

## Re: Injured Worker in ND

Megan Estes <estesmm@hotmail.com>

Tue 6/21/2016 2:02 AM

To: Sinner, George B. <georgesinner@nd.gov>;

Dear Senator Sinner,

I faxed a release of information statement to Rep. Bill Amerman. If you need more than what I sent, let me know and I will make it happen.

As an update to my letter, the "injury committee" I mentioned that would be meeting and determining further options for Josh, met and decided that he has a new retained earnings capacity of \$145, based on a 20 hour week. Josh has been asked to make five job contacts per day for two months. These contacts include, per NDWSI, "visits to Job Service, internet resources or other employment agencies, attendance at job fairs, registering for the Preferred Worker Program, attending a Job Seeking Skills workshop". We are required to make five job contacts a day and submit job logs weekly. We recently received a letter from Jodi L., our WSI claims adjustor, saying that our job logs were not sufficient. I called Jodi L. to get clarification on why our job logs were not sufficient, given that we had been looking for jobs through internet resources and the Missoula Job Service, per NDWSI parameters. I was told by her that we need to be applying to five jobs A DAY. Given Josh's current condition and the assessment of three medical doctors that say he is unable to work full time, and that any part time work must be extremely flexible and per Josh's mental and physical condition on any given day, finding a job that fits that criteria is near impossible. He is also unable to drive due to his epilepsy, and as I work full time night shifts, that limits his ability to hold a job even further. I relayed this information to Jodi L. and was told, "Well, it's tough finding a job." Included in the letter from WSI is the statement that "failure to perform a good faith work search may result in a discontinuation of wage loss benefits". So my husband, who has a traumatic brain injury, epilepsy, significant depression and anxiety related to his injury, ongoing tremors, chronic pain, weakness, short term memory loss, and confusion is supposed to apply to five jobs a day, in hopes that someone will hire him despite the fact that he cannot drive, on some days may be able to work only an hour or two, and other days not at all. Again, I ask you to imagine yourself in similar shoes and imagine the amount of pressure placed on you, knowing that your chances of being hired are practically none, that your capability of earning a wage that will support your family is nonexistent should you actually get hired, and that you will lose the money you receive from WSI if you do not satisfy their requirements, even when it is physically and mentally impossible. The burden of proof remains, as it has the entire 2.5 years since his accident, on my husband's shoulders for a work-related injury that has cost him a quality of life that he will never get back again and his ability to provide in a meaningful way for our family. Our attorney filed an appeal against the injury committee's decision and we have yet to hear back from WSI regarding this, although it was submitted in a timely manner.

Also of note, we are scheduled for a Permanent Partial Impairment evaluation. We received a letter from WSI, which I am including with this email, that said the evaluation will take place in North Dakota. Yesterday I received notice that the evaluation will take place in Iowa on August 2. For our original Independent Medical Evaluation that was to take place in March and was canceled by WSI, we were being sent to Minnesota. Now we are being sent to Iowa for Josh's PPI. We are concerned about the potential lack of unbiased judgment in assessing Josh's condition when we are being sent to different states and providers that WSI hand picks. How can we be assured of fair and unbiased treatment and evaluation when WSI has continually shown us that they will do anything to avoid reasonable respect and justice for my husband's condition?

My husband liked his job, liked the guys he worked with, and wanted to provide for his family. He was an honest worker, and received accolades from his superiors for his work ethic and leadership. Now he searches for an employer that may hire him for an hour or two, someone willing to accept that he cannot drive, and may not be able to work several days in a row, at a potential retained earnings capacity of \$145 a week, if he works a full 20 hours which is unlikely. The cost to our family has already been intangibly enormous. We lost my husband and my children's father in ways we will never get back again. NDWSI continues to make sure my husband and our family pay the price for it.

Sincerely,

Megan Truman

On Jun 20, 2016, at 10:42 AM, Sinner, George B. <[georgesinner@nd.gov](mailto:georgesinner@nd.gov)> wrote:

Hi Megan,

We have a legislative committee meeting this week that is a review of WSI and how they treat injured workers. Do I have your permission to use this letter at the meeting. My thought is that I will pass out a copy of the letter to the committee and all interested parties at the hearing. I would then give a summary of the letter (I am happy to use something you would prepare.) When that is done I would ask specific policy questions of WSI management. Again, I am happy to ask any specific questions you might prepare. Please help me here as I am going to try to present your situation and put the burden on them to make it right.

Thank you.

