the employer or workers' compensation insurer. This also includes charges by job placement specialists or interpreters, if necessary. The employer or insurer is also responsible for temporary disability benefits while the employee is undergoing vocational rehabilitation.

Public Information

The court's Public Information section exists for two purposes:

- to inform the public regarding Nebraska workers' compensation law and procedural rules. This is done by public information specialists who field questions from callers on the court's toll-free information line. Also, public information is disseminated by means of the court's Web site, publications, workshops and seminars; and
- to process reports of injury filed electronically using Electronic Data Interchange (EDI), and to code and enter paper reports of injury and payment into the court's information database.

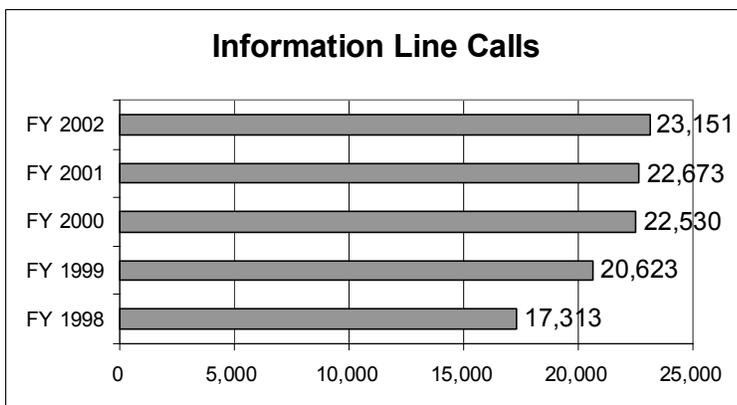
Providing these services requires eight full-time staff members including three public information specialists, two computer operators, a receptionist/secretary, and an office clerk. Overall supervision and guidance is provided by the public information manager.

Information Line

The court's toll-free information line enables the court to serve the public more efficiently and saves the cost of long distance calling. Public information specialists assist callers on the information line Monday through Friday, from 8:00 a.m. to 5:00 p.m. After hours and during weekends and holidays, callers receive instructions to leave a message so that a specialist can return the call on the next working day.

The specialists provide answers to commonly asked questions about workers' compensation in Nebraska or research inquiries for a response, usually within 24 hours. Also, calls can be transferred to other court sections for more information. Court staff do not provide opinions, guesses, or legal advice.

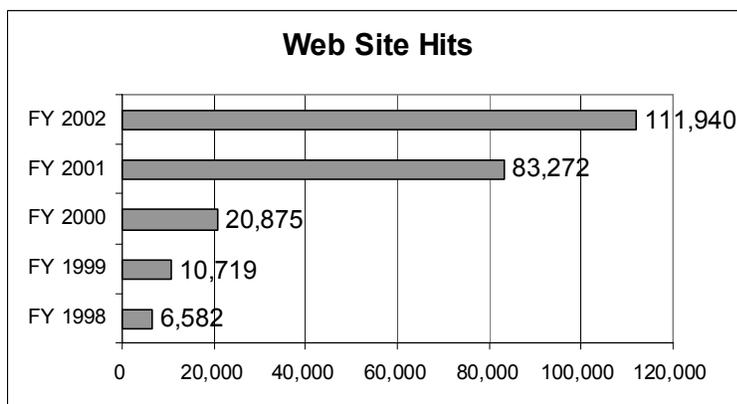
As of June 30, 2002, the information line has received 146,216 calls since it was first made available in 1994. A total of 23,151 calls were received on the information line in FY 2002, an average of 445 calls per week, 94 calls per day. This is a 2.1 percent increase over the number of calls received in FY 2001. These calls come from employees, attorneys, employers, insurers, medical and vocational rehabilitation providers, and others in Nebraska and throughout the nation.



Web Site

The Public Information section created the court's Web site, located at <http://www.nol.org/workcomp/>, and maintains the site on a day-to-day basis. The site's overall functionality, design, and ease of use has been upgraded using Macromedia's Dreamweaver, a Web site design and management software.

