



What's Inside:

Enforcement Bureau Cases	2
Court of Appeals Judge	3
Employee of Quarter	3
Safety Program Success	4
WCA Contact Information	5

MEETING NOTICE:

The Advisory Council on Workers' Compensation and Occupational Disease Disablement has postponed meetings until further notice because of the Governor's mandate on social distancing.

HOLIDAY CLOSURE

The Workers' Compensation offices in Albuquerque and all its field offices will be closed on the following upcoming holidays:

- Memorial Day, Monday, May 25**
- Fourth of July, Friday, July 3**

New Mexico's 2019 Workplace Deaths

By Aileen O'Catherine

Worker Memorial Day is an international day of remembrance of workers killed or injured on the job, and is annually observed on April 28. The day encourages us to think of ways we can help achieve a healthier, safer workplace. Each April, the New Mexico Workers' Compensation Administration (WCA) looks at the lives of some of the workers who have died in the state the previous year as a result of a workplace accident.

In New Mexico, 43 work-related deaths were reported to the WCA in 2019, an increase from the 32 reported in 2018. Two of the deaths listed in 2019 were from injuries sustained in 2018. Motor vehicle accidents were the leading cause of occupational fatalities in the state, with 15 deaths.

Erik "Baby" Navarrette was among those killed. He was only 20 when he died in a motor vehicle accident while on the job. Navarrette was an avid Denver Broncos fan who loved to spoil his nieces and nephews, according to his online obituary. He also loved spending time with his dog, Tyson.

John Paul Marshall, 53, was a seminarian who died while on a trip to an annual Catholic youth conference in Colorado, according to news reports. The camp's bus driver suffered a medical episode, and rather than let the bus careen off the road and kill everyone on board, Marshall grabbed the wheel to steer it so it wouldn't overturn. The tour bus carried 10 children and five adults. Both Marshall and the driver, Anthony Padilla, 36, were killed, but thanks to the quick actions of Marshall, everyone else on the bus survived. Anthony Padilla, the bus driver, was father to three young boys, ages 8, 7 and 5. "His joking spirit will live with us forever," read his obituary.

Tobin "Toby" Williams, 28, died April 3, 2019, after a fatal workplace accident. A city of Santa Fe employee, Williams had been working just a few months when he was electrocuted while changing a light fixture at the city's convention center. Williams was looking forward to graduate studies in archaeology at UNM. His online obituary noted he was "an expert at making people smile," that he "took great pleasure in uncovering the many secrets of the world and sharing them with those around him," and that he could "make anything bloom."

Dustin "Dusty" Roe Mayer, 36, of Wagon Mound, N.M., was a husband and father of three young children, ages 13, 9 and 5. Mayer lost his life doing what he loved, according to his obituary, working as a cowboy. Mayer's horse fell on him while riding at the ranch he worked in Ojo Feliz, N.M. He was an experienced cowboy who loved rodeos and bull riding. "He leaves behind a legacy of love, friendship and faith," wrote a friend in tribute.

Roswell firefighter Jeff Stroble, 46, sustained fatal injuries from an explosion that occurred while he and other firefighters were setting up an Independence Day fireworks display for the city. Several other firefighters were injured, but Stroble's injuries proved fatal. The city council voted unanimously to place a new monument at the Roswell Convention Center in honor of Stroble. "This granite tablet stands as a testament to the sacrifice Jeff made," said Roswell Fire Department Chief Devin Graham at the ceremony held in January, 2020. Stroble left behind a wife and three children. He had been with the Roswell Fire Department for 17 years.

Alfonso Cordova was a pick-up and delivery driver for Estes Express Lines.

Enforcement Bureau Prosecutes Fraud

By Aileen O’Catherine

The WCA’s Enforcement Bureau receives referrals year-round, often through the agency’s website link, which provides an email form. Sometimes referrals come by phone. The bureau works with whomever made the referral to collect information for possible enforcement because of violations of workers’ compensation law. WCA investigators then look into the referral to see if it merits investigation and further prosecution.

Referrals made through the agency’s employer compliance bureau about employers not carrying mandated workers’ compensation insurance sometimes result in temporary or permanent restraining orders that keep an employer from conducting business operations until workers’ compensation insurance is acquired. Sometimes the business is locked out as well. In 2019, the bureau obtained seven temporary and 10 permanent restraining orders. For more egregious cases such as fraud or bad claims processing, it takes time to build a case and gather enough evidence to warrant possible prosecution. In 2019, a bureau investigator put together a case that resulted in the filing of criminal charges. Additionally, another investigator’s 2018 criminal charges

resolved in 2019.

