

## **JUDGES' PANEL**

Overview of Workers' Compensation	1
Workers' Compensation Statutes and Rules	1
Disputes and Pleadings	1
Litigation Events	3
Intervenor Resources	4
Overview of the Workers' Compensation Court of Appeals	7
Cases at the WCCA	7

## **OVERVIEW OF THE WORKERS' COMPENSATION DIVISION**

The Workers' Compensation Division of the Office Administrative Hearings (OAH) was established in 1981. This division serves the citizens of the state of Minnesota, with its main office located in St. Paul. The judges of the division conduct settlement, pretrial and trial level functions associated with disputed claims for workers' compensation benefits.

The division is funded from the Special Compensation Fund through a biennial appropriation of \$14.5 million, with no monies being appropriated from the General Fund.

OAH conducts hearings in locations across Minnesota - including Duluth, Walker, Alexandria, Mankato, Rochester and Brainerd. OAH also conducts hearings via video conferencing technology, which allows parties to avoid travel, if so desired.

Policies and procedures of OAH are regularly communicated to members of the bar and other interested persons through a listserv. Directions on how to receive such communications can be found under the **Attorney Resources** section of our website.

### **WORKERS' COMPENSATION STATUTES AND RULES**

The following statutes and rules are commonly used and referred to throughout the duration of a workers' compensation proceeding:

- **Minnesota Statute Chapter 176**
- **Minnesota Rule 1415**
- **Minnesota Rule 1420**

The **Department of Labor and Industry** also hears and decides certain disputes involving workers' compensation matters. Appeals from a decision by a judge at OAH are heard and decided by the **Workers' Compensation Court of Appeals**.

### **DISPUTES AND PLEADINGS**

- a. Disputes over wage loss benefits, or general disputes over liability of a claim:

*Employee's Claim Petition:* If the compensability of the work-related injury is disputed, or if wage loss benefits have not paid, it may be necessary to file a Claim Petition to initiate litigation.

*Claim Petition for Dependency Benefits or Payment to Estate:* If a work-related injury results in death of the employee, it may be necessary to file a Claim Petition for Dependency Benefits or Payment to the Estate to initiate litigation.

*Answer by Employer/Insurer:* The employer and insurer's Answer to the Claim Petition is due within 20 days. Failure to file an Answer may result in an expedited hearing.

*Employee's Objection to Discontinuance:* If an administrative conference has been held pursuant to Minn. Stat. § 176.239, and if the employee objects to the decision of a Compensation Judge, an Objection to Discontinuance may be filed. An Objection to Discontinuance may also be filed if the time to request a conference under Minn. Stat. § 176.239 has expired, but it has been less than 60 days since filing of the NOID.

*Employer/Insurer's Petition for Discontinuance:* If an administrative conference has been held pursuant to Minn. Stat. § 176.239, and if the employer/insurer object to the decision of a Compensation Judge, a Petition for Discontinuance may be filed. A Petition for Discontinuance may also be filed in lieu of a NOID.

b. Disputes over payment of medical bills, or approval of medical treatment:

*Medical Request:* If the employer and insurer has accepted liability for the work-related injury, and a dispute arises over payment of medical bills or approval of medical treatment, it may be necessary to file a Medical Request to initiate litigation. If the parties have attended an administrative conference and received an unfavorable decision, the aggrieved party may file a Request for Formal Hearing to initiate additional litigation. If the employer and insurer have not accepted liability for the work-related injury, then it is necessary to file a Claim Petition to initiate litigation.

c. Disputes over vocational rehabilitation services:

*Rehabilitation Request:* If the employer and insurer has accepted liability for the work-related injury, and a dispute arises over vocational rehabilitation services (QRC services), it may be necessary to file a Rehabilitation Request to initiate litigation. If the parties have attended an administrative conference and received an unfavorable decision, the aggrieved party may file a Request for Formal Hearing to initiate additional litigation.

If the employer and insurer have not accepted liability for the work-related injury, then it is necessary to file a Claim Petition to initiate litigation.

## **LITIGATION EVENTS**

### **Administrative conferences under Minn. Stat. Sec. 176.239:**

If the insurer discontinues the employee's wage replacement loss benefits, the employee should receive a form called a Notice of Intention to Discontinue Benefits (NOID). The employee may request a conference by calling OAH at 651.361.7901 within the time deadline given on the form (usually within 12 days after the NOID is received by the state).

A notice of an administrative conference is usually served on the parties within three-business days. The conference is typically held within 30 days of the request for the conference.

Conferences on wage loss disputes and other vocational/medical disputes are held by judges at OAH. These conferences are held on an informal basis without sworn testimony.

