

# Human Rights and Workman's Compensation: The Experiences of Two Injured Workers

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## ABSTRACT

This article will highlight examples where human rights were abused and promoted through the description of the experiences of injured workers of the Compensation Process in South Africa. A collective case study design was used and data was collected through semi-structured interviews. The article reports on the findings of a with-in case analysis of two participants. Three themes associated with human rights emerged. These relate to dealing with the consequences of losing a job and not being able to care for self and family, feeling isolated in the compensation process and not being acknowledged. Recommendations are made in relation to practice and education.

**Key words:** Human rights, workman's compensation, injured workers, collective case study

## Introduction

South Africa is one of the countries on the African continent where the rights of workers are protected through a wide range of legislation. These laws ensure inter alia that basic conditions of employment are met<sup>1</sup>, that previously disadvantaged groups have equal opportunities in the workplace<sup>2</sup> and also includes a compensation system for workers who have sustained injuries or diseases as a result of their work<sup>3</sup>. Work and the difficulties around employment in South Africa are a major focus of occupational therapy.

Despite the advanced legislation governing various aspects of work and employment, occupational therapists working with injured workers have noticed the way in which the current compensation system disadvantages some workers financially and also possibly in other ways that are not immediately obvious. Therapists have found that the Compensation for Occupational Injuries and Diseases Act<sup>3</sup> makes no provision for assisting the employee to return to work. This paper is based on a collective case study of the compensation process experienced by injured workers. It will focus on the experiences of two participants whose rights were abused and will explore how the rights of one of the participants were met.

## Background: The process in South Africa

Work related injuries and diseases in South Africa are managed by the Compensation for Occupational Injuries and Diseases Amended Act (COIDA)<sup>3</sup> which falls under the jurisdiction of the Department of Labour. Formerly known as the Workman's Compensation Act 1941 (WCA)<sup>a</sup>, it was replaced in 1993 by the Compensation for Injuries and Diseases Act and was amended in 1997 by the Compensation for Occupational Injuries and Diseases Amended Act. This document will be referred to as 'the Act'. The stated purpose of the Act is:

"To provide for compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment, or for death resulting from such injuries or diseases; and to provide for matters connected therewith"<sup>3:1</sup>

The Act requires employers to make regular contributions to the Compensation Fund<sup>3</sup> on behalf of their employees. These revenues are then used to pay benefits to employees injured dur-

ing the course of their work. When a worker is injured on duty, all medical and rehabilitation expenses<sup>b</sup> are paid for as stipulated in the Act. The employer is liable for paying the employee 75% of his/her wages or salary for the first three months of sick leave<sup>3</sup>. Wages paid to the injured worker are refunded to the employer by the Director General, but there is no stipulation as to when this will occur. If the employee's sick leave extends beyond three months, the employer either continues to pay the employee or 75% of the wages/salary can be claimed by the employee from the Director General. The employee has to complete the prescribed form<sup>c</sup> and send it to the COIDA office in Pretoria. The employer is also responsible for providing transport for the employee to attend medical or rehabilitation appointments<sup>3</sup>. Transport costs may also be claimed back from the Compensation Fund by the employer.

On a practical level, if a worker is injured at work, it has to be reported to the supervisor or employer responsible. Depending on the severity of the injury, the worker has to receive medical attention. The employer is responsible for the completion of a prescribed form to report the accident to the Compensation Commissioner. The worker may also be referred for rehabilitation in the form of occupational therapy, physiotherapy or psychological counseling depending on which service is required.

## Consequences of work injuries

There are numerous consequences of work injuries and every individual worker will experience an injury differently. For the purposes of this article, this review will focus only on the psychological and financial implications.