In December 2016, the WCA opened an investigation against a worker in Las Cruces who committed fraud. The worker had sustained a head injury while working at a construction site when a cinder block fell, cracking his hard hat. He received appropriate care and a workers’ compensation claim was filed. The worker was released back to work on a limited basis per doctor’s orders. He continued to experience symptoms associated with a concussion well after the incident. He told his coworkers he felt fine, but told his doctor he did not. The insurance company suspected malingering and hired a private investigator to conduct surveillance. The worker was recorded doing errands beyond his doctor’s recommended work restrictions and was also recorded working for another company. Despite being under doctor’s orders to not work on anything higher than four feet, he was found to be working on rooftops. At this point, a complaint was filed with the WCA Enforcement Bureau.

The case was re-assigned to WCA Investigator Aaron Miera, who reviewed the evidence, gathered documents and formulated a recommendation to prosecute. His report included exhibits that would help prove the case. Upon his recommendation, Enforcement Bureau Chief Lucy Solimon submitted the case to New Mexico’s 3rd Judicial District Attorney in Las Cruces for possible prosecution. The WCA works collaboratively with the New Mexico court system to prosecute cases within the appropriate jurisdiction. The case was accepted, and in October 2019, the defendant was indicted by a grand

jury on two counts of second degree felony. One count was for fraud over \$20,000, for benefits the worker had received despite his no longer needing them, as evidenced by a documented ability for him to work. The other count was for false application for insurance over \$20,000. The defendant did not appear for his court hearing, and it is believed he has fled the country to avoid prosecution of charges.

The WCA also compiled evidence that led to criminal charges in 2018. The case involved a married couple who applied for workers’ compensation, with the wife assisting her injured worker husband in defrauding the insurer. The enforcement bureau compiled evidence that included video footage taken by a private investigation firm which showed the injured worker walking without a cane and driving a car, activities he had told his doctor and employer he was unable to fulfill. Enforcement’s facts were presented to the district attorney for the 1st Judicial District Court in Santa Fe. In 2019, Enforcement Bureau Chief Lucy Solimon and the assigned investigator assisted the D.A.’s office and a resolution in the matter was reached. The couple entered the Pre-Prosecution Diversion Program, in which they may avoid having felony records, if they can repay funds.

The Enforcement Bureau received a total of 41 referrals in 2019, and by end of year had 36 pending cases, some of which had remained from prior years. The bureau also resolved 32 cases. Resolved cases include those that were open and closed, or cases where the violation/conviction/settlement was

Continued on page 5

NM Workers’ Comp. Adm. Quarterly Bulletin

Loretta Lopez, Director
Diana Sandoval-Tapia, Public Information Officer
Aileen O’Catherine, Public Relations Specialist

The Bulletin is electronically published in January, April, July and October by the Public Information Office of the New Mexico Workers’ Compensation Administration. The Bulletin is available free of charge. Send changes of e-mail address and requests to receive the Bulletin to Diana Sandoval-Tapia in the Public Information Office, New Mexico Workers’ Compensation Administration, WCA-PIO@state.nm.us. Suggestions for articles are welcome. Call Diana Sandoval-Tapia at (505) 841-6052. Recent issues of the Quarterly Bulletin can be viewed on the Internet at <https://workerscomp.nm.gov/NMWCA-Publications>.

What is the Advisory Council?

The Advisory Council on Workers’ Compensation and Occupational Disease Disablement is a task force created by statute, comprised of six members, three representing workers and three representing employers. The primary role of the Council is to advise the governor and legislature on the status of the workers’ compensation system in New Mexico. The Advisory Council is required to meet at least twice annually. Scheduled meetings of the Council are announced on the WCA website, <https://www.workerscomp.nm.gov/Advisory-Council>.

Court of Appeals Judge Shammara Henderson Speaks at WCA

By Aileen O’Catherine

New Mexico’s first African-American Court of Appeals Judge Shammara Henderson made a guest appearance at the WCA on February 28 where she spoke during the agency’s annual Black History Month luncheon. An African-American speaker is featured at the event each year. “We were extremely fortunate to have Shammara Henderson speak to us today,” said WCA Director Loretta Lopez. “We look forward to working with her as she takes her position on New Mexico’s Court of Appeals.”