Sen. George Sinner

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**From:** Megan Estes <[estesmm@hotmail.com](mailto:estesmm@hotmail.com)>

**Sent:** Monday, June 13, 2016 2:47 PM

**To:** Sinner, George B.

**Subject:** Injured Worker in ND

Dear Senator Sinner,

I am writing to you on behalf of our family and the grievances we've encountered in the last two years. On December 14, 2013, my husband, Josh Truman, was working as a derrick hand for Helmerich and Payne, on an oil rig in North Dakota. A 15,000 lb. gas buster came loose and fell, hitting the back of my husband's head and neck, and pinning him for 45 minutes. He sustained serious injuries, including a subarachnoid hemorrhage in his head, a broken neck, a broken back, and a pulmonary embolism. We almost lost him that day. The long term effects of his accident have been devastating. He has temporal lobe epilepsy from the trauma to his head, chronic pain, muscle spasms and twitching throughout his upper body, has no taste or smell, and suffers from short term memory loss, depression and anxiety. One of my biggest fears when he got hurt was that he would never be the same man again, that I wouldn't have the man I fell in love with back. Prior to the accident, my husband had been a laborer for most of his life, logging and ranching, and was very social, always willing to lend a hand to others in need, and loved to hunt, fish, and do anything outdoors. His accident has robbed him of the ability to do the things he loves, as he is now anxious around other people and can only tolerate a little activity at a time. As his wife, it has been heartbreaking to watch him struggle through his recovery. To most outsiders, Josh remains that carefree, funny guy, but to his family, we see the daily pain and withdrawal from a life he previously lived abundantly. It has been hard on all of us. We've all had to adjust to the anxiety and mood swings, and the pain that he suffers from. I am writing to you in hopes that you can intervene in what has now become an injustice against a man that has worked hard all his life and help him get the justice he deserves.

North Dakota Workforce Safety and Insurance is the worker's compensation organization for North Dakota. We have worked with them since Josh's accident in an effort to maximize his medical care, therapy, and rehabilitation. From the beginning, NDWSI has been difficult to work with. Although we didn't want to, we sought legal representation immediately after the accident, as it was recommended to us, despite this being a "clear cut" case. In hindsight, that was the best choice we could have made. They have pulled caseworkers off of our case twice, denied benefits for what they deemed "noncompliance" on multiple occasions, and the burden of proof has rested on our shoulders to prove Josh's injuries time and again. We have numerous diagnostic tests, including MRIs, CT scans, neuropsychiatric testing, EEGs, EMGs, speech, occupational and physical therapy evaluations, functional capacity evaluations, and almost two and a half years of doctors' notes to corroborate Josh's injuries. Josh has been left unable to work, as his mind and body can only handle a couple hours of work at a time, and subsequently needs days of recovery after. NDWSI has repeatedly denied payment of benefits for "noncompliance", including on one occasion for his inability to perform 6-9 hours of computer coursework (hours as determined by NDWSI). He was unable to perform the 6-9 hours because of vision problems, headaches, and seizure type activity, caused by his accident. NDWSI has been unreasonable in their requests given the extent of his injuries, and denial of benefits based on his inability to perform the tasks that they request amounts to coercion. NDWSI also denied crucial epilepsy medication for 12 days while Josh continued to have 15-20 seizures each day, until I called them and informed them of the long term effects of uncontrolled seizures on the brain, possibly causing permanent brain damage. The drugs were approved the next day finally, after that phone call. For us, this has never been about the money. It has always been about getting Josh the help he needs, and an appropriate level of acknowledgment for the injuries he sustained while on the job, and the continuing and ongoing recovery from those

injuries.

Josh has reached Maximum Medical Improvement (MMI) as indicated by his doctors. Through the course of a "normal" case, when a worker has reached MMI, an Independent Medical Evaluation (IME) is performed by a "nonbiased" doctor who looks over the entire medical record and makes a determination. According to a 2014 performance audit by Sedgwick, no North Dakota physicians performed any of the IMEs and were all done out of state, and 75% of IME decisions in the evaluation group ruled in favor of NDWSI. Only 23% agreed with the treating physicians. Our IME was scheduled for March 6, 2016, with a doctor of psychology in Minnesota. NDWSI provided only one ticket for Josh to travel alone. As he is unable to travel alone and gets easily confused with new surroundings and environments, we submitted three different doctors recommendations that Josh not be allowed to travel alone, and that I assist him with his travels and his IME. These were submitted in a timely manner to NDWSI, but we received no communication back from them regarding this. I bought a \$1600 ticket 10 days before his travel date as we were running out of time and I did not want his flight to fill up, and take the chance that he would travel alone. Three days before we were set to leave, NDWSI called and left a voicemail, canceling his IME. The voicemail stated, "We know what we are going to do with you now." They have since denied reimbursement for my ticket bought out of pocket, even though three doctors wrote letters indicating that it was a significant risk to Josh to travel alone. This is yet another example of the unjustness we have encountered from NDWSI.

