

Title 14 INDEPENDENT AGENCIES

Subtitle 09 WORKERS' COMPENSATION COMMISSION

Chapter 03 Hearing Procedures

.01 Definitions

A. *In this chapter, the following terms have the meanings indicated.*

B. *Terms Defined.*

(1) *"Person in interest" means:*

(a) *An adult on whom a health care provider maintains a medical record;*

(b) *A person authorized to consent to health care for an adult pursuant to a grant of authority; and*

(c) *A duly appointed personal representative of a deceased person.*

.02 Filing and Withdrawing Issues.

A. *At the beginning of the claim, the employer or insurer may raise issues by filing the Response to Employee's Claim form (C40).*

B. *After the claim has commenced, any party may raise an issue by filing an Issues form, available on the Commission website.*

C. *The following kinds of issues may be raised by filing an Issues form:*

(1) *Whether the employee sustained an injury causally related to an accident that arose out of and in the course of employment;*

(2) *Whether the disability of the employee is causally related to the accidental injury;*

(3) *Whether the employee sustained a compensable hernia;*

(4) *Whether the employee sustained an occupational disease;*

(5) *Average weekly wage;*

(6) *Limitations;*

(7) *Jurisdiction;*

(8) *Statutory employment;*

(9) *Medical expenses;*

(11) *Attorneys' fees/costs;*

(12) *Penalties;*

(13) *Whether the employee is entitled to temporary partial and temporary total disability benefits;*

(14) *The nature and extent of a permanent disability to specified body parts;*

(15) *Authorization for medical treatment; and*

(16) *Other issues when articulated with specificity.*

D. *On the Issues form, the party shall state with clarity issues to be determined and shall, if relevant:*

(1) *Include the inclusive dates of any temporary total disability;*

(2) *For permanent disability, identify each part of the body affected, and any alleged psychiatric disability;*

(3) *Specifically plead permanent total disability;*

(4) *Include the specific medical treatment sought; and*

(5) *For any medical expenses, attach a list identifying each amount owed and to whom the amount is owed.*

E. *The party who has raised issues may withdraw those issues by:*

(1) *Filing a Request for Action on Filed Issues form; or*

(2) *Verbally requesting that the issues be withdrawn at the scheduled hearing.*

F. *A party that has filed issues and is not ready to proceed at the hearing shall withdraw the issues.*

G. *A party that withdraws issues may not refile the same issues for a period of 90 days.*

H. *A party may request an exemption from the prohibition against refiling issues within the 90-day period by filing a Request for Hearing on Previously Withdrawn Issues form. Any supporting documentation shall be attached to the form.*

I. *If the Commission grants the request for exemption, the Commission shall:*

(1) *Issue a memorandum granting the request; and*

(2) *Schedule a hearing on the previously withdrawn issues.*

J. *Prior to filing issues, the filing party shall possess relevant documentation to the issues to be filed, including medical documentation.*

K. *A party who fails to comply with this regulation, or causes unreasonable delay without good cause, may be subject to an assessment of costs and reasonable attorney fees under Labor and Employment Article, §9-734, Annotated Code of Maryland.*

.03 Hearing Notices.

A. *The Commission shall schedule a hearing on the issues identified on the Issues form, or on the Response to Employee's Claim form (C40), unless a hearing is already scheduled or set to be scheduled, and shall send written notice to all parties of the scheduled hearing date.*

B. A hearing notice issued by the Commission shall contain:

- (1) The date the notice was issued;
- (2) The date, time and place of the hearing; and
- (3) A statement providing information concerning the procedures for making a request for an accommodation or an interpreter.

.04 Interpreters and Other Accommodations.

A. Interpreter and Other Accommodations.

(1) If a party or witness cannot adequately hear, speak, or understand the spoken or written English language the Commission shall provide an interpreter or other reasonable accommodation service necessary for the party or witness to participate fully in the Commission proceedings.

(2) If a party, witness or individual having business with the Commission requires another form of accommodation to participate in Commission proceedings, the Commission shall take reasonable steps to provide a reasonable accommodation for the individual.

B. Request Required.

(1) Within 10 days of the date the Notice of Hearing is issued, an individual requiring an interpreter or other accommodation shall make a request to the Commission Interpreter Program Office that specifies:

- (a) The identity of the individual requiring the service;
- (b) Date and location of hearing;
- (c) The language or other accommodation service being requested;
- (d) Contact information for the service/accommodation requestor or their representative; and
- (e) Any other information that may assist the Commission in providing the requested interpreter service or accommodation.