## The psychological effects of work injuries on workers

Stone<sup>4</sup> conducted a study to establish how workers cope after they had lost their jobs following a work injury in North-Western Ontario, Canada. It was evident that the injured workers, (who were unable to return to work) were forced to re-evaluate their sense of identity. Workers complained that they were not treated with respect when applying for compensation and many had to fight for years to be adequately compensated. Workers mentioned that an injury at work affected all the areas of their life, resulting in, for example, divorce, lack of sympathy from family members, relationships that suffered and being shunned by former friends and co-workers<sup>4</sup>. Keogh *et al*<sup>5</sup> did a survey on the impact of occupational injury on the injured worker and family in Maryland, United States of America (USA). The authors indicated that 38% of the workers, who participated in their study

<sup>a</sup>Act No. 30 of 1941

<sup>b</sup>referred to as 'medical aid' in the Act

<sup>c</sup>Ref: W.C.I.132



(n=537) reported job losses and 31% of the workers reported depressive symptoms.

Work injuries also seemed to have an impact on the mental health needs of injured workers. A study done by Cacciocarro and Kirsh<sup>6</sup> explored the mental health needs of injured workers in Toronto, Canada. Themes that emerged from that study related to life changes after the injuries with the workers mentioning how drastically their lives had changed. Workers also discussed feeling alienated from society as they were unable to continue with their worker role. They felt abandoned by the compensation system as claims were rejected and they also reflected on the need for a change in the system whereby injured workers would be treated with respect.

No South African studies focussing on the psychological effects of work injuries on workers were found thus indicating the need for research to investigate workers' experiences of the South African compensation process.

### Financial loss

Boden and Galizzi<sup>7</sup> investigated the estimated earnings lost from workplace injuries in Wisconsin, USA. They reported that only 47% of lost earnings for men and 38% of lost earnings for women were replaced by the Workmen's Compensation Board. They stated that a substantial number of people in the longer temporary disability groups suffered losses that continued well after their benefits had ceased. Pransky *et al*<sup>8</sup> investigated the outcomes of work related upper extremity and lower back injuries in New Hampshire, USA. Forty-four percent of respondents reported that they had suffered significant injury related financial loss. This finding was more pronounced in workers who had been out of work for a longer period. As a result of financial loss, respondents reported problems with paying bills and how they had to use their savings, borrow money and sell belongings to meet financial responsibilities. The study by Pransky *et al*<sup>8</sup> was based on a relatively small sample size (n=169) and respondents were all from the same state in the USA. Therefore, one has to be cautious about generalising their conclusions to the South African context. Considering that workers in poorer households in South Africa are more likely to suffer from accidents at work compared to those from more affluent households<sup>9</sup> and that unskilled workers have difficulty getting other employment after they have been injured and many end up being unemployed<sup>10</sup>, the financial losses incurred by injured workers in South Africa, are likely to have even greater consequences.

### The role of occupational therapy in rehabilitation of injured workers

Occupational therapy as a profession is concerned with occupation and well-being. Buys and Van Biljon<sup>11</sup> suggested that occupational therapy in South Africa has a unique contribution to make when an individual's employability is negatively affected by injury and/or disability. As such occupational therapists are challenged to play a role in the employability of injured workers and this situates the profession as an important role-player.

In a Canadian study by Westmorland *et al*<sup>12</sup>, the perspectives of six stakeholders on work (re)entry of persons with disabilities, namely, employers, supervisors, co-workers, persons with disabilities, union representatives and human resources personnel, were investigated. The participants suggested that occupational therapists should act as advocates and influence policies. They recommended that good communication between clinicians, employers, union representatives and others is very important and that occupational therapists should have a good knowledge of the workplace and the specific job to which the client is returning.

Friedland<sup>13:266</sup>, a Canadian occupational therapist, argued that occupational therapists had not met the challenge "to prepare, facilitate, and advocate for [their] clients' entry or re-entry to the workforce". The authors firmly believe in the place and the value of work in an individual's life and agree that occupational therapists can become even more involved in ensuring that clients who have been injured at work can return to work. In a society such as South

Africa, where employment and financial security are threatened when clients are injured at work, occupational therapists can play a crucial role in advocating for the rights of injured workers. In order to be able to advocate effectively, therapists need to have a better understanding of injured workers experiences regarding the compensation process. The limited literature available in this area indicates a need for research to investigate this further in the South African context.

