



Presents

Work Comp Litigation Basics

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Applications

LC § 5500 No pleadings other than the application and answer shall be required. Both shall be in writing and shall conform to forms prescribed by the appeals board in its rules of practice and procedure, simply but clearly and completely delineating all relevant matters of agreement and all issues of disagreement within the jurisdiction of the appeals board, and providing for the furnishing of any additional information as the appeals board may properly determine necessary to expedite its hearing and determination of the claim.

Answers

LC § 5505 If any defendant desires to disclaim any interest in the subject matter of the claim in controversy, or considers that the application is in any respect inaccurate or incomplete, or desires to bring any fact, paper, or document to the attention of the appeals board as a defense to the claim or otherwise, he may, within 10 days after the service of the application upon him, file with or mail to the appeals board his answer in such form as the appeals board may prescribe, setting forth the particulars in which the application is inaccurate or incomplete, and the facts upon which he intends to rely. A copy of the answer shall be forthwith served upon all adverse parties. Evidence upon matters not pleaded by answer shall be allowed only upon the terms and conditions imposed by the appeals board or referee holding the hearing.

The Deposition

LC § 5710 (a) provides “The appeals board, a workers’ compensation judge, or any party to the action or proceeding, may, in any investigation or hearing before the appeals board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions, in civil actions in the superior courts of this state.”

The Deposition

LC § 5710 (b), when an employer or insurance carrier requests a deposition of an injured employee the employee is entitled to receive coverage by the employer or insurance carrier for the expenses associated with attending the deposition and a copy of the transcript of the deposition paid for by the employer or insurance company. Further, if the injured employee does not speak or understand the English language, the employer must pay for a certified language interpreter to be in attendance at the deposition.

The Deposition

- Pre-Deposition Material
 - Employer Investigation
 - Medical File
 - Employer Representative (Yera v. J.C. Penney (2013))
 - Witness Statements
 - Surveillance
 - ISO/Index
 - Wage Statement
 - Job Description
 - Subpoenaed Records

Petitions

- CCR § 10450 (a) A request for action by the Workers' Compensation Appeals Board, other than an Application for Adjudication, an Answer, or a Declaration of Readiness, shall be made by petition. ... (b) Unless otherwise provided by statute or rule, an answer may be filed within 10 days after the filing of a petition.

Petitions

- CCR § 10450 (e) All petitions and answers shall be verified under penalty of perjury in the manner required for verified pleadings in courts of record. A failure to comply with the verification requirement constitutes a valid ground for summarily dismissing or denying a petition or summarily rejecting an answer.

Petitions

- LC § 5710
(4) A reasonable allowance for attorneys fees for the deponent, if represented by an attorney licensed by the State Bar of this state. The fee shall be discretionary with, and, if allowed, shall be set by, the appeals board, but shall be paid by the employer or his or her insurer.

Petitions

- LC § 132a makes it a misdemeanor for an employer to discriminate in any way, including discharge or threat of discharge, against an employee who has filed or is thinking about filing a workers' compensation claim or an employee who has received a workers' compensation award.

Petitions

- LC § 4553 (Serious and Willful Misconduct)
The amount of compensation otherwise recoverable shall be increased one-half, together with costs and expenses not to exceed two hundred fifty dollars (\$250), where the employee is injured by reason of the serious and willful misconduct of any of the following:
 - (a) The employer, or his managing representative.
 - (b) If the employer is a partnership, on the part of one of the partners or a managing representative or general superintendent thereof.
 - (c) If the employer is a corporation, on the part of an executive, managing officer, or general superintendent thereof.

Petitions

- Venue

LC § 5501.5 identifies 3 possible locations for workers' compensation venues:

- The county where the applicant resides at the time of filing;
- The county where the injury allegedly occurred;
- The county where the employee's attorney maintains his or her principal place of business.

Petitions

- LC § 5501.5 Venue

(c) If the venue site where the application is to be filed is the county where the employees attorney maintains his or her principal place of business, the attorney for the employee shall indicate that venue site when forwarding the information request form required by Section 5401.5. The employer shall have 30 days from receipt of the information request form to object to the selected venue site. Where there is an employer objection to a venue site under paragraph (3) of subdivision (a), then the application shall be filed pursuant to either paragraph (1) or (2) of subdivision (a).

Petitions

- LC § 5501.6 Petition for change of venue
 - (a) An applicant or defendant may petition the appeals board for a change of venue and a change of venue shall be granted for good cause. The reasons for the change of venue shall be specifically set forth in the request for change of venue.
 - (b) If a change of venue is requested for the convenience of witnesses, the names and addresses of these witnesses and the substance of their testimony shall be specifically set forth in the request for change of venue.