(2) A request for interpreter or other accommodation may be made by:

- (a) Telephoning the Commission's LEP telephone line available on the Commission website;
- (b) Sending an email to the email address for the Commission Interpreter Program Office available on the Commission website; or
- (c) Telephoning the Commission's main telephone line through the TTY service through Maryland Relay available on the Commission's website.

(3) Upon receipt of a timely request for services, the Commission Interpreter Program Office shall:

- (a) Issue a reservation number to the requesting individual; and
- (b) (i) Schedule an interpreter, or accommodation service; or
- (ii) Engage in a dialogue about the requested accommodation.

C. Except as provided in §D of this regulation, the Commission shall pay the fee for interpreter or other reasonable accommodation service requested pursuant to this regulation.

D. Notification of Cancellation and Fees.

(1) An individual who has received a reservation number under §B(2) of this regulation may cancel the requested service by notifying the Commission Interpreter Program Office, in the manner prescribed by the Commission, that the requested service is no longer required.

E. An individual may be assessed the service minimum fee if:

- (1) A matter is resolved more than 2 days prior to the hearing; and
- (2) The service is not cancelled.

F. A party may not provide his or her own interpreter.

.05 Subpoenas

A. Use of Subpoenas. A subpoena is required to compel the person to whom it is directed to attend, give testimony, and produce designated documents or tangible things at a Commission proceeding or at a deposition held pursuant to Labor and Employment Article, § 9-719(b), Annotated Code of Maryland.

B. Procedure for Obtaining Subpoena.

(1) On the request of an attorney entitled to the issuance of a subpoena the Commission shall issue a subpoena signed and sealed but otherwise blank that shall be filled in before service.

(2) On the request of a non-attorney individual entitled to the issuance of a subpoena the Commission shall provide a blank form of the subpoena which shall be filled in and returned to the Commission clerk to be signed and sealed before service.

(3) To the extent practicable, subpoenas shall be served at least 10 days before the hearing.

C. Form of Subpoena.

(1) Every subpoena shall contain:

- (a) The caption of the claim and claim number,
- (b) The name and address of the person to whom it is directed,
- (c) The name of the person at whose request it is issued,
- (d) The date, time and place where attendance is required, and
- (e) A description of any documents or tangible things to be produced.

D. Medical Records Subpoenas.

(1) Every subpoena seeking the production of medical records shall comply with Health General Article, § 4-306, Annotated Code of Maryland.

(2) A party seeking medical records by subpoena shall:

(a) Complete the Notice of Intent to Subpoena Medical Records and Certificate of Service form; and

(b) Send by certified mail a copy of the Notice of Intent to Subpoena Medical Records to the person in interest and his or her counsel.

(3) Within 30 days of the date that the Notice of Intent to Subpoena Medical Records was mailed, a person in interest may oppose the disclosure of his or her medical records by:

(a) Filing the Objection to Subpoena of Medical Records form with the Commission; and

(b) Sending a copy of the Objection form to all parties by first class mail.

(4) Upon receipt of an Objection to Subpoena of Medical Records, the Commission shall schedule a hearing to determine:

(a) Whether the subpoena should be quashed;

(b) Whether the subpoena should be limited in scope or otherwise modified; and

(c) Other appropriate relief.

E. Service of Subpoenas.

(1) Subpoenas may be served by:

(a) Personal delivery by an individual 18 years old or older who is not a party to the proceeding or related by blood or marriage to a party to the proceeding; or

(b) Certified mail to the person at the address specified in the subpoena request.

(2) The subpoena may not be enforced pursuant to Labor and Employment Article, §9-717, Annotated Code of Maryland, absent proof of service by certified mail or personal delivery.

(3) Costs of certified mailing or personal delivery of the subpoena are the responsibility of the person requesting the service.

(4) Proof of service by certified mail or personal delivery is the responsibility of the person requesting the subpoena.

F. Return of service shall be made as follows:

(1) When service is by certified mail, by the filing of the original return receipt; or

(2) When service is by personal delivery, by the filing of an affidavit, signed by the individual who made service, containing:

(a) The name of the individual served;

(b) The date on which the individual was served;

(c) The particular place of service; and

(d) A statement that the server is 18 years old or older and not a party to the proceeding or related by blood or marriage to a party to the proceeding.