The aim of the study was therefore to explore injured workers experiences of the compensation process. This paper takes a human rights perspective on workers' experiences of the compensation process.

### Methodology

A collective case study design was used. Names of potential participants who were injured at work were obtained from the database of a private practice in the Cape metropole. Purposive sampling with maximum variation was used to select six participants with a wide variety of experiences. However, this paper will focus on the experiences of two participants, Daniel and Buddy, whose experiences represent both the upholding and disregard of human rights. Data was collected using semi structured interviews. The interviews were transcribed verbatim. The first step in analysing the data was to write up a description of each case containing a chronology of events and the context surrounding the injury<sup>14</sup>. The data were then organised into pre-determined categories<sup>15</sup> and then into positive and negative factors of the process (barriers and facilitators) to identify trends in the data as described by Field and Morse<sup>16</sup>. Inductive analysis was used to identify sub-categories, categories and themes for each participant as part of a with-in case analysis. A second interview was conducted in which member checking was done to ensure trustworthiness. Additional strategies for trustworthiness included peer debriefing and an audit trail.

The study received ethical clearance from the Health Sciences Faculty Research Ethics Committee, University of Cape Town<sup>d</sup>. All participants signed a consent form prior to the first interview.

### Findings

One theme emerged from the with-in case analysis for Daniel, "**Hoe gat jy lewe?**" (**How are you going to live?**). Buddy's within case analysis identified two themes that have relevance to a human rights approach. One theme, "**Ek het die paadjie so alleen gestap**" (**I walked the road alone**), demonstrated a violation of his rights while the other, **Respect and care**, captured how his rights were upheld. A brief description of the injury story for Daniel and Buddy will be presented followed by a discussion of the themes.

#### "Hoe gat jy lewe?" (How are you going to live?)

This quote from Daniel's initial interview describes his disillusionment and trepidation regarding how he was going to survive following the injury to his hand. Here is Daniel's story:

*Daniel was 54 years old and employed as a slitting operator in the paper processing and manufacturing industry when he was injured. On the day of the injury he tried to adjust his machine. He lost his balance and as he fell, he grabbed onto the machine with his left hand to prevent his head from hitting it. His left hand was pulled in between the rollers on the machine. Daniel was immediately taken to a nearby hospital. Although the doctor initially tried to save his hand, some time later it became gangrenous and two of his fingers had to be amputated. Despite anticipating the loss of part of his hand, it was a shock when he woke up from the operation and realised that his left middle and ring finger had been amputated. Since then Daniel has had four further procedures including debridement of the wounds and skin grafts.*

*Daniel did not experience any problems while undergoing medical treatment and was treated well and his employer helped him and was supportive throughout the process. His employer completed all the required forms and submitted them timeously to the Compensation*

<sup>d</sup>(REC REF: 084/2007)



Commissioner. Daniel received his full wages for the period of seven months that he was on sick leave. His technical manager telephoned him at home and enquired about his well-being and encouraged him to take it easy. He also received support from his colleagues.

Daniel returned to work seven months after the injury but in a different capacity. As a sorter, he was only required to use one hand to sort small packets into bundles and to check the quality of each packet. Then he was informed by the managing director that the company would not be able to keep him on in this capacity forever. He received compensation to the amount of R57 000 from the Compensation Commissioner and felt that this amount did not compensate for his losses. He subsequently appealed this decision and was paid an additional R16 600. He is concerned about his future employability and his capacity to care for his family should his current employer inform him that he would not be able to work there anymore. He is now 56 years old; he fears that nobody will employ him should he lose his job now.

