

THE STATE OF COLORADO

in a joint presentation with the Divisions of

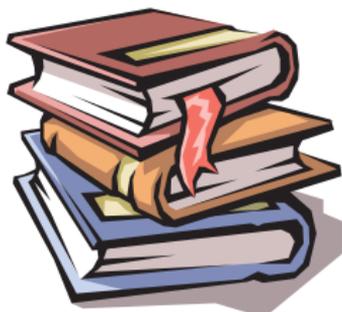
WORKERS' COMPENSATION

and

**OFFICE OF ADMINISTRATIVE
COURTS**

present

*So, You are Thinking of
Representing Yourself in
Your Workers'
Compensation Case...*



This pamphlet is issued for informational purposes only and does not bind the Administrative Law Judge to any specific practices described in it.

Your case will be heard and decided by an administrative law judge who works for the Office of Administrative Courts. The Office of Administrative Courts is an independent agency within the executive branch of government. The Office of Administrative Courts hears cases for many agencies of the State of Colorado, including the Division of Workers' Compensation.

The information provided in this pamphlet contains general information about workers' compensation hearings. The Office of Administrative Courts provides this information to help you in the workers' compensation hearing process. This is not legal advice. Not all cases are the same and your case may be different. It is **not** proper to talk to the judge or Office of Administrative Courts staff about the facts of your case or to ask them for legal advice.

HOW DO I GET A HEARING?

If you have disputed issues in your workers' compensation case that need to be decided by a judge, you may request a hearing from the Office of Administrative Courts. You can call the Office of Administrative Courts at (303) 866-2000 or (303) 866-5881, or you can also call Customer Service at the Division of Workers' Compensation, (303) 318-8700, to request the *Application for Hearing/Notice to Set* form. You may also get a copy of this form by clicking on the "forms" link then "Workers' Compensation" on the Office of Administrative Courts web site. See the last page of this pamphlet for the website addresses. You need to fill in the information on the front of the form regarding parties and issues. You also should attach a copy of your Workers' Claim for Compensation. If you are the employer in the case, you need to file a *Response to Application for Hearing* and attach the last *Admission*, if any. The Response to Application form is also available under "forms" on the web site.

If you wish to have the Office of Administrative Courts set your case for hearing for you, fill out the front of the form, mark the box on the back side of the form, and send it to the Office of Administrative Courts office closest to your residence. You should also send a copy of the form to the attorney for the insurance company or employer, or directly to them if they do not have an attorney. A clerk will send a *Notice to Set* to the necessary parties and arrange for a hearing date for you. If you wish to set the case yourself, follow the directions on the application form.

Once a mutually agreeable hearing date has been set, the Office of Administrative Courts will send a formal Notice of Hearing. Hearings are held in Denver, Alamosa, Boulder, Fort Collins, Greeley, Colorado Springs, Pueblo, Grand Junction, Durango, and Glenwood Springs.



IS THERE A WAY TO SETTLE THIS WITHOUT A HEARING?

Cases often settle without going to hearing. The parties may discuss settlement, and settle a case, at any time. You can contact the lawyer for the other side to see if you can work something out. You may request a settlement conference at the Division of Workers' Compensation by calling (303) 866-5508. You may also request mediation by calling Customer Service at the Division of Workers' Compensation, (303) 318-8700.

Settlement discussions or mediation do not put your case on hold. All deadlines in the case remain the same unless the judge changes them.

WHAT SHOULD I KNOW ABOUT THE LAW PROCEDURAL RULES?

You should obtain a copy of the Workers' Compensation Act (Articles 40 to 47 of Title 8, Colorado Revised Statutes) and the Division of Workers' Compensation Rules of Procedure (7CCR1101-3). The Act is available from the Division of Workers' Compensation for a small fee. You should also refer to the Workers' Compensation Rules of Procedure: click on the "Hearings & Docketing" button then go to "Procedures" on the Office of Administrative Courts website to see these rules



WHAT HAPPENS AT THE HEARING?

In workers' compensation cases the issues vary from case to case. In most cases, the employee must introduce evidence to show that he or she is entitled to workers' compensation benefits. Generally, you must show that you were hurt as a result of performing the duties of your employment, and that under the law you are entitled to workers' compensation benefits from the insurance company or your employer. You must present your evidence first at the hearing, and the insurance company and employer will then present their evidence.

If the insurance company or employer already is paying benefits to you and they wish to stop or reduce the benefits, the employer or insurance company will set the case for hearing. If that happens, the employer or insurance company must show proper grounds for stopping or reducing your benefits and they present their evidence first. You will then have the opportunity to present evidence to show that your benefits should not be reduced.

WHAT KIND OF EVIDENCE WILL I NEED FOR THE HEARING

You may testify at the hearing, if you have been listed as a witness on the application for hearing or response. You may also bring witnesses to the hearing who know about the facts and issues involved in the case. If there are documents, such as letters, contracts, business records, or medical records that help prove your case, bring the original and at least three copies to the hearing. You may also bring photographs or other items that relate to your case that you want the judge to consider. Documents, photographs, records, and reports can be considered by the judge if permitted by the Workers' Compensation Act or by the Colorado Rules of Evidence.