G. Enforcement of Subpoenas.

(1) If an individual fails to comply with a properly served subpoena, pursuant to Labor and Employment Article, §9-717, Annotated Code of Maryland, the party wishing to enforce the subpoena shall file with the Commission a written request for the enforcement of the subpoena.

(2) The request shall:

(a) state, with specificity:

(i) when and how the subpoena was served, and

(ii) why the testimony or documents sought are necessary for the resolution of the issue, and

(b) be accompanied by copies of the subpoena, and any certificate of service, return receipt, or affidavit.

(3) Upon determining that the subpoena was issued and served in compliance with the law, the Commission may and, on request of a party to the proceeding, shall apply to the appropriate circuit court for an order to show cause why the individual should not be imprisoned for failing to comply with a subpoena.

.06 Average Weekly Wage

A. Preliminary Determination. For the purpose of making an initial award of compensation before a hearing in the matter, the Commission shall determine the claimant's average weekly wage from gross wages, including overtime, reported by the claimant on the employee's claim form.

B. Filing of Wage Statement. As soon as practicable, the employer/insurer shall file a wage statement containing the following information:

(1) The average wage earned by the claimant during the 14 weeks before the accident, excluding the time between the end of the last pay period and the date of injury, provided that periods of involuntary layoff or involuntary authorized absences are not included in the 14 weeks;

(2) Those weeks the claimant actually worked during the 14 weeks before the accident;

(3) Vacation wages paid; and

(4) Those items set forth in Labor and Employment Article, §9-602(a)(2), Annotated Code of Maryland.

C. Determination at First Hearing.

(1) Calculation of the average weekly wage shall be adjudicated and determined at the first hearing before the Commission.

(2) All parties shall be prepared to produce evidence from which the Commission can determine an accurate average weekly wage at the first hearing.

(3) If the Commission determines that an inaccurate average weekly wage resulted in the overpayment or underpayment of benefits, the Commission may order:

(a) A credit against future permanent disability benefits;

(b) The payment of additional compensation; or

(c) Any other relief the Commission determines is appropriate under the circumstances.

D. *Uninsured Employers' Fund.* The Uninsured Employers' Fund may contest the average weekly wage determined by the Commission under §A or C of this regulation, along with other issues as authorized by Labor and Employment Article, §9-1002, Annotated Code of Maryland, by filing issues on the form prescribed by the Commission.

.07 Disclosure of Medical Information.

A. Parties' Continuing Duty to Disclose Medical Information.

(1) When a claim or an issue is filed with the Commission, each party promptly shall provide to all other parties copies of all relevant medical information in the possession of the party or that is subsequently received by the party, but not previously provided.

(2) For the purpose of this regulation, medical information in the possession of, or received by, the party's agent or attorney is considered to be in possession of the party.

(3) The duty to disclose applies to all medical information including reports, evaluations, tests, and bills, and continues during the pendency of the claim.

B. Duty to Provide Medical Authorization.

(1) Unless the Commission orders otherwise for good cause shown, a party shall provide to any other party, on written request, a medical authorization or release.

(2) The parties shall, in good faith, attempt to resolve any issues concerning the scope of the requested medical authorization or release.

(3) Failure to comply with this regulation may result in sanctions including attorneys' fees and costs, delay, and the exclusion of any evidence not properly disclosed.

C. Motion to Compel Medical Authorization.

(1) Upon the failure of a party to provide an executed medical authorization, the party seeking the medical authorization may file a Motion to Compel Medical Authorization form.

(2) A Motion to Compel Medical Authorization shall:

(a) Be filed electronically;

(b) Be served by hand delivery or facsimile on all parties of record; and

(c) Contain the claimant's name, date of accident/disablement, the health care provider's name, and the body parts or medical conditions to which the authorization/release applies.

(3) A party may oppose the motion by filing a Response to Motion to Compel Medical Authorization form.

(4) A Response to Motion to Compel Medical Authorization shall:

(a) Be filed within seven days after receipt of the motion;

(b) Be filed electronically;

(c) Be served by hand delivery or facsimile on all parties of record; and

(d) State with particularity the reasons for failing to provide the requested medical authorization;

(5) The motion will be decided on the papers filed.

.08 Medical Examinations

A. Medical Examinations Ordered by the Commission.

(1) The Commission may order that the claimant be examined, at the Commission's expense, by the Commission's medical examiner or by some other physician, psychologist, or psychiatrist selected by the Commission.