Daniel was disillusioned with the amount of compensation that was paid out to him. He was under the impression that he would be compensated for the losses he incurred through the injury he sustained at work as is demonstrated in this quote from his first interview:

*“Soos ek het verstaan, as jy seerkry dan moet die workman’s compensation jou onderhou. Hulle moet jou uitbetaal in jou wages en sê as jy enige iets verloor, dan moet hulle jou uitbetaal, as jy ’n besering gekry het.”*

*“(As I understood it, if you get hurt the workmen’s compensation must support you. They have to compensate you for your wages and if you have lost anything, they have to compensate you if you had an injury.)”*

This quote also demonstrates a lack of understanding of the compensation process. Friesen et al<sup>17:15</sup> mentioned that workers’ in their study in Canada often felt disempowered and this feeling was often linked with a sense of being unable to understand ‘the system’ or ‘negotiate the system’. The barrier of poor communication highlighted by this participant was also mentioned by Sager and James<sup>18</sup>.

The Bill of Rights<sup>19e</sup> focuses on access to information stating that:

*“Everyone has the right to access any information held by the state and any information that is held by another person and that is required for the exercise of the protection of any rights”.*

Traditionally access is understood as the handing over of information. However, we argue that in South Africa where literacy rates are low and language barriers exist, access has to be understood more broadly as not only ensuring that workers have the information they need but also that they fully comprehend it. The Bill of Rights also states that everyone has the right to use the language of their choice<sup>f</sup>. Daniel may have been informed about the compensation process and how it works, but he did not understand the implications of such an injury and how procedures of remuneration during the recovery period, as well as the awarding of compensation, worked. This led him to experience disillusionment with the process while at the same time having to deal with all the other consequences of the injury. Daniel’s human rights were violated because the current systems within the Compensation Process do not ensure that workers comprehend the responsibility and function of the Process.

Daniel was the breadwinner in his family and his injury resulted in him losing some of the function in his left hand. He also talked about his anxiety with regard to his future employability as he was 54 years old and feared that if asked to leave his current job he would not be gainfully employed again. He described it as follows:

*“En jy kan niks doen sonder jou ander hand nie, jy moet altwee hande het om iets te kan doen, om ’n living te kan verdien. Because nêrens in die wêreld, hiero in die land, sal jy iemand kan kry met my ouderdom van 54 jaar oud wat sal vir my aanneem, aanvat as ’n werker nie.”*

*“(And you can’t do anything without your other hand, you must have both hands to do something to earn a living. Because nowhere in the world, here in this country, will you get someone who would take anybody with my age of 54 years on as a worker.)”*

Daniel went on to explain his fear of losing his job:

*“Ek voel eintlik baie bedroef because as ek nie kan sorg vir myself nie, daar is niemand anders wat sal kan sorg vir my nie. En dit is eintlik ’n aaklige gevoel. Ek is vreesbevange, as ek so ’n woord kan gebruik. Because wat gaan word van my?”*

*“(I feel very sad because if I can’t look after myself, there is nobody else who can look after me. It is a terrible feeling. I am panic-stricken, if I can use such a word, because what is going to become of me?)”*

A report of the Health Systems Trust in South Africa on the absence of rehabilitation and reintegration of the injured/diseased worker found that:

*“The lack of compulsory rehabilitation or vocational training programmes to assist injured/diseased workers and to reintegrate them back into the workforce results in a huge loss to the economy as skilled workers who become injured/diseased at work invariably leave employment”<sup>20:119</sup>.*

The Act, which was specifically developed to address issues around financial compensation, does not make provision for the return to work of the injured worker. It does not regulate the type of intervention that the Department of Labour or employers should make available to employees to ensure continued employment and productivity. By failing to include a structured programme geared towards return to work within the Compensation Act, workers’ rights to continuation of employment is compromised. Daniel’s story illustrates this gap between providing adequate compensation for injuries at work and facilitating the process of return to work.

