

Minnesota Workers' Compensation Dispute Issue Tracking Study Report 2: Vocational Rehabilitation Disputes

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Executive Summary

Although the Department of Labor and Industry (DLI) workers' compensation database contains a large amount of information to assist in the dispute-resolution process, it does not provide all the data needed to track disputes and issues through that process or to monitor performance. In consideration of this, DLI began an issue-tracking project in the fall of 2006. The project has tracked individual dispute issues through the dispute-resolution system, using a database and coding structure separate from the main DLI database. The coded data comes primarily from imaged documents in the DLI database, but also from an electronic log of dispute-resolution activities. The project has tracked medical and rehabilitation disputes filed in 2003 and in 2007 and claim petition disputes filed in 2003.

This is the second report from that project. It deals with rehabilitation disputes filed in 2003 and 2007.¹ It analyzes the paths taken by the issues in those disputes through the resolution process at DLI and the Office of Administrative Hearings (OAH). It also analyzes the time the issues take to travel these different paths. Not all of the coded data on those disputes is presented here. Additional data will be presented in future reports.

A diagrammatic analysis of the major resolution paths for the 2003 and 2007 disputes is provided in Figures 3.1 and 3.2 (pp. 12, 13) and Figures 9.1 and 9.2 (pp. 38, 39). Appendices 1 and 2 present a brief description of the dispute-resolution process and a glossary of terms. Appendix 3 describes enhancements made in the DLI dispute-resolution process between 2005 and 2007.

Following are some of the main findings for the 2003 and 2007 rehabilitation disputes (where statistics are indicated for 2003 disputes only, this is because of insufficient sample size for 2007 disputes):

Dispute characteristics

- Some 72 to 73 percent of the 2003 and 2007 disputes involved sprains, strains, tears and pain. This compares with 54 to 60 percent of all workers' compensation paid indemnity claims for injury years 2003-2007. This difference is to be expected because this type of injury is often more difficult to verify than more objective injuries such as fractures.
- The most common services at issue for both years were eligibility for consultation and plan content.
- The most common point in dispute in these disputes was causation; the second most common was reasonableness and necessity.

Dispute resolution activity at DLI

- The percentage of rehabilitation disputes recorded as not certified rose from 24 percent to 34 percent between 2003 and 2007. This increase is attributable to a larger percentage of disputes recorded as being resolved in the certification process. Part of this change may reflect an improvement in recordkeeping.
- Among certified disputes,² the percentage scheduled for an administrative conference at DLI increased from 55 percent to 73 percent between 2003 and 2007, while the percentage referred to OAH fell from 16 percent to 10 percent.
- The total number of disputes referred to OAH fell from 158 per 1,000 to 98 per 1,000 between 2003 and 2007.
- For disputes with a conference scheduled at DLI, the median time from first rehabilitation request to scheduled conference date fell from 63 days to 49 days between 2003 and 2007.

¹ The first report deals with medical disputes and was released in May 2009. It is available at www.dli.mn.gov/pdf/dispsstudy01.pdf.

² In this analysis, disputes not certified because of pending litigation and disputes without a recorded certification decision are counted with certified disputes.

- Sixteen percent of scheduled DLI conferences had re-sets for 2003, and 15 percent for 2007. There was a median of 28 days from the originally scheduled date to the re-set date for 2003, and 23 days for 2007.
- Where the scheduled DLI conference was not held, the median time from the rehabilitation request to the final dispute-resolution event was as follows.

For 2003 disputes:

- 58 days where the dispute was resolved informally at DLI;
- 118 days where the final event was an award on stipulation after action at DLI;
- 235 days where the final event was an award on stipulation after action at OAH.

For 2007 disputes:

- 45 days where the dispute was resolved informally at DLI;
- 94 days where the final event was an award on stipulation after action at DLI;
- 211 days where the final event was an award on stipulation after action at OAH.

- Where DLI issued a decision-and-order after a conference, the median time from the rehabilitation request to the decision-and-order fell from 71 days for 2003 disputes to 62 days for 2007 disputes.
- When the employee was the prevailing party in a DLI decision-and-order for 2007, the employer filed an appeal 43 percent of the time. When the employer was the prevailing party, the employee appealed 66 percent of the time. These percentages were somewhat higher than for 2003 disputes, but the difference was not statistically significant.
- For 2007 disputes with appeals from DLI decision-and-orders, the median time from rehabilitation request to final resolution was 220 days. For 25 percent of these disputes, the time was 347 days or longer.

Dispute-resolution activity at OAH for disputes referred from DLI

- About two-thirds of the disputes first scheduled for an OAH hearing after referral from DLI had an order for consolidation before the first scheduled OAH proceeding; an order for consolidation was almost never present for disputes scheduled for OAH conference or for disputes that resolved without being scheduled for either proceeding type.
- For 2007 disputes, the median time from rehabilitation request to first scheduled proceeding date was 68 days for disputes initially scheduled for an OAH administrative conference and 117 days for those initially scheduled for hearing.
- Thirteen percent of scheduled OAH administrative conferences had re-sets for 2003, as did 6 percent of those for 2007.
- Where OAH issued a decision-and-order after a conference in 2003 disputes, it occurred, at the median, three days after the conference and 65 days after the first rehabilitation request.
- Of the disputes scheduled for hearing (not counting appeals), about three-quarters were scheduled initially for hearing while about one-quarter were scheduled first for an OAH administrative conference. For 2003 disputes, in the former case, the median time from referral to the scheduled hearing date was 124 days, while in the latter it was 189 days.
- Twenty-two percent of scheduled OAH hearings (not counting appeals) had re-sets in 2003 disputes, and 16 percent in 2007 disputes. For the 2003 disputes, there was a median of 63 days from the originally scheduled date to the re-set date.
- A findings-and-order was issued in approximately one-quarter of the disputes scheduled for hearing for both years; in the remaining cases, the parties typically reached agreement, usually through an award on stipulation. For 2003 disputes where an OAH administrative conference had not been scheduled first and there was no findings-

and-order, the final resolution event occurred, at the median, 337 days after the rehabilitation request.³

Association between timing scheduled of proceedings and agreements

- A statistical analysis was performed to analyze the possible correlation between the scheduling of proceedings and the timing of agreements where the proceeding is canceled because of agreement of the parties. The analysis found that earlier scheduling of proceedings at DLI and OAH is associated with earlier resolution by the parties where the proceeding is canceled because of informal agreement or an award on stipulation. The agreement tends to occur about one day earlier for each day earlier the proceeding is scheduled to occur.

Observations

The data analysis in this report leads to the following observations.

- **Some disputes take substantially longer to reach resolution than others with seemingly the same sequence of events.** An effort should be made to determine how to reduce the time consumed in resolving these longer disputes.
- **Re-sets of proceedings at DLI and OAH add time to the process.** Consequently, their use should be limited as much as possible, using authority in rule. In 2005, DLI began approving re-sets of administrative conferences only upon showing of good cause.⁴
- **For disputes that go to hearing at OAH, the time to hearing is substantially longer if an OAH administrative conference has been scheduled first.** Consequently, an effort should be made to determine which disputes, after being referred to OAH, are likely to go ultimately to hearing so they can be scheduled for hearing initially rather than incurring long delays by being first scheduled for an administrative conference that does not occur.
- **Enhancements made by DLI in its dispute/resolution process between 2005 and 2007 have brought about major reductions in the time taken to resolve disputes.**⁵
- **The data show that earlier scheduling of proceedings leads to earlier agreement where the parties reach resolution before the proceeding.** This is in addition to the expectation that earlier scheduling should bring about earlier decisions where the parties do not reach agreement. It adds to the value of scheduling proceedings as promptly as possible with sufficient time for the parties to prepare.

³ There was insufficient sample size to present statistics on the timing of the findings-and-order itself.

⁴ The data suggests a reduction in the frequency of re-sets at DLI between 2003 and 2007, but is not conclusive (see p. ii).

⁵ These enhancements are described in Appendix 3.

Introduction

Background

A major goal in workers' compensation is to minimize the number of disputes and to resolve those disputes that do occur as quickly as possible and with the least possible amount of formal litigation. In Minnesota, workers' compensation dispute prevention and resolution services are provided by the Department of Labor and Industry (DLI) and the Office of Administrative Hearings (OAH). These services are described in Appendix 1 and a glossary of related terms is provided in Appendix 2.

The goal notwithstanding, Minnesota's workers' compensation system has experienced an increasing dispute rate during the past several years. From 1997 to 2008, the proportion of filed indemnity claims with one or more disputes rose from 15.4 percent to 20.6 percent, and the proportion of claims with formal litigation rose from 14.0 percent to 17.3 percent.⁶ These trends have focused attention on the importance of dispute prevention and resolution.

To effectively prevent and resolve disputes, it is essential to have data both to carry out the dispute prevention and resolution process itself and to monitor the performance of that process.

The DLI workers' compensation database records a large amount of information to assist in the dispute-resolution process. Much of this information is in the form of imaged documents. All workers' compensation claim documents filed with DLI, including dispute documents, are stored in the database as images. These are available to DLI dispute-resolution specialists and OAH judges to facilitate their dispute-resolution work. In addition, the database records certain actions in the dispute-resolution

process, such as informal resolutions at DLI and decision documents issued by DLI or OAH.

However, the database does not currently track individual issues through the system. It is structured to track disputes, which may include several issues. The data system, thus, does not provide data about the characteristics of issues, nor does it follow different issues in a dispute when they proceed along different paths, which sometimes happens. In addition, the system does not always completely track the disputes themselves. For example, when an appeal is filed from an administrative-conference decision-and-order from DLI or OAH,⁷ the system treats the appeal as a new dispute. Being able to track issues through the dispute-resolution system is important for evaluating its performance and developing options for improvement.

Issue-tracking project

In consideration of this, DLI began an issue-tracking project in the fall of 2006. The project has been carried out by DLI's Policy Development, Research and Statistics (PDRS) unit. The project tracks individual dispute issues through the system, using a database and coding structure created by PDRS. The coded data comes primarily from imaged documents in the DLI database. Additional data comes from an electronic log of dispute-resolution activities maintained primarily by DLI but also, to a lesser degree, by OAH.

The project has tracked three types of disputes: medical-request disputes, rehabilitation-request disputes and claim-petition disputes. It began with medical-request disputes and rehabilitation-request disputes that were filed in 2003, to allow enough time for those disputes to reach

⁶ *Minnesota Workers' Compensation System Report, 2008*, DLI Policy Development, Research and Statistics, July 2010. These statistics are by year of injury. Because many claims are not yet complete, especially for more recent years, the statistics are projected to full maturity.

⁷ As described in Appendices 1 and 2, such an appeal is filed via a request for *de novo* hearing at OAH. For brevity, this report refers to a request for hearing as an appeal, even though it is not technically that because the issues are heard anew and new evidence may be presented.

completion by the time of coding. Disputes from throughout 2003 were included.

Since that time, DLI has made several enhancements in its dispute-resolution process, including earlier identification of dispute-resolution opportunities, greater emphasis on early dispute-resolution and more active management of the process (see Appendix 3). In recognition of this, a second sample of medical- and rehabilitation-request disputes was coded, this one consisting of medical disputes presented from May through August 2007, and rehabilitation disputes presented from May through December 2007.⁸ These disputes were coded from 2008 through 2010. During 2008 and 2009, the project coded a sample of claim-petition disputes that began in 2003. Issues in the coded disputes are tracked through the dispute-resolution system, starting with their first appearance at DLI and continuing to their final resolution at DLI, OAH or beyond.

Appendices 4 through 7 describe the sample selection procedure and present lists of coded data items and issue and event categories. Multiple occurrences of issues in the same category in the same dispute were counted as a single issue. For an event to be “codable,” it had to be on the list or otherwise necessary for understanding the course of the dispute. A “dispute” was operationally defined as a set of one or more issues where each issue shared at least one dispute event or resolution event with at least one other issue in the group. For example, all issues presented on a rehabilitation request were counted as part of the same dispute.

This report

This is the second report from the issue-tracking project. It analyzes the rehabilitation-request disputes from 2003 and 2007. Figure 1.1 shows the numbers of rehabilitation disputes analyzed for the two years. About 8 to 9 percent of the rehabilitation requests for both years were uncontested vocational rehabilitation plan terminations. These are cases in which the

insurer files a rehabilitation request to inform the employee and DLI of an intended plan termination and the employee does not dispute the termination. These cases were not analyzed because they are not disputes. The remaining 1,430 cases for 2003 and 904 cases for 2007 were analyzed.

Figure 1.1
Numbers of rehabilitation request cases analyzed and not analyzed

	2003 cases		2007 cases	
	Number	Pctg. of total	Number	Pctg. of total
Analyzed -- "disputes" (issues other than uncontested plan termination present) [1]	1,430	91.7%	904	91.3%
Not analyzed (uncontested plan termination only)	130	8.3%	86	8.7%
Total	1,560	100.0%	990	100.0%

1. Among the cases analyzed, three for 2003 and one for 2007 had an uncontested plan termination issue along with the other issues. The uncontested plan termination issues in these cases were ignored in the analysis.

Data presentation

In presenting data, this report uses a weighting procedure to allow for the fact that different issues in the same dispute may take different paths. One issue, for example, may be settled informally while the other goes to conference. In the analysis, each issue is followed separately while being weighted inversely to the number of issues in the dispute. For example, if a dispute has three issues, each issue is tracked separately with one-third weight given to each. In this way, different issues in the same dispute can be counted in different categories if they take different paths. But the total weight for the dispute is the same regardless of the number of issues.

A second weighting procedure is used to express numbers of disputes throughout the report as numbers per 1,000 total disputes. This allows for ready comparison between the 2003 and 2007 data even though different numbers of disputes were coded for the two years. A second benefit is that the number of disputes per 1,000

⁸ Rehabilitation disputes were coded from a longer period to increase the number of these disputes in the sample, since they are less frequent than medical disputes.

translates directly to a percentage. For example, 350 disputes per 1,000 is 35 percent.

Because of these weighting procedures, the numbers presented are rounded versions of decimal numbers and, therefore, do not always add exactly to the totals presented.

Many tables in the report show lengths of time between major events in a dispute, such as between the presentation of the dispute and the scheduling of a conference. Where sample size permits, these tables show the times, expressed in days, at different points in the distribution ranging from the 5th to the 95th percentile. For some of these tables, the sample size is not large enough to permit showing the times in the ends of the distribution. In these cases, some of the lower and higher percentiles are omitted.⁹

Some figures present statistical significance levels for certain findings. For example, if the amount of time between two types of events in

the dispute-resolution process differs between the sample cases for 2003 and 2007, it may be asked whether this is because of chance or because of a true difference between the years. A statistical test estimates the likelihood that the observed difference in the sample cases could have occurred because of chance in the absence of any underlying difference between the two years. If this probability is lower than a specified threshold (e.g., .05), the finding is said to be statistically significant at that level.

In some instances, statistical significance levels are not presented with respect to differences between dispute years 2003 and 2007. In these instances, there may have been differences in coding between the two years, leading to spurious differences in the results. Where significance levels concerning differences between two years are not shown, the reader should view the statistics as a description of both years.

⁹ The criterion adopted for presenting data for any percentile is that at least 10 sample cases must lie on the opposite side of that point from the middle of the distribution.

Analysis of rehabilitation disputes from 2003 and 2007

Dispute characteristics

Most of the rehabilitation-request disputes had only one issue (Figure 2.1). Only 10 percent of the certified disputes for 2003 and 4 percent of those for 2007 had more than one issue. The number of issues per dispute is relatively small for noncertified disputes because noncertified disputes tend to be simpler and not all issues may be reported on the certification request (often a rehabilitation request is not present in a noncertified dispute).¹⁰

There was an average of 4.9 codable events per dispute for both years (Figure 2.2). For certified disputes, these averages were 5.6 and 6.1, respectively. About 11 percent of the certified disputes for 2003, and 13 percent for 2007, had 10 or more codable events. It is uncertain whether the higher average number of codable events for 2007 reflects an underlying reality or perhaps more complete coding for 2007.

Some 78 percent of disputes for 2003 and 2007 involved sprains, strains, tears and pain (Figure 2.3).¹¹ This compares with 54 to 60 percent of all workers' compensation paid indemnity claims for injury years 2003 through 2007.¹² This difference is to be expected because this type of injury is often more difficult to link to a particular injury event or exposure than are more objective injuries such as fractures.

Each issue in the dispute involves a particular service at issue. The whole range of vocational rehabilitation services is involved in these disputes (Figure 2.4). The most common services at issue for both years were eligibility for consultation and plan content, followed by unpaid bills, plan termination and change of

qualified rehabilitation consultant (QRC). Where plan content was at issue, the dispute most frequently centered on retraining or job-placement assistance. When plan termination was the issue, the service most frequently cited by the employee was workplace modifications or job-placement assistance.

“Point in dispute” is the reason the insurer and the employee disagree about whether the service at issue should be provided or paid for (Figure 2.5). It is sometimes referred to as “insurer defense.” For 304 disputes per 1,000 for 2003 and 346 for 2007, the request from the employee or provider was not disputed. In these cases, all indications from the insurer (e.g., the insurer's response to a request for dispute certification or the rehabilitation response) were that it accepted the request. As will be seen in Figure 5.7, a majority of the “not disputed” cases were not certified (DLI determines the dispute to be “not certified” if the insurer does not dispute the request or the dispute is resolved).¹³ The increase between 2003 and 2007 in the proportion of disputes “not disputed” corresponds to an increase in the proportion of disputes that were not certified (Figures 3.1 and 3.2).¹⁴

Among disputed cases, the distribution by point in dispute was about the same for the two years. For 2007, 30 percent of the disputed cases had causation as a point in dispute, 17 percent had reasonableness and necessity, and 10 percent had a disagreement about participation in a required activity. In 16 percent of the disputed cases for 2003 and 11 percent for 2007, the insurer did not indicate a point in dispute (see note 7 in figure).

¹⁰ See note 3 in Figure 2.1. As shown in Figure 3.3, the difference between 2003 and 2007 in the percentage of disputes certified or with no certification decision is statistically significant.

¹¹ These percentages derive from the numbers in the “disputes per 1,000” column.

¹² Computed from the DLI workers' compensation claims database.

¹³ Some of the not-disputed cases did not indicate a certification decision and were classified with the certified cases.

¹⁴ Among disputes with a decision of “not certified,” 83 percent had a point in dispute of “no reason given or not disputed” for 2003 and 86 percent did for 2007 (computed from data in Figure 5.7).

Figure 2.1
Number of issues in dispute by dispute certification status

Number of issues in dispute	Number of disputes per 1,000 [1]						Statistical significance level of difference between years for disputes certified or with no decision
	2003 disputes			2007 disputes			
	Certification status [2]		Total	Certification status [2]		Total	
	Decision: not certified	Certified or no decision [3]		Decision: not certified	Certified or no decision [3]		
1	238	685	923	329	637	966	
2	2	62	64	8	24	32	
3		11	11		2	2	
4		1	1				
5	1	~	1				
All disputes	240	760	1,000	337	663	1,000	
Average number of issues per dispute	1.02	1.12	1.09	1.03	1.04	1.04	.01
Percentage of disputes with two or more issues	1%	10%	8%	2%	4%	3%	.01

1. Numbers may not add exactly to totals because of rounding (see pp. 2, 3). "~" means a positive number less than 0.5.
2. Disputes not certified because of pending litigation are counted with certified disputes because they continue through the dispute-resolution process.
3. Some disputes do not show evidence of a certification decision. They are counted with certified disputes because the dispute-resolution experience for them more closely resembled that of certified disputes than that of not-certified disputes. More information about disputes without a certification decision is presented in Figures 4.1, 4.2 and 4.4.

Figure 2.2
Number of codable events in dispute by dispute certification status

Number of codable events in dispute	Number of disputes per 1,000 [1]					
	2003 disputes			2007 disputes		
	Certification status [2]		Total	Certification status [2]		Total
	Decision: not certified	Certified or no decision [3]		Decision: not certified	Certified or no decision [3]	
1		7	7	6	6	6
2	184	117	301	238	54	293
3	36	62	98	65	43	108
4	11	104	115	22	87	109
5	3	152	155	3	140	143
6	1	105	106	6	121	126
7		57	57	1	58	59
8	1	40	42	1	37	38
9	1	31	32		33	33
10	1	35	37		19	19
11	1	14	15		22	22
12		10	10		15	15
13	1	5	5		9	9
14	1	3	4		7	7
15		4	4		6	6
16		3	3		4	4
17		1	1		2	2
18		4	4			
19		1	1			
20		1	1			
21		1	1		1	1
23		1	1			
25		~	~			
33		1	1			
All disputes	240	760	1,000	337	663	1,000
Average number of codable events	2.49	5.63	4.88	2.46	6.11	4.88

1. Numbers may not add exactly to totals because of rounding (see pp. 2, 3). "~" means a positive number less than 0.5.
2. Disputes not certified because of pending litigation are counted with certified disputes because they continue through the dispute-resolution process.
3. Some disputes do not show evidence of a certification decision. They are counted with certified disputes because the dispute-resolution experience for them more closely resembles that of certified disputes than of not-certified disputes. More information about disputes without a certification decision is presented in Figures 4.1, 4.2 and 4.4.