You must provide reports, such as medical and hospital reports, records of your employer, vocational reports and doctors' reports to the other side in the case (to their attorney if they have one) at least 20 days before the hearing. If you do not do this the judge may not consider those records or reports that were not provided to the other side. Be sure to read the procedural rules for workers' compensation cases and follow all pre-hearing orders issued by a judge.

HOW DO I GET RECORDS?

First, try to get the documents just by asking the other side. You also have the right to subpoena from individuals, businesses, and government agencies relevant records or other things to be produced at the hearing. Contact the Office of Administrative Courts well before the hearing for the subpoena forms. You must arrange to pay required fees, including mileage, and have someone else serve the subpoena at least 48 hours before the hearing, not counting weekends and holidays. You can also obtain records through formal discovery.

WHAT IS “DISCOVERY”?

Discovery is a formal way of finding out information about the other side’s case before the hearing. Discovery includes depositions and interrogatories. Depositions are sworn statements of witnesses taken before the hearing before a court reporter, without the judge being present. Interrogatories are written questions the other side must answer in writing under oath.

If you cannot find out the information you need by talking to the other side, you may send written interrogatories to the other side. You must send them only to the lawyer for the other side if a lawyer is representing them in the case. If they fail to answer within 20 days, you may file a motion with the judge requiring the other side to answer the questions or

you may request a deposition of a witness to find out the information. If you want to take the deposition of a witness you will be responsible for any witness fees, court reporter fees and other expenses of the deposition. All discovery must be finished at least 20 days before the hearing.

Upon request from the insurance company or employer you must complete and return any requests for release of medical, financial or other information as required by law. Unless a judge orders, you may, but are not required to, answer any written questions from the insurance company or employer. However, if a judge orders you to answer written questions or submit to a deposition, you must do so. Failure to do so after an order from a judge may result in the cancellation of the hearing or even dismissal of the claim. Be sure to read the documents you receive to verify the time that you have to respond to any discovery requests.



HOW DO I GET A WITNESS TO COME TO THE HEARING?

A witness can come voluntarily to the hearing; however, a subpoena protects your right to have that person testify if their testimony is relevant to your case. Contact the Office of Administrative Courts well before the hearing to get a subpoena to require the witness to appear. You must arrange to pay

required fees including mileage to the hearing, and have someone else serve the subpoenas at least 48 hours before the hearing, not counting weekends and holidays. If you subpoena doctors or other experts, you may have to pay for their time to testify at the hearing as well as their time to travel to the hearing.



IS IT OK TO BRING LETTERS INSTEAD OF WITNESSES?

A written statement by a witness who is not present at the hearing is usually not allowed. However, medical reports and employer records provided at least 20 days before the hearing to the opposing lawyer, or the insurance company or employer if they have no lawyer, may be considered by the judge if they are presented to the judge at the hearing.

Remember: This hearing is your chance to tell the judge why you should receive workers' compensation benefits. It is important to have your witnesses present at the hearing to testify and to provide the medical records and employer records that support your claim to the judge at the hearing.

IF I FORGET SOMETHING, CAN I SEND IT TO THE JUDGE LATER?

Your chance to present evidence is at the hearing. Only in rare cases will the judge allow you to send evidence later.

WHAT IF I NEED AN INTERPRETER?

If you or a witness needs a language interpreter, you should arrange to bring your own certified interpreter. **Normally, it is not okay to bring a friend or relative to interpret for you.** You may contact the lawyer for the other side to see if you can arrange for an interpreter or share an interpreter.

If you need a sign-language interpreter, contact the Office of Administrative Courts Clerk's Office.



WILL THE HEARING LOCATION BE ACCESSIBLE TO PEOPLE WITH DISABILITIES?

Hearing locations are accessible to persons with disabilities; however, check in advance with the Office of Administrative Courts to assure accessibility. In addition, if you know persons who plan to attend have special needs that require reasonable accommodation, contact the Office of Administrative Courts Clerk's Office as soon as possible so arrangements can be made.

WHAT IF I CAN'T BE THERE ON THE DAY SET FOR THE HEARING?

If you cannot attend the hearing on the date and time shown, you must contact the other side and the Office of Administrative Courts as soon as you know of the problem. Contact the other side to see if they will agree to change the hearing date. If they agree, you can call the Office of Administrative Courts and get a new hearing date.

If the other side does not agree, contact the Office of Administrative Courts immediately. You can ask the judge for an extension of time to begin the hearing, (that is, for a new hearing date).

You must show good cause to change a hearing date. The sooner you make your request, the more likely it will be granted. Good cause is defined in the Workers' Compensation Rules of Procedure. The rules can be accessed on the Division of Workers' Compensation website. See the last page of this pamphlet for website addresses.

ARE THE HEARINGS AND RECORDS CONFIDENTIAL?