Similar changes to those which Daniel experienced with regards to his role as the breadwinner were also reported by Stone<sup>4</sup> who examined how injured workers in Canada would look to another for support. She indicated that after a workplace injury a worker’s internal sense of well being was challenged when they were deprived of meaningful occupations. In Daniel’s case he had been working for the company for 26 years and now faced the possibility of losing his job. Roberts-Yates<sup>21</sup> commented that in Australia the primary focus after a work injury is the compensable condition which is the work injury. The workers’ perception in this study is that little effort is made to break down the barriers that influence how injured workers are reconstructing their future work and life.

*“Ek het die paadjie so alleen gestap” (I walked the road alone.)*

Buddy’s experience of the Compensation process proved to be an uphill battle that caused him to feel frustrated, disillusioned and devalued. Here is his story:

*Buddy was 44 years old and employed as a cash-in-transit guard at a company in Cape Town when he was shot during a violent robbery. This event changed his life.*

*Buddy was hit seven times in the chest and right arm through the ‘bullet-proof’ windscreen of the vehicle. Buddy then decided to get out of the vehicle as he thought he would be safer outside. He crawled around the vehicle and looked for somewhere to hide from the robbers. He also talked to the robbers and asked them not to shoot him anymore as he could do them no harm in his condition. They fired more*

<sup>e</sup>Section 32: 9

<sup>f</sup>Section 30



shots on the pavement but miraculously left him alone. The robbers left with the money before the police arrived. Buddy's colleague was not injured and was hiding somewhere. He did not come to help him.

Buddy was taken to a nearby hospital and according to Buddy, the mismanagement by the medical team at this hospital exacerbated his ordeal. Buddy had to endure severe pain constantly and during treatment sessions. He said he was denied answers and explanations by various members of the team about his condition and felt that he was a burden to them. He also reported that he was labelled as being paranoid and disrespectful to the team. Buddy was concerned about the pain and the bullet still lodged in his arm and obtained a second opinion from another surgeon. The intervention by the second team was a turning point for Buddy as he felt that they cared for him and his mental condition by listening to him and showing him respect.

The owner of the cash-in-transit company never came to see Buddy. His manager came to visit him once in the hospital to find out if he would be back at work before the three month sick leave period was over. Buddy felt that he received no support from his employers with the administration of COIDA. He had great difficulty getting forms from them to submit to COIDA and making sure all his paperwork was in order.

He felt disregarded when trying to contact the offices of COIDA in Pretoria; a disregard to the extent that they admitted to having lost his file. He finally met a certain official at the COIDA regional offices in Cape Town, whom he described as a 'go-getter'. This official helped him with all the administration and made sure all forms were completed.

Buddy was paid his wages by the company for the initial three months of his sick leave. He then claimed his wages from COIDA and should have received a monthly payment from them but only started receiving payments ten months after submitting his first form. The issue of compensation was another dead end for Buddy. He was unable to return to work and relied on some money from the Fund to help him get back on his feet. He received only R29 000 in compensation. The financial difficulties Buddy endured because he did not earn an income for so many months also affected his family. Buddy, a single parent of a daughter and a son, who were 18 and 15 years respectively at the time of the incident, was unable to provide for their everyday needs.

Buddy was under the impression that his employer would support him through his ordeal, but this was not the case. He even went so far as to say that he felt that the robber who stole the money had more rights than him.

*"Dis nie dat hulle vir my op die skouer moet kom pat nie, maar wat sou dit hulle gekos het om net by die hospitaal om te kom, te kom sit langs die bed en sê, 'Buddy, ons gaan jou adviseer hoe jy moet maak'. Ek het net gevoel dat die rower is soveel gelukkiger as ek in die sin dat behalwe dat hy nou geld gesteel het, is dat ek dink amper, hy meer regte as ek gehad."*

*"(It is not that I wanted them to pat me on the shoulder but what would it have taken them to visit me in hospital, sit next to my bed and say, 'Buddy, we will advise you what to do'. I just felt that the robber is much luckier in the sense that apart from the fact that he stole the money, I almost think he had more rights than I.)"*

Buddy also talked about the fact that he did not receive support from his employer with the forms required and that he experienced a change in the company's attitude towards him after the injury.