(2) The claimant shall report to the office of the examining physician at the time scheduled by the physician for the examination.

(3) If the claimant is physically unable to report to the physician's office, the examination may be conducted wherever the claimant is located or is physically able to report.

(4) When the examining physician's report is filed, the Commission shall serve on all parties:

(a) a copy of the report; and

(b) a notice that any written objection to the report shall be filed within 15 days after the date of the notice.

(5) A written objection may be made by written letter filed with the Commission and shall state clearly the reasons for objecting to the examining physician's report.

(6) If no written objection is timely filed, the Commission may consider the report, along with any other admissible evidence presented, in deciding the claim.

(7) If an objection is timely filed, the Commission shall schedule a hearing on the matter.

B. Medical Examination Requested by a Party.

(1) A party may schedule a medical examination of the claimant with a physician, psychologist, or psychiatrist chosen by the party, by providing to the claimant and claimant's counsel reasonable notice of the examination in writing.

(2) *The party scheduling a medical examination of the claimant shall be responsible for all reasonable expenses associated with the examination.*

(3) *The parties shall, in good faith, attempt to resolve any differences in scheduling and scope of examination.*

(4) *A claimant shall appear for a scheduled medical examination.*

(5) *If a claimant fails to appear, refuses to submit, or fails to cooperate with the medical examination, the party requesting the examination may file an Issues form for a hearing to compel a medical examination and for reimbursement of reasonable expenses and costs.*

(6) *If a claimant fails to appear at, refuses to submit to, or fails to cooperate with the medical examination, without good cause, the Commission may order the claimant to attend a medical examination and order reimbursement of reasonable expenses and costs at a rate not to exceed \$125 per missed examination.*

C. Appearance by Examining Physician. A party requesting the appearance of an examining physician, psychologist, or psychiatrist at a hearing shall pay the appearance fee imposed by the provider.

.09 Hearing Exhibits and Witnesses

A. Mandatory Exchange of Hearing Exhibits

(1) *At least three business days prior to the scheduled hearing date each party shall send to the other parties, including the Subsequent Injury Fund and the Uninsured Employers' Fund, copies of all medical exhibits that the party intends to introduce at the time of hearing that were not previously produced to the other party in accordance with Regulation 14.09.03.07A.*

(2) *Failure to comply with this provision may result in sanctions.*

B. Confidential Information

(1) *If sensitive material must be brought to the attention of a Commissioner for the proper adjudication of a matter in dispute, the party seeking the admission of the sensitive or restricted material may request to brief the Commissioner in-chambers regarding the subject matter only after providing notice to opposing counsel.*

(2) *A request to admit sensitive or restricted material shall be granted or denied at the Commissioner's discretion.*

C. General Rules Concerning Hearings

(1) *On any genuine issue, each party is entitled to call witnesses, offer evidence, and cross-examine any witness who testifies.*

(2) *A hearing shall be called to order by the Commissioner. The Commissioner may allow the parties to present preliminary matters.*

(3) *Witnesses shall be sworn or put under affirmation to tell the truth.*

(4) *A Commissioner may admit evidence that reasonable and prudent individuals commonly accept in the conduct of their affairs, and give probative effect to that evidence.*

D. Hearing Exhibits

(1) *Each party shall prepare an exhibit that:*

(a) *Includes all documents that have not been filed previously with the Commission that are relevant and necessary to decide the issue or issues to be heard;*

(b) *Is paginated; and*

(c) *Includes a Table of Contents that indicates the first page of each document contained in the exhibit, and the name of the health care provider, the date of the report, and date of treatments.*

E. Sequestration of Witnesses.

(1) *Upon request by a party, the Commissioner may exclude witnesses other than parties from the hearing room, except when testifying.*

(2) *A party, representative, witness, or spectator may not disclose to a witness excluded under this section the nature, substance, or purpose of testimony, exhibits, or other evidence introduced during that witness's absence.*

(3) *A party that is not an individual may designate an employee or officer as its representative to remain in the hearing room, even though the employee or officer may be a witness.*

(4) *An expert witness who is to render an opinion based on testimony given at the hearing may remain during the testimony.*

(5) *The Commissioner may exclude the testimony of a witness who receives information in violation of this section, or take other appropriate action.*

F. Stipulations.

(1) *The parties may, in accordance with law, agree to any substantive or procedural matter.*

(2) *A stipulation may be filed in writing or entered on the record at the hearing.*

(3) *The Commissioner may require additional development of stipulated matters.*

(4) *The parties filing a stipulation shall attach to the stipulation, or submit to the Commissioner at the hearing, documentation supporting the stipulation.*

G. Expert Testimony.

(1) *If a party wishes to have an expert witness appear and testify, other than a vocational rehabilitation counselor, the party must seek prior approval from the Chairman.*

(2) *The party shall submit a letter stating why oral testimony is necessary in lieu of documentary evidence.*

(3) *The party producing the expert witness shall be responsible for any fees charged by the expert for appearing and testifying.*

(4) If vocational rehabilitation counselor is called as an expert witness, the employer/insurer shall be responsible for any fees charged by the expert for appearing and testifying.