Workers' compensation hearings are open to the public, but workers' compensation files are not open to the public. If a hearing or record that normally would be open to the public contains sensitive or personal information (such as medical records) a party can ask the judge to close the hearing to the public.

WHAT WILL MY HEARING BE LIKE?

Your hearing will be very similar to a trial in court, with witnesses, and exhibits presented by all parties. An attorney may represent the other side to your case. You may be represented by an attorney or you may appear and represent yourself. If you represent yourself, you must be familiar with the Workers'

Compensation Act, the Workers' Compensation Rules of Procedure, and Colorado Rules of Evidence. The judge must remain neutral, and cannot represent you.

It is up to you to decide whether you will hire an attorney. The Office of Administrative Courts cannot appoint one for you. You may choose to represent yourself, but an attorney may be better able to present your case.

The Colorado Bar Association keeps a list of attorneys who you may be able to consult for no charge. Some attorneys will charge a fee only if you recover money in your case.

You should arrive at the place where your hearing will be held before your scheduled hearing so that you and any witnesses may be seated in the hearing room.

The judge may tape-record the hearing, or there may be a court reporter present to take down everything that is said at the hearing. This is important because the tape-recorded record, or the record taken by the court reporter, may be necessary if anyone wants to appeal the judge's decision.

When the hearing begins, the judge may ask each side what the issues are and what each side intends to prove. Each side then can introduce relevant evidence to prove its case. Evidence can include testimony taken under oath or documents such as medical reports or employer records. In some cases, depositions may be taken of doctors or other witnesses. A deposition is a sworn statement taken before a court reporter outside of court, with all parties having received notice of the deposition and having an opportunity to be present. The depositions are filed with the judge who reads them instead of having the witnesses testify at the hearing. Each side is then allowed to call witnesses, who will take an oath to tell the truth. You may call witnesses and you may testify yourself. If you call witnesses,

you may ask them questions about the facts of your case (direct examination). After you are finished asking questions, the lawyer for the other side will ask questions (cross-examination). You may then ask more questions about matters brought up by the other side (redirect).

Either side may object to documents, and the documents will not be considered unless they comply with the Workers' Compensation Act, or the Colorado Rules of Evidence. The judge will decide whether to allow documents into evidence.

If you testify, the judge may ask some questions. You also can make a statement. Then the other side will ask you questions (cross-examination). You then will have a chance to make another statement to respond to the questions asked by the other party.

After each side has presented its case, rebuttal witnesses may be called. Rebuttal witnesses may

only testify to issues already brought up by the other side. Few hearings actually involve rebuttal witnesses.

After all testimony has been heard and the documents received, the judge may allow each side to make a closing argument. Closing arguments can only address facts brought out in testimony of the witnesses or in exhibits received into evidence. Closing argument is not a chance to testify and you may not mention things that were not received in evidence. Sometimes the judge may allow the parties to make a closing argument in writing after the hearing.

Before the hearing closes, you must submit all the evidence you want the judge to consider.



WHAT IF I DON'T GO TO THE HEARING?

In workers' compensation cases if you request a hearing and do not attend the hearing, an order will be issued requiring you to explain why you were not present. If you do not show good cause for your absence, your case may be dismissed. If the other side requested the hearing and you do not appear, the hearing will probably proceed without you or your evidence and the judge will rule on the case.

WHEN WILL I GET A DECISION?

After the closing arguments have been presented, the hearing is concluded. The judge may issue a ruling at the end of the hearing or the judge may have to review the evidence. If the judge has to review the evidence, the judge will issue a written order within 30 days after the hearing.

CAN I APPEAL THE JUDGE'S DECISION?

If you want to appeal after receiving the judge's order, you must file a *Petition to Review* with the judge within 20 days after the date the judge's written order was mailed. This time limit is very important: **If you do not file a *Petition to Review* on time you may lose the right to appeal.**

If you need all or part of the transcript of the hearing as part of your appeal you must order the transcript when you file the *Petition to Review*. You will have to pay for the transcript. If you appeal the order, you will **not** have another hearing. Instead, you will be required to submit your argument in a written brief. You will be notified of the schedule for writing your brief. The file will then be sent to the Industrial Claim Appeals Office in the Department of Labor and Employment for review.

OFFICES

Office of Administrative Courts
633 17th Street, Suite 1300
Denver, CO 80202
(303) 866-2000

Office of Administrative Courts
222 S. 6th St., Room 414
Grand Junction, CO 81501
(970) 248-7340

Office of Administrative Courts
1259 Lake Plaza Drive, Suite 210
Colorado Springs, CO 80906
(719) 576-2958

Division of Workers' Compensation
633 17th Street, Suite 400
Denver, CO 80202
(303) 318-8700

WEBSITES

Division of Workers' Compensation website:
<http://www.coworkforce.com/DWC/>

Office of Administrative Courts website:
<http://www.colorado.gov/dpa/oac>

Both the Colorado Workers' Compensation Act and the Workers' Compensation Rules of Procedure can be accessed from the workers' compensation website.