Our next communication from them was a Vocational Assessment Appointment, where we spoke with our Vocational Case Manager. She indicated that at the present time, NDWSI has determined that Josh is not eligible for retraining and falls under Paragraph 6 of their Rehabilitation Hierarchy options [*statute 65-05.1-01(6)*]. They have recently determined that he has a retained earnings capacity of \$353.20 per week, based on an hourly rate of \$8.83 x 40 hour work week. At issue is that Josh is unable to work a 40 hour work week and this has been proven in multiple medical documents. His case goes before an "injury committee" in the next two weeks to determine further "options" for him. It has been our experience that multiple decisions are made regarding Josh's case with very little chance of rebuttal, given the lack of communication we receive from NDWSI, and thus Josh is not afforded due process. He is permanently disabled, unable to work, and basing a retained earnings capacity on a 40 hour work week is not only unjust but another way NDWSI has tried to avoid compensating Josh for the injuries he sustained while working in their state. The time involved in this claim now sits at 2.5 years. In another 2.5 years, NDWSI will stop paying as it reaches the end of their limits of benefits. They will not settle, they will not compensate accordingly, and their hope is that Josh will somehow go from making \$107,000 a year working in the oil field to working a clerk job (per NDWSI's assessment) somewhere where he won't be able to work a 40 hour week and they can wash their hands of us at 5 years. My husband's biggest fear is how he is going to take care of his family when he can't hold a job and the system in place to help him for situations like this is broken and corrupt. He worries that they are going to cut us off. Please imagine for a moment, the stress of not knowing how you are going to provide for your family, when you can only tolerate very limited periods of activity and need days of recovery after, mixed in with the chronic pain, stiffness, and muscle spasms you endure on a daily basis. Then add in seizures, depression, and anxiety to that stress. And then add in that time is running out, and the impact to your family is something that you have no control over, and you are helpless. That is our future.

As a respiratory therapist primarily involved in trauma and critical care at our local trauma center, I see these injuries happen all too often. Now that I've seen the other side of it, I can assure you that the pain and heartbreak from watching your spouse struggle to recover and be a different person than the one you married, is something that I would never wish on another human being. It has been made far worse by the continued disrespect, prejudice, and negligence from NDWSI. I implore you to get involved in what is happening with Josh's case, as well as other workers that have been hurt on the job in North Dakota. Without legal consultation and extensive support, NDWSI would have taken advantage of him with their continued lack of communication, coercion and denial of benefits, and insistence that the injuries he sustained while on the job are not deserving of rightful attention and consideration. Josh suffered extensive and life-altering injuries while on the job. As for me and our children, our lives have been forever changed by this, and the man we once knew will never come home again. Please help us find justice for our family.

Sincerely,

Megan Truman  
10405 Rustic Road  
Missoula, MT 59802  
[estesmm@hotmail.com](mailto:estesmm@hotmail.com)  
(406) 360-2699

Bryan Klipfel  
Director



# North Dakota Workforce Safety & Insurance

Putting Safety to Work

www.WorkforceSafety.com



1600 East Century Avenue, Suite 1  
PO Box 5585  
Bismarck ND 58506 - 5585

April 12, 2016

Joshua Truman  
10405 Rustic Rd  
Missoula MT 59802

Injured Worker: Joshua Truman  
Claim No.: 2013-907561  
Body Part: Cervical (Neck), Head, Brain

Birth Date: 11/15/1977  
Injury Date: 12/14/2013

Dear Joshua Truman:

Workforce Safety & Insurance (WSI) has received medical information indicating you may be eligible for a permanent impairment award.

You may be eligible for an award if the work injury resulted in the permanent loss of, or loss of use of, a body part and you receive a rating from a physician which is equal or exceeds 14 percent of your whole body according to the most recent edition of the *AMA Guides to the Evaluation of Permanent Impairment*. No award is authorized by statute for any impairment of less than 14 percent whole body. You may wish to discuss with your physician whether your condition qualifies you for an award. Enclosed for your review is information regarding permanent impairment.

A permanent partial impairment (PPI) evaluation is optional. If you decide to request a PPI evaluation, **you must submit a written request to WSI within 180 days of this letter** to schedule an evaluation. If you do not submit a written request for an evaluation within 180 days, you will no longer be eligible to request an evaluation. The evaluation will take place in North Dakota. If you reside outside of North Dakota, travel arrangements will be made for you to return to North Dakota.

Any award for a permanent impairment is exempt from the claim of creditors, including your attorney. Exceptions to this include: child support, claims by Job Service of North Dakota, overpayment of benefits to WSI, and fraud. An attorney may not seek or obtain a contingent fee arrangement (payment by you of a percentage of your award) for costs or fees payable in connection with any award for permanent impairment.

If you have any questions or concerns, please contact customer service at 1-800-777-5033 or 701-328-3800.

Sincerely,

*Jodi L.*

Jodi L., Claims Adjuster

Enclosure: Information on permanent impairment  
**By certified mail**

cc: Molly Howard

FL501

7014 2870 0000 2254 6842

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