### **Settlement conferences:**

Typically, each case is scheduled for a settlement conference. The purpose of a settlement conference is to discuss resolution of the dispute. At least seven days prior to the conference, a settlement proposal must be submitted to the opposing party. In addition, parties are required to file a pretrial statement at least five business days prior to the settlement conference. Further instructions about pretrial statements can be found on our website. At the conference, the parties should be prepared to enter into settlement discussions, and/or have the necessary person(s) with settlement authority available by phone. A judge will be present at the conference to facilitate the discussion, but will not make any decisions. If the matter is resolved, a stipulation for settlement (settlement agreement) will be drawn up for signatures and submitted to a judge for approval. A stipulation status conference will be scheduled after the case is reported settled to ensure that the stipulation is filed with the court in a timely manner. If the matter does not settle at the settlement conference, a hearing will be scheduled if one has not already been set.

## **Mediation:**

OAH also offers mediation services at no charge to the parties. Please see the Mediation section of the website for further details and instructions on how to schedule mediation with a judge.

## **Hearings:**

Hearings are scheduled at the Stassen Building in downtown St. Paul and throughout the state. Once a hearing date is set, all parties are notified in writing of the date, time and place of the hearing.

If an interpreter is required for the hearing, a party must make that request at least thirty days prior to the hearing. If an interpreter is requested, one will be provided at no cost.

Hearings are held before a Workers' Compensation Judge. The judge may request an opening statement by each party. Witnesses are sworn in before testifying. The parties have a right to present their own witnesses and cross-examine witnesses presented by other parties. Parties also may submit documents and reports that they wish for the judge to consider as part of their case. Each party may present a final statement on the claim and defenses. All hearings are recorded digitally or by court reporter. After the hearing the judge will issue a Findings and Order. This is the decision of the case.

Any party has the right to appeal the order of the judge. If a party wishes to appeal, a notice of appeal must be filed within 30 days of receipt of the order. The Workers' Compensation Court of Appeals (WCCA) will review the hearing record. The WCCA can affirm, reverse, remand or modify the judge's order. All parties will receive a copy of the WCCA decision. Any party may also appeal the WCCA decision to the Minnesota Supreme Court.

## **Stipulation status conferences (SSC):**

An SSC is a conference scheduled by OAH to determine the outcome of pending dispute. The purpose of the SSC is to update OAH and the other parties concerning the status of the stipulation, and to make plans to achieve final resolution of the claim.

After the parties have communicated to OAH that settlement has been reached, an SSC will be scheduled approximately 45 days from the date the case is reported settled. Cases are often scheduled with 50 to 100 other cases during the same time. If

the stipulation for settlement is filed with OAH prior to the SSC, then the SSC will be canceled. Generally, continuances of SSCs are not permitted.

Parties should come to the SSC prepared to state a reason(s) final resolution of the case has been delayed, and to propose strategies on a timeline for achieving final resolution.

Questions regarding SSCs should be directed to 651-361-7950 or [oah.wcstipstatus@state.mn.us](mailto:oah.wcstipstatus@state.mn.us).

### **INTERVENOR RESOURCES**

If you have provided services to or on behalf of an injured employee, then a party to the litigation must serve you with a Notice of Right to Intervene. If you have a financial interest in an employee's workers' compensation claim, you may want to file a Motion to Intervene. Your motion should be filed no later than 60 days from the date you were provided notice. Claims of intervenors are governed by Minn. Stat. § 176.361, various rules found in Minnesota Rules Chapters 1415 and 1420, and relevant case law.

The following forms may be utilized when filing a Motion to Intervene.

- **Intervention Cover Letter**
- **Intervention Motion**
- **Intervention Stipulation**
- **Intervention Service Affidavit**

You are required to provide documentation of your claim. This includes an itemization of disability or other benefits paid or owing, itemized bills, and treatment notes. Prior to the scheduled hearing date, you should provide OAH and all parties with your updated claim, if necessary.

If you are given notice of the right to intervene and you fail to file a Motion within the time deadline, there may be an order issued that absolves the workers' compensation insurer from paying your claim and may prevent you from collecting from the employee or any government program.

After you file a Motion to Intervene, the Office of Administrative Hearings (OAH) or the Department of Labor and Industry gives notice to you of proceedings in the case. This keeps you updated on the case status, and informed of administrative conferences, settlement conferences, pretrial conferences, and hearings. The Workers' Compensation Act requires your attendance at these proceedings. Unless you have permission from the judge, your attendance is expected. Failure to appear may result in denial of your claim and an inability to collect the sum claimed from the parties or a government program. Attendance by telephone is allowed for all settlement conferences (Standing Order Granting Intervenor's at Settlement Conference by Telephone).

The Workers' Compensation Act specifically allows intervenors to represent themselves in a workers' compensation proceeding without hiring an attorney. Attorneys in this area of practice may be helpful to you because they are familiar with the process and the nature of proof needed to establish or settle intervention claims. OAH sees both attorneys and non-attorneys representing intervenors. The decision of whether to hire an attorney to assist you is up to you.

OAH maintains a master service list for intervenors. This list is often referred to by the litigants in order to obtain the correct contact information for an intervenor. If you wish to be added to this list, please complete the **Workers' Compensation Intervenor Contact Information** form.