Figure 2.3
Nature of injury

Nature of injury [1]	2003 disputes		2007 disputes	
	Disputes per 1,000	Pctg. of all natures of injury [2]	Disputes per 1,000	Pctg. of all natures of injury [2]
Sprains, strains, tears, pain [3]	783	73%	780	72%
<i>Back</i>	432	40%	400	37%
<i>Neck</i>	187	17%	191	18%
<i>Shoulder</i>	120	11%	136	13%
<i>Knee</i>	86	8%	92	8%
<i>Other</i>	116	11%	110	10%
Peripheral nerve disorders [4]	93	9%	85	8%
Fractures	68	6%	74	7%
Bruises, contusions, crushes	44	4%	22	2%
Intracranial injuries, concussions	12	1%	22	2%
Mental disorders or syndromes	7	1%	13	1%
Cuts, punctures, open wounds, abrasions	19	2%	11	1%
Amputations	7	1%	10	1%
Burns (heat and other)	8	1%	8	1%
Other	21	2%	30	3%
Nonclassifiable or not indicated	15	1%	28	3%
Total disputes	1,000		1,000	
Total natures of injury per 1,000 disputes [5]	1,076	100%	1,084	100%

1. In this figure, nature of injury is counted without regard to part of body. If the same nature of injury affects more than one body part, it is counted once here.
2. The percentage in this column is expressed relative to the total number of natures of injury, rather than to the total number of disputes, to make the percent distribution of natures of injury comparable between the two years. Since the average number of natures of injury per dispute is different for the two years, this would tend to make the percentage of disputes with any given injury different between the two years even if the relative preponderance of different natures of injury were the same.
3. Also includes reflex sympathetic dystrophy. The sum over the part-of-body subcategories is greater than the total for this nature of injury because more than one part of body may be involved for this nature of injury in the same dispute.
4. Includes carpal tunnel syndrome among others.
5. Total natures of injury is greater than total disputes because a dispute may have more than one nature of injury.

Figure 2.4
Service at issue

Service at issue	2003 disputes		2007 disputes	
	Disputes per 1,000	Pctg. of all services at issue [1]	Disputes per 1,000	Pctg. of all services at issue [1]
Eligibility for consultation	269	25%	282	27%
Plan content	266	24%	247	24%
<i>Retraining [2]</i>	129	12%	113	11%
<i>Job-placement assistance</i>	59	5%	61	6%
<i>Plan goal</i>	22	2%	31	3%
<i>Workplace modifications</i>	8	1%	15	1%
<i>Vocational testing or evaluation</i>	11	1%	10	1%
<i>Medical management</i>	11	1%	3	0%
<i>Ancillary services (mileage, food, lodging)</i>	3	0%	3	0%
<i>Basic skills training</i>	6	1%	3	0%
<i>Functional capacity evaluation</i>	11	1%	2	0%
<i>Other or unspecified plan content</i>	6	1%	7	1%
Unpaid bills	182	17%	189	18%
<i>QRC services</i>	170	16%	178	17%
<i>Other or unspecified unpaid bills</i>	12	1%	11	1%
Plan termination [2]	171	16%	170	16%
<i>Plan service cited by employee:</i>				
<i>Workplace modifications</i>	59	5%	104	10%
<i>Job-placement assistance</i>	59	5%	38	4%
<i>Medical management</i>	39	4%	24	2%
<i>Retraining [3]</i>	17	2%	8	1%
<i>Other plan service</i>	6	1%	4	0%
<i>No plan service cited</i>	25	2%	21	2%
Change of QRC	162	15%	104	10%
Eligibility for VR services [4]	42	4%	40	4%
Other or unspecified VR services	1	0%	2	0%
Total disputes	1,000		1,000	
Total services at issue per 1,000 disputes [5]	1,093	100%	1,037	100%

1. The percentage in this column is expressed relative to the total number of services at issue, rather than to the total number of disputes, to make the percent distribution of services at issue comparable between the two years. Since the average number of services at issue per dispute is different for the two years, this would cause the percentage of disputes with any given service at issue to differ between the two years even if the relative frequency of different services at issue were the same.
2. The sum of disputes in the subcategories is greater than the total for this category because the employee may have cited more than one plan service in a plan termination dispute.
3. Includes exploration of retraining.
4. The issue here is whether the vocational rehabilitation consultation correctly determined whether the employee was eligible for services.
5. The number of services at issue is greater than the number of disputes because a dispute may have more than one service at issue.

Figure 2.5
Point in dispute [1]

Point in dispute [1]	2003 disputes		2007 disputes	
	Disputes per 1,000	Pctg. of all points in dispute [2]	Disputes per 1,000	Pctg. of all points in dispute [2]
Not disputed	304		346	
Remainder of disputes (actually disputed) [3]	696		654	
Primary liability	25	3%	41	5%
Causation [4]	235	29%	248	30%
<i>IR claims pre-injury status or full recovery</i>	180	22%	194	24%
<i>Other causation defense</i>	78	10%	74	9%
Reasonableness and necessity	168	21%	138	17%
Participation in job search, VR plan or other activity [5]	71	9%	78	10%
IR asserts request for benefits not filed timely	24	3%	30	4%
IR asserts claimant voluntarily left employment [6]	34	4%	29	4%
IR asserts claimant fired for cause	15	2%	26	3%
QRC performance	9	1%	23	3%
Choice of QRC	37	5%	17	2%
Issues with return-to-work job offered or taken	12	1%	17	2%
Amount of payment	13	2%	14	2%
Refusal of suitable job offer	11	1%	10	1%
Other reason	31	4%	59	7%
No reason given [7]	127	16%	86	11%
Total points in dispute per 1,000 disputes [8]	814	100%	817	100%
Total disputes	1,000		1,000	

Note: IR = insurer.

- See Appendix 2 for definitions of point in dispute and of major point-in-dispute categories.
- The percentage in this column is expressed relative to the total number of points in dispute, rather than to the total number of disputes (actually disputed), to make the percent distribution of points in dispute comparable between the two years. Since the average number of points in dispute per dispute is different for the two years, this would tend to make the percentage of disputes with any given point in dispute different between the two years even if the relative preponderance of different points in dispute were the same.
- Equal to 1,000 minus the number of disputes per 1,000 that were "not disputed" (top row).
- The sum of disputes in the subcategories is greater than the total for this category because both subcategories may be present in the same dispute.
- Other activity includes medical treatment, independent medical examination and independent vocational examination.
- Also includes IR assertion that the claimant withdrew from the overall labor market or retired.
- In most of these cases, the insurer did not file a rehabilitation response, where it would typically indicate why it opposes the employee's or provider's request if this is the case. In a small number of cases, the insurer did file a response but did not indicate a reason for opposing the request.
- Equal to the sum of points in dispute for disputes actually disputed.

Major dispute paths at DLI

Figures 3.1 and 3.2 show the major dispute paths at DLI for the 2003 and 2007 rehabilitation-request disputes, respectively, beginning with the presentation of the certification request or rehabilitation request. The process shown is reduced to its major steps. Subsequent references in this report to the dispute-resolution “process” relate to the simplified version presented in these figures and in Figures 9.1 and 9.2, which show the major dispute paths at OAH. Figure 3.3 provides a direct comparison of the relative numbers of disputes following the major paths for 2003 and 2007, using numbers from Figures 3.1 and 3.2.

As mentioned previously, DLI made several enhancements in its dispute-resolution process between 2005 and 2007, which are described in Appendix 3. The results for the 2003 and 2007 disputes should be viewed with these process changes in mind.

At the first step shown in Figures 3.1 and 3.2, 240 disputes per 1,000 were not-certified for 2003; this number rose to 337 per 1,000 for 2007. As shown in Figure 3.3, this difference between the two years is statistically significant. As shown in Figure 4.4 (p. 14), this change primarily involved a shift from the “no certification decision” category to “not certified — resolved.”

At the second step in the process in Figures 3.1 and 3.2, the dispute may be scheduled for a DLI administrative conference, referred to OAH or otherwise resolved (neither scheduled nor referred). Between 2003 and 2007, the number of disputes scheduled for conference rose from 419 per 1,000 (55 percent of those certified) to 483 per 1,000 (73 percent). During the same period, disputes referred to OAH fell from 124 per 1,000 (16 percent of those certified) to 69 (10 percent).¹⁵ The number neither scheduled nor referred fell from 29 percent of those certified (or with not certification decision) to 17 percent. As shown in Figure 5.1 (p. 20), most of these disputes are resolved informally at DLI.

As shown in Figure 3.3, the difference between 2003 and 2007 in the relative numbers of disputes following these three paths is statistically significant.

For the 2003 disputes, conferences were actually held for 51 percent of those scheduled for conference; for 2007 this had fallen to 45 percent. This difference is statistically significant (Figure 3.3). However, the *number* of disputes having conferences was about the same for 2007 as for 2003 (216 per 1,000 versus 213) because of the larger number of disputes scheduled for conference for 2007. In other words, the increase in the number of disputes per 1,000 that were scheduled for conference was manifested in an increase in the number for which the scheduled conference was not held (267 per 1,000 in 2007 versus 206 for 2003). As shown in Figure 6.5 (p. 29), most of these disputes were resolved informally at DLI.

For the two years, decision-and-orders were issued in 75 to 81 percent of the disputes with conferences held, and among these, appeals were filed (via a request for hearing) somewhat less than half of the time. The difference between the percentages with decision-and-orders for the two years is not statistically significant (Figure 3.3).

The right columns in Figures 3.1 and 3.2 show additional information. First, they show the final event location (generally meaning the place of final resolution) for disputes following each path. Most not-certified disputes, for example, were resolved at DLI (usually in the certification process), but a small number of these proceeded to OAH. Appendix 8 shows more detailed information about the final events for the disputes following each path. The right columns in Figures 3.1 and 3.2 also show whether the dispute was actually disputed. As in Figure 2.5, the dispute is classified as “disputed” if the insurer opposes the request at any point, and is otherwise counted as “not disputed.” Finally, the right columns show the median time to final resolution for each dispute path, measured from the initial presentation of the dispute (certification request or rehabilitation request). For 2007, for example, the median time to resolution ranged from nine days for disputes

¹⁵ See note 5 in each of the two figures regarding the total number of referrals to OAH.

not certified to 224 days for disputes with an appeal from a DLI decision-and-order.

The remainder of this report follows disputes along the different paths shown in Figures 3.1 and 3.2, providing detail about timelines and outcomes.

Figure 3.1
Major dispute-resolution paths at the Department of Labor and Industry, 2003 disputes [1]

	Final event at DLI	Final event at OAH or beyond	Disputed?		Pctg. disputed	Median days to final resolution [2]
			Yes	No		
1,000 disputes	236	5	41	199	17%	12
Certification decision — not certified: 240 (24%) [3]						
Neither scheduled for DLI conference nor referred to OAH: 217 (29%) [4]	196	21	117	99	54%	21
Certified or no certification decision: 760 (76%) [3]	2	67	69	0	100%	240
Appealed: 69 (43%)						
Not appealed: 91 (57%)	90	1	91	0	100%	78
Decision & order issued: 160 (75%)						
Decision & order not issued: 53 (25%)	52	1	53	0	100%	76
Conference held: 213 (51%)						
Conference not held: 206 (49%)	173	33	202	5	98%	80
Scheduled for DLI conference: 419 (55%)						
Referred to OAH: 124 (16%) [5]	5	118	122	1	99%	159
All disputes.....	755	245	696	304	70%	56

1. All numbers are numbers of disputes per 1,000 total disputes. Percentages at each step in the diagram are relative to the total number of disputes at the preceding step. More detail is provided in Appendix 8.

2. These numbers encompass all types of resolution for the given dispute path; consequently, care is required in relating these numbers to other resolution timelines in this report, which sometimes refer to particular types of resolution within the given dispute path.

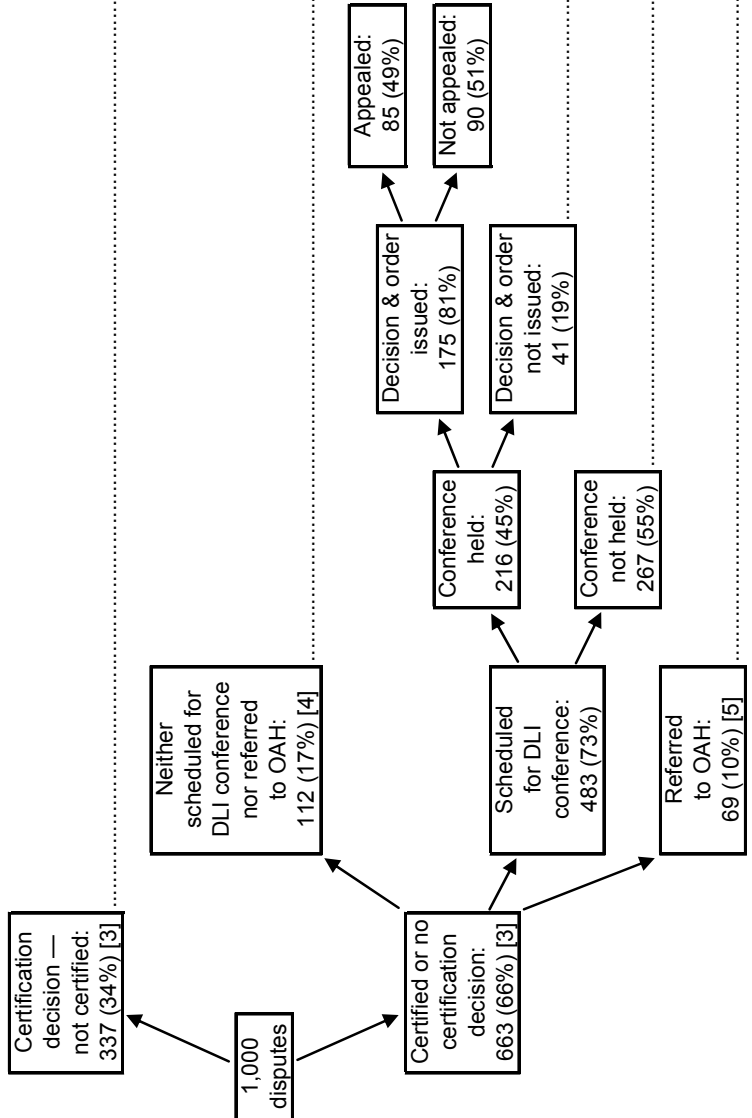
3. Disputes not certified because of pending litigation are counted with certified disputes because they continue through the dispute-resolution process. Some disputes do not show evidence of a certification decision. They are counted with certified disputes because the dispute-resolution experience for them more closely resembles that of certified disputes than of not-certified disputes. More information about disputes without a certification decision is presented in Figures 4.1, 4.2 and 4.4.

4. As shown in Figure 5.1, most of these disputes are resolved informally at DLI.

5. This counts those disputes referred to OAH that were certified (or had no certification decision) and were not scheduled for a DLI conference. An additional 34 disputes per 1,000 that were not certified or were scheduled for conference were eventually referred to OAH.

Figure 3.2
Major dispute-resolution paths at the Department of Labor and Industry, 2007 disputes [1]

	Final event at DLI	Final event at OAH or beyond	Disputed?		Pctg. disputed	Median days to final resolution [2]
			Yes	No		
.....	336	1	52	285	15%	9
.....	102	10	70	42	63%	18
.....	4	80	85	0	100%	224
.....	90	0	90	0	100%	65
.....	39	2	40	1	98%	64
.....	228	39	249	18	93%	66
.....	2	66	69	0	100%	134
All disputes.....	801	199	654	346	65%	42



1. All numbers are numbers of disputes per 1,000 total disputes. Percentages at each step in the diagram are relative to the total number of disputes at the preceding step. More detail is provided in Appendix 8.

2. These numbers encompass all types of resolution for the given dispute path; consequently, care is required in relating these numbers to other resolution timelines in this report, which sometimes refer to particular types of resolution within the given dispute path.

3. Disputes not certified because of pending litigation are counted with certified disputes because they continue through the dispute-resolution process. Some disputes do not show evidence of a certification decision. They are counted with certified disputes because the dispute-resolution experience for them more closely resembles that of certified disputes than of not-certified disputes. More information about disputes without a certification decision is presented in Figures 4.1, 4.2 and 4.4.

4. As shown in Figure 5.1, most of these disputes are resolved informally at DLI.

5. This counts those disputes referred to OAH that were certified (or had no certification decision) and were not scheduled for a DLI conference. An additional 29 disputes per 1,000 that were not certified or were scheduled for conference were eventually referred to OAH.

Figure 3.3

Major dispute-resolution paths at the Department of Labor and Industry: Comparison of 2003 and 2007 disputes [1]

Dispute path	2003		2007		Statistical significance level of difference between years in percentages for different paths within category
	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total	
All disputes	1,000	100%	1,000	100%	.01
Certification decision — not certified [2]	240	24%	337	34%	
Certified or no certification decision [2]	760	76%	663	66%	
Disputes certified or without certification decision	760	100%	663	100%	.01
Scheduled for DLI conference	419	55%	483	73%	
Referred to OAH [3]	124	16%	69	10%	
Neither scheduled for conference nor referred	217	29%	112	17%	
Disputes scheduled for DLI conference	419	100%	483	100%	.10
Conference held	213	51%	216	45%	
Conference not held	206	49%	267	55%	
Disputes with DLI conference held	213	100%	216	100%	N.S.
Decision-and-order issued	160	75%	175	81%	
Decision-and-order not issued	53	25%	41	19%	

"N.S." = not statistically significant.

1. Numbers are taken from Figures 3.1 and 3.2
2. See note 2 in Figures 3.1 and 3.2.
3. See note 4 in Figures 3.1 and 3.2.

DLI dispute-resolution process for 2003 and 2007 disputes

Dispute certification decisions

For 2003, 312 disputes per 1,000 did not show evidence of a certification decision in the imaged documents or the DLI log (Figure 4.1). By 2007 this number had fallen to 184, the difference between the years being statistically significant. Among the remaining disputes, most had one certification decision.

Among disputes without a certification decision in the record, 29 percent for 2003, and 34 percent for 2007, were referred to OAH (Figure 4.2). Of those not referred, a majority were resolved informally, were determined in need of no further action, were withdrawn, or had a rehabilitation response indicating already paid or agree to pay. Some, however, such as those with a certification request or a rehabilitation request as final event, had no indication of closure in the record.

For 2003 disputes, the first certification decision typically happened within 14 days of dispute presentation; for 2007 disputes this timeline was 11 days (median days in Figure 4.3).¹⁶ However, for 10 percent of disputes, the certification process took more than a month (41 days and 35 days at the 90th percentile for the two years). Because the distribution of days to the certification decision is skewed to the right,¹⁷ the average number of days was 19 and 15 per 1,000 for the two years respectively.

Among disputes with a certification decision, 60 percent were certified for 2003 and 53 percent for 2007 (Figure 4.4). Most disputes with a “not certified” decision had that result because they were resolved in the certification process. The largest change between 2003 and 2007 was a shift in disputes from “no decision” (down 128, from 312 to 184 per 1,000) to “not certified — resolved” (up 91, from 232 to 323 per 1,000). Although this difference between the two years is statistically significant, the degree to which it reflects a real shift as opposed to an improvement in recordkeeping is unknown.

¹⁶ The presentation of the dispute in this analysis is the date of the first dispute document, generally either a dispute certification request or a rehabilitation request.

¹⁷ A distribution is said to be skewed to the right (or left) if it extends farther from the median in that direction than in the other direction.

Figure 4.1**Number of certification decisions per dispute**

Number of certification decisions	Disputes per 1,000 [1]		Statistical significance level of difference between years
	2003 disputes	2007 disputes	
None	312	184	.01
One or more [2]	688	816	
1	668	795	
2	19	19	
3	1	2	
Total	1,000	1,000	

1. Numbers may not add exactly to totals because of rounding (see pp. 2, 3).

Figure 4.2**Referrals to OAH and selected final events for disputes without a certification decision**

	2003 disputes		2007 disputes	
	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total
Referred to OAH	92	29%	63	34%
No referral to OAH indicated	220	71%	121	66%
Final event:				
Resolved informally while issue is at DLI or DLI determines no further action needed	71	23%	49	26%
Issue withdrawn	23	8%	17	9%
Rehab response — already paid or agree to pay	30	10%	16	8%
Decision or mediation award from DLI or OAH [1]	50	16%	12	7%
Certification request or rehab request	30	10%	12	7%
Scheduled proceeding	6	2%	6	3%
Award on stipulation	4	1%	3	2%
Other [2]	5	2%	7	4%
Total	312	100%	184	100%

1. Includes decision and order (DLI), mediation award (DLI), decision and order (OAH), findings and order (OAH), order for dismissal (OAH) and WCCA decision.

2. Includes rehabilitation response (disagree), order for consolidation (OAH), answer to claim petition, letter resolving issue prior to OAH proceeding, rehabilitation request rejected by DLI and other document issued (DLI).

Figure 4.3
Number of days from presentation of dispute to first certification decision, for disputes with at least one certification decision

	Number of days		Statistical significance level of difference between years
	2003 disputes	2007 disputes	
Mean (average) [2]	19	15	.01
5th percentile	0	1	
10th percentile	2	2	
25th percentile	6	6	
50th percentile (median) [2]	14	11	.01
75th percentile	26	21	
90th percentile	41	35	
95th percentile	51	42	
Disputes with data per 1,000 [1]	676	816	

1. Twelve of the 688 disputes per 1,000 concerned for 2003 are excluded because of missing or unreliable dates.

Figure 4.4
Nature of dispute certification decision [1]

Nature of decision [2]	2003 disputes		2007 disputes		Statistical significance level of difference in percentage between years
	Disputes per 1,000	Pctg. among disputes with decision	Disputes per 1,000	Pctg. among disputes with decision	
Disputes with decision	688	100%	816	100%	
Certified	416	60%	431	53%	.01
Not certified	272	40%	385	47%	
<i>Resolved</i> [3]	232	34%	323	40%	.02
<i>Litigation pending</i>	32	5%	49	6%	
<i>Other</i> [3]	8	1%	13	2%	
Disputes without decision	312		184		
Total	1,000		1,000		

1. Numbers may not add exactly to totals because of rounding (see pp. 2, 3).
2. If the dispute has more than one certification decision, the last decision is counted here.
3. In Figures 3.1 and 3.2, "not certified" consists of the categories "not certified — resolved" and "not certified — other" in the present figure. The category "certified or no certification decision" in Figures 3.1 and 3.2 comprises the remaining categories in the present figure. As noted in Figures 3.1 and 3.2, disputes not certified because of pending litigation are counted with certified disputes because they continue through the dispute-resolution process.

