

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Workers' Compensation

7 CCR 1101-3

WORKERS' COMPENSATION RULES OF PROCEDURE

Rule 9 Division of Workers' Compensation Dispute Resolution

9-1 DISCOVERY

One of the goals of the workers' compensation system is to minimize litigation, but disputes do arise and a system for resolution is necessary. One of the underlying premises of an administrative adjudication system is that parties should be able to resolve disputes in, as much as possible, a quick, inexpensive and simple manner. Therefore, when discovery is authorized and appropriate, the following apply:

(A) Interrogatories

- (1) One set of written interrogatories and requests for production of documents may be served upon each adverse party. The number of interrogatories, including the requests for production of documents, to any one party shall not exceed 20, each of which shall consist of a single question or request.
- (2) The responses to the interrogatories and production of documents shall be provided to all opposing parties within 20 days of mailing of the interrogatories and requests.
- (3) The interrogatories and the requests for production of documents may not be submitted later than 40 days prior to hearing, except for expedited hearings.

(B) Depositions

- (1) Depositions of a party may be taken upon written motion and order. Permission to take a deposition of a party will be granted only when there is a specific showing:
 - (a) That a party who has been served with written interrogatories has failed to respond to the interrogatories; or
 - (b) That the responses to the written set of interrogatories are insufficient; or
 - (c) All parties agree to the taking of a deposition.
- (2) Depositions of other witnesses may be taken upon written motion, order, and written notice to all parties.

- (C) Each party is under a continuing duty to timely supplement or amend responses to discovery up to the date of the hearing.

- (D) Discovery, other than evidentiary depositions, shall be completed no later than 20 days prior to the hearing date, except for expedited hearings.
- (E) If any party fails to comply with the provisions of this rule and any action governed by it, an administrative law judge may impose sanctions upon such party pursuant to statute and rule. However, attorney fees may be imposed only for violation of a discovery order.
- (F) All asserted privileges shall be accompanied by a privilege log with sufficient description to allow the other parties to assess the applicability of the privilege claims.
- (G) Once an order to compel has been issued and properly served upon the parties, failure to comply with the order to compel shall be presumed willful.
- (H) Upon agreement of the parties or for good cause shown, an administrative law judge may allow additional discovery, may limit discovery or may modify the time limits set forth in this rule. Setting of a formal hearing on an expedited schedule shall constitute good cause. Good cause shall include but not be limited to an agreement of the parties.

9-2 MEDIATION, SETTLEMENT CONFERENCES, PREHEARING CONFERENCES AND ARBITRATION

- (A) Mediation. Parties to a dispute may consent to submit any dispute to mediation. A request for mediation may be presented to either the Division of Workers' Compensation or the Office of Administrative Courts. If all parties agree a conference will be scheduled.
- (B) Settlement Conferences. Parties to a dispute may request a settlement conference subject to the limitations set forth in §8-43-206, C.R.S.
- (C) Prehearing Conferences. The Director, administrative law judges in the Office of Administrative Courts, or any party to a claim may request a prehearing conference before a prehearing administrative law judge. Prehearing administrative law judges may order any party to a claim to participate in a prehearing conference.
 - (1) The issues raised for consideration may be raised by motion, either written or oral. At least five days prior to the prehearing conference, the parties shall notify each other of the issues they intend to present to the prehearing administrative law judge. Additional time to respond to an issue raised at the prehearing conference may be requested by any party. It shall be within the discretion of the prehearing administrative law judge to determine if such additional time is necessary to protect the rights of the parties.
 - (2) Once a prehearing conference has been requested by a party to a claim, it shall be set. If any party objects to the prehearing conference as set, the following procedures shall apply:
 - (a) A party objecting to the setting of a prehearing conference or refusing to participate in the conference shall fax or hand-deliver any objections to the prehearing unit within 2 days after the date the prehearing conference is set. If the prehearing administrative law judge orders that

the prehearing conference proceed as set, the requesting party shall send written notice of the time and place of the prehearing conference to all other parties.

- (3) At the time of the prehearing conference, each party may submit a prehearing statement setting forth a brief summary of the issues in dispute, the names of all witnesses each party intends to call, the estimated time each party will require to present testimony and evidence, and the status of settlement discussions. Each party may also submit any discovery or pre-trial motion.
 - (4) Any party to a claim may request, either in advance or on the date of the prehearing conference, that the prehearing conference be recorded electronically or by court reporter. If a request for electronic recording is made, a party shall have until the date of the merit hearing, if such hearing date is pending at the time of the prehearing conference, or 100 days following the prehearing conference, whichever is shorter, within which to request that the prehearing conference unit prepare a transcript. The cost of preparing such transcripts shall be paid by the requesting party directly to the vendor providing the service.
 - (5) The prehearing administrative law judge may require a party to provide available vocational, medical, hospital and employment records, or reports to the other parties.
- (D) Arbitration. Parties to a dispute may consent to submit any dispute to binding arbitration by written agreement. Binding arbitration shall be conducted by an administrative law judge of the parties' mutual choice from the Office of Administrative Courts, or pursuant to arbitration procedures as provided by the Colorado Rules of Civil Procedure. Unless otherwise provided by the administrative law judge or upon mutual consent of the parties and/or upon the order of the arbitrator(s), proceedings in any such arbitration shall be conducted in a manner consistent with the Colorado Rules of Civil Procedure.