The Department of Labor and Industry is a valuable resource for questions you may have. They can be found on the web at (insert link to DOLI) or reached by telephone at 651-284-5030. You may also call OAH at 651.361.7900 and ask to speak with a staff attorney.

## **NOTES**

## **OVERVIEW OF THE WORKERS' COMPENSATION COURT OF APPEALS**

The Minnesota Workers' Compensation Court of Appeals (WCCA) was created as an independent agency of the executive branch of state government by Chapter 175A of the Minnesota Statutes. The court consists of five judges appointed to six-year terms by the Governor and confirmed by the state Senate. The Governor designates one of the five as the Chief Judge. The Chief Judge is responsible for the administration of the court.

The WCCA has exclusive, statewide authority to review workers' compensation cases decided by compensation judges at the Office of Administrative Hearings and certain cases decided by the Workers' Compensation Division at the Department of Labor and Industry. A panel of three or five judges decides each appeal. A written decision must be issued within 90 days after a case has been assigned to a panel. The judges review the evidentiary record created at the initial hearing, preside over oral arguments, conduct legal research, decide the legal and factual issues appealed by the parties, and issue written orders, decisions and memoranda. Decisions are written to inform the parties and the public of the bases for the court's decisions and to create a body of law interpreting and applying Minnesota workers' compensation laws. Decisions of the WCCA are appealable directly to the Minnesota Supreme Court.

The mission of the WCCA is to produce high quality and consistent decisions in a timely manner to ensure the quick and efficient delivery of workers' compensation benefits to qualified injured workers at a reasonable cost to employers.

### **Cases at the Workers' Compensation Court of Appeals (WCCA)**

#### **a. Filing the Appeal**

An appeal to the WCCA begins with the filing of a notice of appeal with OAH. The notice must be filed within 30 days of the OAH decision and must specify the findings that are being appealed. Minn. Stat. § 176.421. A cross appeal may be filed in the 30-day period after the OAH decision but no later than 15 days after service of the

notice of appeal. After receiving the notice of appeal, OAH orders a transcript of the hearing. Once the transcript is received, the file is sent to the WCCA.

#### **b. Procedure at the WCCA**

The receipt of the transcript and file at the WCCA begins the briefing schedule for the parties – 30 days for the appellant, 25 days after that for the respondent, 10 days for a reply brief. Minn. R. 9800.0900. The court also sends a letter to the parties advising that the file has been received and asking if the parties want oral argument and want the case assigned to a three judge panel or the full court. The file is also assigned to one of our compensation attorneys to monitor for receipt of briefs. The attorney prepares a memo identifying the issues and arguments raised by the parties. The judges review the memo and the file and vote on whether oral argument should be granted and assigned to a 3-judge panel or the full court.

The judge assigned to be the writer is responsible for preparing a rough draft of the decision and for circulating that rough draft to the other members of the panel for corrections, comments, and eventual approval. In practice, the judges on the panel usually discuss the decision with each other throughout the process and consider whether one of the judges has an issue with the draft. A judge who is not the writer may decide to write a concurrence or a dissent.

#### **c. Petitions to Vacate**

The WCCA has the authority to vacate or set aside an award for “cause.” Cause is defined in the statute and is limited to one of the listed definitions. Minn. Stat. § 176.461. A petition to vacate the award, almost always an award approving a settlement and almost always filed by the employee, is filed with the court along with all supporting records and affidavits. Any responsive pleading with briefs must be filed within 45 days. The rule also provides that oral argument on a petition to vacate will be provided if requested by any party. Assignment of the petition to a judge for a decision and the preparation of the decision are handled in the same manner as an appeal.

#### **d. What to Expect – timeline**

The following is a rather typical timeline for a case working its way through the workers compensation appeal system:

9/25/14 – hearing before the compensation judge

10/30/14 – compensation judge findings and order

12/1/14 – notice of appeal filed at OAH  
1/8/15 – transcript and file arrives at WCCA  
1/9/15 – letter sent to attorneys regarding briefs and requests for oral argument  
2/5/15 – appellants’ brief filed  
2/27/15 – respondent’s brief filed  
3/9/15 – appellants’ reply brief filed  
3/16/15 – staff attorney’s memo given to judges  
3/17/15 – letter sent to parties advising of oral argument  
5/11/15 – oral argument  
8/9/15 – decision from WCCA due

**e. Issues before the WCCA**

(1). Hengemuhle – If the issue on appeal involves a factual determination by the compensation judge, The standard of review for the WCCA is to determine if substantial evidence supports the compensation judge’s determination. If so, the determination is to be affirmed.

(2). If on appeal there is no significant dispute as to facts, the WCCA reviews to see if the conclusion drawn by the compensation judge from those facts are consistent with the statute and with case law.

**f. Appeals to the Minnesota Supreme Court**

Decisions of the WCCA are appealable to the Minnesota Supreme Court. The Supreme Court decides whether to grant oral argument or decide the case on a non-oral basis. The Supreme Court may write a full decision either affirming or reversing the WCCA or it may summarily affirm the WCCA decision.