First major event at DLI for certified disputes

As shown in Figures 3.1 and 3.2, a large number of certified disputes (217 per 1,000 for 2003 and 112 for 2007) were neither scheduled for a DLI conference nor referred to OAH.

As shown in Figure 5.1, most of these disputes reached resolution or at least had their final event at DLI or after DLI action. In one-third of the cases, the issues were resolved by the parties or by DLI intervention. The other more common final events were a rehabilitation response where the insurer agreed to the request (or indicated payment had been made) and a withdrawal of the issue.

For those certified disputes scheduled for DLI conference, the median time from the first rehabilitation request to the first conference notice dropped from 27 days to 17 days between 2003 and 2007 (Figure 5.2). The median time from notice to scheduled conference date was about the same for the two years at 29 or 30 days. As a result, the median time from the first rehabilitation request to the first scheduled conference date dropped from 63 days for 2003 to 49 days for 2007. Because of the more prompt issuance of the conference notice for 2007, the time intervals measured from the presentation of the dispute also dropped.

For disputes referred to OAH, the most prominent referral reason was concurrent litigation on the same or similar issues (Figure 5.3).¹⁸ According to the record, one percent of the 2003 referrals and 10 percent of the 2007 referrals were because of a primary liability issue. Perhaps for some referred disputes, concurrent litigation and a primary liability issue were both present, and these disputes were more prone in 2007 than in 2003 to be recorded as referred because of primary liability as opposed to concurrent litigation. Relatively few rehabilitation disputes were referred because of

an order for consolidation, complex issues or a request by the parties. Notably, the decline in referrals to OAH between 2003 and 2007 is essentially accounted for by the decline in referrals for the reason of concurrent litigation.

When DLI refers a dispute to OAH, the referral usually happens early in the dispute-resolution process (Figure 5.4). For disputes certified and not scheduled for conference (first two columns in the figure), the median referral time for 2003 was 14 or 15 days depending on whether the time was measured from the rehabilitation request or presentation of the dispute. For 2007, the median time had fallen to 11 days measured from either point. The total number of disputes referred to OAH (last two columns in the figure) includes those in the first two columns plus referred disputes that had a certification decision of “not certified” or had first been scheduled for conference. When this overall total is considered, the referral times are longer than for the smaller group of referrals (first two columns) and the differences between the two years are generally not as large.

One question of interest is whether there are any observable differences in the characteristics of disputes following the three major paths for certified disputes in addition to the “not certified” path in Figures 3.1 and 3.2. Figures 5.5 through 5.7 compare the disputes traveling these four major paths with respect to nature of injury, service at issue and point in dispute.

The disputes following the four major paths do not show a statistically significant difference in nature of injury for either year (Figure 5.5). For the 2003 disputes, the percentage with sprains, strains, tears or pain ranged from 70 percent to 75 percent for the four dispute paths; for 2007, it ranged from 68 percent to 82 percent.

Service at issue shows statistically significant variation among the four major dispute paths for each year (Figure 5.6). Plan content issues were most frequent among disputes scheduled for DLI conference and least frequent among not-certified disputes. By contrast, eligibility for consultation was most frequent among not-certified disputes and least frequent among disputes scheduled for DLI conference or

¹⁸ OAH currently has jurisdiction in medical disputes where the disputed amount is more than \$7,500, and in medical and vocational rehabilitation disputes where primary liability is at issue. DLI at its discretion may refer other medical and vocational rehabilitation disputes to OAH. Minnesota Statutes §176.106.

referred to OAH. Perhaps this is because the clarity of the conditions for eligibility for consultation makes disputes about such eligibility especially amenable to informal resolution, either during or after the certification process.

Unpaid bills also had a relatively high frequency among not-certified disputes and among certified disputes neither scheduled for conference nor referred to OAH.

Very few not-certified disputes had a plan termination issue. Plan termination figured prominently, however, among disputes referred to OAH (35 percent for 2003, 45 percent for 2007). This may be because the insurer is more likely to be attempting to end benefits altogether in plan termination cases.¹⁹ For 2003 disputes, there was a simultaneous discontinuance dispute in 66 percent of the cases with plan-termination issues versus 35 percent of the cases without such issues; for 2007 disputes, the percentages were 60 percent and 41 percent, respectively.²⁰

Change-of-QRC issues did not show a strong tendency to occur with greater frequency in one path than another.

Point in dispute also shows statistically significant variation among the four major dispute paths for each year (Figure 5.7). As

previously indicated, if all indications were that the insurer agreed with the request, the dispute was counted as “not disputed.” For both years (and especially for 2007), a majority of the “not disputed” cases had a “not certified” certification decision. However, several “not disputed” cases did not have a certification decision and were categorized with the certified cases (“certified or no certification decision”).

Among disputes actually disputed, causation issues were most frequent for disputes referred to OAH and to a lesser degree for those scheduled for conference. For 2003, reasonableness and necessity was most common among disputes scheduled for conference; for 2007, this point in dispute had elevated frequency for disputes scheduled for conference and those referred to OAH.

“No reason given” is relatively prominent among “not certified” disputes and disputes neither scheduled for conference nor referred to OAH. This is to be expected because many of these disputes are resolved informally or withdrawn at an early stage (Figures 4.4, 5.1). The longer a dispute continues, especially if it is heard in a conference or hearing, the more likely it is that a point in dispute (insurer defense) will come to light.

¹⁹ Depending on how they are filed, discontinuance disputes are heard in either an OAH administrative conference or an OAH hearing, usually the former.

²⁰ Computed from DLI database information for sample cases. A discontinuance dispute was deemed to be occurring simultaneously if it was filed no earlier than 120 days before the rehabilitation request and no later than 30 days after.

Figure 5.1

**Final event for disputes neither referred to the Office of Administrative Hearings
nor scheduled for conference at the Department of Labor and Industry**

Final event	2003 disputes		2007 disputes	
	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total
Final event is at DLI or after DLI action	196	90%	102	91%
Issue resolved by parties or DLI intervention	74	34%	39	35%
Rehabilitation response -- already paid or agree to pay	55	25%	17	15%
Issue withdrawn	17	8%	12	11%
Dispute certification decision [1]	7	3%	10	9%
Certification request or rehabilitation request	7	3%	6	5%
Award on stipulation [2]	28	13%	7	6%
DLI determines issues need no further action [3]	0	0%	8	7%
Other [4]	7	3%	4	4%
Final event is at OAH or after OAH action [5]	21	10%	10	9%
Total	217	100%	112	100%

1. Most of these certification decisions were to certify the dispute; a smaller number were to not certify because of pending litigation.
2. An award on stipulation is counted as occurring at OAH or after OAH action if it was preceded by any events occurring at OAH; otherwise, it is counted as occurring at DLI or after DLI action. This category excludes mediation award and order on agreement.
3. This code was only used for 2007.
4. Includes rehabilitation response (refuse to pay), answer to claim petition, mediation award, written agreement other than mediation award, and nonconference decision and order.
5. For the 2003 disputes, seven of the 21 cases per 1,000 with final event at OAH had a claim petition on the same issues; for the 2007 disputes this true was for two of the 10 cases per 1,000.

Figure 5.2

Timelines related to conference scheduling at the Department of Labor and Industry

	Number of days				
	First rehabilitation request to first conference notice	Presentation of dispute to first conference notice	First conference notice to scheduled conference date	First rehabilitation request to scheduled conference date	Presentation of dispute to scheduled conference date
2003 disputes					
Mean (average)	32	38	32	64	70
5th percentile	9	10	14	30	31
10th percentile	13	14	16	36	38
25th percentile	20	22	21	46	49
50th percentile (median)	27	30	29	63	66
75th percentile	41	46	41	78	84
90th percentile	57	64	52	93	103
95th percentile	67	82	59	104	118
Disputes with data per 1,000 [1]	397	405	408	399	410
2007 disputes					
Mean (average)	20	25	32	52	57
5th percentile	3	6	15	29	31
10th percentile	5	7	17	34	35
25th percentile	9	12	22	38	41
50th percentile (median)	17	21	30	49	52
75th percentile	28	32	40	62	69
90th percentile	38	44	50	76	82
95th percentile	49	53	59	84	91
Disputes with data per 1,000 [1]	438	444	444	438	444
Statistical significance level of difference between years					
Means	.01	.01	N.S.	.01	.01
Medians	.01	.01	N.S.	.01	.01

"N.S." = not statistically significant.

- Some of the disputes concerned (419 per 1,000 for 2003, 483 for 2007) are excluded because of missing or unreliable dates or the presence of intervening events that might change the course of the dispute.

Figure 5.3

Referral reason for all disputes referred to the Office of Administrative Hearings [1]

Referral reason	2003 disputes		2007 disputes	
	Disputes per 1,000	Pctg. of total [2]	Disputes per 1,000	Pctg. of total [2]
Concurrent litigation on same issue(s)	134	85%	70	71%
Primary liability issue	2	1%	10	10%
Order for consolidation	4	2%	3	3%
Complex issues	2	1%	2	2%
Requested by parties	5	3%	1	1%
Other or not indicated	11	7%	12	12%
Total [1]	158	100%	98	100%

- This figure includes all cases referred to OAH, including those not certified or first scheduled for a DLI conference. The difference between the numbers of disputes per thousand referred to OAH for the two years is statistically significant at the .01 level.
- The difference between the two years in the percent distribution by referral reason is statistically significant at the .01 level.

Figure 5.4
Timelines related to referral to the Office of Administrative Hearings

	Number of days			
	Disputes referred that were certified and not scheduled for conference [1]		All disputes referred [2]	
	First rehabilitation request to first referral	Presentation of dispute to first referral	First rehabilitation request to first referral	Presentation of dispute to first referral
2003 disputes				
Mean (average)	18	22	26	31
25th percentile	7	8	8	9
50th percentile (median)	14	15	16	19
75th percentile	24	29	34	42
Disputes with data per 1,000 [3]	122	124	156	158
2007 disputes				
Mean (average)	14	14	24	25
25th percentile	5	5	7	7
50th percentile (median)	11	11	15	15
75th percentile	17	17	35	38
Disputes with data per 1,000 [3]	69	69	98	98
Statistical significance level of difference between years				
Means	.05	.01	N.S.	.10
Medians	.05	.05	N.S.	N.S.

"N.S." = not statistically significant.

1. "Certified disputes" include, in addition to those actually certified, those with no certification decision and those not certified because of pending litigation.
2. Includes the disputes in the first two columns plus those that were not certified or were scheduled for conference but eventually referred to OAH.
3. Some disputes are excluded from some columns because of missing or unreliable dates.

Figure 5.5

Nature of injury for the four major dispute paths at the Department of Labor and Industry

Nature of injury [1]	Certification decision — not certified [2]		Certified or no certification decision [2]					
			Neither scheduled for DLI conference nor referred to OAH		Scheduled for DLI conference		Referred to OAH [3]	
	Disputes per 1,000	Pctg. of all natures of injury [4,5]	Disputes per 1,000	Pctg. of all natures of injury [4,5]	Disputes per 1,000	Pctg. of all natures of injury [4,5]	Disputes per 1,000	Pctg. of all natures of injury [4,5]
2003 disputes								
Sprains, strains, tears, pain [5]	182	74%	163	70%	336	73%	102	75%
<i>Back</i>	96	39%	95	41%	181	39%	61	45%
<i>Neck</i>	50	20%	34	15%	80	17%	23	17%
<i>Shoulder</i>	20	8%	28	12%	52	11%	20	15%
<i>Knee</i>	18	7%	20	9%	36	8%	11	8%
<i>Other</i>	30	12%	20	9%	55	12%	11	8%
Peripheral nerve disorders [6]	24	10%	22	9%	36	8%	11	8%
Fractures	12	5%	10	4%	40	9%	6	4%
Other	27	11%	34	15%	41	9%	16	12%
Nonclassifiable or not indicated	3	1%	5	2%	6	1%	1	1%
Total disputes	240		217		419		124	
Total natures of injury per 1,000 disputes [7]	247	100%	233	100%	459	100%	136	100%
2007 disputes								
Sprains, strains, tears, pain [5]	257	72%	99	82%	373	70%	50	68%
<i>Back</i>	132	37%	53	44%	183	34%	33	45%
<i>Neck</i>	66	19%	20	17%	95	18%	10	14%
<i>Shoulder</i>	43	12%	12	10%	68	13%	13	18%
<i>Knee</i>	29	8%	18	15%	39	7%	6	8%
<i>Other</i>	22	6%	12	10%	70	13%	6	8%
Peripheral nerve disorders [6]	22	6%	6	5%	48	9%	9	12%
Fractures	31	9%	6	5%	33	6%	4	5%
Other	33	9%	7	6%	64	12%	9	12%
Nonclassifiable or not indicated	11	3%	2	2%	14	3%		
Total disputes	337		112		483		69	
Total natures of injury per 1,000 disputes [7]	356	100%	121	100%	534	100%	74	100%

1. In this figure, nature of injury is counted without regard to part of body. If the same nature of injury affects more than one body part, it is counted once.
2. Disputes not certified because of pending litigation are counted with certified disputes because they continue through the dispute-resolution process.
3. Additional disputes — 34 per 1,000 for 2003, 29 per 1,000 for 2007 — that were not certified or were scheduled for conference were eventually referred to OAH.
4. See note 2 in Figure 2.3, which also applies here to the four major dispute paths.
5. For both the 2003 and the 2007 disputes, the differences among the four major dispute paths in the percent distribution of nature of injury are not statistically significant.
6. Also includes reflex sympathetic dystrophy. The sum of disputes in the subcategories (part of body) is greater than the number in the overall category (nature of injury) because more than one subcategory may be present in the same dispute.
7. Includes carpal tunnel syndrome among others.
8. Total natures of injury is greater than total disputes because a dispute may have more than one nature of injury.

Figure 5.6
Service at issue for the four major dispute paths at the Department of Labor and Industry

Service at issue	Certification decision — not certified [1]		Certified or no certification decision [1]					
			Neither scheduled for DLI conference nor referred to OAH		Scheduled for DLI conference		Referred to OAH [2]	
	Disputes per 1,000	Pctg. of all services at issue [3,4]	Disputes per 1,000	Pctg. of all services at issue [3,4]	Disputes per 1,000	Pctg. of all services at issue [3,4]	Disputes per 1,000	Pctg. of all services at issue [3,4]
2003 disputes								
Eligibility for consultation	101	41%	61	27%	83	17%	24	18%
Plan content	34	14%	45	20%	154	32%	34	25%
Unpaid bills	61	25%	60	26%	49	10%	12	9%
Plan termination	1	0%	23	10%	100	21%	47	35%
Change of QRC	43	18%	32	14%	75	16%	12	9%
Eligibility for voc rehab services	5	2%	8	3%	22	5%	8	6%
Other or unspec. voc rehab serv.					1	0%		
Total disputes	240		217		419		124	
Total services at issue per 1,000 disputes [5]	245	100%	229	100%	483	100%	136	100%
2007 disputes								
Eligibility for consultation	150	43%	32	28%	94	19%	6	8%
Plan content	54	16%	20	18%	156	31%	17	23%
Unpaid bills	85	25%	34	30%	59	12%	11	15%
Plan termination	8	2%	9	8%	121	24%	33	45%
Change of QRC	37	11%	15	13%	48	10%	4	5%
Eligibility for voc rehab services	10	3%	3	3%	24	5%	2	3%
Other or unspec. voc rehab serv.					2	0%		
Total disputes	337		112		483		69	
Total services at issue per 1,000 disputes [5]	345	100%	114	100%	504	100%	73	100%

1. Disputes not certified because of pending litigation are counted with certified disputes because they continue through the dispute-resolution process.
2. Additional disputes — 34 per 1,000 for 2003, 29 per 1,000 for 2007 — that were not certified or were scheduled for conference were eventually referred to OAH.
3. See note 1 in Figure 2.4, which also applies here to the four major dispute paths.
4. For both the 2003 and the 2007 disputes, the differences among the four major dispute paths in the percent distribution of service at issue are statistically significant at the .01 level.
5. Total services at issue is greater than total disputes because a dispute may have more than one service at issue.

Figure 5.7

Point in dispute for the four major dispute paths at the Department of Labor and Industry

Point in dispute [3]	Certification decision — not certified [1]	Certified or no certification decision [1]							
		Neither scheduled for DLI conference nor referred to OAH		Scheduled for DLI conference		Referred to OAH [2]			
		Disputes per 1,000	Pctg. of all points in dispute [4,5]	Disputes per 1,000	Pctg. of all points in dispute [4,5]	Disputes per 1,000	Pctg. of all points in dispute [4,5]	Disputes per 1,000	Pctg. of all points in dispute [4,5]
2003 disputes									
Not disputed	199		99		5		1		
Remainder of disputes (actually disputed) [6]	41		118		414		123		
Primary liability	6	14%	6	5%	6	1%	8	6%	
Causation	2	5%	30	23%	136	28%	68	47%	
Reasonableness and necessity	4	9%	17	13%	129	26%	18	13%	
Participation in required activity [7]	2	5%	12	9%	50	10%	8	6%	
Other reason	10	23%	20	15%	130	26%	26	18%	
No reason given	21	48%	48	37%	46	9%	12	8%	
Total points in dispute per 1,000 disputes [8]	44	100%	131	100%	494	100%	144	100%	
Total disputes	240		217		419		124		
2007 disputes									
Not disputed	285		43		19		0		
Remainder of disputes (actually disputed) [6]	52		69		464		69		
Primary liability	2	3%	10	11%	21	4%	8	9%	
Causation	10	17%	21	23%	181	31%	36	39%	
Reasonableness and necessity	6	10%	10	11%	107	19%	16	17%	
Participation in required activity [7]	4	7%	4	4%	58	10%	11	12%	
Other reason	17	29%	16	18%	167	29%	19	21%	
No reason given	19	33%	28	31%	39	7%	1	1%	
Total points in dispute per 1,000 disputes [8]	58	100%	91	100%	575	100%	92	100%	
Total disputes	337		112		483		69		

Note: IR = insurer; IME = independent medical examination; CMCO = certified managed care organization.

- Disputes not certified because of pending litigation are counted with certified disputes because they continue through the dispute-resolution process.
- Additional disputes — 34 per 1,000 for 2003, 29 per 1,000 for 2007 — that were not certified or were scheduled for conference were eventually referred to OAH.
- See Appendix 2 for definitions of point in dispute and of the major point-in-dispute categories.
- See note 2 in Figure 2.5, which also applies here to the four major dispute paths.
- For both the 2003 and the 2007 disputes, the differences among the four major dispute paths in the percent distribution of point in dispute are statistically significant at the .01 level.
- Equal to total disputes in the category (bottom row) minus the number of disputes per 1,000 that were "not disputed" (top row).
- Required activities include job search, medical treatment, vocational rehabilitation activities, independent medical examination and independent vocational evaluation.
- Total points in dispute is greater than total disputes actually disputed because a dispute may have more than one point in dispute.

Disputes scheduled for DLI conference

A variety of experiences occur for disputes scheduled for administrative conference at DLI.

Among these disputes, 16 percent had one or more re-sets²¹ for 2003, as did 15 percent for 2007 (Figure 6.1). As indicated in Appendix 3, under changes initiated in 2005, DLI began approving re-sets only upon showing of good cause. In most of the disputes with re-sets there was just one, but a small number had more than one. The frequency of re-sets was about the same for conferences held and those not held.

In 65 percent of these re-sets for 2003 and 47 percent for 2007, the reason for the re-set was not indicated in the record (Figure 6.2). Between 20 and 25 percent of the re-sets for both years were requested by the employee (or attorney). Nine percent of the re-sets for both years were requested by the insurer (or attorney). For 2007, another 15 percent were requested by both sides.

For re-set conferences, there was a median of 28 days between the original and re-set proceeding dates for 2003, which dropped to 23 for 2007 (Figure 6.3). At the 75th percentile, there were 43 days between re-set conference dates for 2003, and 38 for 2007.

As shown in Figures 3.1 and 3.2, 51 percent of the scheduled conferences for 2003 and 45

percent for 2007 were actually held. For those not held, the most common reason was that an agreement had been reached or was in progress (Figure 6.4). In other cases, the dispute had been withdrawn or referred to OAH.

More information is given about the outcome of these disputes in Figure 6.5. Among disputes for both years where the final event was at DLI or after DLI action, most resolved informally, had an award on stipulation or were withdrawn. Approximately 85 percent of the resolutions were at (or after action at) DLI as opposed to OAH. Among the cases that went to OAH, about half had an award on stipulation, while smaller numbers were withdrawn or had a findings-and-order.

The timelines associated with these resolutions are shown in Figure 6.6.²² For the 2003 disputes, the median time from first rehabilitation request to final event was 58 days where the dispute resolved informally at DLI, 118 days for an award on stipulation after DLI action and 235 days for an award on stipulation after OAH action (see note 3 in the figure). For the 2007 disputes, these times had fallen by substantial amounts, but the difference between the two years was statistically significant only for cases resolved informally at DLI or with an award on stipulation after DLI action.

²¹ As used in this report, the term “re-set” means an instance of rescheduling a proceeding where the proceeding did not begin on the originally scheduled date. In this instance, the rescheduling notice is typically sent to the parties before the originally scheduled proceeding date. The term “re-set” is used to distinguish this instance from the case where the proceeding continued on a later date after beginning on the originally scheduled date. Both cases are included in the term “continuance” as used in Minnesota Rules part 1415.3700, subp. 6.