Declaration of Readiness to Proceed

- CCR § 10414

(a) Except when a hearing is set on the Workers' Compensation Appeals Board's own motion, no matter shall be placed on calendar unless one of the parties has filed and served a declaration of readiness to proceed in the form prescribed by the Appeals Board. The declaration of readiness shall be served on all parties and lien claimants.

(d) All declarations of readiness to proceed shall state under penalty of perjury that the moving party has made a genuine, good faith effort to resolve the dispute before filing the declaration of readiness to proceed, and shall state with specificity the same on the declaration of readiness to proceed. Unless a status or priority conference is requested, the declarant shall also state under penalty of perjury that the moving party has completed discovery and is ready to proceed on the issues specified in the declaration of readiness.

Objection to DOR

- **CCR § 10416**

(a) Any objection to a declaration of readiness to proceed shall be filed and served within ten calendar days after service of the declaration. The objection shall set forth, under penalty of perjury, specific reason why the case should not be set or why the requested proceedings are inappropriate.

(b) A false declaration or certification filed under this section by any party, lien claimant, attorney or representative may give rise to proceedings under Labor Code section 134 for contempt or Labor Code section 5813 for sanctions.

Hearings

- **CCR § 10301**

(dd) "Status conference" means a proceeding set for the purpose of ascertaining if there are genuine disputes requiring resolution, of providing assistance to the parties in resolving disputes, of narrowing the issues, and of facilitating preparation for trial if a trial is necessary.

(v) "Mandatory settlement conference" means a proceeding to assist the parties in resolving their dispute or, if the dispute cannot be resolved, to frame the issues and stipulations in preparation for a trial.

(z) "Priority conference" means a proceeding in which the applicant is represented by an attorney and the issues in dispute at the time of the proceeding include employment and/or injury arising out of and in the course of employment.

Hearings

- **CCR § 10552 Expedited Hearing**

(a) Where injury to any part or parts of the body is accepted as compensable by the employer, a party is entitled to an expedited hearing and decision upon the filing of an application for adjudication of claim and a declaration of readiness to proceed pursuant to section 10414 establishing a bona fide, good faith dispute as to:

- (1) the employee's entitlement to medical treatment pursuant to Labor Code section 4600;
- (2) whether the employee is required to obtain treatment within a medical provider network;
- (3) a medical treatment appointment or medical-legal examination;
- (4) the employee's entitlement to, or the amount of, temporary disability indemnity payments;
- (5) the employee's entitlement to compensation from one or more responsible employers when two or more employers dispute liability as among themselves; or
- (6) any other issue as prescribed in the rules and regulations of the Administrative Director.

(b) An expedited hearing may be set upon request where injury to any part or parts of the body is accepted as compensable by the employer and the issues include medical treatment or temporary disability for a disputed body part or parts.

Hearings

- **CCR § 10301**

(ff) "Trial" means a proceeding set for the purpose of receiving evidence.

(u) "Lien conference" means a proceeding held for the purpose of assisting the parties in resolving disputed lien claims pursuant to Labor Code section 4903 or 4903.1 or, if the dispute cannot be resolved, to frame the issues and stipulations in preparation for a lien trial.

Hearings

- Properly preparing your attorney for a Hearing
 - Someone with authority
 - Benefit Printout
 - Wage Information
 - Job Description
 - Witnesses Names

Stipulations

STATE OF CALIFORNIA
 DIVISION OF WORKERS' COMPENSATION
 WORKERS' COMPENSATION APPEALS BOARD

PRE-TRIAL CONFERENCE STATEMENT CASE NO. _____

STIPULATIONS

THE FOLLOWING FACTS ARE ADMITTED:

1. I, _____, am _____
 WHILE EMPLOYEE ALLEGEDLY EMPLOYED
 OR _____
 DURING THE PERIOD _____

 AS A(n) _____ OCCUPATIONAL GROUP NUMBER _____
 AT _____, CALIFORNIA,
 IN THE COURSE OF EMPLOYMENT;
 SUBSTANTIALLY AND AS A RESULT OF USE IN THE COURSE OF EMPLOYMENT TO _____
 EQUIPMENT OR OTHER EQUIPMENT OUT OF USE IN THE COURSE OF EMPLOYMENT TO _____

2. AT THE TIME OF INJURY THE EMPLOYER'S BUSINESS CORPORATION LETTER WAS _____
 THE EMPLOYER WAS INDIVIDUALLY OWNED UNINCORPORATED ALLEGEDLY UNINCORPORATED

3. AT THE TIME OF INJURY THE EMPLOYEE'S EMPLOYER WAS _____ PERIOD, WARRANTING NECESSARY
 PAY OF \$ _____ FOR TEMPORARY DISABILITY AND \$ _____ FOR PERMANENT DISABILITY.