*"Hoekom is die mense so wreed teenoor my want wat het hulle om te verloor deur vir my die nodige papierwerk in te vul. Ek kos hulle niks nie. Die geld was recover, alles. Dit is net dat na die skietery was dit totale houdingsverandering en jy moet maar op jou eie regkom."*

*"(Why are the people so cruel towards me, what do they have to lose if they do not complete my forms. I don't cost them anything. The money was recovered. It is only that after the shooting incident there was a total change in attitude and I had to manage on my own.)"*

The Act<sup>3:21</sup> is specific in its expectations of the employer and states:

*"An employer shall at the request of the employee or the dependant of an employee furnish such employee or dependant with a copy of the notice of the accident furnished by the employer to the commissioner in respect of a claim for compensation by such employee or dependant"*.

This reference implies a direct violation of his human rights. Fultz and Pieris<sup>22</sup> commented on the fact that compensation schemes in Southern Africa lack adequate resources to enforce the law. Specific reference was made to the failure of employers in South Africa to report accidents. In Buddy's case the accident was reported, but the employer did not assist him with any administrative matters and refused to give him a copy of the accident report.

Buddy had expectations about the support he would get from his employer that did not materialise. Bezuidenhout<sup>23</sup> referred to these expectations as the psychological contract. She defined it as an unwritten, individual agreement between the manager and the employee that encompasses the employer's expectations of the employee and the employee's attempt to meet these expectations. Furthermore, it incorporates the employee's expectations and the employer's willingness to realise them. Bezuidenhout<sup>23</sup> continued to say that if the expectations are not met the relationship between the employee and employer deteriorates. This was evident in the relationship that broke down between Buddy and his employer when he was seeking assistance and support from his employer, which he did not receive.

Buddy described his efforts in trying to convince health professionals who were initially responsible for his treatment that he was experiencing severe pain and that there was something wrong with his arm.

*"Dit was net vir my een swart tyd daai. Ek moes soveel moeite doen om te sê, 'Wag, hierso sê julle gaan my nou stuur na iemand, na 'n spesialis toe?' Ek kon ook nie verstaan; wat my ook absoluut mal gedryf het is om vir 'n chirurg te vra en vir 'n fisioterapeut, 'Mense, ek is drie maande terug geskiet, my bietjie kennis sê vir my julle het been uit my heup uitgehaal ek het die x-strale gesien, julle het 'n stukkie van die humerus vervang. Is daar 'n manier wat julle gaan bepaal of hy aangegroei het?'"*

*"(It was a dark time. I had to go through so much trouble to say, 'Wait, are you not going to send me to a specialist?' I could not understand, what drove me absolutely crazy was to ask a surgeon and a physiotherapist, 'People, I have been shot three months ago, you have taken bone from my hip and I saw the x-rays where you have replaced a part of the humerus, is there no way that you are going to find out if it had healed?'"*

He also verbalised his frustration as he felt his rights as a patient and a victim of crime were not met by the health professionals.

*"Ek het die reg gehad as 'n pasiënt en slagoffer om vrae te vra. En dit was, hulle hulle moes vir my antwoorde verskaf. Hulle het nie"*.

*"(I had the right as a patient and a victim to ask questions. They had to give me answers. They did not.)"*

In South Africa, the National Patient's Rights Charter<sup>24:2</sup> declares that everyone has the right to health services that include:

*"treatment and rehabilitation that must be made known to the patient to enable the patient to understand such treatment or rehabilitation and the consequences thereof; and a positive disposition displayed by health care providers that demonstrates courtesy, human dignity, patience, empathy and tolerance"*.

In failing to respond to Buddy's needs, the health professionals failed to honour the National Patient's Rights Charter<sup>24</sup>, thus



violating his rights as a South African citizen.