²² In this and other figures concerning time gaps, where there are small numbers of sample cases, statistics are suppressed as appropriate in the lower and upper ends of the distribution.

Figure 6.1**Re-sets of conferences at the Department of Labor and Industry during dispute [1]**

Number of re-sets	2003 disputes						2007 disputes					
	Conference not held		Conference held		Total		Conference not held		Conference held		Total	
	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total
None	176	85%	174	82%	350	84%	227	85%	184	85%	411	85%
One or more	30	15%	39	18%	69	16%	40	15%	32	15%	72	15%
1	27	13%	34	16%	61	15%	33	12%	28	13%	61	13%
2	2	1%	4	2%	6	1%	3	1%	3	1%	7	1%
3	1	0%	1	0%	1	0%	2	1%	1	0%	3	1%
4	1	0%			1	0%	1	0%			1	0%
Total	206	100%	213	100%	419	100%	267	100%	216	100%	483	100%

1. Numbers may not add exactly to totals because of rounding (see pp. 2, 3).

Figure 6.2**Party requesting re-set of scheduled conference at the Department of Labor and Industry [1]**

Party requesting re-set	2003 disputes		2007 disputes	
	Re-sets per 1,000 disputes	Pctg. of total	Re-sets per 1,000 disputes	Pctg. of total
Employee (or attorney)	20	24%	22	25%
Insurer (or attorney)	7	9%	8	9%
Employee and insurer (or attorneys)	2	2%	13	15%
Provider (or attorney)			1	0%
DLI staff [2]			3	3%
Not indicated	53	65%	41	47%
Total	82	100%	88	100%

1. "~" means a positive number less than 0.5.

2. Re-sets initiated by DLI staff are typically in response to events in the dispute, such as a late motion to intervene.

Figure 6.3

Time between scheduled dates of re-set administrative conferences at the Department of Labor and Industry, 2003 disputes [1]

	Number of days		Statistical significance level of difference between years
	2003 disputes	2007 disputes	
Mean (average)	33	26	.05
25th percentile	14	13	
50th percentile (median)	28	23	N.S.
75th percentile	43	38	
Disputes with data per 1,000 [2]	79	84	

"N.S." = not statistically significant.

1. Because of limited sample size, statistics are not shown for all percentiles. See p. 3 including note 10.
2. Some disputes are excluded because of missing or unreliable dates. The total number of re-sets concerned is obtained by multiplying the numbers of re-sets in Figure 6.1 by the respective numbers of disputes with those re-sets.

Figure 6.4

Reason not held for scheduled conferences at the Department of Labor and Industry that were not held

Reason conference not held	2003 disputes		2007 disputes	
	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total
Agreement reached or in process	135	66%	160	60%
Withdrawn	36	17%	62	23%
Referred to OAH	23	11%	23	9%
Parties using mediation			4	2%
Other 1] [12	6%	18	7%
Total	206	100%	267	100%

1. Includes issues consolidated with other disputes, denial of primary liability, missing parties or documents, conference statust not indicated and reason not indicated.

Figure 6.5

Final event for disputes with scheduled conferences at the Department of Labor and Industry that were not held

Final event	2003 disputes		2007 disputes	
	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total
Final event is at DLI or after DLI action	173	84%	228	86%
Issue resolved informally [1]	62	30%	95	35%
Award on stipulation [2]	51	25%	61	23%
Issue withdrawn	37	18%	60	22%
Rehab response — already paid or agree to pay	4	2%	8	3%
Scheduled conference not held	20	10%	2	1%
Other [3]	1	0%	3	1%
Final event is at OAH or after OAH action	33	16%	39	14%
Award on stipulation [2]	18	9%	19	7%
Withdrawn			8	3%
Findings-and-order	6	3%	2	1%
Other [4]	9	4%	10	4%
Total	206	100%	267	100%

1. Includes (in declining order of frequency) letter resolving issue, resolved by parties (no document), rehabilitation document indicating resolution, resolved by DLI intervention, DLI letter noting resolution by parties, mediation award or other written agreement, and DLI determines no further action needed.
2. An award on stipulation is counted as occurring at OAH or after OAH action if it was preceded by any events occurring at OAH; otherwise, it is counted as occurring at DLI or after DLI action. This category excludes mediation award and order on agreement.
3. Includes employee dies or goes to jail, other document issued and agreement to mediate.
4. Includes OAH temporary order, DLI referral to OAH, OAH order for dismissal, OAH conference decision and order, OAH award on agreement and WCCA decision.

Figure 6.6

Timelines to final events for disputes with scheduled conferences at the Department of Labor and Industry that were not held [1]

	Number of days					
	Rehabilitation request to final event			Presentation of dispute to final event		
	Final event:			Final event:		
	Resolved informally at DLI [2]	Award on stipulation after DLI action [3]	Award on stipulation after OAH action [3]	Resolved informally at DLI [2]	Award on stipulation after DLI action [3]	Award on stipulation after OAH action [3]
2003 disputes						
Mean (average)	69	133	350	75	136	351
10th percentile	32			37		
25th percentile	42	81		48	81	
50th percentile (median)	58	118	235	64	118	236
75th percentile	77	164		84	170	
90th percentile	105			113		
Disputes with data per 1,000 [4]	101	51	18	102	51	18
2007 disputes						
Mean (average)	53	105	241	57	108	248
10th percentile	23			23		
25th percentile	34	66		34	71	
50th percentile (median)	45	94	211	50	98	211
75th percentile	69	133		70	133	
90th percentile	92			98		
Disputes with data per 1,000 [4]	161	61	19	162	61	19
Statistical significance level of difference between years						
Means	.01	.05	N.S.	.01	.05	N.S.
Medians	.01	.05	N.S.	.01	.05	N.S.

"N.S." = not statistically significant.

1. Because of limited sample size, statistics are not shown for all percentiles. See p. 3 including note 10.
2. Includes the following categories from Figure 6.4 where final event is at DLI or after DLI action: issue resolved informally, issue withdrawn and rehabilitation response — already paid or agree to pay.
3. An award on stipulation is counted as occurring after OAH action if it has been preceded by any events occurring at OAH; otherwise, it is counted as occurring after DLI action. This category excludes mediation award and order on agreement.
4. Some disputes are excluded because of missing or unreliable dates.

Disputes with DLI conference held

DLI decision-and-orders in most cases follow fairly soon after the administrative conference. The median time from conference to decision-and-order was seven days for both 2003 and 2007, while the mean was 13 and 14 days respectively (Figure 7.1). However, for 10 percent of the cases, the time was 30 days or more for 2003 and 36 days or more for 2007. Because of the earlier scheduling of conferences in 2007, the median time from first rehabilitation request to decision-and-order fell from 71 days to 62 days between 2003 and 2007, while the median time from initial dispute presentation to the decision-and-order fell from 77 to 69 days.

Figure 7.2 shows the outcomes of disputes with a conference held but no decision-and-order. For more than 67 percent of these cases for 2003 and 49 percent for 2007, there was an order on agreement or mediation award. For most other cases, some other form of agreement was reached or the issue was withdrawn.

In these cases without a decision-and-order, the median time from conference date to final event was two days for 2003 and zero days for 2007 (Figure 7.3). From the first rehabilitation request to the final event, the median time in the sample cases dropped from 74 days for 2003 to 61 days for 2007, but this was not statistically significant.

Figure 7.1
Timelines related to conference decision-and-orders at the Department of Labor and Industry [1]

	Number of days		
	Conference date to decision-and-order [2]	First rehabilitation request to decision-and-order	Presentation of dispute to decision-and-order
2003 disputes			
Mean (average)	13	80	87
10th percentile	1	41	46
25th percentile	2	51	56
50th percentile (median)	7	71	77
75th percentile	15	101	107
90th percentile	30	127	143
Disputes with data per 1,000 [3]	159	156	159
2007 disputes			
Mean (average)	14	71	76
10th percentile	1	37	40
25th percentile	2	45	49
50th percentile (median)	7	62	69
75th percentile	16	92	97
90th percentile	36	115	118
Disputes with data per 1,000 [3]	175	171	175
Statistical significance level of difference between years			
Means	N.S.	.01	.01
Medians	N.S.	.05	.01

"N.S." = not statistically significant.

1. Because of limited sample size, statistics are not shown for all percentiles. See p. 3 including note 10.
2. Where a conference was continued, i.e., held open after the conference date to allow additional evidence to be submitted, the continuation date (the date through which it was held open) was substituted for the last scheduled conference date in counting the time to the decision-and-order.
3. Some disputes are excluded in some columns because of missing or unreliable dates.

Figure 7.2

Final event for disputes with conference held at the Department of Labor and Industry and no decision-and-order [1]

Final event	2003 disputes		2007 disputes [2]	
	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total
Final event is at DLI or after DLI action	52	99%	39	95%
Order on agreement or mediation award	35	67%	20	49%
Other agreement [3]	14	27%	15	38%
Withdrawn	1	3%	3	8%
Other	1	3%	0	0%
Final event is at OAH or after OAH action	1	1%	2	5%
Total	53	100%	41	100%

1. Numbers may not add exactly to totals because of rounding (see pp. 2, 3).
2. For 2007 disputes, final events are not shown for DLI ("other") or for OAH, because the 2007 disputes were still in process and it was not yet known how many of these disputes would fall into these categories.
3. Includes (in declining order of frequency) informal agreement at proceeding, written agreement other than mediation award, award on stipulations, resolved by parties (no document), letter or other document confirming agreement at proceeding and rehabilitation document indicating resolution. (An award on stipulation is counted as occurring at OAH or after OAH action if it has been preceded by any events occurring at OAH; otherwise, it is counted as occurring at DLI or after DLI action.)

Figure 7.3

Time to final event where there was no decision-and-order after a conference held at the Department of Labor and Industry and the final event was a resolution at the Department of Labor and Industry [1]

	Number of days		
	Conference date to final event [2]	First rehabilitation request to final event	Presentation of dispute to final event
2003 disputes			
Mean (average)	6	76	79
50th percentile (median)	2	74	76
Disputes with data per 1,000 [3]	51	50	51
2007 disputes			
Mean (average)	11	67	70
50th percentile (median)	0	61	61
Disputes with data per 1,000 [3]	39	39	39
Statistical significance level of difference between years			
Means	N.S.	N.S.	N.S.
Medians	N.S.	N.S.	N.S.

"N.S." = not statistically significant.

1. Because of limited sample size, statistics are not shown for all percentiles. See p. 3 including note 10.
1. Includes the disputes from Figure 7.2 where the final event is an order on agreement, median award, other agreement or withdrawal and occurs at DLI.
2. The number of days from the conference to the final event can be as low as zero because of informal resolutions occurring at the conference or on the same day (or being recorded in the log on the same date as the conference).
3. Some disputes are excluded because of missing or unreliable dates.

Disputes with DLI decision-and-orders

For 2003 and 2007, the employee was the prevailing party in DLI conference decision-and-orders about two-thirds of the time (Figure 8.1).

Figure 8.2 presents data about appeal rates from DLI decision-and-orders. (The appeals take the form of requests for *de novo* hearing at OAH.) The overall appeal rate was 43 percent for 2003 and 48 percent for 2007. When the employee was the prevailing party in the decision-and-order, appeals were filed 38 or 43 percent of the time (by the insurer or employer), depending on the year. When the employer prevailed, appeals were filed 57 or 66 percent of the time (by the employee). In other words, the employee was substantially more likely than the employer to appeal if the other side prevailed. The difference between the appeal rates of employees and employers is statistically significant, while the difference between the two years is not.

Minnesota statute requires appeals to be filed within 30 days of the decision-and-order²³ and this is reflected in actual experience. The median time from the decision-and-order to the request for hearing was 19 days for 2003 and 18 days for 2007 (Figure 8.3). At the 75th percentile, the time was 26 or 27 days. From the request for hearing to the scheduled hearing date, the median time was 98 days for 2003, but 21 days less for 2007. This reflected decreases in the

time from appeal to hearing notice and from notice to hearing date. Measuring from earlier points in the dispute, the median time from the rehabilitation request to the hearing date fell from 174 days for 2003 to 157 days for 2007, and a similar decline occurred with the time measured from the initial dispute presentation. Some of the decline as measured from the rehabilitation request and the initial dispute presentation resulted from the earlier scheduling of conferences at DLI (Figure 5.2).

The most common final event for appeals from DLI decision-and-orders was an award on stipulation (Figure 8.4). This happened 59 percent of the time for 2003 and 60 percent for 2007. Where there was not an award on stipulation, findings-and-orders appear to have been somewhat more common relative to informal resolutions for 2007 than for 2003, but the difference is not statistically significant (note 1 in figure).

Timelines to final events for the appealed disputes cannot be considered separately for different outcomes because of insufficient sample size. For all appeals for 2007, the median time to the final event was 124 days from the hearing notice, 220 days from the first rehabilitation request and 224 days from the presentation of the dispute. A quarter of the 2007 cases took 347 days or more from the initial rehabilitation request. The differences between the two years are not statistically significant.

²³ Minnesota Statutes, §176.106, subd. 7.

Figure 8.1
Prevailing party in conference decision-and-orders at
the Department of Labor and Industry

Prevailing party	2003 disputes		2007 disputes	
	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total
Employee [1]	106	66%	111	64%
Employer [1]	49	30%	56	32%
Other [2]	6	4%	8	4%
Total	160	100%	175	100%

1. For both years, the percentage of cases where the employee (or the employer) is the prevailing party is statistically different from 50 percent at the .01 level.
2. Includes split decision, issue dismissed with no apparent decision and issue not addressed by decision. A split decision here is a decision on a particular issue where each party prevailed in part. It does not include instances where different parties prevailed on different issues in the dispute. In those instances, each issue is counted separately, with partial weight, according to whether the employee or employer prevailed (see p. 2).

Figure 8.2
Appeals (requests for hearing) from conference decision-and-orders issued by the Department of Labor and Industry

Appeal (request for hearing) filed?	Prevailing party								Statistical significance level of difference in percentage between employees and employers
	Employee		Employer		Other [1]		Total		
	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total	
2003 disputes									
Yes	40	38%	28	57%	1	17%	69	43%	.01
No	65	62%	21	43%	5	83%	91	57%	
Total	106	100%	49	100%	6	100%	160	100%	
2007 disputes									
Yes	48	43%	37	66%	0	0%	85	48%	.01
No	64	57%	19	34%	8	100%	90	52%	
Total	111	100%	56	100%	8	100%	175	100%	
Statistical significance level of difference between years	N.S.		N.S.						

1. Includes split decision, issue dismissed without an apparent decision and issue not addressed by decision. A split decision here is a decision on a particular issue where each party prevailed in part. It does not include instances where different parties prevailed on different issues in the dispute. In those instances, each issue is counted separately, with partial weight, according to whether the employee or employer prevailed (see p. 2).

Figure 8.3

Timelines related to appeals (requests for hearing) from conference decision-and-orders issued by the Department of Labor and Industry [1]

	Number of days					
	Decision-and-order to request for hearing	Request for hearing to hearing notice [2]	Hearing notice to scheduled hearing date [2]	Request for hearing to scheduled hearing date [2]	First rehabilitation request to scheduled hearing date [2]	Presentation of dispute to scheduled hearing date [2]
2003 disputes						
Mean (average)	19	36	64	100	179	187
25th percentile	12	22	43	76	148	148
50th percentile (median)	19	31	61	98	174	181
75th percentile	27	43	79	116	207	213
Disputes with data per 1,000 [3]	69	67	68	67	65	68
2007 disputes						
Mean (average)	19	31	54	85	160	167
25th percentile	13	19	44	70	133	133
50th percentile (median)	18	25	54	77	157	158
75th percentile	26	35	62	93	176	182
Disputes with data per 1,000 [3]	85	80	80	80	80	80
Statistical significance level of difference between years						
Means	N.S.	N.S.	.01	.01	.05	.05
Medians	N.S.	.05	.05	.01	.01	.05

"N.S." = not statistically significant.

1. Because of limited sample size, statistics are not shown for all percentiles. See p. 3 including note 10.
2. Hearing includes pre-trial.
3. Some disputes are excluded in some columns because of missing or unreliable dates.

Figure 8.4

Final event for disputes with appeals from conference decision-and-orders issued by the Department of Labor and Industry

Final event	2003 disputes		2007 disputes	
	Disputes per 1,000	Pctg. of total [1]	Disputes per 1,000	Pctg. of total [1]
Award on stipulation	41	59%	51	60%
Findings-and-order	9	13%	15	18%
Resolved informally [2]	12	18%	9	10%
Order to strike or dismiss [3]	5	7%	4	5%
Other [4]	2	3%	5	6%
Total	69	100%	85	100%

1. The difference between 2003 and 2007 in the percent distribution of final events is not statistically significant.
2. Includes withdrawn, letter resolving issue, resolved by parties (no document), rehabilitation document indicating resolution and order on agreement or mediation award.
3. If the order to strike or dismiss is preceded by an event in one of the three preceding categories (e.g., resolved informally), the dispute is counted in that other category.
4. Includes order for consolidation, Workers' Compensation Court of Appeals decision, Supreme Court decision, scheduled stipulation status conference and scheduled pre-trial.

Figure 8.5

Time to final event for disputes with appeals from conference decision-and-orders issued by the Department of Labor and Industry [1]

	Number of days to final event			
	From hearing notice [2]	From request for hearing	From rehabilitation request	From presentation of dispute
2003 disputes				
Mean (average) [3]	190	214	304	321
25th percentile	77	91	184	189
50th percentile (median) [3]	120	136	226	240
75th percentile	197	231	336	342
Disputes with data per 1,000 [4]	68	69	66	69
2007 disputes				
Mean (average) [3]	184	194	287	295
25th percentile	79	88	169	175
50th percentile (median) [3]	124	129	220	224
75th percentile	230	245	347	370
Disputes with data per 1,000 [4]	80	85	84	85
Statistical significance level of difference between years				
Means	N.S.	N.S.	N.S.	N.S.
Medians	N.S.	N.S.	N.S.	N.S.

"N.S." = not statistically significant.

1. Because of limited sample size, statistics are not shown for all percentiles. See p. 3 including note 10.
2. Hearing includes pre-trial.
3. The differences between the means and medians for the two years are not statistically significant.
4. Some disputes are excluded in some columns because of missing or unreliable dates.

Major dispute paths at OAH

Figures 9.1 and 9.2 show the major dispute-resolution paths for the 2003 and 2007 rehabilitation-request disputes, respectively, that were referred to OAH. These do not include disputes with appeals from DLI decision-and-orders (which have already been considered). As in Figures 3.1 and 3.2 depicting the DLI process, the OAH process is reduced to its major steps. Subsequent references in this report to the OAH dispute-resolution “process” relate to the simplified version presented in this figure. Figure 9.3 provides a direct comparison of the relative numbers of disputes following the major paths at OAH for 2003 and 2007, using data from Figures 9.1 and 9.2.

DLI referred a total of 158 rehabilitation-request disputes per 1,000 to OAH for 2003, and 98 for 2007. Most of these were referred directly after being certified (or without a certification decision), but some were referred after being scheduled for a DLI conference or after an initial decision not to certify (see note 2 in Figures 9.1 and 9.2).

Of the referred disputes for 2003, 45 percent were initially scheduled for an OAH administrative conference, 35 percent were first scheduled for hearing and the remaining 20 percent were not scheduled for either type of proceeding. (As shown in Figure 10.2, most disputes in the last group settle informally.) For the 2007 disputes, these percentages were 34 percent, 31 percent and 33 percent, respectively. As indicated in Figure 9.3, the difference in these percentages between the two years is statistically significant. This suggests that between 2003 and 2007, there was an increased likelihood for disputes to settle informally as

opposed to being scheduled for an OAH administrative conference.

Unlike the DLI data, the OAH data does not directly indicate whether a scheduled proceeding took place.²⁴ Among the 2003 disputes scheduled for conference, 34 percent had a decision-and-order issued, 25 percent were scheduled for hearing without a decision-and-order and the remaining 41 percent experienced neither event. (As shown in Figure 11.4, most disputes in the last group settle informally.) Although these percentages were somewhat different for 2007, the difference is not statistically significant (Figure 9.3).