9-3 PLACE OF FILING

- (A) All matters for the Director's determination shall be filed with the Division of Workers' Compensation, Customer Service Unit. Matters for the Director's determination include:
- (1) Requests for penalties for consideration by the Director;
 - (2) Requests for attorney fee determinations made by the Director;
 - (3) Matters regarding claims handling or administration, for example, benefit distribution, petitions to modify, terminate or suspend temporary benefits, lump sum requests;
 - (4) Requests for payment of costs of a transcript due to indigence pursuant to §8-43-213 (3), C.R.S.;
 - (5) Closure orders;

- (6) Matters involving uninsured employers;
 - (7) Utilization reviews, unless the Director has referred the matter on appeal;
 - (8) Applications for admission to the major medical or medical disaster funds;
 - (9) Settlement documents in which all parties are represented by counsel, unless settlement was finalized before an administrative law judge, in which case an administrative law judge may approve the settlement documents.
- (B) To avoid duplication, and unnecessary expense to all parties and the Division of Workers' Compensation and the Office of Administrative Courts, copies of matters for the determination of the Director shall not be filed with the Office of Administrative Courts. However, copies of these documents may be filed if required as attachments, evidence submissions, and other instances to complete the record at the Office of Administrative Courts.
- (C) All other motions and responses shall be filed, unless otherwise specifically ordered, with the Office of Administrative Courts office closest to the claimant's residence.
- (D) To avoid duplication, and unnecessary expense to all parties and the Division of Workers' Compensation and the Office of Administrative Courts, copies of these motions and responses shall not be filed with the Division of Workers' Compensation. However, copies of these documents may be filed if required as attachments, evidence submissions, and other instances to complete the record for determination of a matter before the Director.

9-4 CLAIM FILES

The file at the Division of Workers' Compensation will be retained at the Division and is not subject to subpoena for administrative hearings. Certified copies of any documents in the Division file can be tendered by a party to the Office of Administrative Courts and should be considered self-authenticating. Parties may obtain certified copies of documents in the Division file by contacting the Division of Workers' Compensation, Customer Service Section. Absent extraordinary circumstances, no employee of the Division of Workers' Compensation should be expected or required to testify at a hearing.

9-5 TRUST DEPOSITS AND SURETY BONDS

- (A) The Subsequent Injury Fund Unit of the Division of Workers' Compensation is designated as trustee for purposes of §8-43-408(2), C.R.S. When the provisions of §8-43-408, C.R.S. apply, an administrative law judge or the Director shall compute, using the best information available, the present value of the total indemnity and medical benefits estimated to be due on the claim. The employer shall provide the funds so ordered by check within ten days of the order. The trustee shall pay an amount to bring the claim current, and continue to pay the claimant benefits on a regular basis in an interval and amount ordered by an administrative law judge or the Director. The trustee shall also make payments for medical services consistent with the order of an administrative law judge or the Director. Any interest earned shall accrue to the benefit of the trust. The

amount ordered to be placed in trust can be amended from time to time, and any excess amount shall be returned to the employer. The trustee shall make such disbursements as appropriate so long as funds are available, and shall not be subject to penalties or any other actions based on administration of the trust.

- (B) In the alternative to the establishment of a trust, the employer shall provide a bond as set forth in §8-43-408(2), C.R.S. In the event that the employer fails to bring the claimant current with medical and indemnity benefits owed, or fails to continue to pay the claimant such benefits on a regular basis in an interval and amount ordered by an administrative law judge or the director, the surety will be obliged to do so. The surety's liability to fulfill such obligation shall extend to the amount fixed, which can be amended by order, and exist in the form prescribed by the Director.
- (C) Any disputes about the proper disbursement of funds in the trust shall be made to the Director or an administrative law judge for determination.

9-6 CONSOLIDATION

Two or more claims or applications may be consolidated for hearing or other purposes upon the order of a judge or the Director for good cause shown.

9-7 PENALTY PROCEDURES

A party requesting that the Director assess penalties shall file a motion with the Division of Workers' Compensation directed to the attention of the Director. If no response to the motion is filed the Director will issue an order to show cause. If necessary the Director may hold a hearing or may refer the matter for a hearing.

9-8 ATTORNEY REPRESENTATION

- (A) To represent a party in a claim at the Division of Workers' Compensation, an attorney shall file an entry of appearance with the Division. Any application for hearing, response, or other pleading filed at the Office of Administrative Courts by an attorney on behalf of a party shall be considered to be an entry of appearance at the Office of Administrative Courts.
- (B) When a claim has closed, an attorney may withdraw by filing a substitution of counsel signed by both attorneys and sent to all parties, or by filing a notice of withdrawal sent to the client and all parties.
- (C) When a claim is not closed, an attorney may withdraw by filing a substitution of counsel signed by both attorneys and sent to all parties. Otherwise, an attorney must request an order allowing withdrawal from the claim by filing a motion with the Office of Administrative Courts and including the required notice. The motion must be sent to the client and all parties. The notice must contain all the following:
 - (1) A statement that the attorney wishes to withdraw;

- (2) A statement that the client is responsible for keeping the Division of Workers' Compensation and the other parties informed of the client's current address and telephone number;
- (3) A statement that the claim may be closed if it is not pursued;
- (4) The date scheduled for any future hearings, the dates by which any pleadings or briefs are to be filed; and notice that these dates will not be affected by the withdrawal of counsel;
- (5) A statement that the client may object to the withdrawal by filing a written objection within 10 days of the date on the certificate of mailing of the notice, and mailing a copy of the objection to the attorney.