

August 19, 2010

Mr. James Marsh
Director
Division of Labor and Management
700 Governors Drive
Pierre, SD 57501-2291

Dear Mr. Marsh,

We received your letter dated August 16, 2010. We are in agreement with certain points. I suppose we could wait until Monday to give our response but, perhaps to save some time at the meeting, we can put our thoughts on paper.

You are correct in saying that a good source of information would be the South Dakota Department of Labor. We are certain that you meant well when you made the statement in the first paragraph regarding the Department of Labor's contact information being on the First Report of Injury that is required by law to be provided to the employee. However, it reinforces a key point we have been trying to make.

Time and again we read in the workers' compensation material about how the injured worker is the one who is contacted by company representatives. Time and again we read about how the injured worker is the one who receives information. Time and again we read about how the injured worker is the one who is provided with documents. But, time and again we see nothing about how the system is to function in those cases in which the worker is incapable of communicating – either because they are critically injured, comatose or deceased.

We have no doubt that your contact information is included on the First report of Injury form that the worker is required to receive by law. The issue here is that we did eventually receive a copy of the report – **in December of 2008** – over a year after Brian died. Even then, it was a copy of only the front portion of the document which had (at least what we received) no reference to the Department of Labor or any contact information. If a copy was sent to Brian, we never received it.

The copy we did obtain was not provided to us by anyone associated with Workers' Comp or Brian's employer. We acquired that one-page front copy **only after** we filed an appeal through the Solicitor General of the US Department of Labor in Washington, DC (through OSHA) not as part of any of our efforts to deal with Workers' Comp. Rather, we received it as part of our efforts to gain more details into the death investigation of our son's case. As with most of what we have faced thus far, as family members of a deceased worker, we were legally provided with only scant information. The reports we received from OSHA had all identifying information of anyone involved blotted out. Even Brian's name was removed from any report we received. We were told that in order to gain more details, we would have to file the written appeal.

Even after that lengthy process, we were essentially told that our need to know did not outweigh the need to protect the privacy of anyone involved in the case (that is witnesses or the like). What we got was, for all practical purposes, the same documents we had received before (with the inclusion of the one-page report of injury). The exception was that now Brian's name was not blotted out. We were afforded nothing else than before.

Apparently, like Workers' Comp (?), OSHA operates under the precept that only the employee can gain access to certain details, be made aware of hearings and anything of that sort. Again, if the employee is incapable of participating in the process because of his or her medical condition or they have died, no one else (personal representative or not) is legally provided with anything without filing written requests for reports, filing appeals or whatever and even then there is little guarantee that the family will be given anything of value. What are family members to do if they need to make decisions within days – not weeks or months – after their loved one dies such as how to deal with the many financial concerns?

Regarding the second paragraph of your letter - I'm not certain when we gave the impression that we wanted the information to come through the medical case managers. However, if it is true that they are involved in only a small percentage of the cases, we are wondering whether those are the most severe cases. Medical Case Managers probably aren't needed at the hospital when someone has received a minor, non-life threatening injury. Is it possible that they are involved in only five to ten percent of the cases because those are the most critical/severe cases and crucial decisions need to be made for the insurance company? Then, are those the same cases in which a family member also needs to make crucial decisions? The difference appears to be that the insurance company can get all the information they need. Families are expected to operate in the dark.

We just happened to now realize that we have been criticizing what the Medical Case Manager did in our case. Rather than being critical of her, we now feel we should be somewhat thankful because at least she tried to give us something to work with – albeit not accurate. It appears to us now that, maybe, she was one who really cared and felt compelled to at least try to give us some information about benefits. Whose responsibility was it to better prepare her to meet with us?

Going even further, one of the things of which we had no advanced knowledge was the burial benefit available to us if/when Brian died and the fact that state law mandated that benefit. It was Brian's employer who made us aware that the funds were available as we were making funeral arrangements. We wonder if that was because the insurance company had no way to contact us about that benefit except through the employer. In that respect, we suppose the process worked fine. But, as odd as it may seem, we didn't initially know whether the funds were a benefit, gift or whatever. If the information about the benefit would have come from a source unrelated to the company, it may have cleared that simple matter up.

Remember, when people are faced with a situation of a loved one being critically injured, or worse, dying, they go through a myriad of questions, worries and suffering. They will probably not retain much of the information given to them without reminders. We feel we are qualified to say that unless people have “been there”, they will not fully understand that. For companies and agencies to expect people immersed in crisis situations to figure things out on their own is sad to say the least.

The bottom line is we don't care who relays the information. It's just that the information should be made available in a prompt, competent manner. Something to make reference to the information on the South Dakota Department of Labor's website would be acceptable if there is a degree of discomfort with an actual printed document from the Department being handed out. In that respect, perhaps the Case Managers are exactly the people to start this process for a number of reasons. If it is true (as we presume) that they become involved at the very early stages of the most critical cases (five to ten percent of the time), at least they are present in person to provide the family with contact information, telephone numbers of State Departments or whatever else may be helpful to the employee's family. Further, since they fall under the licensing authority of the Department of Labor (and if the department wants to be the source of information for families), the Case Manager's action can be regulated – including training as to what they should or should not discuss.

In any event, until it is realized and accepted that there are going to be times when the injured worker is not capable of being the recipient of the information, and that someone else representing the worker must be provided answers, nothing is going to change. If the Workers' Comp system in this state is not willing to accept that point, we have no hope of improving anything for families of South Dakota workers.

Sincerely,

Doug and Carol Pavel