Office of Judges
Offices of the WV Insurance Commissioner

A Guide to Your Workers' Compensation Claim Appeal

west virginia
OFFICES OF THE
INSURANCE
COMMISSIONER

Governor Joe Manchin III
State of West Virginia

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WV Insurance Commissioner

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1. THE WV WORKERS' COMPENSATION APPEALS SYSTEM

Workers' compensation claims are administered and paid by one of the following:

- a third party administrator of the state's funds (for injuries prior to 7/1/05); or
- the employer's private insurance carrier; or
- employers who provide their own coverage **(self-insured employers).**

Most claim adjustor decisions can be objected to by the injured worker (and, in some cases, by the employer). The objection – called a "protest" – is filed with the Workers' Compensation Office of Judges. The Office of Judges is independent of the private carrier, self-insured employer, or the third party administrator of the state's funds.

The Offices of the Insurance Commissioner is a state agency which regulates all workers' compensation insurance carriers and matters. The Workers' Compensation Office of Judges and the Workers' Compensation Board of Review are both part of the Offices of the Insurance Commissioner.

2. DISPUTES BETWEEN CARRIERS or ADMINISTRATORS

Sometimes a dispute may exist between carriers or third party administrators about which has responsibility for the claim. There are a couple of things that you should know about those circumstances.

First, all employers working in West Virginia are required to have workers' compensation insurance coverage. If your employer fails to provide workers' compensation coverage, then you may receive notice that your claim must be filed against the State's Uninsured Fund. This is done by submitting your claim application form to:

The Offices of the Insurance Commissioner
Claims Services
P.O. Box 50541
Charleston WV 25305

Second, if a dispute exists between carriers or third party administrators about which has responsibility for the claim, the Offices of the Insurance Commissioner will provide a process to resolve that conflict without delaying administration of your claim.

3. WHY YOU RECEIVED THIS BROCHURE

Your case is now before the Office of Judges because either you or the opposing party (the employer or the claimant) has objected to a claim management decision of the claim adjustor.

4. WHAT THE OFFICE OF JUDGES WILL DO

The Office of Judges will set a time limit for filing evidence and arguments, consider any evidence or arguments filed with the Office of Judges, and mail to you a written decision explaining our ruling in the claim.

5. SOME DEFINITIONS OF WORDS THAT WE OFTEN USE

- You will be called the **protesting party** in many of our notices if you protested the claim adjustor's decision.
- You will be called the **responding party** if you did not protest the claim adjustor's decision.
- The injured worker is often called the **claimant.**
- The employer is usually referred to as the **employer.**
- The private carrier, or the administrator for the state's fund, or for the self-insured employer, is often referred to as the **claim administrator.**

6. HERE'S WHAT YOU MUST DO NEXT IF YOU PROTEST

The protesting party must give to the Office of Judges either evidence or some explanation of why the claim adjustor's order was wrong. Usually, evidence already submitted to the claim adjustor, with nothing else submitted, will not be sufficient to convince the Office of Judges to overrule the claim adjustor.

Because the Office of Judges is independent of the claim adjustor, we do NOT have copies of documents submitted to the claim administrator. Therefore, you will need to submit new copies to us.

YOU WILL LOSE your protest if you do not submit new evidence or sufficient explanation for the protest!

Evidence, or explanation for why you protested, must be filed with us in writing and a copy must be mailed to all other parties (the employer or claimant, or their attorney if represented).

In claims involving the State's Fund, the Offices of the Insurance Commissioner is formally involved and will appear as a party. In those cases, the Insurance Commissioner must also receive copies of any filings. Copies to the Insurance Commissioner are normally filed with the third party administrator, whose name and address you should have. If an attorney has made an appearance on behalf of the State Fund, then you should send copies to the attorney.

7. DEADLINES FOR FILING EVIDENCE

The Office of Judges will mail to you an **Automatic Time Frame Order.** The Time Frame Order tells you a date by which you have to submit evidence and argument to the Office of Judges.

If you cannot, for a good reason, get us your evidence before the Time Frame deadline, you can ask us in writing to extend the Time Frame. If you do:

- You must explain in your request why you need more time.
- You must also send us the request at least ten days before the Time Frame deadline.