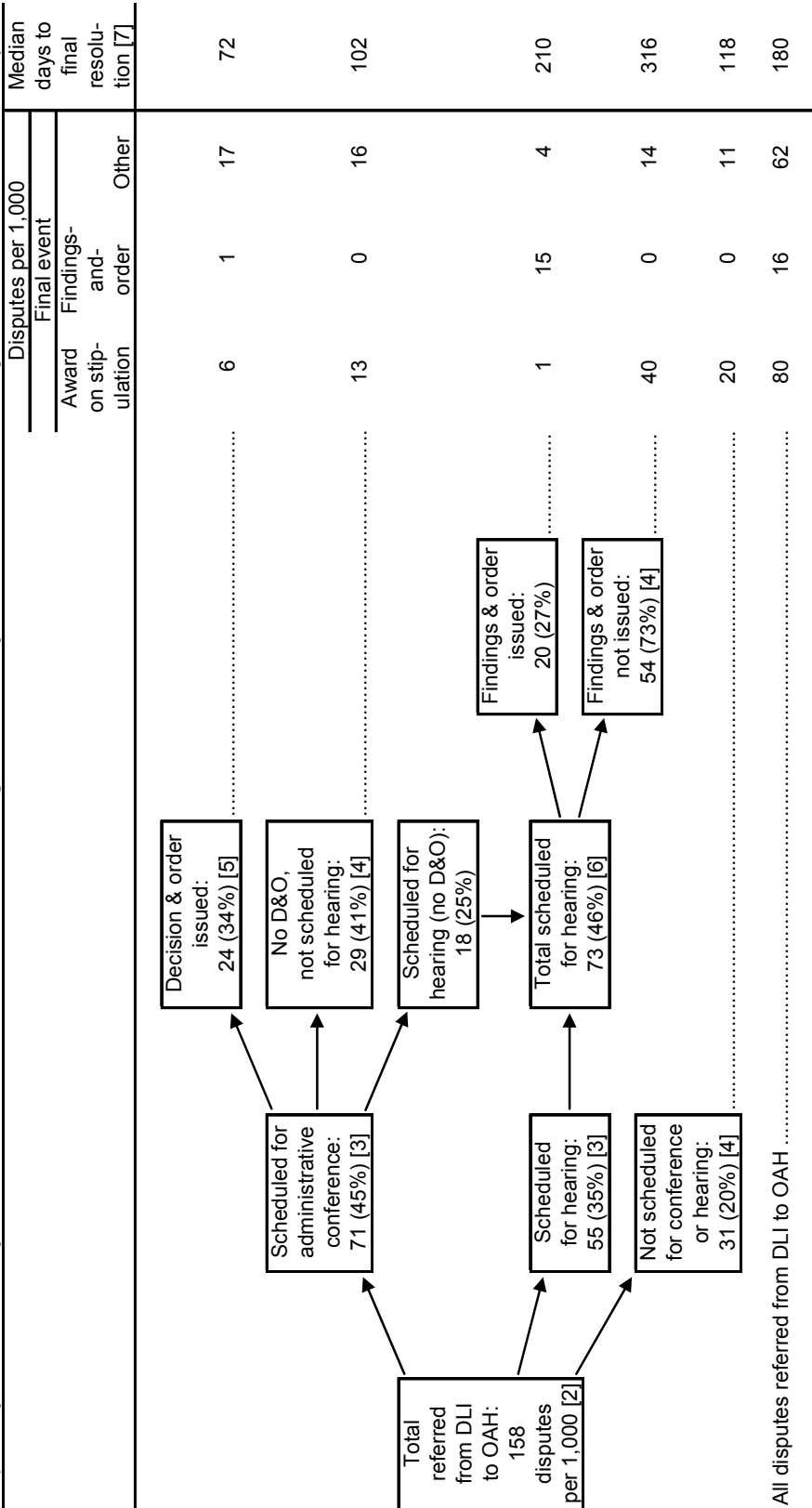
Combining the disputes initially scheduled for hearing and those scheduled for hearing after being scheduled for conference, 73 disputes per 1,000, or 46 percent of the total referred to OAH, were eventually scheduled for hearing for 2003. For 2007, 41 disputes per 1,000, or 42 percent of the total referred, were eventually scheduled for hearing. (Again, these do not include appeals from decision-and-orders.) The difference between years is not statistically significant. Findings-and-orders were issued in roughly one-quarter of these cases for the two years.

The right columns in Figure 9.1 give summary data about the outcomes of the 2003 disputes. The sample size for the 2007 disputes is not large enough to permit comparable statistics. Appendix 8 shows more detailed information about the final events for the disputes following each path.

The following sections of this report track these disputes through the major paths shown in Figures 9.1 and 9.2, showing timelines and outcomes.

²⁴ In many instances, it is known that a proceeding occurred, such as when a decision-and-order is issued. But when a decision document is not issued, the scheduled proceeding may or may not have taken place.

Figure 9.1
Major dispute-resolution paths at the Office of Administrative Hearings for 2003 disputes referred from the Department of Labor and Industry [1]



1. All numbers are numbers of disputes per 1,000 total disputes. Percentages at each step are relative to the total number of disputes at the preceding step. More detail is provided in Appendix 8.

2. Includes 124 disputes per 1,000 that were referred after certification without being scheduled for DLI conference plus 34 disputes per 1,000 that were not certified or were scheduled for conference and then referred. See notes 2 and 3 in Figure 3.1.

3. At the first step of the OAH process after referral from DLI, disputes are counted as scheduled for conference or hearing according to which of the two proceeding types was scheduled first. Hearing includes pre-trial. Other types of proceedings are ignored in this classification. Five of the 55 disputes per 1,000 that were scheduled for hearing were first scheduled for a settlement conference.

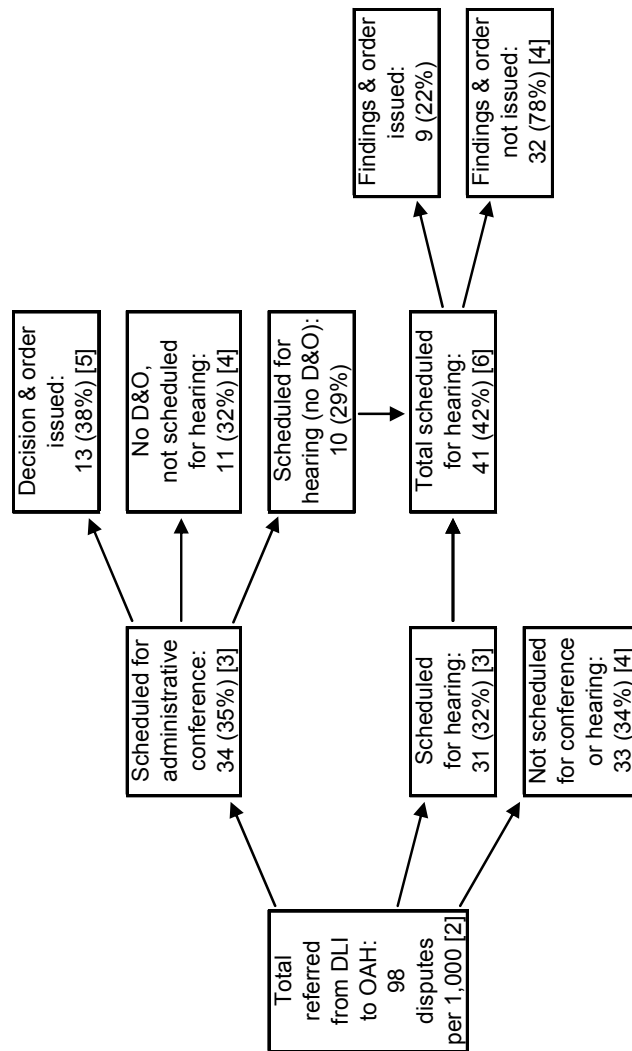
4. As shown in subsequent tables, most of these cases are resolved by agreement among the parties.

5. Numbers of cases with appeals from decision-and-orders are not shown because of small sample size.

6. The percentage here indicates the percentage of all referrals to OAH eventually scheduled for hearing, excluding appeals from conference decision-and-orders. Hearing includes pre-trial.

7. Some of resolution times shown here do not correspond to numbers shown in more detailed tables that follow, because the categories in some of those tables are subcategories of the ones shown here.

Figure 9.2
Major dispute-resolution paths at the Office of Administrative Hearings for 2007 disputes referred from the Department of Labor and Industry [1]



1. All numbers are numbers of disputes per 1,000 total disputes. Percentages at each step are relative to the total number of disputes at the preceding step. More detail is provided in Appendix 8. Statistics about final events and time to final resolution are not shown because of insufficient numbers of cases in the dispute paths concerned.

2. Includes 69 disputes per 1,000 that were referred after certification without being scheduled for DLI conference, plus 29 disputes per 1,000 that were not certified or were scheduled for conference and then referred. See notes 2 and 3 in Figure 3.1.

3. At the first step of the OAH process after referral from DLI, disputes are counted as scheduled for conference or hearing according to which of the two proceeding types was scheduled first. Hearing includes pre-trial. Other types of proceedings are ignored in this classification. Eleven of the 31 disputes per 1,000 that were scheduled for hearing were first scheduled for a settlement conference.

4. As shown in subsequent tables, most of these cases are resolved by agreement among the parties.

5. Numbers of cases with appeals from decision-and-orders are not shown because of small sample size.

6. The percentage here indicates the percentage of all referrals to OAH eventually scheduled for hearing, excluding appeals from conference decision-and-orders. Hearing includes pre-trial.

Figure 9.3**Major dispute-resolution paths at the Office of Administrative Hearings: Comparison of 2003 and 2007 disputes [1]**

Dispute path	2003		2007		Statistical significance level of difference between years in percentages for different paths within category
	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total	
All disputes referred to OAH [2]	158	100%	98	100%	.05
Initially scheduled for conference	71	45%	34	35%	
Initially scheduled for hearing	55	35%	31	32%	
Not scheduled for conference or hearing	31	20%	33	34%	
All disputes referred to OAH [2]	158	100%	98	100%	N.S.
Scheduled for hearing initially or later [3]	73	46%	41	42%	
Never scheduled for hearing	85	54%	57	58%	
Disputes scheduled for conference	71	100%	34	100%	N.S.
Decision-and-order issued	24	34%	13	38%	
No decision-and-order, not scheduled for hearing	29	41%	11	32%	
No decision-and-order, scheduled for hearing	18	25%	10	29%	

"N.S." = not statistically significant.

1. Numbers are taken from Figures 9.1 and 9.2

2. See note 2 in Figures 9.1 and 9.2.

3. Includes disputes scheduled for hearing directly after referral to OAH or after first being scheduled for OAH conference. Does not count hearings scheduled on appeal.

OAH dispute-resolution process for 2003 disputes

First major event at OAH

Figure 10.1 examines possible reasons why different disputes were initially scheduled for administrative conference, scheduled for hearing without first being scheduled for conference or neither as their first major event at OAH. Recall that most referrals to OAH for 2003 and 2007 disputes were because of concurrent litigation about the same or similar issues (Figure 5.3). The preponderance of concurrent litigation as the referral reason seems to be somewhat lower for disputes first scheduled for hearing than for those on the other two paths, although this is statistically significant only for 2003.

The three dispute paths showed wide divergence with respect to the presence of an order for consolidation. For both years, about two-thirds of the disputes first scheduled for hearing had an order for consolidation before the first scheduled proceeding, while virtually none of the disputes on the other two paths did. Causation issues had a higher prevalence among disputes first scheduled for conference than among those on the other two paths (statistically significant for 2003 only). There were no statistically significant differences among the dispute paths with respect to the presence of a primary liability issue or a claim petition.

Among the disputes not scheduled for either type of proceeding, a majority for both years were resolved with an award on stipulation and most of the remainder had a different type of agreement or were withdrawn (Figure 10.2).²⁵

Figures 10.3-A and 10.3-B show timelines related to the scheduling of the first OAH proceeding for both administrative conferences and hearings for 2003 and 2007. Both tables show the same timelines, but are arranged differently. Figure 10.3-A is arranged to highlight differences between the proceeding types within each year. Figure 10.3-B is

arranged to facilitate comparisons between years within each proceeding type.

For both years, all the timelines were longer for disputes first scheduled for hearing than for those first scheduled for conference, although the differences were not statistically significant in all instances (Figure 10.3-A). For example, for 2007, the median time from referral to first proceeding date was 49 days for conference and 99 days for hearing. The longer time for hearing reflected both a longer time from referral to proceeding notice (21 versus 13 days at the median) and a longer time from notice to proceeding date (58 versus 33 days at the median). Measured from the rehabilitation request, the median time to the first scheduled proceeding for 2003 was 72 days for conference and 124 days for hearing; for 2007 it was 68 days and 117 days, respectively. Contributing to these differences was a greater time from rehabilitation request to referral for those disputes scheduled for hearing. In all cases, the mean time is greater than the median because the distribution is skewed to the right.²⁶ For example, for 2007, the mean time from the rehabilitation request to the first scheduled OAH proceeding was 67 days for conference and 147 days for hearing.

The differences between years in these timelines (Figure 10.3-B) are far smaller than those between proceeding types. For hearings, there are no statistically significant differences between the two years. For conferences, between 2003 and 2007, the mean time from the rehabilitation request to the scheduled proceeding date fell from 80 days to 67 days, and the median fell from 72 days to 68 days. Contributing to these reductions were decreases in the times from rehabilitation request to referral and from referral to scheduled proceeding date (most of the latter resulted from a decrease in the time from notice to scheduled proceeding date).

The timelines relating to conference scheduling were generally somewhat longer for OAH than for DLI. For example, for 2007 disputes, the time from the rehabilitation request to the scheduled conference date was 67 and 68 days at

²⁵ Too few cases were in the sample to analyze timelines to final resolution for these disputes.

²⁶ See note 17 on p. 15.

the mean and median, respectively, for OAH (Figure 10.3-B), versus 52 and 49 days for DLI (Figure 5.2). (The 2007 times were less than the 2003 times for both DLI and OAH.)

Figure 10.1

Selected characteristics of disputes referred to the Office of Administrative Hearings by first scheduled proceeding there (administrative conference or hearing)

Selected dispute characteristic	First scheduled proceeding at OAH (administrative conference or hearing) [1]								Statistical significance level of differences among row percentages
	Administrative conference		Hearing [2]		Neither conference nor hearing [2]		All disputes referred to OAH		
	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total	
2003 disputes									
Referred because of concurrent litigation on same issues	62	87%	42	77%	30	96%	134	85%	.05
Order for consolidation before first scheduled proceeding [3]	1	1%	38	69%	0	0%	38	24%	.01
Causation issue present	45	63%	26	47%	13	42%	84	53%	.05
Primary liability issue present	4	6%	6	11%	1	4%	12	8%	N.S.
Claim petition present	2	3%	5	9%	1	4%	9	6%	N.S.
Total disputes	71	100%	55	100%	31	100%	158	100%	
2007 disputes									
Referred because of concurrent litigation on same issues	27	77%	19	61%	24	73%	70	71%	N.S.
Order for consolidation before first scheduled proceeding [3]	0	0%	20	64%	0	0%	20	20%	.01
Causation issue present	22	65%	15	50%	15	47%	53	54%	N.S.
Primary liability issue present	4	13%	6	18%	7	20%	17	17%	N.S.
Claim petition present	1	3%	1	4%	4	13%	7	7%	N.S.
Total disputes	34	100%	31	100%	33	100%	98	100%	

N.S. = not statistically significant.

1. Proceedings other than administrative conferences, hearings and pre-trials are ignored in this classification. Among the disputes counted under hearing, a settlement conference was scheduled before the pre-trial or hearing in five of the 55 cases per 1,000 for 2003 and in 11 of the 31 cases per 1,000 for 2007.
2. Hearing includes pre-trial. See note 1.
3. An order for consolidation was counted as being "before" the scheduled proceeding if it occurred no later than one week after the hearing notice.

Figure 10.2

Final event for disputes referred to OAH and not scheduled for administrative conference or hearing [1]

Final event	2003 disputes		2007 disputes	
	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total
Award on stipulation	20	64%	18	53%
Otherwise agreed or withdrawn [2]	8	25%	10	30%
Other [3]	3	11%	6	17%
Total	31	100%	33	100%

1. Hearing includes pre-trial. Numàers may not add to totals because of rounding.
2. Includes rehab document indicating issue resolution, withdrawn, resolved by parties (no document), resolved by letter, dispute not certified (resolved by DLI intervention), issue determined by DLI to need no further action, rehab response (agree to pay), answer to claim petition (agree to pay) and OAH award on agreement.
3. Includes referred from DLI to OAH, DLI decision-and-order, OAH order to strike, order for dismissal (withdrawn), dispute not certified (other) and OAH order on discontinuance.

Figure 10.3–A

Timelines related to scheduling of first proceeding (administrative conference or hearing) at the Office of Administrative Hearings: grouped by year of dispute

Year of dispute and first scheduled proceeding at OAH (administrative conference or hearing) [1]	Number of days					
	Rehabilitation request to first referral	Referral to first proceeding notice	First proceeding notice to first scheduled proceeding date	Referral to first scheduled proceeding date	Rehabilitation request to first scheduled proceeding date	Presentation of dispute to first scheduled proceeding date
2003 disputes						
Administrative conference						
Mean (average)	24	16	41	58	80	87
Median (50th percentile)	15	13	39	52	72	77
Disputes with data per 1,000 [3]	70	66	71	68	70	71
Hearing [2]						
Mean (average)	28	62	58	120	145	148
Median (50th percentile)	18	28	55	103	124	124
Disputes with data per 1,000 [3]	55	45	46	46	48	48
Statistical significance level of difference between proceeding types						
Means	N.S.	.01	.01	.01	.01	.01
Medians	N.S.	.01	.05	.01	.01	.01
2007 disputes						
Administrative conference						
Mean (average)	20	14	34	48	67	69
Median (50th percentile)	11	13	33	49	68	69
Disputes with data per 1,000 [3]	34	33	34	33	34	34
Hearing [2]						
Mean (average)	29	58	59	117	147	151
Median (50th percentile)	28	21	58	99	117	117
Disputes with data per 1,000 [3]	31	20	20	20	20	20
Statistical significance level of difference between proceeding types						
Means	N.S.	N.S.	.01	.05	.05	.05
Medians	.10	N.S.	N.S.	.01	.01	.01

"NS" = not statistically significant.

1. Proceedings other than administrative conferences, hearings and pre-trials are ignored in this classification.
2. Hearing includes pre-trial where present.
3. Some disputes are excluded in some columns because of missing or unreliable dates. Under "hearing," nine disputes with a settlement conference scheduled before the hearing are also excluded. See note 1 in this figure and note 2 in Figure 10.1.

Figure 10.3–B

Timelines related to scheduling of first proceeding (administrative conference or hearing) at the Office of Administrative Hearings: grouped by first proceeding type

First scheduled proceeding at OAH (administrative conference or hearing) and year of dispute [1]	Number of days					
	Rehabilitation request to first referral	Referral to first proceeding notice	First proceeding notice to first scheduled proceeding date	Referral to first scheduled proceeding date	Rehabilitation request to first scheduled proceeding date	Presentation of dispute to first scheduled proceeding date
Administrative conferences						
2003 disputes						
Mean (average)	24	16	41	58	80	87
Median (50th percentile)	15	13	39	52	72	77
Disputes with data per 1,000 [3]	70	66	71	68	70	71
2007 disputes						
Mean (average)	20	14	34	48	67	69
Median (50th percentile)	11	13	33	49	68	69
Disputes with data per 1,000 [3]	34	33	34	33	34	34
Statistical significance level of difference between years						
Means	N.S.	N.S.	.01	.05	.05	.01
Medians	N.S.	N.S.	N.S.	N.S.	.10	.10
Hearings [2]						
2003 disputes						
Mean (average)	28	62	58	120	145	148
Median (50th percentile)	18	28	55	103	124	124
Disputes with data per 1,000 [3]	55	45	46	46	48	48
2007 disputes						
Mean (average)	29	58	59	117	147	151
Median (50th percentile)	28	21	58	99	117	117
Disputes with data per 1,000 [3]	31	20	20	20	20	20
Statistical significance level of difference between years						
Means	N.S.	N.S.	N.S.	N.S.	N.S.	N.S.
Medians	N.S.	N.S.	N.S.	N.S.	N.S.	N.S.

"NS" = not statistically significant.

1. Proceedings other than administrative conferences, hearings and pre-trials are ignored in this classification.
2. Hearing includes pre-trial where present.
3. Some disputes are excluded in some columns because of missing or unreliable dates. Under "hearing," nine disputes with a settlement conference scheduled before the hearing are also excluded. See note 1 in this figure and note 2 in Figure 10.1.

Disputes scheduled for OAH administrative conference

Of the disputes that were scheduled for administrative conference at OAH, 13 percent of the 2003 disputes and six percent of the 2007 disputes had one or more re-sets (Figure 11.1). The difference between these numbers and their DLI counterparts in Figure 6.1 is statistically insignificant. As with the DLI conferences, multiple re-sets were uncommon.

Figure 11.2 presents a rudimentary analysis of why the 2003 disputes scheduled for OAH administrative conference received a decision-and-order, became scheduled for hearing without a decision-and-order or neither. For both years, the disputes scheduled for hearing had a far greater incidence of orders for consolidation (88 percent for 2003, 67 percent for 2007) than did disputes in the other two categories, a statistically significant difference. The three dispute paths did not show statistically significant variation with respect to the presence of a causation issue.

The median time to an OAH decision-and-order following an administrative conference for 2003 disputes was three days and the mean time was six days (Figure 11.3). At the median, the OAH decision-and-order occurred 42 days after the referral from DLI and 65 days after the rehabilitation request.

These time intervals for OAH decision-and-orders were less than the comparable intervals for DLI decision-and-orders (Figure 7.1). For 2003 disputes, the time to the decision-and-order, at the median, was three days from the conference date for OAH versus seven days for DLI and 65 days from the rehabilitation request for OAH versus 71 days for DLI. This latter difference is notable in view of the fact that the median time from the rehabilitation request to the scheduled conference date, *for all 2003 disputes scheduled for conference*, was 63 days for DLI conferences versus 72 days for OAH conferences (Figures 5.2 and 10.3-B). This apparent contradiction occurs because for both DLI and OAH, the disputes that receive decision-and-orders are a subset of all the disputes scheduled for conference.²⁷

Among the 2003 disputes with no decision-and-order after the scheduled OAH conference, almost half ended with an award on stipulation and almost half otherwise agreed or were withdrawn (Figure 11.4).

For these 2003 disputes with no decision-and-order, the final event occurred, at the median, 64 days after the last conference notice, 99 days after the referral to OAH and 111 days after the first rehabilitation request (Figure 11.5). The median of 111 days from the rehabilitation request compares with 74 days where a DLI conference was concerned for 2003 disputes (Figure 7.3). At the mean, the times were 155 days for OAH and 76 days for DLI.