Although she had recently been appointed as the first African American on a New Mexico Appellate Court, Henderson said she was by no means the first to be part of New Mexico’s African-American legal profession. Henderson spoke of firsts, and the importance of breaking down barriers, especially for women. Some of the firsts she spoke of included Tommy Jewell Jr., the first African-American judge in Albuquerque, Angela Jewell, the first African-American domestic violence

judge in New Mexico, and Judge Stan Whitaker, Chief Judge of the Second Judicial District Court of New Mexico, who is African American. She also spoke of Thurgood Marshall, the first African-American Supreme Court Justice of the United States. “There have been many firsts,” Henderson said, noting she was honored to be part of the group, which included many trailblazers before her.

Henderson grew up in Albuquerque and graduated from the University of New Mexico School of Law. She then clerked for Justice Charles Daniels of New Mexico’s Supreme Court and worked as a federal prosecutor during the Obama administration.

Henderson said she was pleased to see the diversity found in the audience before her at the WCA. She said it was important to break down barriers and rid ourselves of implicit bias. She said it was also important for judges to recognize



WCA Judges Shanon Riley, Tony Couture, Leonard Padilla, Director Loretta Lopez, NM Court of Appeals Judge Shammara Henderson and WCA Judge Rachel Bayless

any implicit biases in themselves so that they could be impartial in their judgements. Henderson ended by saying she was thankful to learn more about the WCA, as any appealed decisions of its court go directly to the New Mexico Court of Appeals. Knowing more about workers’ compensation would aid her in understanding WCA court decisions more fully in the future.

Stephanie Rice Named WCA Employee of the Quarter

By Aileen O’Catherine

The New Mexico Workers’ Compensation Administration (WCA) announced Human Resources Specialist Stephanie Rice as their first Employee of the Quarter on January 29, 2020. WCA Director Loretta Lopez has instituted the quarterly award to recognize agency employees who exemplify excellence in the workplace.

“Stephanie is a huge asset to the HR Bureau,” said WCA Human Resources Manager Catherine Farrell. “Her contribution to the day-to-day operations is essential in enabling us to efficiently and effectively meet the always-changing demands and priorities of the Bureau.” Rice began with the agency in May, 2019, and works on

benefits, classification, payroll records, and labor relations. She is the go-to person for employees when they have questions or encounter a problem. Agency employees submitted the names of co-workers they thought deserving of the award, and senior management chose someone from the names put forward. WCA Director Loretta Lopez presented the award at an agency gathering on January 29, 2020. “It’s important to recognize the hard workers in the agency, and let them know they are valued,” Lopez said. “Stephanie exemplifies the qualities of hard work, and she undertakes any task with a professional and cheerful manner.”

Employees who receive the award



WCA Director Loretta Lopez (l) presents HR Specialist Stephanie Rice with Employee of the Quarter Award

are given administrative leave and a specially marked parking space for the duration of the quarter.

Forrest Tire Safety Record Improves With Help of WCA Risk Reduction Program

By Aileen O’Catherine

When insurance carrier Hub International took over Forrest Tire Company in 2014, the tire and auto repair company had a lot of safety issues. Its insurance experience modifier, the rating that determines whether its safety record is adequate, was at 1.67, a very high and dangerous rating. “One of our goals was to try to get them safe again,” said Darrell Martinez, Hub’s risk consultant for Forrest. Martinez is a senior risk consultant with more than 30 years of safety experience. Forrest Tire Company has 12 locations in southeastern New Mexico and west Texas. In 2015, WCA Roswell Field Office Manager Sarah Castro contacted Martinez to inform him that Forrest Tire was being placed into the WCA’s Risk Reduction Program (RRP).

The WCA renamed the Extra Hazardous Employer program the Risk Reduction Program (RRP) in 2013. The RRP aims to help employers identify and eliminate occupational hazards and reduce workplace accidents. Employers with a higher than average accident frequency for their industry, or with a safety audit that reveals a need for assistance, are placed in the RRP. Once the WCA identifies and enrolls a company into the program, employers are notified by letter and an appointment with a WCA safety consultant takes place within 30 days. An inspection of the facilities must take place before the consultation, with participants including the business owner or manager, and an insurance company representative, if desired. The business then develops an action plan to address the issues raised in the consultation. The WCA follows up with a review that evaluates the effectiveness of the plan.