8. EXPEDITED (FAST) DECISION PROCESS FOR CLAIMANTS

For certain protest issue types the Office of Judges offers a faster decision process as an option to the claimant. For those issues, the Automatic Time Frame will notify the claimant of the available option.

Once a claimant elects the faster process, we will not usually allow either the employer or the claimant to change the option.

Choosing the faster decision process may seem like the best choice. However, there are some drawbacks to the expedited process.

First, the time limits for both claimant and employer are very short and are difficult to extend. Remember, if you do not submit new evidence you will lose automatically so limiting your time to obtain evidence can also limit your chances of winning.

Second, a hearing will be conducted that limits both sides to thirty (30) minutes each. That is a very short amount of time to get everything said and presented. If you are a claimant you may be limiting your ability to present your case.

Finally, if you are represented by a lawyer, **DO NOT ELECT THIS OPTION** without first consulting with your attorney.

9. FORMAL HEARINGS

Unlike most other legal systems, you do not automatically get a hearing for your protest (except for those expedited processes described immediately above).

Instead of, or in addition to, filing your evidence in writing with us, you may also ask us to schedule a hearing so that you or other witnesses may testify.

Often both sides agree to take testimony under oath at an agreed time and place (a deposition) instead of at a hearing.

You must request a hearing at least 30 days before your Time Frame ends.

10. WHO REPRESENTS YOU BEFORE US

A claimant may represent himself or herself, or a claimant may be represented by a lawyer.

- Family members, friends, husband or wife, pastors, and doctors cannot represent claimants.
- Any employer that is a corporation must be represented by an attorney. An officer of a corporation cannot represent the employer.

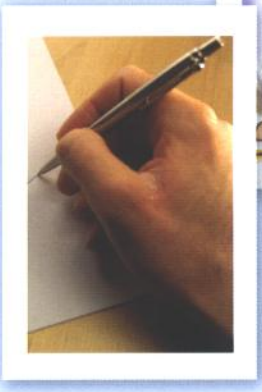
In many cases the employer will be supplied an attorney by their insurance carrier. Claims defense is part of the insurance premium that the employer pays. However, there is no legal provision for an attorney to be appointed for the claimant.

11. SOME THINGS YOU MAY HAVE TO DO

Employers and claim administrators have the legal right to require a claimant to do certain things and give certain information. Among the things a claimant may have to do are:

- Appear at a hearing, if subpoenaed, to answer questions about:
  - details of the injury;
  - the claimant's health and medical history;
  - other matters related to the protest.
- Undergo an examination by a doctor or other expert selected by the employer.
- Sign a medical information release.
- Answer written questions (interrogatories).

Failure of any party to cooperate may result in the protest being decided against the non-cooperating party.



12. THE OFFICE OF JUDGES' DECISION

After the Time Frame has ended, we will send you an **Order Submitting Protest.** This notice will also include a list of all evidence that has been submitted to us by any party. ***It is very important that you review that list.*** If anything is missing from this list, you should immediately contact us at the phone number included on the notice.

We will then mail to you our decision on the protest. Our decision will explain our ruling and the basis for our ruling.

We try to get all our protests decided within 90 days of the Order Submitting Protest. The expedited claims are decided within 30 days of the hearing.

13. APPEAL RIGHTS

Whoever loses in our final decision has the legal right to appeal the decision to the Workers' Compensation Board of Review.

- **If you want to appeal, you must send a notice of appeal to:**

  Board of Review
  P.O. Box 2628
  Charleston, WV 25329

- Notices of Appeal forms are available at our web site: **www.wvinsurance.gov/ooj/**
- Generally you may not submit new evidence to the Board of Review, so be sure to get to us everything you want considered within the Time Frame.

14. DO YOU STILL HAVE QUESTIONS?

You can contact our help line with your questions at:

- **304/558-0852 or 304/558-1686.**

- The persons who answer the help line can only explain general things about your claim. They cannot give you help on how to win your protest or give you advice on what evidence you should file.

- The Office of Judges website, **www.wvinsurance.gov/ooj/**, has helpful information including sections with forms, rules, descriptions of our processes and frequently asked questions and answers.

This brochure is merely a simple guide to our process. We have procedural rules that control the actual process. This brochure does not change nor overrule those procedural rules.

This brochure is not intended to replace professional legal advice. You may wish to consult with an attorney for advice or representation in any matter pending before the Office of Judges.

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