Public use of the court's Web site increased to 111,940 hits in FY 2002, a 34.4 percent increase over the number of hits received in FY 2001. Of these, the files in the "Publications/Forms" page had the most hits with 27,911 (24.9 percent of all hits in FY 2002). More than half of these were for the Rule Book, with a total of 14,902 hits (13.3 percent). This was followed by the "Frequently Asked Questions" (FAQs) page with 9,389 hits (8.4 percent) and the "About the Court" page with 7,334 hits (6.6 percent). The court's Web site server host, Nebraska@ Online, gathers these statistics and it should be noted that they do not include hits to our Web site from State of Nebraska agencies.



Publications

The public information specialists design, write, edit, and maintain an inventory of all publications and forms produced and provided by the court. These include the following: this Annual Report and its Statistical Supplement, Rule Book, The Bulletin (newsletter of the court), Rights & Obligations (Pamphlet), Choosing a Doctor for a Work-Related Injury (Pamphlet), Vocational Rehabilitation Services (Pamphlet), Informal Dispute Resolution and Mediation (Pamphlet), Form 1-First Report of Alleged Occupational Injury or Illness, Form 4-Subsequent Report, Form 10W-Corporate Executive Officer Waiver, Form 10T-Termination of Waiver, Form 12-Insurance Coverage, Form 50-Choice of Doctor, Form 63-1-Request for Independent Medical Examiner, Form 67-2-Notice of Agreement to use a Named Independent Medical Examiner. Many of these publications are available in Spanish as well.

Workshops and Seminars

The public information specialists also assist with planning, preparing, and conducting informational workshops and seminars presented by the court. During FY 2002, court staff have presented information to 148 people in a total of eight workshops and seminars.

Data Processing

The Public Information section processed 61,522 first reports and 59,087 subsequent reports in Calendar Year 2001. At the time of publication, 99.7 percent of all first reports and 12.3 percent of all subsequent reports are filed electronically using EDI. Public Information staff process, code and manually enter the remaining paper reports.

Record Searches

Public Information staff fulfill approximately 3,200 record search requests each year. Effective August 1, 2002, policies regarding fulfillment and charges for public record searches have been changed. A new Record Request form was created to reflect these policy changes. One major change is that five-year searches of first and subsequent reports will be fulfilled at no charge, if sufficient information is provided to promptly identify the records.

Information Technology

The Information Technology section of the Nebraska Workers' Compensation Court is responsible for the administration and maintenance of the court's computer systems and network. This includes the court's databases relating to first reports of injury, subsequent reporting, vocational rehabilitation, and adjudication, which are maintained in Oracle. The court has also made considerable strides in exchanging information through Electronic Data Interchange (EDI). The section maintains an electronic connection with the State of Nebraska's mainframe computers and the database of the National Council on Compensation Insurance (NCCI). The court also takes advantage of Internet access to Secretary of State information related to Corporation and Business Records. Providing these services requires a manager and three full-time staff members.

Fiscal Year Activities

Ending June 30, 2002, the court completed its fifth full year of managing data on its client/server system, which utilizes an Oracle database. The database currently contains seven full years' of information, going back to calendar year 1996 for first reports of injury. The court also added to its historical statistical injury-related information for purposes of performing cross-year analysis. At the end of FY 2002, the court had six fiscal years' worth of this type of historical information.

During the fiscal year the court began a comprehensive Vocational Rehabilitation re-engineering project. The court continues to move toward maintaining its documents and records in electronic format, and to familiarize staff with using electronic files and documents in place of paper files and documents.

Electronic Data Interchange Initiative

The court's Electronic Data Interchange (EDI) reporting initiative allows employers, insurers, and others to file certain forms with the court in an electronic format as opposed to sending these forms through the mail. At the time of publication, 99.7 percent of all first reports and 12.3 percent of all subsequent reports are filed electronically using EDI. The court performed considerable analysis, design, and development for the filing of electronic subsequent reporting with the several trading partners becoming electronic by the end of the fiscal year.

Nebraska Occupational Injury and Illness Survey — 2000

Occupational Safety and Health Act

The Occupational Safety and Health Act of 1970 (OSHA) became an official part of the nation's labor laws in 1971. With its passage, Congress declared its intent “. . . to assure as far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.”