.10 Consequence of Nonappearance by Claimant.

A. When a claimant, without good cause, fails to appear at a hearing on issues contesting the compensability of a claim, the Commission may dismiss the claim.

B. When a claimant, without good cause, fails to appear at a hearing on issues in a compensable claim, the Commission may proceed ex parte and may decide the issues based on information on file with the Commission, together with any evidence presented at the hearing.

.11 Request for Emergency Hearing.

A. A party may request an emergency hearing by filing a Request for Emergency Hearing form.

B. A party may request an emergency hearing on the following bases:

(1) Continuing temporary total disability and exigent circumstances causing undue financial hardship;

(2) Proposed urgent medical treatment; or

(3) Other truly exigent circumstances causing undue hardship.

C. A request for an emergency hearing shall be accompanied by supporting medical documentation and other documentation that establishes the nature of the emergency condition or circumstance.

D. A Request for Emergency Hearing on temporary total disability shall contain a detailed statement showing that any delay will cause the claimant undue financial hardship.

E. Unless exceptional circumstances are demonstrated, the Commission shall deny a Request for Continuance made by the party upon whose request the emergency hearing was scheduled.

F. A Request for Emergency Hearing will be decided based on the papers filed.

.12 Request for Continuance.

A. Prior to filing a Request for Continuance of a scheduled hearing, the party seeking the continuance shall contact the other parties to the case and seek their consent.

B. A party seeking a continuance shall file a Request for Continuance form setting forth the reasons for the continuance at least 30 days prior to the scheduled hearing.

C. Requests for Continuance filed more than 30 days prior to a scheduled hearing, to which the parties have consented, shall routinely be granted.

D. A Request for Continuance filed less than 30 days before the hearing may be granted subject to the discretion of the Commissioner.

E. A Request for Continuance will be decided based on the papers filed.

.13 Motion for Modification.

A. A party seeking modification of a prior finding or order shall file the form captioned Motion for Modification and simultaneously file an Issues form identifying the issue to be resolved.

B. A party seeking modification must file a Motion for Modification within 5 years of the later of the date of the accident, the date of disablement, or the date of the last compensation payment.

C. The motion shall state specifically the finding or order that the party wishes modified and the facts and law upon which the party is relying as grounds for the modification.

D. When a party seeks an increase in a prior award for permanent partial disability, the parties shall comply with Regulation .07 of this Chapter and COMAR 14.09.09.

.14 Motion for Rehearing.

A. Within 15 days after the date of decision, a party seeking reconsideration of a decision shall file a Motion for Rehearing form, available on the Commission's website.

B. If the motion is based on an alleged error of law, the motion shall state specifically the error and the applicable case and statutory law.

C. If the motion is based on newly discovered evidence, the motion shall describe specifically the newly discovered evidence and the reasons why that evidence was not known and could not have been discovered by due diligence at the time of the prior hearing.

D. The motion shall be accompanied by copies of all documentary evidence upon which the motion is based.

E. An answer to a motion for rehearing may be filed with the Commission within 10 days after the motion is filed.

F. The Commission may decide the motion with or without a hearing.

.15 Miscellaneous Forms.

A. The Request for Action on Filed Issues Form shall be used:

(1) By the filing party, to withdraw issues previously filed;

(2) By the claimant, to request dismissal of the claim;

(3) By the filing party, to request that the issues raised on the issue form be set for hearing with the pending issues in related claims; and

(4) By any party, to request a change in venue.

B. The Request for Document Correction form may be used to correct an error when:

- (1) There is an undisputed typographical error; or*
- (2) All parties agree that the factual error is undisputed.*

C. The Request for Document Correction form may not be used to:

- (1) Obtain reconsideration or rehearing of an issue;*
- (2) Correct a factual matter over which there is a dispute.*