4. THE OVERSIGHT EMPLOYER'S WORKERS' COMPENSATION AS FOLLOWS: (TYPE/DATE)

TYPE	DATE	TYPE	DATE
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

THE EMPLOYEE HAS BEEN SEPARATELY COMPENSATED FOR ALL PERIODS OF HIS CLAIM THROUGH _____

5. THE EMPLOYER HAS FURNISHED ALL SOME NO MEDICAL TREATMENT.
 THE REASON THEREFOR IS _____

6. NO ATTORNEY FEES HAVE BEEN PAID AND NO ATTORNEY REPRESENTATION HAS BEEN RECEIVED.

7. OTHER STIPULATIONS _____

 APPLICANT

 EMPLOYER

 LAW SUBSCRIBER

FORM WCC-24 (Rev. 2015) WCC 2/04

Issues

STATE OF CALIFORNIA
 DIVISION OF WORKERS' COMPENSATION
 WORKERS' COMPENSATION APPEALS BOARD

PRE-TRIAL CONFERENCE STATEMENT CASE NO. _____

ISSUES

EMPLOYMENT: _____

EMPLOYER STATUS: _____

EMPLOYER'S SOURCE OF FUND IN THE SOURCE OF EMPLOYMENT: _____

EMPLOYER'S CLASS: _____

SERVICE: EMPLOYEE CLASS: _____ PERIOD: _____ ON _____
 EMPLOYER CLASS: _____ PERIOD: _____ ON _____

TEMPORARY DISABILITY EMPLOYER DURING THE FOLLOWING PERIODS: _____

PERMANENT AND STATUTORY BENEFIT:
 EMPLOYEE CLASS: _____ PERIOD: _____
 EMPLOYER CLASS: _____ PERIOD: _____

PERMANENT DISABILITY APPOINTMENT

EMPLOYER'S GROUP NUMBER CLASS: EMPLOYEE: _____
 EMPLOYER CLASS: _____

NEED FOR FURTHER MEDICAL TREATMENT: _____

LIABILITY FOR SELF-PROCURING MEDICAL TREATMENT: _____

<input type="checkbox"/> WERE		
UNEMPLOYED	TYPE OF LAW	APPLICABLE PROVISIONS AND
_____	_____	_____
_____	_____	_____
_____	_____	_____

ATTORNEY'S FEE: _____

OTHER ISSUES: _____

 APPLICANT SIGNATURE LETTER SIGNATURE OTHER

WCB FORM 018 (REV. 2012) PAGE 2 OF 2

Supporting your Settlement

CHECKLIST FOR PRO PER SETTLEMENTS

Prepared By The
Information And Assistance Unit

Settlements submitted for applicants in Propria Persona (In Pro Per) are carefully reviewed by the Information and Assistance Unit to insure that the unrepresented injured worker's rights are protected. When submitting settlements to the WCAB on unrepresented workers, *please make sure to include the following:*

1. **Wage Information** - Necessary if temporary disability and/or permanent disability is paid at less than maximum rates. A running total showing your calculations for TD.
2. **Disability Payments** - It is not appropriate to use phrases such as "adequately compensated," "in dispute" (without explanation of dispute), or "unknown" on settlement documents. It is important to include periods paid and at what rates. This includes any wage loss periods and/or salary continuation periods and rates.
3. **Medical Records** - The Primary Treating Physician's signed permanent and stationary report and/or the signed Qualified Medical Examiner's report. Include all test/x-ray/MRI results. *Please make sure the medical records are in reverse chronological order; i.e. oldest medical on the bottom of the stack and the most recent at the top. It is important that the reports are signed pursuant to LC 4628.*
4. **Signatures** - Make sure all documents (including addendums) are properly signed by all parties. Please also ensure para 9 on C&Rs are initialed by both parties. Witnesses must be disinterested parties, i.e. not employees of defendant or members of employee's family. **Interpreter's signature is required when the applicant is a non-English speaker.**
5. **QME Waiver**- if possible. If the settlement is a C&R, please have the applicant's phone number.
6. **Documents Needed** -
 - [a] **Claim Forms** - A DWC-1 is required for all injury dates. **Form 4906 (g)**
 - [b] **Proof of Service required**- all documents filed with the district office **must be served** on all other parties as required by regulations and the Labor Code.
 - [c] **PD/TD Benefit Notice/QME Notice/Benefit Printouts** - A copy of the benefit information notice (letter **ONLY**, not the attached fact sheets) to the unrepresented worker advising of his/her right to a Qualified Medical Examiner. If both parties agree to use the treating physician's permanent and stationary report for the settlement of injuries that occurred on or after January 1, 1994, the parties may execute a written affidavit, signed by both parties, which includes an express agreement to settle the case pursuant to the treating physician's report.
 - [d] **Rating** - Necessary when submitting settlement documents. This may include a Summary Rating prepared by the DEU or a rating formula prepared by a private vendor or a claims administrator (a self-rating). Information and Assistance may request a consultative rating from the Disability Evaluation Unit to substantiate a private or self-rating.
 - [e] **Job Description/Analysis**- It is requested that the job analysis be included, especially if it is not fully described in the medical reports.
 - [f] **Offer of Regular/Alt/Mod Work or SJDB voucher**: For post 1/1/04 injuries-1/1/13, please include the offer of regular/alt/mod work; and/or the offer of the supplemental job displacement voucher, especially if defendants are requesting the 15% increase/decrease in PD. Injuries after 1/1/13 are on a new form.