²⁷ A separate analysis showed that for 2003 disputes scheduled for DLI or OAH conference, the time from the rehabilitation request to the scheduled conference date was less where a decision-and-order occurred than where it did not. This difference was minor for DLI (four days at the mean and median) but substantial for OAH (36 days at the mean, 17 days at the median). For OAH, the difference was almost entirely accounted for by a difference in the time from referral to the scheduled conference date. Apparently, at both DLI and OAH, something caused the conference to be scheduled earlier for those disputes where a decision-and-order eventually occurred than for the others and this phenomenon was more pronounced at OAH. For the disputes with a decision-and-order, the time from the rehabilitation request to the scheduled conference was identical at the median between DLI and OAH (61 days) and six days less at OAH at the mean (56 versus 62 days). For the cases without a decision-and-order, the time was substantially longer for OAH conferences than for DLI conferences.

Figure 11.1
Re-sets of administrative conferences at the Office of Administrative Hearings

Number of re-sets	2003 disputes		2007 disputes		Statistical significance level of difference in percentage between years
	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total	
None	62	87%	32	94%	N.S.
One or more	9	13%	2	6%	
1	8	11%	2	6%	
2	1	1%			
Total disputes	71	100%	34	100%	

"N.S." = not statistically significant.

Figure 11.2
Selected characteristics of disputes scheduled for OAH administrative conference by major event after scheduled conference [1]

Dispute characteristic [3]	Major event after scheduled conference								Statistical significance level of differences among row percentages
	Decision-and-order issued		Scheduled for hearing [2]		No decision-and-order, not scheduled for hearing [2]		Total		
	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total	
2003 disputes									
Order for consolidation present	6	27%	16	88%	2	8%	25	35%	.01
Causation issue present	15	63%	12	65%	18	62%	45	63%	N.S.
Total disputes	24	100%	18	100%	29	100%	71	100%	
2007 disputes									
Order for consolidation present	6	42%	7	67%	0	0%	12	35%	.01
Causation issue present	10	75%	6	56%	7	60%	22	65%	N.S.
Total disputes	13	100%	10	100%	11	100%	34	100%	

"N.S." = not statistically significant.

1. Numbers do not always add to row totals because of rounding.
2. Hearing includes pre-trial.
3. The numbers of disputes with a primary liability issue and with a claim petition present were quite small for both years—so the variation in these factors by major dispute path is not explored here.

Figure 11.3**Time to decision-and-order at the Office of Administrative Hearings, 2003 disputes [1]**

	Number of days to OAH decision-and-order			
	From last scheduled OAH administrative conference [2]	From referral to OAH	From first rehabilitation request	From presentation of dispute
Mean (average)	6	40	62	70
50th percentile (median)	3	42	65	68
Disputes with data per 1,000 [3]	23	24	24	24

1. Statistics are not shown for 2007 disputes because of an insufficient number of cases.
2. Where a conference was continued, i.e., held open after the conference date to allow additional evidence to be submitted, the continuation date (the date through which it was held open) was substituted for the last scheduled conference date in counting the time to the decision-and-order.
3. Some disputes are excluded in some columns because of missing or unreliable dates.

Figure 11.4**Final event where there is no decision-and-order or hearing following a scheduled administrative conference at the Office of Administrative Hearings, 2003 disputes [1]**

	Disputes per 1,000	Pctg. of total
Award on stipulation	13	46%
Otherwise agreed or withdrawn [1]	14	47%
Order to strike or dismiss	2	7%
Total	29	100%

1. Statistics are not shown for 2007 disputes because of an insufficient number of cases. Numbers may not add to totals because of rounding.
2. Includes (in descending order of frequency) withdrawn, letter resolving issue, resolved by parties (no document), rehabilitation response (already paid or agree to pay), mediation award or order on agreement (OAH), proceeding canceled — agreement reached or in process, letter or other document confirming agreement at proceeding and letter resolving issue, and proceeding held — informal agreement.

Figure 11.5**Time to final event where there is no decision-and-order or hearing following a scheduled administrative conference at the Office of Administrative Hearings, 2003 disputes [1]**

	Number of days to final event			
	From last OAH administrative conference	From referral to OAH	From first rehabilitation request	From presentation of dispute
Mean (average)	105	132	155	155
50th percentile (median)	64	99	111	102
Disputes with data per 1,000 [1]	28	28	28	28

1. Statistics are not shown for 2007 disputes because of an insufficient number of cases.
2. Some disputes are excluded because of missing or unreliable dates.

Disputes with OAH decision-and-orders

The number of sample cases was too small to analyze the disputes with OAH decision-and-orders.

Disputes scheduled for OAH hearing

The last remaining path to be analyzed in the rehabilitation-request dispute process is the one involving disputes scheduled for hearing at OAH. As indicated in Figure 9.1, these disputes numbered 73 per 1,000 for 2003 and 41 per 1,000 for 2007. For both years, approximately three quarters of these disputes were initially scheduled for hearing while the remainder were scheduled for hearing after first being scheduled for a conference that did not occur. (Again, these disputes do not include those with appeals from decision-and-orders at DLI or OAH.)

In the analysis of these disputes, pre-trials are counted as hearings. This is done for simplicity, because disputes scheduled for pre-trial have begun on the hearing track. If a dispute is scheduled for pre-trial, it is counted as scheduled for hearing even if it was not eventually scheduled for an actual hearing.

As shown in Figure 12.1, of the disputes counted in this manner as being scheduled for hearing, 97 percent for each year were scheduled for an actual hearing while only 3 percent were scheduled for a pre-trial and not an actual hearing. A majority of the disputes actually scheduled for hearing did not have a pre-trial.

Of the disputes scheduled for hearing, 22 percent for 2003 and 16 percent for 2007 had one or more re-sets (Figure 12.2). In about a fifth of the 2003 cases with re-sets, there were more than one, but none of the 2007 cases had multiple re-sets. These re-set percentages are higher than the 13 percent and 6 percent re-set rates for OAH conferences for the two years, respectively (Figure 11.1), but the difference is statistically significant (at the .10 level) only for

2003. The re-set rates for OAH hearings are not statistically different from those for DLI conferences for the two years.

Where these re-sets occurred for 2003 disputes, a median of 62 days elapsed between the successive scheduled hearing dates (Figure 12.3). This is more than double the 28 days for re-sets of DLI administrative conferences for 2003 (Figure 6.3) (no data about time between re-sets is presented for the OAH administrative conferences because of small sample size).

As shown in Figure 13.4, the timelines for scheduling of OAH hearings for the 2003 disputes varied substantially according to whether an administrative conference was scheduled at OAH before the hearing. Where a conference was not scheduled first, a median of 28 days elapsed from referral to OAH to the hearing notice, versus 95 days when a conference had been scheduled first. As a result, the median time from referral to scheduled hearing date was 103 days for the one case and 153 days for the other. Measured from the first rehabilitation request, the difference was greater — 189 days where a conference was scheduled first, as compared with 124 days where it was not.

Where there was not a findings-and-order after the hearing (73 percent of the cases scheduled for hearing for 2003, 78 percent for 2007), 75 percent of the disputes for 2003 and 83 percent for 2007 ended with an award on stipulation (Figure 12.5). Smaller numbers of cases had other types of agreement or were withdrawn, or had an order to strike or dismiss.

Figure 12.6 shows the amount of time to the final event for those 2003 disputes without a findings-and-order where an OAH administrative conference had not been scheduled first. For these cases, the median time to the final event was 134 days from the last hearing notice, 298 days from the referral to OAH and 337 days from the first rehabilitation request.

Figure 12.1
Scheduled hearings and pretrials

Scheduled proceeding(s)	2003 disputes		2007 disputes		Statistical significance level of difference in percentages between years
	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total	
Hearing (with or without pre-trial)	71	97%	40	97%	N.S.
<i>Hearing only [1]</i>	43	59%	30	73%	
<i>Hearing and pre-trial</i>	28	38%	10	24%	
Pre-trial only	2	3%	1	3%	
Total	73	100%	41	100%	

"N.S." = not statistically significant.

Figure 12.2
Re-sets of OAH hearings [1]

Number of re-sets	2003 disputes		2007 disputes		Statistical significance level of difference in percentage between years
	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total	
None	57	78%	34	84%	N.S.
One or more [2]	16	22%	7	16%	
1	12	16%	7	16%	
2	2	2%	0	0%	
3	1	1%	0	0%	
4	1	2%	0	0%	
6	1	1%	0	0%	
Total	73	100%	41	100%	

"N.S." = not statistically significant.

1. Hearing includes pre-trial.

Figure 12.3
Time between scheduled dates of
re-set hearings at the Office of
Administrative Hearings, 2003
disputes [1]

	Number of days
Mean (average)	79
50th percentile (median)	63
Resets with data per 1,000 disputes [3]	27

- Hearing includes pre-trial. Statistics are not shown for 2007 disputes because of an insufficient number of cases.
-
- The total number of re-sets concerned is obtained by multiplying the numbers of re-sets in Figure 12.2 by the respective numbers of disputes with those re-sets.

Figure 12.4
Timelines related to scheduling of hearings for 2003 disputes referred to the Office of Administrative Hearings [1]

Dispute path	Number of days				
	Referral to OAH to hearing notice	Hearing notice to scheduled hearing date	Referral to OAH to scheduled hearing date	First rehabilitation request to scheduled hearing date	Presentation of dispute to scheduled hearing date
OAH administrative conference not scheduled first					
Mean (average)	74	58	132	157	160
50th percentile (median)	28	55	103	124	124
Disputes with data per 1,000 [2]	47	47	48	49	49
OAH administrative conference scheduled first					
Mean (average)	119	55	173	205	218
50th percentile (median)	95	53	153	189	189
Disputes with data per 1,000 [2]	18	18	18	18	18
Statistical significance level of difference between dispute paths (conference scheduled first vs. not)					
Means	.05	N.S.	.10	.10	.05
Medians	.01	N.S.	.01	.01	.01

- Hearing includes pre-trial. Statistics are not shown for 2007 disputes because of an insufficient number of cases.
- Some of the disputes without an administrative conference scheduled first (55 per 1,000) are excluded because of missing or unreliable dates or the presence of an intervening event (usually a scheduled settlement conference) that might change the course of the dispute.

Figure 12.5

Final event where there was no findings-and-order following a scheduled hearing at the Office of Administrative Hearings [1]

	OAH administrative conference not scheduled first		OAH administrative conference scheduled first		Total	
	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total	Disputes per 1,000	Pctg. of total
2003 disputes						
Award on stipulation	30	75%	10	74%	40	75%
Otherwise agreed or withdrawn	5	11%	1	11%	6	11%
Order to stike or dismiss	4	10%	1	11%	6	10%
Other	1	3%	1	5%	2	4%
Total	40	100%	13	100%	54	100%
2007 disputes						
Award on stipulation	18	76%	9	100%	27	83%
Otherwise agreed or withdrawn	2	9%	0	0%	2	7%
Order to stike or dismiss	3	14%	0	0%	3	10%
Other	0	0%	0	0%	0	0%
Total	23	100%	9	100%	32	100%

1. Numbers may not add exactly to totals because of rounding. Percentages are sometimes different where the numbers of cases per 1,000 are the same because the numbers of cases are rounded versions of decimal numbers.

Figure 12.6

Time to final event when there was no findings-and-order following a scheduled hearing at the Office of Administrative Hearings where an OAH administrative conference was not scheduled first, 2003 disputes

	Number of days to final event			
	From last hearing notice	From referral to OAH	From first rehabilitation request	From presentation of dispute
Mean (average)	169	367	397	399
50th percentile (median) [1]	134	298	337	330
Disputes with data per 1,000	38	40	40	40

1. The number of days at the median is somewhat less from the presentation of the dispute than from the rehabilitation request because there is one more sample case in the former number, even though the number of cases per 1,000 (rounded) is the same in the two categories.

Correlation between scheduling of proceedings and occurrence of agreements

The preceding analysis of the timing of proceeding scheduling and dispute outcomes raises the question of what relationship might exist between the two. Certainly, the sooner a proceeding is scheduled, the sooner one can expect the corresponding decision document (e.g., a decision-and-order or findings-and-order) to be issued when the parties do not agree. However, when the parties do reach agreement, what consequences does the scheduling of the proceeding have for the timing of that form of resolution?

This question was analyzed by applying a formal statistical analysis to the data for 2003 and 2007. The analysis considered three types of proceedings: DLI administrative conferences, OAH administrative conferences and OAH hearings. For each proceeding type, separate consideration was given to informal agreements and awards on stipulation.²⁸

For each type of proceeding and type of agreement, the statistical analysis estimated the effects of the timing of the proceeding notice and of the scheduled proceeding date on the timing of the agreement where the proceeding was canceled because of agreement. In the statistical model, there was one “outcome” variable — the time from the rehabilitation request to the agreement (for the given proceeding and agreement type) — and two explanatory variables — (1) the amount of time from the rehabilitation request to the proceeding notice and (2) the amount of time from the proceeding notice to the scheduled proceeding date. The statistical model estimated the effect of the each explanatory variable on the outcome variable with the other explanatory variable statistically held constant.

²⁸ Informal agreement included rehabilitation response (agree to pay), letter resolving issue, resolved by DLI intervention, resolved by parties (no document), withdrawn and agreement referred from DLI to OAH for stipulation.

The results are shown in Figure 13.1. Each line in the figure corresponds to one estimation of the model for the given proceeding type, agreement type and dispute data year. The model yields a coefficient for each explanatory variable. The coefficient is the estimated effect of the associated explanatory variable on the outcome variable with the other explanatory variable statistically held constant. The coefficient is the estimated change in the outcome variable associated with a one-unit change in the respective explanatory variable. The asterisks in the “statistical significance” column indicate the degree of statistical significance of the estimated coefficient being different from zero, with three asterisks being the highest level of significance.²⁹ Blanks in the coefficient column and the associated statistical significance column mean the coefficient was not statistically significant.

For example, for DLI conferences for 2003 disputes, when the conference was canceled because of an informal agreement, it is estimated that a one-day increase in the time from the proceeding notice to the scheduled proceeding date (first explanatory variable) is associated with a 0.8-day increase in the time from the rehabilitation request to the informal agreement. Conversely, if the scheduled proceeding date is one day sooner, the agreement is estimated to occur 0.8 day sooner.

The coefficients for the time from the rehabilitation request to the proceeding notice (second explanatory variable) represent the effect of simultaneously changing the timing of the notice and the scheduled proceeding date by one day. This is because these coefficients are estimated with the first explanatory variable — the time from the notice to the scheduled proceeding date — statistically held constant. For example, continuing in the first line of the figure, the coefficient of 0.9 for informal agreements for DLI conferences for the 2003 disputes means that if the proceeding notice and the scheduled proceeding date are both moved one day sooner (holding constant the interval between them), the informal agreement is estimated to occur 0.9 day sooner than otherwise.

²⁹ See note 4 in the figure.

The estimated coefficients for the proceeding notice variable are almost all statistically significant, ranging from 0.6 to 1.5 in magnitude. The coefficients for the scheduled proceeding date are mostly significant but more variable in magnitude. A majority of the coefficients for each explanatory variable are not statistically different from 1.0. This means the estimates are generally consistent with the hypothesis that a one-day difference in the scheduled proceeding date (whether or not accompanied by a one-day difference in the notice date) makes a one-day difference in the same direction in the timing of the agreement.

The coefficients of the proceeding notice variable, with a couple of exceptions, are generally similar in magnitude to the respective coefficients of the proceeding date variable. This supports the hypothesis that the scheduled proceeding date, as opposed to the timing of the notice by itself, is the crucial explanatory factor. In other words, changing the proceeding date seems to have a similar magnitude of effect whether or not the proceeding notice date is changed simultaneously.

Figure 13.1

Estimated effects of timing of proceeding notice and scheduled proceeding date on timing of agreement where proceeding is canceled because of agreement [1]

Proceeding type	Dispute year	Outcome variable: days from rehabilitation request to—	Explanatory variable			
			Days from proceeding notice to scheduled proceeding date		Days from rehabilitation request to proceeding notice [2]	
			Coefficient [3]	Significance level [4]	Coefficient [3]	Significance level [4]
DLI conference	2003	Informal agreement [5]	.8	***	.9	***
		Award on stipulation			.7	*
	2007	Informal agreement [5]	.7	***	1.0	***
		Award on stipulation	2.0	**		
OAH conference	2003	Informal agreement [5]	1.0	***	1.0	***
		Award on stipulation			.6	***
	2007	Informal agreement [5]	[6]	[6]	[6]	[6]
		Award on stipulation	[6]	[6]	[6]	[6]
OAH hearing	2003	Informal agreement [5]	2.0	***	1.5	***
		Award on stipulation	.8	**	1.1	***
	2007	Informal agreement [5]	2.0	**	.9	**
		Award on stipulation	1.0	***	1.1	***

1. These estimates are derived from a statistical model (multiple regression). The model applies to the case where a proceeding is canceled because of agreement between the parties. The model estimates the effects of the timing of the proceeding notice and of the scheduled proceeding date (explanatory variables) on the timing of the agreement (outcome variable). For each proceeding type and dispute year, the estimates are derived separately for each of two outcome variables — the number of days from the rehabilitation request to an informal agreement and to an award on stipulation, each being estimated for the cases where it occurs. For each of these two outcome variables, the effect of each explanatory variable is estimated with the other explanatory variable statistically held constant. The estimated effect of each explanatory variable on the outcome variable is represented by its coefficient. The coefficient shows the amount of change in the outcome variable associated with a one-unit change in the explanatory variable with the other explanatory variable statistically held constant. For example, for DLI conferences in 2003 disputes, for each additional day of delay in sending out the proceeding notice, the agreement is estimated to be delayed by 0.9 day (for an informal agreement) or 0.7 days (for an award on stipulation), given the amount of time from the notice to the scheduled proceeding date.
2. Care is needed in interpreting the estimated effects of this variable. The coefficients for this variable represent what happens when the time from the rehabilitation request to the proceeding notice changes, holding constant the time from the notice to the scheduled proceeding date. These coefficients, therefore, measure the effect of moving the notice date and the proceeding date simultaneously by one unit.
3. The coefficient is not shown if it is statistically insignificant.
4. The significance level indicates whether the estimated effect (coefficient) can be attributed to an underlying tendency as opposed to random variation in the data. The significance levels here pertain to whether the estimated coefficient is statistically different from 0. For example, if the coefficient is significant at the .01 level, this means there is less than a .01 chance that a coefficient that large or larger would have resulted simply from random variation in the data if there were no underlying relationship between the variables; this means the estimate is highly statistically significant.
 * = significant at the .10 level.
 ** = significant at the .05 level.
 *** = significant at the .01 level.
 Additional tests show that a majority of the estimated coefficients are not statistically different from 1. This supports the hypothesis that there is a one-to-one relationship between days to the conference notice or to the scheduled conference date, on one hand, and days to informal agreement or award on stipulation, on the other, where the proceeding is canceled because of agreement between the parties.
5. Informal agreement includes rehabilitation response (agree to pay), letter resolving issue, resolved by DLI intervention, resolved by parties (no document), withdrawn and agreement referred from DLI to OAH for stipulation.
6. Could not be estimated because there were only three cases for informal agreement and two cases for award on stipulation.

Observations

Much of the data presented in this report relates to the timelines involved in dispute resolution. Following are some observations related to these timelines.

The time to resolution varies even when the path is the same.

Different disputes typically take far different amounts of time to travel the same dispute-resolution path. As a result, a single measure of time, such as a mean or median, fails to fully capture the range of experience of different disputes. Therefore, where sample size has permitted, this report has presented the durations of different dispute-resolution paths measured at multiple points in the distribution of time concerned, for example at the 10th and 90th percentiles along with others. However, in many instances, insufficient sample size limited the extent to which this could be done. The available statistics, however, demonstrate wide variation in the amount of time taken by disputes traveling the same resolution path.

Figure 14.1, summarizing several other figures in the report, shows the amount of time from the first rehabilitation request to selected major dispute-resolution events, measured at different percentiles as sample size permits. For example, for 2007 disputes where a scheduled DLI administrative conference was not held and an award on stipulation occurred after DLI action, the total amount of time from the rehabilitation request was 94 days at the median and 133 days at the 75th percentile. For 2007 disputes with appeals from a DLI decision-and-order, the resolution time (counting all final events) was 220 days at the median and 347 days at the 75th percentile. In other words, 25 percent of these cases took more than 347 days to resolve. Even though the sample size is often insufficient to present statistics at the outer percentiles of the different resolution paths, the general picture of wide variation in resolution times is clear.

An effort should be made to determine how to shorten the time consumed in resolving those

disputes that take significantly longer than the usual time for any dispute/resolution path.

Re-sets add time to the process.³⁰

Among 2003 disputes, the proportion with re-sets of proceeding dates was 16 percent for DLI administrative conferences, 13 percent for OAH administrative conferences and 22 percent for OAH hearings; for 2007 disputes, the analogous percentages were 15 percent, 6 percent and 16 percent (Figures 6.1, 11.1 and 12.2). Multiple re-sets occurred occasionally among these disputes. For DLI conferences, the median time from the original proceeding date to the re-set date was 28 days for 2003 disputes and 23 days for 2007 disputes (Figure 6.3); for OAH hearings, the median time was 63 days for 2003 disputes (Figure 12.3). (For OAH conferences, and for OAH hearings for 2007 disputes, sample size was insufficient to present these statistics.) Bear in mind that for half of the re-set cases, the time to the re-set proceeding date was more than the figures indicated here.

Because of the time re-sets add to the dispute-resolution process, their use should be limited as much as possible. As provided in rule, "continuances are disfavored and will be granted only upon a showing of good cause for the inability or failure to appear at a conference. Good cause generally means that circumstances beyond the control of the party or party's representative prevent attendance at the scheduled time."³¹ Under changes initiated in 2005, DLI began granting continuances (including re-sets) of administrative conference only upon showing of good cause.³² The percentage of DLI conferences with re-sets was approximately the same for the 2003 and 2007 sample cases. The OAH re-set percentages were lower for the 2007 sample cases than for 2003, but the differences between the two years are

³⁰ See note 21 on p. 26.