Neglecting patients' rights is not unique to the South African context. Roberts-Yates<sup>21,903</sup> studied the perceptions of injured workers in Australia and reported that workers experienced treatment and rehabilitation as intimidating and felt they had little if any control over it. Workers expressed limited understanding of their condition and found consultants to be rushing consultations and therefore unable to communicate effectively with them.

Another violation of Buddy's rights occurred when he was trying to access information, and to make and maintain contact with COIDA officials.

*"Wel jy het geweet as jy die dag gaan probeer bel, jy is gelukkig as iemand sou optel. As iemand sou optel en jy gee vir hulle 'n verwysing dan is dit hou aan. Of ons kry nie jou lêer nie. Of die persoon met wie jy werk is nie hier nie. Ons sal jou terugskakel. Die lyn van verskonings wat hulle al uitgedink het is 'n boek op sy eie".*

("Well you knew if you are trying to phone, you are lucky if somebody answers. If they do answer and you give them a reference then they say hold on, or they do not get your file. Or the person that deals with your case is not available. We will phone you back. The line of excuses that they have thought of is a book on its own.")

*"In Pretoria was die probleem eerstens om by enige government instansie die regte telefoonnummers te kry en die faksnummers. Hulle het op 'n stadium nie eers geweet van my wat geskiet is nie. Jy is gecross reference en verwys na verskillende mense toe in die departement. Niemand wil verantwoordelikheid vat om te sê maar ons is in beheer van die file nie."*

("In Pretoria the problem firstly was to get the right telephone numbers or fax numbers at any government institution. At one stage they did not even know that I was shot. You are cross referenced and referred to different people in the department. Nobody wants to take responsibility and say that they are in charge of the file.")

Buddy's experience of administrative difficulties, such as unanswered telephones and messages not being returned, files and faxes getting lost, is supported by Fultz and Pieris<sup>22</sup>. They reported that many schemes in Southern African countries lack a customer service mentality and are marked by long queues of claimants awaiting attention which seemed to be the norm in some agencies. Publicly listed telephone numbers were often unanswered or continuously engaged. Similar experiences of injured workers were documented by Strunin and Boden<sup>25</sup> who noted that participants' encounters with the system in the USA often left them feeling mistreated, frustrated and helpless. Parrish and Schofield<sup>26</sup> reported that respondents in their study in New South Wales highlighted administrative inefficiency and miscommunication when they were asked about their relationships with claims officers. In Canada, participants in a study by Lippel<sup>27</sup> experienced the process as a fight against a big machine. The undignified interaction described by Buddy resonates with Strunin and Boden<sup>25</sup> and Cacciocarro and Kirsh<sup>6</sup>. Both studies document how participants felt humiliated and that the process contributed to increased feelings of sadness and frustration.

The Bill of Rights<sup>19</sup> protects the worker's right to fair and reasonable administrative action and states that everyone has the right to lawful, reasonable and procedurally fair administrative action. Supporting the Bill of Rights, the eight principles of Batho Pele<sup>28</sup> were accepted as a mechanism for transforming service delivery in the public sector. The fourth principle of courtesy is described as follows:

"This goes beyond a polite smile, 'please' and 'thank you'. It requires service providers to empathise with the citizens and treat them with as much consideration and respect as they would like

for themselves. The public service is committed to continued, honest, transparent communication with the citizens. This involves communication of services, products, information and problems which may hamper or delay the efficient delivery of services to promised standards".

Through administrative inefficiency and lack of offering assistance to injured workers who need support, public service officials are not honouring their commitment to the Constitution of South Africa or to the Batho Pele principles.

## Respect and Care

Later during his treatment and claims process Buddy experienced instances where his human rights were upheld by health professionals and a COIDA official. He was affirmed and felt valued through the respect they showed him and their care for him.

*"Dit was lekker om by 'n plek in te stap waar jy kon eerlik wees van die begin af. En die mense was met jou eerlik. En jy is rêrig behandel, nie omdat jy dit demand het nie, dit het net vanself gekom uit hulle harte uit. Ek hoef nooit aangedring op perfekte behandeling nie, dit was normaal van hulle, om mense net die beste te gee."*

("It was good to walk into a place where you could be honest from the beginning. And the people were honest with you. And you were really treated well, not because you demanded it, it just came from their hearts. I never had to insist on perfect treatment, it was their norm to give people only the best.")