File and Serve

- CCR § 10301

(r) To "file" a document means to deliver a document or cause it to be delivered to the district office with venue or to the Appeals Board for the purpose of having it included in the adjudication file.

(cc) To "serve" a document means to personally deliver a copy of the document, or to send it in a manner permitted by these rules or the rules of the Court Administrator, to a party, lien claimant, or attorney who is entitled to a copy of the document.

Post Trial Procedure

- **CCR §10566 Minutes of Hearing and Summary of Evidence**

Minutes of hearing and summary of evidence shall be prepared at the conclusion of each hearing and filed in the record of proceedings. They shall include:

- (a) The names of the commissioners, deputy commissioner or workers' compensation judge, reporter, the parties present, attorneys or other agents appearing therefor and witnesses sworn;
- (b) The place and date of said hearing;
- (c) All interlocutory orders, admissions and stipulations, the issues and matters in controversy, a descriptive listing of all exhibits received for identification or in evidence (with the identity of the party offering the same) and the disposition, which shall include the time and action, if any, required for submission;
- (d) A summary of the evidence required by Labor Code Section 5313 that shall include a fair and unbiased summary of the testimony given by each witness;
- (e) If motion pictures are shown, a brief summary of their contents;
- (f) A fair statement of any offers of proof.

If the disposition is an order taking off calendar or a continuance, the reason therefor shall be given.

Post Trial Procedure

- **CCR § 10156 Formal Rating Instructions**

A formal rating determination will be prepared by the Disability Evaluation Unit when requested by the Appeals Board or a Workers' Compensation Judge on a form specified for that purpose by the Administrative Director. The form will provide for a description of the disability to be rated, the occupation of the injured employee, the employee's age at the time of injury, the date of injury, the formula used, and a notice of submission in accordance with Appeals Board Rules of Practice and Procedure.

WCJ shall not discuss the instructions or any other aspect of the case with the assigned disability evaluator, except to clarify or correct clerical or technical errors or omissions. See: *Blacklege vs. Bank of America*, en banc, (2010) 75 CCC 613

Post Trial Procedure

- **LC § 5800-5816 Findings and Award**
 - **Final Determination by the WCJ of the Issues in Dispute**
 - **Decision must issue within 90 days of submission per LC § 123.5(a)**

Post Trial Procedure

- **LC § 5903** Petition for Reconsideration

At any time within 20 days after the service of any final order, decision, or award made and filed by the appeals board or a workers' compensation judge granting or denying compensation, or arising out of or incidental thereto, any person aggrieved thereby may petition for reconsideration upon one or more of the following grounds and no other:

- (a) That by the order, decision, or award made and filed by the appeals board or the workers' compensation judge, the appeals board acted without or in excess of its powers.
- (b) That the order, decision, or award was procured by fraud.
- (c) That the evidence does not justify the findings of fact.
- (d) That the petitioner has discovered new evidence material to him or her, which he or she could not, with reasonable diligence, have discovered and produced at the hearing.
- (e) That the findings of fact do not support the order, decision, or award.

LC § 5904

The petitioner for reconsideration shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the matter upon which the reconsideration is sought other than those set forth in the petition for reconsideration.

Post Trial Procedure

- **LC § 5905 Answer to Petition for Reconsideration**
A copy of the petition for reconsideration shall be served forthwith upon all adverse parties by the person petitioning for reconsideration. Any adverse party may file an answer thereto within 10 days thereafter. Such answer shall likewise be verified. The appeals board may require the petition for reconsideration to be served on other persons designated by it.

Post Trial Procedure

- **LC § 5950 Petition for Writ of Review**

Any person affected by an order, decision, or award of the appeals board may, within the time limit specified in this section, apply to the Supreme Court or to the court of appeal for the appellate district in which he resides, for a writ of review, for the purpose of inquiring into and determining the lawfulness of the original order, decision, or award or of the order, decision, or award following reconsideration.

- **Must be made within 45 days after a petition for reconsideration is denied**

Post Trial Procedure

- **CRC 8.500(e)(1) Petition for Review to the CA Supreme Court**

A petition for review must be served and filed within 10 days after the Court of Appeal decision is final in that court.



Q&A



THANK YOU

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