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Workers' Compensation Law Blog
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Surveillance Investigations of Injured Workers

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It is not unusual for an insurer or self-insured employer to hire investigators to videotape injured workers for the purpose of showing that the worker is not as injured as he or she claims to be.

Investigators typically park in front of an injured worker's home to get a few minutes of the worker going to the mailbox, entering their vehicle, or doing household tasks. These investigators are not violating the law so long as they are not trespassing, and they may videotape the injured worker in public places as well.

The real problem with these investigations is that an adjuster will then forward edited DVD's and investigation summaries to the injured worker's treating doctor without the knowledge of the patient. It is only when the injured employee receives a letter that benefits have been abruptly terminated that the employee discovers that their doctor has been influenced by a DVD or an investigator's conclusions. The employee is often released by the doctor and has no opportunity to discuss the contents of the DVD with the doctor. Additionally, unless the employee has an attorney, the employee usually has a very difficult time even obtaining a copy of the DVD.

I have seen DVD's where the person videotaped is not the injured worker, and I have found that many times the doctor will not bother to watch the actual DVD. It takes time to watch these DVD's, as the investigator usually has to catch a minute here and there over several days to compile a DVD. On the other hand, I have seen cases where the injured worker has claimed severe disability, but is then caught doing very strenuous physical activity that is completely inconsistent.

My complaint is not so much that adjusters and employers hire investigators to sit outside injured workers' homes. Again, there is nothing illegal with that activity. Instead, my concern is that it is unfair to the injured worker not to provide her and her attorney with a copy of whatever the adjuster sends to the treating physician. An injured worker should not be discovering weeks later when benefits are denied or terminated that their physician viewed a surveillance video. The injured worker and his attorney should have an opportunity **when the DVD or investigation report is sent to the doctor** to view a copy of whatever is sent to the doctor.

I wrote to the Division of Industrial Relations recently and asked whether DIR has reviewed this issue to formulate a policy. I was told that DIR has not taken a broad position on the manner in which surveillance videos are sent to doctors, but only investigates particular complaints on a case by case basis if a complaint is filed by an injured worker. I will be continuing my discussions with DIR on this issue, as I interpret existing law ([NRS 616D.330](#), [NRS 616B.528](#)) as requiring that the insurer send a copy of a DVD and any investigation reports to the injured worker and his attorney when they are sent to the doctor. As an attorney, I have always succeeded in ultimately obtaining a copy

of whatever is sent to the doctor, but not all injured workers have attorneys or the ability and energy to fight for themselves.

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