*"Net die mense se vermoëns om pyn in my raak te sien hetsy fisies of geestelike pyn. En dan met my te sit en gesels, nie asof ek 'n babatjie is nie. Maar rêrig luister na my probleem en ook agterkom as ek dalk iets terughou of nie."*

("The people had the ability to see my physical and spiritual pain, and then to sit and talk to me not as if I am a baby, but they were really listening and also to realise whether or not I am holding back.")

Buddy felt that he was taken seriously in his relationship with these health professionals. Cacciocarro and Kirsh<sup>6</sup> confirmed this in a Canadian study in which participants noted how health professionals helped them, gave them hope, validated their feelings of pain, and provided ongoing encouragement.

Buddy mentioned the personal attention and help he received from one official in the Cape Town office of COIDA. He referred to her as a 'go-getter'.

*"En ons het met die dametjie gepraat en toe ek instap daai dag vanaf toe ek nou vir haar vertel hoe sukkel ek by die werk, sy was net een van hierdie go-getters wat besluit het maar hoor hierso hy kan mos niks vir homself doen nou nie. Hy het om die vorms in te vul het hy die werk se hulp nodig en die kantoor s'n. En sy het net absoluut net voluitgegaan vir my."*

("We spoke to a lady and when I walked in that day and when I told her how I struggle with the work, she was just one of those go-getters that decided that I can do nothing for myself and that I need the help of my employer to complete my forms. She absolutely did her utmost for me.")

It is interesting to note the issue of individual attention that led to results for Buddy. The value of individual attention is supported by Strunin and Boden<sup>25</sup> who reported that some workers described helpful relations with insurance company personnel and that this kind of behaviour resulted in timely outcomes. These agents were also seen as acquaintances or friends by the injured workers and not as nameless representatives of a faceless organisation.

<sup>§</sup>Section 33<sup>1</sup>



## Conclusion and recommendations

Both Daniel's and Buddy's experiences after their injuries illustrate violation of their rights by individuals as well as the system. Daniel was left disillusioned because he was under the wrong impression of the support the compensation process would offer him. As a man of 54 years old his injury left him feeling anxious about the future due to his uncertainty about whether he would be able to keep his job, and concern about how he would care for himself and his family.

Buddy received no support from his employer and had to deal with health professionals and officials from COIDA who proved unhelpful and unsympathetic. Buddy, however, also experienced the opposite when health professionals and the COIDA official in Cape Town cared for him and respected him. This led to Buddy feeling valued and acknowledged when he was treated like a human being.

The Batho Pele principle highlighted in the article talks about empathy, consideration and respect<sup>28</sup>, aspects in service delivery that cost nothing. As we have seen demonstrated in this study, upholding this principle made Buddy feel that his human rights were acknowledged. The National Patient's Rights Charter<sup>24</sup> declares similar characteristics in health professionals' demeanour such as courtesy, human dignity, patience, empathy and tolerance to uphold the rights of patients.

As health professionals in both the public and private sectors, we as occupational therapists have to understand the consequences that a work injury can have for a worker. We need to be mindful on a day to day basis about how our behaviour as service providers can either violate or uphold an injured worker's rights. Adopting a human rights approach should manifest in practitioners being more responsive to the needs of their clients. This implies that knowledge of human rights should be a foundational concept in health professional education programmes.

It is hoped that the findings of this article will stimulate reflection on everyday practice and generate opportunities for discussion with other team members. In particular, health professionals and COIDA officials need to appreciate their role in facilitating not only provision of information but also comprehension of that information. In so doing, they will become truly responsive to the National Patient's Rights Charter and the Batho Pele principles in challenging each another to uphold the rights of clients.

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