³¹ Minn. Rules part 1415.3700, subp. 6. See note 21 on p. 26.

³² See Appendix 3.

statistically insignificant (Figures 11.1 and 12.2).

For disputes that go to hearing at OAH, the time to resolution is substantially longer if an OAH administrative conference has been scheduled first.

For 2003 disputes, measuring from the referral to OAH, the median time to the scheduled hearing date was 103 days if an OAH administrative conference had *not* been scheduled first versus 153 days if it had been (Figure 12.4). An order for consolidation is a primary determinant of a rehabilitation dispute being scheduled for hearing, either directly after referral to OAH (Figure 10.1) or after an administrative conference has been scheduled (Figure 11.2).

An effort should be made to determine which disputes, after being referred to OAH, are likely to ultimately require hearing, so they can be scheduled for hearing initially rather than incurring delays by first being scheduled for an administrative conference that does not occur.

Enhancements made by DLI in its dispute-resolution process between 2005 and 2007 have produced noticeable results.

Between 2005 and 2007, DLI introduced several enhancements to its dispute-resolution process, both to speed the process and to improve its quality. These are described in Appendix 3. The data shows the following changes between 2003 and 2007, demonstrating the effects of these enhancements.

- The number of disputes not certified because they were resolved rose from 232 to 323 per 1,000 (Figure 4.4).
- The number of disputes referred to OAH dropped from 158 to 98 per 1,000. Virtually all of the decrease was accounted for by a decline in disputes referred because of concurrent litigation at OAH (Figure 5.3).
- The number of disputes scheduled for DLI conference rose from 419 to 483 per 1,000. This increase manifested itself almost entirely in an increase in the number of

disputes for which the scheduled conference was not held (267 per 1,000 in 2007 versus 206 for 2003), most of which were resolved informally at DLI (Figures 3.1, 3.2, 6.4, 6.5).

- The time from the initial rehabilitation request to the first scheduled DLI conference fell from 63 to 49 days at the median and from 93 to 76 days at the 90th percentile (Figure 5.2).
- The time from the initial rehabilitation request to the DLI decision-and-order (where it occurred) fell from 71 to 62 days at the median and from 127 to 115 days at the 90th percentile (Figure 7.1).
- The time from the initial rehabilitation request to an informal resolution at DLI where a scheduled DLI conference was not held fell from 58 to 45 days at the median and from 105 to 92 days at the 90th percentile. The time to an award on stipulation after DLI action where a scheduled conference was not held fell from 118 to 94 days at the median and from 164 to 133 days at the 75th percentile (Figure 6.6).³³

The enhancements made by DLI in its dispute-resolution process between 2005 and 2007 have brought about major reductions in the time taken to resolve disputes.

The timing of scheduled proceedings affects the timing of resolution by the parties where they reach agreement outside of the proceeding.

A statistical analysis found that earlier scheduling of proceedings is associated with earlier resolution by the parties where the proceeding is canceled because of agreement, either informal agreement or an award on stipulation. This was generally true for DLI conferences, OAH conferences and OAH hearings for 2003 disputes and for DLI conferences and OAH hearings for 2007 disputes.³⁴ The agreement between the parties

³³ Statistics on the latter timeline are unavailable at the 90th percentile because of limited sample size.

³⁴ There were too few cases to perform the analysis for OAH conferences for 2007 disputes, and the association

tends to occur about one day earlier for each day earlier the proceeding is scheduled to occur (Figure 13.1).

Not only does prompt scheduling of proceedings lead to earlier decisions by DLI or OAH where the parties do not reach agreement, earlier

scheduling also prompts earlier agreement between the parties where they reach resolution outside of the proceeding. This adds to the value of scheduling proceedings as promptly as possible with sufficient time for the parties to prepare.

was not always statistically significant for awards on stipulation where other conferences were concerned.

Figure 14.1

Amount of time from rehabilitation request to selected major events in the dispute-resolution process, measured at various percentiles

Event	Number of days from first rehabilitation request to indicated event [1]				
	Percentile				
	10th	25th	50th [2]	75th	90th
Scheduled DLI administrative conference [3]					
2003 disputes	36	46	63	78	93
2007 disputes	34	38	49	62	76
DLI administrative conference decision-and-order [4]					
2003 disputes	41	51	71	101	127
2007 disputes	37	45	62	92	115
Final event where scheduled DLI administrative conference was not held [5]					
Resolved informally at DLI — 2003 disputes	32	42	58	77	105
Resolved informally at DLI — 2007 disputes	23	34	45	69	92
Award on stipulation after DLI action — 2003 disputes [6]		81	118	164	
Award on stipulation after DLI action — 2007 disputes [6]		66	94	133	
Award on stipulation after OAH action — 2003 disputes [6]			235		
Award on stipulation after OAH action — 2007 disputes [6]			211		
Scheduled OAH hearing after appeal (request for hearing) from DLI decision-and-order [7,8]					
2003 disputes		148	174	207	
2007 disputes		133	157	176	
Final event after appeal (request for hearing) from DLI decision-and-order [9]					
2003 disputes		184	226	336	
2007 disputes		169	220	347	
OAH first proceeding scheduled (excluding appeals from decision-and-orders) [10]					
Administrative conference — 2003 disputes			72		
Administrative conference — 2007 disputes			68		
Hearing — 2003 disputes [7]			124		
Hearing — 2007 disputes [7]			117		
OAH administrative conference decision-and-order — 2003 disputes [11]			65		
Final event where there was no decision-and-order following a scheduled OAH administrative conference — 2003 disputes [12]			111		
Final event where there was no findings-and-order after a scheduled OAH hearing where an OAH administrative conference was not scheduled first — 2003 disputes [7,13]			337		

1. Numbers are not shown where there is insufficient sample size.

2. The 50th percentile is the median.

3. From Figure 5.2.

4. From Figure 7.1.

5. From Figure 6.6.

6. An award on stipulation is counted as occurring at OAH or after OAH action if it was preceded by any events occurring at OAH; otherwise, it is counted as occurring at DLI or after DLI action. This category excludes mediation award and order on agreement.

7. Hearing includes pre-trial. Excludes disputes with appeals from decision-and-orders.

8. From Figure 8.3.

9. From Figure 8.5.

10. From Figure 10.3-B.

11. From Figure 11.3. The median time from the rehabilitation request to an OAH decision-and-order was less than the median time to a scheduled OAH conference for 2003 disputes because the time to the scheduled conference for those disputes scheduled for conference that eventually had decision-and-orders was substantially less than for those that did not. See note 27 on p. 45.

12. From Figure 11.5.

13. From Figure 12.6.

Appendix 1

Disputes and the dispute resolution process

The following is a brief description of dispute types and the dispute-resolution process in Minnesota's workers' compensation system. The glossary in Appendix 2 provides further information about terms used.³⁵

Disputes in Minnesota's workers' compensation system generally concern one or more of the three types of workers' compensation benefits and services:

- monetary benefits;
- medical services; and
- vocational rehabilitation services.³⁶

The injured worker and the insurer may disagree about initial eligibility for the benefit or service, the level at which it should be provided or how long it should continue. Disputes may also occur about payment for a service already provided. Payment disputes typically involve a medical or vocational rehabilitation provider and the insurer, and may also involve the injured worker.

In any workers' compensation dispute, there are one or more points of disagreement between the insurer and the injured worker or provider. The parties may disagree, for example, about primary liability, causation, reasonableness and necessity, or other points.³⁷ These points of disagreement are often referred to as "insurer defenses." In this report, they are called "points in dispute."

Depending on the nature of the dispute, the form on which it is filed and the wishes of the parties, dispute resolution may be facilitated by a

dispute-resolution specialist at the Department of Labor and Industry (DLI) or by a judge in the Office of Administrative Hearings (OAH). Administrative decisions from DLI or OAH can be appealed by requesting an OAH hearing; decisions from an OAH hearing can be appealed to the Workers' Compensation Court of Appeals (WCCA) and then to the Minnesota Supreme Court.

Dispute-resolution activities at the Department of Labor and Industry

DLI carries out a variety of dispute-resolution activities.

Informal intervention — Through informal intervention, DLI provides information or assistance to prevent a potential dispute, or communicates with the parties to resolve a dispute and/or determine whether a dispute should be certified. A resolution through informal intervention may occur either during or after the dispute certification process. The goal is to avoid a longer, more formal and costly process.

Dispute certification — In a medical or vocational rehabilitation dispute, DLI must certify that a dispute exists and that informal intervention did not resolve the dispute before an attorney may charge for services.³⁸ The certification process is triggered by either a certification request or a medical or rehabilitation request. DLI specialists attempt to resolve the dispute informally during the certification process.

Mediation — If the parties agree to participate, a DLI specialist conducts a mediation to seek agreement on the issues. Any type of dispute is eligible. Mediation agreements are usually recorded in a "mediation award."

³⁵ The description provided here is only intended to help the reader understand the material presented in this report. It is not intended to be legally definitive or exhaustive.

³⁶ Disputes also occur about other types of issues, such as attorney fees, that do not directly affect the employee.

³⁷ See Appendix 2 for definitions.

³⁸ Minnesota Statutes §176.081, subd. 1(c).

Administrative conference — DLI conducts administrative conferences for medical or vocational rehabilitation (VR) issues presented on a medical or rehabilitation request unless it has referred the issues to OAH or they have otherwise been resolved. DLI refers medical disputes involving more than \$7,500 to OAH and it may refer medical or VR disputes for other reasons. The DLI specialist usually attempts to bring the parties to agreement during the conference. If agreement is not reached, the specialist issues a “decision-and-order.” If agreement is reached, the specialist issues an “order on agreement.” A party may appeal a DLI decision-and-order by requesting a *de novo* hearing at OAH.³⁹

Dispute-resolution activities at the Office of Administrative Hearings

OAH performs the following dispute-resolution activities.

Mediation — If the parties agree to participate, OAH offers mediation to seek agreement about the issues. Any type of dispute is eligible. Mediation agreements are usually recorded in a “mediation award.”

Settlement conference — OAH conducts settlement conferences in litigated cases to achieve a negotiated settlement, where possible, without a formal hearing. If achieved, the settlement typically takes the form of a “stipulation for settlement.” A stipulation for settlement is approved by an OAH judge; it may be incorporated into a mediation award or “award on stipulation,” usually the latter.

Administrative conference — With some exceptions, OAH conducts administrative conferences about issues presented on a medical or rehabilitation request that have been referred from DLI (see above). In some cases, medical and rehabilitation request disputes referred from

DLI are heard in a formal hearing (see below). OAH also conducts administrative conferences where requested by the claimant in a dispute about discontinuance of wage-loss benefits.⁴⁰ If agreement is not reached, the OAH judge issues a “decision-and-order.” A party may appeal an OAH decision-and-order by requesting a *de novo* hearing at OAH.

Formal hearing — OAH holds formal hearings about disputes presented on claim petitions and other petitions where resolution through a settlement conference is not possible. OAH also conducts hearings about other issues, such as medical request disputes involving surgery, medical or rehabilitation request disputes that have complex legal issues or have been joined with other disputes by an order for consolidation, discontinuance disputes where the parties have requested a hearing and disputes over miscellaneous issues such as attorney fees. OAH also conducts *de novo* hearings when a party files a request for hearing to appeal an administrative-conference decision-and-order from DLI or OAH. If the parties do not reach agreement, the judge issues a “findings-and-order.”

Dispute resolution by the parties

Often, the parties in a dispute reach agreement outside of the dispute-resolution process at DLI or OAH, although this is often spurred by DLI or OAH initiatives such as the scheduling of proceedings. Sometimes the party initiating a dispute or an appeal of a decision-and-order withdraws the dispute or the appeal. Sometimes the parties agree informally, sometimes without notifying DLI or OAH. Often they settle by means of a stipulation for settlement, which may be reached while the dispute is at DLI or OAH. The stipulation for settlement is usually incorporated into an award on stipulation issued by an OAH judge.

³⁹ For brevity, this report refers to the filing of a request for *de novo* hearing as an appeal, even though it is not technically that because the issues are heard anew and new evidence may be presented.

⁴⁰ Minnesota Statutes §176.239.

Appendix 2

Glossary

The following terms are used in this report.⁴¹

Administrative conference — An expedited, informal proceeding where parties present and discuss viewpoints in a dispute. With some exceptions, administrative conferences are conducted for medical and vocational rehabilitation (VR) disputes presented on a medical or rehabilitation request; they are also conducted for disputes about discontinuance of wage-loss benefits presented by a claimant’s request for administrative conference. Medical and rehabilitation conferences are conducted at either DLI or OAH depending on whether DLI has referred the issues concerned to OAH. Discontinuance conferences are conducted at OAH. If agreement is not achieved in the conference, the DLI specialist or OAH judge issues a “decision-and-order.” If agreement is achieved, an “order on agreement” is issued. A party may appeal a DLI or OAH decision-and-order by requesting a *de novo* hearing at OAH.⁴²

Answer to claim petition — A form by which the insurer responds to a claim petition by indicating whether it has paid for (or provided) the requested services or benefits, intends to pay for them or does not intend to pay for them, and if not, why not.

Award on stipulation — A document issued by an OAH judge that awards to the parties in a dispute the services, benefits and payments specified in a stipulation for settlement.

Causation — The issue of whether the medical condition or disability for which the employee requests benefits or services was caused by an admitted injury (one for which the insurer or employer has admitted primary liability).

An insurer denying benefits or services on the basis of causation is claiming that the medical condition or disability in question did not arise from the admitted work injury.

Certification request — A form by which an employee attorney requests that DLI certify a medical or rehabilitation dispute. See dispute certification.

Claim petition — A form by which the injured worker contests a denial of primary liability or requests an award of indemnity, medical or rehabilitation benefits. In response to a claim petition, OAH generally schedules a settlement conference or formal hearing.

Decision-and-order — See administrative conference.

Dispute certification — A process required by statute in which, in a medical or rehabilitation dispute, DLI must certify that a dispute exists and that informal intervention did not resolve the dispute before an attorney may charge for services.⁴³ The certification process is triggered by either a certification request or a medical or rehabilitation request. DLI specialists attempt to resolve the dispute informally during the certification process.

Findings-and-order — See hearing.

Hearing — A formal proceeding of a disputed issue or issues in a workers’ compensation claim, conducted at OAH, after which the judge issues a “findings-and-order” that is binding unless appealed to the Workers’ Compensation Court of Appeals. OAH conducts formal hearings about disputes presented on claim petitions and other petitions where resolution through a settlement conference is not possible. OAH also conducts hearings for disputes about discontinuance of wage-loss benefits where requested by a dispute party, disputes referred

⁴¹ These definitions are only intended to help the reader understand the material presented in this report. They are not intended to be legally definitive or exhaustive.

⁴² For brevity, this report refers to the filing of a request for *de novo* hearing as an appeal, even though it is not technically that because the issues are heard anew.

⁴³ Minnesota Statutes §176.081, subd. 1(c).

by DLI because they do not seem amenable to less formal resolution, and disputes about miscellaneous issues such as attorney fees. Finally, OAH conducts *de novo* hearings when a party disagrees with an administrative-conference or nonconference decision-and-order from either DLI or OAH.

Indemnity benefit — A benefit to the injured or ill worker or survivors to compensate for wage loss, functional impairment or death. Indemnity benefits include temporary total disability, temporary partial disability, permanent partial disability and permanent total disability benefits; supplementary benefits; dependents' benefits; and, in insurance industry accounting, vocational rehabilitation benefits.

Indemnity claim — A claim with paid indemnity benefits. Most indemnity claims involve more than three days of total or partial disability, since this is the threshold for qualifying for temporary total or temporary partial disability benefits, which are paid on most of these claims. Indemnity claims typically include medical costs in addition to indemnity costs.

Injury year — The year in which the injury occurred or the illness began. In injury year data, all claims, costs and other statistics are tied to the year in which the injury occurred. Injury year, used with DLI, is essentially equivalent to accident year, used with insurance data.

Intervenor — A person or entity that is not an original party to a workers' compensation dispute but has an interest in the dispute and has been granted status as a dispute party upon application.⁴⁴ Intervenors are typically medical or vocational rehabilitation providers that have provided services to the claimant, or entities other than the workers' compensation insurer that have paid for such services or have paid income benefits. Intervenors may be private or public entities.

Intervention — 1. An instance in which DLI provides information or assistance to prevent a potential dispute or communicates with the parties (outside of a conference or mediation) to

resolve a dispute and/or determine whether a dispute should be certified. A dispute resolution may occur through intervention either during or after the dispute certification process. 2. An instance in which an intervenor (defined above) becomes involved in a dispute after its initiation.

Mediation award — See mediation.

Mediation — A voluntary, informal proceeding conducted by DLI or OAH to facilitate agreement among the parties in a dispute. If agreement is reached, the DLI specialist or OAH judge formally records its terms in a "mediation award." A mediation occurs when one party requests it and the others agree to participate. This often takes place after attempts at resolution by phone and correspondence have failed.

Medical dispute — A dispute about a medical issue, such as choice of providers, nature and timing of treatments or appropriate payments to providers.

Medical Request — A form by which a party to a medical dispute requests assistance from DLI in resolving the dispute. The request may lead to mediation or other efforts toward informal resolution by DLI or to an administrative conference at DLI or OAH (see administrative conference).

Medical Response — A form by which the insurer responds to a medical request by indicating whether it has paid for the requested medical services, intends to pay for them or does not intend to pay for them and, if not, why not.

Nonconference decision-and-order — A decision issued by DLI, without an administrative conference, in a dispute for which it has administrative conference authority (see "administrative conference"). The decision is binding unless an affected party requests a formal hearing.

Office of Administrative Hearings (OAH) — An executive branch body that conducts hearings in administrative law cases. One section is responsible for workers' compensation

⁴⁴ Minnesota Statutes §176.361.

cases; it conducts administrative conferences, mediations, settlement conferences and hearings.

Order for consolidation — An order issued by an OAH judge consolidating different disputes for the same claimant.

Order on agreement — See administrative conference.

Point in dispute — The reason the insurer and the employee disagree about whether the medical service at issue should be provided or paid for. “Point in dispute” is defined solely for purposes of this report. It is sometimes referred to elsewhere as “insurer defense.”

Primary liability — The overall liability of the insurer for any costs associated with an injury claim once the injury is determined to be compensable. An insurer may deny primary liability (deny that the injury is compensable) if it has reason to believe the injury did not arise out of and in the course of employment or is not covered under Minnesota’s workers’ compensation law.

Reasonableness and necessity — The issue of whether a requested medical service is appropriate for the medical condition for which it is requested.⁴⁵ An insurer denying services on the basis of reasonableness and necessity is claiming the services are not appropriate for the medical condition for which they are requested.

Rehabilitation Request — A form by which a party to a vocational rehabilitation dispute requests assistance from DLI in resolving the dispute. The request may lead to mediation or other efforts toward informal resolution by DLI

⁴⁵ Minnesota Rules part 5221.6040, subp. 10, defines “medically necessary treatment” as health services that are “reasonable and necessary” for diagnosis, cure or significant relief of the condition in question, consistent with the workers’ compensation medical treatment parameters or, if they don’t apply, consistent with current accepted standards of practice within the scope of the provider’s license or certification. The treatment parameters are guidelines contained in Minnesota Rules parts 5221.6050-5221.6600 for the treatment of low back pain, neck pain, thoracic back pain and upper extremity disorders.

or to an administrative conference, usually at DLI but occasionally at OAH (see administrative conference).

Rehabilitation Response — A form by which the insurer responds to a rehabilitation request by indicating whether it has paid for (or provided) the requested rehabilitation services, intends to pay for them or does not intend to pay for them and, if not, why not.

Request for hearing — A form by which a party to an decision-and-order from DLI or OAH requests a *de novo* hearing at OAH. In this report and elsewhere, a request for hearing is sometimes referred to as an appeal, although it is not technically that because the issues are heard anew and new evidence may be presented.

Settlement conference — A proceeding conducted at OAH to achieve a negotiated settlement, where possible, without a formal hearing. If achieved, the settlement typically takes the form of a “stipulation for settlement” (see below).

Stipulation for settlement — A document that states the terms of settlement of a claim among the affected parties. A stipulation usually occurs in the context of a dispute, but not always. The stipulation may be reached independently by the parties or in a settlement conference or associated preparatory activities. A stipulation is approved by an OAH judge. It may be incorporated into a mediation award or an award on stipulation, usually the latter. The stipulation usually includes an agreement by the claimant to release the employer and insurer from future liability for the claim other than for medical treatment.

Vocational rehabilitation (VR) dispute — A dispute about a VR issue, such as whether the employee should be evaluated for VR eligibility, whether he or she is eligible, whether certain VR plan provisions are appropriate or whether the employee is cooperating with the plan.

Workers’ Compensation Court of Appeals (WCCA) — An executive branch body that hears appeals of workers’ compensation

findings-and-orders from OAH. WCCA
decisions may be appealed to the Minnesota
Supreme Court.

Appendix 3

Recent enhancements in the DLI dispute resolution process

Between October 2005 and May 2007, DLI made the following changes in its workers' compensation dispute resolution process, with the purpose of increasing its speed and quality⁰

- Established best practices for maintaining impartiality and confidentiality, dealing with conflicts of interest, gathering and analyzing information, facilitating communication, managing dispute/resolution processes, conducting negotiations, producing agreements, drafting legal documents and other necessary activities.
- Established shorter time-frames for processing dispute certification requests and medical and rehabilitation requests.
- Set goal of achieving informal resolutions in a higher proportion of cases in response to assistance contacts, dispute certification requests, and medical and rehabilitation requests.
- Limited discretionary referrals to OAH with goal of keeping disputes at DLI when they are capable of DLI resolution.
- Began scheduling administrative conferences in a higher proportion of disputes.
- Began scheduling administrative conferences more promptly.
- Began approving continuances (re-sets) of administrative conferences only upon showing of good cause.
- Increased outreach on the availability of mediation.
- Set goal of diverting more disputes into mediation, whether after an assistance contact, a medical or rehabilitation request, or the scheduling of an administrative conference.⁴⁶
- Established standards for the quality of administrative conferences and mediations.
- Established a shorter time-frame for issuing administrative conference decision-and-orders.
- Established standards for the quality of decision-and-orders.
- Improved standards for managing intervenor claims.
- Consolidated the DLI dispute/resolution units in St. Paul and Duluth.
- Added staff of go dgtu'with experience in both law and workers' compensation.

