

EMPLOYEES' GUIDE TO APPEALING A WORKERS' COMPENSATION CLAIM DENIAL

Appeals of workers compensation claim denials are handled by the Labor Commission's Adjudication Division. If you disagree with the claim denial, you, or in cases of death, dependents and/or a surviving spouse may file an Application for Hearing with the Commission's Adjudication Division and a hearing will be scheduled on your claim.

Do I Need Legal Representation?

You may represent yourself. You cannot have someone else represent you unless that person is an attorney licensed to practice law in the state of Utah. Representing yourself without the benefit of an attorney's training and experience is not a simple matter. The law requires certain steps to be followed, certain papers to be filed and certain evidence to be presented for the judge to issue an order or award of compensation. If you represent yourself, you alone are responsible for knowing and following the correct procedures. The judge will not assist you either before or during the hearing. If you fail to follow the correct procedures, the judge may dismiss your case or deny your claim. You should be aware that your employer/insurer will have legal representation. In many cases, you will be at a disadvantage without legal counsel.

Judges and their clerks must remain impartial. Neither the judges nor their staff is permitted to give legal advice to you about your claim, motions, discovery requests or hearing preparation.

Under workers' compensation law, attorneys who represent injured workers in the hearing process are paid a percentage of any compensation awarded or, in some cases, by an add-on attorney fee paid by the employer/insurer. Any attorney you hire must agree to the terms of the Commission's Appointment of Counsel form. This form is required to be signed by both you and your attorney.

Requesting a Hearing

Obtain, either in person, by mail or from the Commission's website, the correct Application for Hearing and supporting forms. The forms must be filled out completely. You will be required to explain the nature of your injury and what compensation and/or medical treatment you want. If the forms are incomplete, they will be returned to you and no action will be taken on your claim. Your completed Application for Hearing begins a formal adjudication process under the Utah Administrative Procedures Act.

What is a Formal Adjudication?

The formal adjudication process is a hearing process. It is similar to the process used by the courts. It gives the parties an opportunity to:

- Outline their claims in writing
- Exchange, gather and disclose information using Commission rules
- File motions to compel the other party's cooperation with Commission rules
- File motions asking the judge to make preliminary rulings on the case
- Hold an evidentiary hearing

What Happens When I File My Application for Hearing?

You may file your Application for Hearing by mail, fax, in person at the Commission or email it to casefiling@utah.gov

When you file a completed Application for Hearing, an Order is sent to the employer and insurer ordering them to file an Answer to your claim. The Answer will admit or deny the facts you included on your Application for Hearing and will also state the reasons ("defenses") why your claim should be denied.

Once an Answer has been filed, you must send copies of anything you file with the Commission to the attorney(s) representing the employer/insurer. If you move or change your address after filing your Application for Hearing, you must give written notice of your new address, telephone number and email address to the Commission and to all other parties.

A hearing will be scheduled once the employer/insurer files an Answer. This hearing will be at least 4 months from when the Answer is filed. Because hearings are scheduled so far in advance, you are expected to be prepared to present evidence, including witnesses and exhibits if necessary, to support your claim. Also, during this time, the parties may exchange information through a process called "discovery."

What is "Discovery"?

"Discovery" is a term given to the gathering and exchange of information by the parties to prepare for an evidentiary hearing. You may be mailed written discovery requests by the employer/insurer that require you to send them written answers to questions and produce documents in your possession. You may also be required to attend a deposition scheduled by the employer/insurer. At a deposition, you will be placed under oath and asked questions with a court reporter present to record the proceeding. Depositions of witnesses may also be taken during this period. The employer/insurer can also require you to attend a medical examination by a doctor of their choosing, sometimes referred to as an independent medical evaluation ("IME").

You are required to follow Commission rules that govern the discovery process. Failure to participate in discovery by failing to file timely and complete responses and/or failure to attend your scheduled deposition and/or failure to attend the medical examination may cause your case to be dismissed.