Under this Act, employers are required to keep records of all work-related deaths, any diagnosed occupational illnesses and any occupational injuries which involve loss of consciousness, restriction of work or motion, transfer to another job, or requires medical treatment beyond first aid. Employers with more than ten (10) workers are required to maintain a log and summary of occupational injuries and illnesses (OSHA No. 300) and a supplementary record (OSHA No. 301)¹ of each occurrence within the calendar year. These records are retained at the work site for five (5) years and must be available for inspection by representatives of the U.S. Department of Labor and the U.S. Department of Health and Human Services. Employers with less than eleven (11) employees and those employers who conduct business in one of the low hazard industries specified by OSHA are generally exempt from these recordkeeping requirements unless they are notified of the necessity to maintain these records for a given year for statistical purposes.

Occupational Injury and Illness Survey

In order to measure and evaluate the efforts in reducing work-related injuries and illnesses, a standardized system to collect, compile and analyze the health and safety statistics was established and implemented. This standardized system enabled data users to identify those industries that need improvement, to further monitoring and education programs, and allow employers to compare their incidence rates with other employers in the same industry.

The Nebraska Workers' Compensation Court has cooperated with the U.S. Department of Labor and the Bureau of Labor Statistics in conducting an annual survey of Nebraska Employers which has provided these essential work injury and illness statistics since 1971. The 2000 sample surveyed 3,652 employing units in the state.

Information regarding the survey and the results of the Occupational Injury and Illness Survey 2000 is available on the court's Web site (<http://www.nol.org/workcomp/about/2000NOIL.pdf>).

¹In the State of Nebraska the Workers' Compensation Form 1 — First Report of Alleged Occupational Injury or Illness, may be used in place of the OSHA No. 301 form.

Census of Fatal Occupational Injuries (CFOI) — 2001

The Census of Fatal Occupational Injuries (CFOI) Program was developed by the U.S. Department of Labor, Bureau of Labor Statistics (BLS) to provide a timely and accessible census of work-related fatalities. The CFOI program is a federal/state cooperative program. In Nebraska, CFOI is conducted by the Nebraska Workers' Compensation Court. This is the 10th year that CFOI has been conducted in all 50 states and the District of Columbia.

2001 Census of Fatal Occupational Injuries

CFOI 2001 used multiple data sources including death certificates, workers' compensation reports, medical examiner reports, and other available federal and state administrative records, to compile a complete, verifiable count of Nebraska fatal workplace injuries. The census covers all traumatic occupational fatalities, including those resulting from injuries to the self-employed, laborers on small farms, government workers, and others too difficult to identify from a single data source.

Besides comprehensive counts of fatal work injuries, the 2001 census provides information on the demographic characteristics of the deceased workers (including age, gender, and race), the occupations and industries the decedents worked in and the circumstances of their tragedies. This wealth of information on hazards in Nebraska workplaces yields vital insights to aid in preventing future workplace fatalities. Safety and health researchers will be able to study patterns of fatal work injuries, identify hazardous activities and equipment, and alert workers to these dangers.

2001 Census Results

The Nebraska Census of Fatal Occupational Injuries recorded 57 fatal workplace injuries during 2001, down from 59 the previous year. Other findings of the census include:

- Transportation accidents were the leading fatal event, accounting for 33 (58 percent) of fatal occupational injuries in 2001. Contact with objects and equipment followed with 11 (20 percent), falls contributed 5 (7 percent), and assaults and violent acts contributed 3 (6 percent).
- Among industry groups, the largest number of fatal work injuries was in agriculture with 20 deaths (35 percent). Construction followed with 10 deaths (15 percent).
- Fifteen (26 percent) of those fatally injured were 65 years or older and 14 (25 percent) were 45 – 54 years of age.
- Fifty-four (95 percent) of those fatally injured were white, non-hispanic.
- Fifty-five (97 percent) of those fatally injured were men.
- Thirty-five (61 percent) of those fatally injured were wage and salary workers. The remainder were self-employed.

Information regarding the census and the results of the Census of Fatal Occupational Injuries 2001 is available on the court's Web site (<http://www.nol.org/workcomp/about/2001CFOI.pdf>).