⁴⁶ The parties may agree to mediate either before or after appearing for an administrative conference.

Appendix 4

Sample selection procedure

For both the 2003 and 2007 rehabilitation disputes, disputes were randomly selected from the DLI database. For 2003, disputes that had been filed at any time during the year were selected. For 2007, the selection was limited to disputes filed from May through December of that year. May was the start month for the 2007 data because staffing increases and modifications in DLI business practices had been accomplished by that time.

For both the 2003 and 2007 disputes, a sample was drawn from the DLI database of all disputes with a rehabilitation request or certification request during the respective sample period. Certification requests involving only medical issues were ignored. The result was a random sample of cases with either a rehabilitation request, a certification request involving rehabilitation issues or both, for the sample period.

Appendix 5

Data items coded

Overall claimant and dispute data

The following items were coded for each injured worker with dispute issues:

fate of injury=
 input date for coded data=
 combined claims (yes/no for whether multiple claims are involved in the same dispute)=
 total number of documents in case file, including combined claims (and duplicate filings)=
 number of workers' compensation insurers involved in dispute=cpf
 dispute comments0

Issue data

The following items were coded for each issue in dispute:

benefit at issue (see Appendix 6)=
 amount in dispute (up to three)=
 nature of injury (up to three)=
 part of body (up to three)=
 amount of money requested (initial) (2007 disputes only)=
 amount of money requested (ending)=
 amount of money awarded (2007 disputes only)=
 Roraff and Heaton fees (attorney fees)=
 timing of service (relative to presentation and final resolution of dispute)=cpf
 issue comments0

Event data

The following items were coded for each event related to a coded issue:

event type (see Appendix 7)=
 event initiator (employee, employee attorney, insurer, insurer attorney, etc.)=
 event date (date document received or issued by DLI, or date indicated in DLI log)=
 date document signed (where event is document)=
 proceeding date (for scheduled proceedings) =
 proceeding status (held, re-set (with requesting party), canceled (with reason))=
 proceeding previously scheduled (yes/no for whether proceeding was scheduled before issue was added to it) (2007 only)=
 proceeding continuation date (date to which proceeding was held open if it began on originally scheduled date)=
 employee attorney (yes/no for whether employee attorney is indicated on event)=
 insurer attorney (yes/no for whether insurer attorney is indicated on event)=
 payor intervenor (yes/no for whether payor intervenor is indicated on event)=
 provider intervenor (yes/no for whether provider intervenor is indicated on event) (2007 disputes only)=
 medical issues added (yes/no for whether event adds medical issues to dispute)=

rehabilitation issues added (yes/no for whether event adds vocational rehabilitation issues to dispute)⁴⁷
indemnity issues added (yes/no for whether event adds indemnity issues to dispute)⁴⁷
claimant award (gross amount awarded to claimant, including indemnity, any medical or rehabilitation
not counted elsewhere, and indemnity-related attorney fees) (2007 only)0

⁴⁷ For the 2003 rehabilitation disputes, this item pertained to any rehabilitation issues added to the dispute after the initial rehabilitation request. For the 2007 rehabilitation disputes, it was limited to any rehabilitation issues added to the dispute at OAH or beyond. Such added issues were not coded as issues in their own right; they were only recognized by coding “rehabilitation issues added” as “yes”. For this report, to make the rehabilitation disputes comparable between 2003 and 2007, rehabilitation issues added to 2007 disputes after the initial rehabilitation request but before the dispute reached OAH (which were originally coded as issues in their own right) were converted to “added issues”. That is, the “rehabilitation issues added” item was converted to “yes” and the issues were not recognized as separate issues.

Appendix 6

Benefit-at-issue categories

The following are the benefit-at-issue categories used in coding the 2003 and 2007 rehabilitation request disputes. Each category was used no more than once in the same dispute.

Consultation (whether required)

Vocational rehabilitation eligibility — initial or resumed

Plan content

Plan goal

Vocational testing or evaluation

Retraining (includes exploration of retraining)

Job-placement assistance

On-the-job training

Medical management

Basic skills training

Equipment and supplies for claimant use (specify)

Employee ancillary expenses (e.g., mileage, food, lodging)

Workplace modifications

Functional capacity evaluation

Unspecified plan content

Other plan content (specify)

Retraining not through plan

Plan termination (continuing eligibility) (see “plan termination detail” below)

Change of QRC

Unpaid bills (provider classification — use if multiple services)

QRC services

Placement vendor services

General retraining provider services

Basic skills provider services

Other provider (specify)

Unpaid bills (service classification — use if one or two services easy to distinguish)

Vocational testing or evaluation

Retraining (includes exploration of retraining)

Job-placement assistance

On-the-job training

Medical management

Basic skills training

Workplace modification

Functional capacity evaluation

Equipment and supplies for claimant use (specify)

Employee ancillary expenses (e.g., mileage, food, lodging)

Unspecified services

Other services (specify)

Unspecified vocational rehabilitation services

Intervenor recovery (payor intervenors)

Other rehab service (specify)

Plan termination detail

Where the benefit at issue was plan termination, up to three of the following items were coded to capture the plan service(s), if any, cited by the employee in this situation:

- vocational testing or evaluation=
- retraining (includes exploration of retraining)=
- job-placement assistance=
- on-the-job training=
- medical management=
- basic skills training=
- equipment and supplies for claimant use (specify)=
- workplace modifications or job restrictions=
- other plan content (specify)=
- no employee benefit argued

Appendix 7

Codable events

The following are the codable events used in coding the 2003 and 2007 rehabilitation request disputes. Each event in the list was coded every time it occurred for at least one of the issues in the dispute (and was linked to those issues to which it related). In addition, any other event deemed important for understanding the resolution process for the issues concerned was coded. Where “detail also coded” is indicated (in parentheses), relevant detail for the event was coded separately for each issue to which the event applied.

Document received

- Certification request
- Rehabilitation request
- Claim petition
- Rehabilitation response (detail also coded—"nature of response)
- Answer to claim petition (detail also coded—"nature of answer)
- Agreement to mediate
- Request for hearing
- Notice of appeal to Workers' Compensation Court of Appeals
- Petition for Writ of Certiorari (appeal to Supreme Court)
- Employee independent medical examination report
- Insurer independent medical examination report
- Employee independent vocational consultation report
- Employer independent vocational consultation report
- Amendment of rehabilitation request or claim petition (if it adds issues)
- Amendment of rehabilitation response or of answer to claim petition (detail also coded—"nature of amended response or answer)
- Other amendment or update of issues
- Affidavit of significant financial hardship
- Letter resolving issue
- Vocational rehabilitation document indicating issue resolution
- Letter or other document confirming agreement at proceeding
- Other document received (specify)

Proceeding scheduled

- Mediation — DLI
- Medical or rehabilitation conference — DLI
- Medical or rehabilitation conference — OAH
- Discontinuance conference — OAH
- Stipulation status conference — OAH
- Settlement conference — OAH
- Pre-trial (regular) — OAH
- Pre-trial (hardship) — OAH
- Pre-trial (surgery status) — OAH
- Hearing — OAH
- Other proceeding scheduled (specify)

For all scheduled proceedings, “proceeding status” was also coded, indicating whether the proceeding was held (if this information was available in the record). If the proceeding was held and no resolution document was issued, whether an agreement was reached in the proceeding was also coded (separately for each issue) if the information was available. If the proceeding was canceled, the reason for the cancellation was coded.

Document issued

Dispute certification decision — DLI (detail also coded—"nature of decision)
Letter noting resolution by parties, no further action — DLI
Award on agreement (mediation award) — DLI
Written agreement other than mediation award — DLI
Conference decision-and-order — DLI (detail also coded—"prevailing party)
Nonconference decision-and-order — DLI (detail also coded—"prevailing party)
Order for consolidation — OAH (detail also coded—"type of dispute(s) with which consolidated)
Order for joinder — OAH (detail also coded—"requesting party)
Award on stipulation — OAH (detail also coded—"nature of resolution)
Partial award on stipulation — OAH (detail also coded—"nature of resolution)
Award on agreement — OAH
Conference decision-and-order — OAH (detail also coded—"prevailing party)
Order on discontinuance — OAH
Findings-and-order — OAH (detail also coded—"prevailing party)
Findings-and-order on discontinuance — OAH
Order to strike — OAH (detail also coded—"requesting party)
Order for dismissal — OAH (detail also coded—"reason for dismissal)
Temporary order — OAH
Award on stipulation — WCCA (detail also coded—"nature of resolution)
Decision — WCCA (detail also coded—"prevailing party)
Decision — Supreme Court (detail also coded—"prevailing party)
Notice of intervention status — OAH
Order dismissing insurer from dispute — OAH
Order dismissing intervenor from dispute — OAH
Other document issued (specify)

Other event

Issue resolved by DLI intervention
Issue determined by DLI to need no further action
Issue resolved by parties (no document)
Issue withdrawn
Issue referred from OAH to DLI (detail also coded—"reason for referral)
Issue referred from DLI to OAH
Issue referred to DLI Claims Services and Investigations
Issue referred to DLI Vocational Rehabilitation unit
Agreement referred from DLI to OAH for stipulation
Rehabilitation request rejected by DLI (detail also coded—"reason for rejection)
Employee dies or goes to jail
Employee gets out of jail
Other event (specify)

Appendix 8

Dispute profile tables

The following tables provide more detailed data on the major dispute/resolution paths depicted in Figures 3.1, 3.2, and 9.1. Panel A of each table shows the data behind those figures. Panel B

shows the major resolution events for each major dispute/resolution path and the number of disputes (per 1,000) with each major final resolution event.

Vocational rehabilitation disputes from 2003:
 Major dispute-resolution paths at the Department of Labor and Industry and the Office of Administrative Hearings
 Panel A: Percentages of disputes, number per 1,000 and median days to resolution [1]

Major path [2]	Pctg. of all disputes	Percentage among disputes at prior step in path [3]	Number of disputes per 1,000 [4]				Median days to final resolution [5]	
			Location of final resolution		Disputed?			
			DLI	OAH	Yes	No		Total
Total	100%		755	245	696	304	1,000	56
Certification decision: dispute not certified (other than cases with pending litigation)		24%	236	5	41	199	240	12
Remainder of cases [6]		76%	519	241	654	105	760	77
Neither scheduled for DLI conference nor referred to OAH		29%	196	21	117	99	217	21
Final resolution at DLI		90%	196		97	99	196	19
Final resolution at OAH		10%		21	20	1	21	217
Scheduled for DLI conference		55%	317	102	415	5	419	90
Conference held		51%	144	69	213		213	105
Decision-and-order issued		75%	92	68	160		160	128
Appealed		43%	2	67	69		69	240
Not appealed		57%	90	1	91		91	78
No decision-and-order		25%	52	1	53		53	76
Conference not held		49%	173	33	202	5	206	80
Referred to OAH		14%	1	27	28		28	210
Not referred to OAH		86%	172	6	174	5	178	74
Referred to OAH (and not sched. for DLI conf.)		16%	5	118	122	1	124	159
Total referred to OAH [7]		16%	9	149	156	1	158	180
Scheduled for OAH adm. conference first		45%	2	69	71	1	71	138
Decision-and-order issued		34%		24	24		24	72
Appealed		38%		9	9		9	*
Not appealed		63%		15	15		15	*
No D&O scheduled for hearing [8]		25%	1	18	18		18	289
Findings-and-order issued		28%		5	5		5	*
No findings-and-order		72%	1	13	13		13	*
No D&O not scheduled for hearing		41%	2	28	28	1	29	102
Scheduled for hearing first [8]		35%	2	53	55		55	287
Findings-and-order issued		27%	1	14	15		15	*
No findings-and-order		73%	2	39	40		40	330
Not sched for adm. conf. or hearing		20%	4	27	30	1	31	118
Total scheduled for hearing [8, 9]		46%	3	70	73		73	288
Findings-and-order issued		27%	1	19	20		20	210
No findings-and-order		73%	2	51	54		54	316

* Data not shown because of insufficient sample size.

Vocational rehabilitation disputes from 2003:
Major dispute-resolution paths at the Department of Labor and Industry and the Office of Administrative Hearings
Panel B: Final resolution event [1]

Major path [2]	Number per 1,000 disputes (shown for most-detailed major paths only) [10]										Total	
	Final resolution event											
	Certification decision	Rehabilitation response	Resolved by DLI intervention [11]	DLI decision & order [12]	DLI mediation award [13]	Resolved by parties or withdrawn	Award on stipulation	OAH decision & order	OAH findings & order	OAH order for dismissal		Other
Total	222	73	19	90	38	210	223	17	28	12	67	1,000
Certification decision: dispute not certified (other than cases with pending litigation)	215	9				6	6				4	240
Remainder of cases [6]												
Neither scheduled for DLI conference nor referred to OAH												
Final resolution at DLI	7	58	18	1	1	61	28				21	196
Final resolution at OAH						2	12	2	2	1	1	21
Scheduled for DLI conference												
Conference held												
Decision-and-order issued												
Appealed						11	40		9	4	5	69
Not appealed				88		1	1				1	91
No decision-and-order	1			1	37	2	1				11	53
Conference not held												
Referred to OAH												
Not referred to OAH		3	1		1	3	15	1	5	1	3	28
Referred to OAH (and not sched. for DLI conf.)		1				105	55		1	1	12	178
Total referred to OAH [7]	1	1		1		19	65	14	11	4	9	124
Scheduled for OAH adm. conference first						23	80	15	16	6	13	158
Decision-and-order issued												
Appealed	*	*	*	*	*	*	*	*	*	*	*	9
Not appealed	*	*	*	*	*	*	*	*	*	*	*	15
No D&O, scheduled for hearing [8]												
Findings-and-order issued	*	*	*	*	*	*	*	*	*	*	*	5
No findings-and-order	*	*	*	*	*	*	*	*	*	*	*	13
No D&O, not scheduled for hearing						12	13			1	2	29
Scheduled for hearing first [8]												
Findings-and-order issued	*	*	*	*	*	*	*	*	*	*	*	15
No findings-and-order						4	30			3	3	40
Not sched for adm. conf. or hearing	1	1		1		6	20				3	31
Total scheduled for hearing [8, 9]	1	1				5	41		15	5	7	73
Findings-and-order issued	1	1				1	1		15		3	20
No findings-and-order	1					4	40			5	4	54

* Data not shown because of insufficient sample size.

Vocational rehabilitation disputes from 2007:
 Major dispute-resolution paths at the Department of Labor and Industry and the Office of Administrative Hearings
 Panel A: Percentages of disputes, number per 1,000 and median days to resolution [1]

Major path [2]	Pctg. of all disputes	Percentage among disputes at prior step in path [3]	Number of disputes per 1,000 [4]				Median days to final resolution [5]	
			Location of final resolution		Disputed?			
			DLI	OAH	Yes	No		Total
Total	100%		801	199	654	346	1,000	42
Certification decision: dispute not certified (other than cases with pending litigation)		34%	336	1	52	285	337	9
Remainder of cases [6]		66%	466	197	602	61	663	71
Neither scheduled for DLI conference nor referred to OAH		17%	102	10	70	42	112	18
Final resolution at DLI		91%	102		60	42	102	17
Final resolution at OAH		9%		10	10		10	*
Scheduled for DLI conference		73%	362	121	464	19	483	74
Conference held		45%	133	82	215	1	216	96
Decision-and-order issued		81%	95	80	175		175	138
Appealed		49%	4	80	85		85	224
Not appealed		51%	90		90		90	65
No decision-and-order		19%	39	2	40	1	41	64
Conference not held		55%	228	39	249	18	267	66
Referred to OAH		10%	2	25	28		28	175
Not referred to OAH		90%	226	13	222	18	239	63
Referred to OAH (and not sched. for DLI conf.)		10%	2	66	69		69	134
Total referred to OAH [7]		10%	6	93	98		98	147
Scheduled for OAH adm. conference first		35%	34		34		34	152
Decision-and-order issued		38%	13		13		13	*
Appealed		57%	8		8		8	*
Not appealed		43%	6		6		6	*
No D&O, scheduled for hearing [8]		29%	10		10		10	*
Findings-and-order issued		10%	1		1		1	*
No findings-and-order		90%	9		9		9	*
No D&O, not scheduled for hearing		32%	11		11		11	*
Scheduled for hearing first [8]		32%	31		31		31	248
Findings-and-order issued		26%	8		8		8	*
No findings-and-order		74%	23		23		23	*
Not sched for adm. conf. or hearing		34%	6	28	33		33	112
Total scheduled for hearing [8, 9]		42%	41		41		41	217
Findings-and-order issued		22%	9		9		9	*
No findings-and-order		78%	32		32		32	217

* Data not shown because of insufficient sample size.

Vocational rehabilitation disputes from 2007:
Major dispute-resolution paths at the Department of Labor and Industry and the Office of Administrative Hearings
Panel B: Final resolution event [1]

Major path [2]	Number per 1,000 disputes (shown for most-detailed major paths only) [10]										Total	
	Certification decision	Rehabilitation response	Resolved by DLI intervention [1.1]	DLI decision & order [12]	DLI mediation award [13]	Resolved by parties or withdrawn [14]	Award on stipulation	OAH decision & order	OAH findings & order	OAH dismissal		Other
Total	305	40	6	91	27	231	189	6	23	7	77	1,000
Certification decision: dispute not certified (other than cases with pending litigation)	295	13		1		12	11			1	3	337
Remainder of cases [6]												
Neither scheduled for DLI conference nor referred to OAH												
Final resolution at DLI	10	19	1		1	42	7				22	102
Final resolution at OAH	*	*	*	*	*	*	*	*	*	*	*	10
Scheduled for DLI conference												
Conference held												
Decision-and-order issued												
Appealed				90	1	7	50		14	2	11	85
Not appealed					23	8	3				7	90
No decision-and-order												
Conference not held												
Referred to OAH						4	14		1	2	4	28
Not referred to OAH			4		1	150	66		1		9	239
Referred to OAH (and not sched. for DLI conf.)						7	37		4	1	14	69
Total referred to AH [7] O	1					11	52		6	3	19	98
Scheduled for OAH adm. conference first												
Decision-and-order issued												
Appealed	*	*	*	*	*	*	*	*	*	*	*	8
Not appealed	*	*	*	*	*	*	*	*	*	*	*	6
No D&O, scheduled for hearing [8]												
Findings-and-order issued	*	*	*	*	*	*	*	*	*	*	*	1
No findings-and-order	*	*	*	*	*	*	*	*	*	*	*	9
No D&O, not scheduled for hearing	*	*	*	*	*	*	*	*	*	*	*	11
Scheduled for hearing first [8]												
Findings-and-order issued	*	*	*	*	*	*	*	*	*	*	*	8
No findings-and-order	*	*	*	*	*	*	*	*	*	*	*	23
Not sched for adm. conf. or hearing	1					3	18			1	10	33
Total scheduled for hearing [8, 9]						2	27		7	2	3	41
Findings-and-order issued	*	*	*	*	*	*	*	*	*	*	*	9
No findings-and-order						2	27			2	1	32

* Data not shown because of insufficient sample size.

**Vocational rehabilitation disputes from 2003 and 2007:
Major dispute-resolution paths at the Department of Labor and Industry
and the Office of Administrative Hearings**

Notes

1. Some disputes have multiple issues. In these cases, a separate path and final resolution event are counted for each issue, and each issue is weighted inversely to the number of issues in the dispute. For example, if there are three issues, each issue is given one-third weight. Numbers and percentages do not always add exactly to totals or subtotals because of rounding (see pp. 2, 3).
2. The "major path" categories are simply characteristics of the disputes analyzed. They do not necessarily imply anything about actions taken or not taken by DLI or OAH. For example, "not scheduled for DLI conference or referred to OAH" does not necessarily mean DLI decided not to take either of the actions concerned. It simply means neither action occurred, which may have been true, for example, because the parties resolved the dispute beforehand.
3. This shows, among the disputes at the prior step in the path, the percentage that proceed to the current step. For example, among the disputes scheduled for DLI conference for 2003, the conference was held 51 percent of the time and not held 49 percent of the time.
4. This number reflects the percentages in the columns to the left.
5. Measured from the first event in the dispute, typically a certification request or rehabilitation request.
6. Includes disputes certified, disputes not certified because of pending litigation and disputes with no recorded certification decision in DLI data.
7. Includes (in addition to certified disputes not scheduled for DLI conference) disputes with a certification decision of "not certified" and disputes with a scheduled DLI conference that were referred to OAH. In most of the cases with a scheduled conference, the conference was not held (see "referred to OAH" under "conference not held").
8. OAH hearing includes pre-trial.
9. Includes disputes first scheduled for hearing and those scheduled for hearing after being scheduled for OAH administrative conference. Excludes disputes scheduled for hearing because of an appeal (via a request for hearing) from an administrative conference decision-and-order.
10. These figures are shown only for the most detailed paths to facilitate focus on ultimate outcomes. Numbers less than 0.5 cases per 1,000 are not shown.
11. In these cases DLI resolves the dispute after it is certified but before conference.
12. Includes conference and nonconference decision-and-order.
13. Also includes order on agreement plus a relatively small number of cases with a written agreement other than a mediation award or order on agreement.