Motions

A motion is a written request to the judge asking that the request be granted. For example, if you fail to cooperate in the discovery process, the employer/insurer's attorney will file a motion asking the judge to order you to cooperate.

The rules give the party not making the motion 10 days to file a written response to the motion. If you disagree with what is asked for in a motion, this is your chance to explain to the judge why you disagree.

Hearing

The hearing is a formal hearing similar to hearings held in court. You will have the opportunity to tell the judge your side of the case. During the hearing, you will present evidence or witnesses on your behalf. The employer/insurer may ask the witnesses questions and present their own evidence and witnesses. You may ask the employer/insurer's witnesses questions about their testimony. When it is your turn to ask questions, you must only ask questions. You cannot make statements or be argumentative, even if you do not agree with the testimony.

At the hearing, you must prove the employer/insurer owes you workers' compensation benefits for your claim to be granted. You must have the evidence to prove your case. You will need to be fully prepared to give testimony, call and/or question witnesses who testify, submit relevant documentary evidence and make legal arguments in support of your claim.

Hearings are scheduled for a minimum of 2 hours. You must be on time for your hearing. If you are late, or if you fail to appear, your case may be dismissed.

Witnesses who do not want to voluntarily testify at the hearing may be compelled to attend the hearing by subpoena. All subpoenas must be prepared using the Commission's subpoena form and be approved by the judge. Subpoenas must be submitted for approval more than 14 days prior to the scheduled hearing. Once approved, it is your responsibility to have the subpoena served upon the witness. All costs associated with subpoenas and witnesses are the responsibility of the person requesting the subpoena.

It is important to be fully prepared for a hearing. It will not be rescheduled if you find yourself unprepared to present your case or did not anticipate the evidence or legal argument made by the employer/insurer's legal counsel. The hearing also becomes the final record of your claim. Any subsequent appeal will be based upon the evidence presented at this hearing.

The judge will not announce a decision at the hearing. The judge will issue a written decision that will be mailed to parties and legal counsel.

Commission Medical Panels

If there are disputed medical issues, such as in cases where two doctors disagree as to the cause or treatment of your condition, the judge's decision may be to refer the medical aspects of your claim to a medical panel. The judge will appoint a medical panel chair person who is then authorized to bring in other medical experts deemed necessary to evaluate the medical evidence. You will be required to attend a medical panel examination. These appointments are considered to be the same as a hearing. You must arrive on time and your claim may be dismissed if you are late or fail to appear. Medical panels are paid for by the Commission.

The medical panel will submit a written report to the judge which will be mailed to you and the opposing attorney(s). Both sides have 20 days to file an objection to the panel's report being admitted into the hearing record. The judge will consider the medical panel report as part of the final decision in the case.

Appealing the Judge's Order

If either party is dissatisfied with the judge's ruling, either party may file a Motion for Review within 30 days of the date the judge issued the Order. The judge will refer the case for review to the Labor Commissioner or Commission Appeals Board.

The Commissioner or Appeals Board may affirm, amend, modify, reverse the judge's Order or remand the case back to the judge for further proceedings or findings.

If either party is dissatisfied with the Commissioner or Appeals Board's final Order, either party may file a Notice of Appeal to the Utah Court of Appeals.

Settlements

If you reach an agreement to settle all or part of your claim, the written agreement between you and the employer/insurer must be submitted to the judge for review. Once a settlement is approved by the judge, either all or part of the claim settled is dismissed. If the settlement resolves all the outstanding claims, your Application for Hearing will be dismissed and the hearing will be canceled.

Enforcing Payment of Compensation and/or Medical Benefits

If payment of compensation or medical expenses has been awarded either in a judge's decision or settlement but the employer/insurer does not pay, you may enforce the award through a collection action filed in the state District Court system. An abstract of the award may be obtained from the Commission. The Commission does not assist in collection process.