Both Sarah Castro and now retired Roswell Safety Consultant Joe Fresquez met with the company’s owners at the corporate office in Carlsbad. “They weren’t thrilled with having to be

placed on the program,” said Martinez, “but they understood why it was being done.” If the goal was to get their experience modifier down, the owners were agreeable, as long as the WCA would help. Owner involvement is key in making the program work. With Castro and Fresquez, the business came up with a plan on how to improve their safety outcomes. The company would report back to the WCA every six months

Forrest Tire hired a safety coordinator and began to conduct monthly safety meetings. Martinez volunteered his services to conduct a safety meeting every three months, varying locations. The safety topic would be on whatever accident was most common for the quarter, such as slips, trips or falls. If there was a high incidence of vehicle accidents, the topic would be driver safety. Employee involvement was mandatory. Employees listened, made notes, and took a quiz at the end of each presentation. Within two years, Forrest’s accident record was vastly improved, and their experience modifier had dropped to 1.28, low enough to be taken off the program. The improvement was outstanding for the tire industry, which is very dangerous work. “The fact that they were able to do all that in such a short period of time is just a major accomplishment,” said Martinez. In addition to improving safety statistics at the business, the resultant improvement in the company’s e-modifier reduced costs on their workers’ compensation insurance premiums. The results of the RRP tie in with the WCA’s mission of providing a workers’ compensation

system at a reasonable cost to employers.

Martinez believes the WCA was instrumental in helping to create a safety culture at the business. He credits Castro, Fresquez and Don St. Germain, who continued the safety work after Fresquez retired, with the improvement. Martinez appreciated the way the WCA helped rather than admonished. “That’s one of the reasons I wanted Sarah’s office to get some recognition,” said Martinez. “It was a really good thing that happened with that account.”

Hub International, which underwrites insurance nationwide, took notice of the improvement and highlighted Forrest’s safety improvements at a conference for risk consultant CEOs that took place in Chicago in late 2019. The story of Forrest Tire was the success story for the insurance firm’s southwestern region.

Sarah Castro credits the vast knowledge of safety consultants Fresquez and St. Germain, who understand OSHA requirements. “It is important to me and my team that our approach is one of service to employers, workers, and everyone we serve,” Castro said of the success the RRP had with Forrest Tire. Castro strives to have a positive impact with employers, helping them become aware of safety hazards, how to improve safety protocols, and to understand the importance of reducing injuries so employees arrive home safely. “I am so proud of the work that Joe Fresquez has done and the work that will continue with Don St. Germain and with Norma Nored, who is new on our safety team,” Castro said.

SHANON RILEY APPOINTED CHIEF JUDGE

WCA Judge Shanon Riley has been appointed as chief judge by a vote of her peers and administration approval. Riley has been a judge with the WCA since August 20, 2011, serving a one-year probationary term and a subsequent five-year reappointment term. She was reappointed for a second five-year term in August, 2017.

Workplace Deaths (contd.)

Continued from page 1

Cordova, 53, suffered a fatal workplace accident when he became caught between two forklifts. Cordova was making a connection between the forklifts when one lurched backwards, pinning him in between. According to his obituary, Cordova enjoyed camping, anything to do with cars, and spending time with friends and family. He is survived by his wife, two daughters, and

two grandsons.

The selected date to honor these workers was so chosen as it commemorates the establishment of the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) opening its doors to the public in 1971. OSHA plays an important role in ensuring workplace safety, issuing citations to employers for

safety missteps and failures that cause grievous harm, or even death. OSHA investigated eight fatalities in New Mexico in 2019, and issued citations to fatalities in three of those investigations. All investigations resulted in safety violation citations. (<https://www.osha.gov/fatalities>).

Enforcement Bureau (contd.)

Continued from page 2

obtained and all obligations were met. Charges were filed on 15 cases, and one criminal case was filed. Additionally the bureau filed 48 charges for employer non-compliance, and 10 for safety. There were 11 referrals to the New Mexico Construction Industries Division (CID) for businesses/individuals that were operating without a required workers' compensation insurance policy. Overall, penalties in the amount of \$39,500 were assessed, and \$26,100 in penalties were collected via fines for non-compliance.

Enforcement Bureau Chief Lucy

Solimon is pleased with the work done by her bureau. "I'm hopeful that we'll get funding to get the tools we need to work more efficiently," she said, so the bureau's work can grow in numbers to uphold the statutes and regulations of the Workers' Compensation Act. She is thankful for referrals from the public, other bureaus in the WCA and the hard work of the agency's compliance officers and safety consultants. In addition to Solimon, the bureau includes attorney Israel Chavez in a newly created position, investigator Aaron

Miera, and paralegal Yvette Aguirre. One investigator position is currently vacant.

Anyone who suspects fraud, bad faith, unfair claims processing or other violation of workers' compensation laws should contact the Enforcement Bureau at 505-841-6865.

IN MEMORIAM

Former WCA Judge Col. Joseph N. Wiltgen died in his sleep Feb. 14, 2020. Wiltgen retired from the Air Force in 1987 and went on to serve as an administrative law judge at the New Mexico Workers' Compensation Administration until his retirement in 2001.

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