

**INITIAL CONSIDERATIONS FOR THE PETITIONER AND RESPONDENT
IN WORKERS' COMPENSATION CASES**

INTRODUCTION: THE COMMISSION

The Workers' Compensation Act provides an administrative law remedy for employees who sustain injuries during the course and scope of their employment. The Act is administered by the Illinois Workers' Compensation Commission. The Commission and its membership are described in Section 13 of the Act.

The Workers' Compensation Commission consists of ten members appointed by the Governor. The members of the Commission administer the Act and serve as a de facto board of appeals for workers' compensation decisions.

Individual cases are decided by the Workers' Compensation Commission through arbitrators who are appointed by the Commission (see Section 14 of the Act).

Workers' Compensation Commission arbitrators serve as de facto judges. They preside over and decide individual cases brought by injured employees (Section 19 (including 19(b) and 19(b-1))).

If either party appeals the arbitrator's decision, the decision of the arbitrator is reviewed by a panel of three Commissioners (see Section 19(e)).

Except for cases against the State of Illinois, either party can then appeal decisions of the Workers' Compensation Commission to the Circuit Court of the County where any Respondent can be found (see Section 19(f)(1)). Decisions of the Circuit Court can be appealed to a special workers' compensation division of the Appellate Court (S. Ct. Rule 22).

THE ACT AND RULES

Every practitioner needs a current copy of the Act. Copies are available through the Workers' Compensation Commission. A copy of the Act will be distributed with these materials. Practitioners need to familiarize themselves with the Act and should begin their practice by reading the Act completely.

The language of the statute, unfortunately, is quite antiquated. The practitioner can gain additional practical information about the Workers' Compensation Commission and the way it operates by obtaining and carefully examining copies of all the Workers'

Compensation Commission forms. The forms contain helpful information. For example, footnote number 1 on the **Appearance of Representative** form tells us that the Commission assigns code numbers to attorneys who regularly appear before it and explains how to obtain such a code number. Footnote number 2 on the **Application for Adjustment of Claim** contains another interesting point stating that "date of accident" can include the date of the accident, last exposure, disability, or death. That footnote, of course, reflects the Supreme Court's decision in cases like Oscar Meyer v. Industrial Commission.

Practitioners should next obtain a set of the Rules Governing Practice Before the Illinois Workers' Compensation Commission. These are the Commission's rules adopted pursuant to the Illinois Administrative Code. They are essential to the practitioner, as they contain the procedural requirements for practice before the Illinois Workers' Compensation Commission. Procedural questions about practice before arbitrators and commissioners, trials, filings, and reviews are addressed in the Rules. A copy of the Workers' Compensation Commission rules will be distributed with this material. Briefly peruse the index to see the scope of the rules and the breadth of the information they contain.

LOCATIONS AND DOCKETS

Cases are heard by arbitrators at regularly scheduled dockets. The State is divided up into geographic areas and Workers' Compensation Commission arbitrators hold regularly scheduled hearing dates or "docket calls" at each arbitration site. Each arbitrator is assigned to specific arbitration venues, and the docket call for that venue is held at a regularly scheduled time, usually monthly. For example, Arbitrator Stephen Mathis covers Workers' Compensation Commission hearings scheduled in Springfield and Mattoon. He appears in Springfield during the first full week of each month and in Mattoon generally on the last Wednesday of the month. Arbitrator Ruth White conducts the docket calls at Danville, Urbana, and Decatur. Jeffery Tobin conducts the monthly docket calls in Quincy, Mt. Vernon, Carlinville, Jacksonville, Taylorville, and Lawrenceville.

A complete set of the Arbitrator's assignments and schedules for 2007 is attached.

The Workers' Compensation Commission maintains offices at the following locations - Chicago, Collinsville, Peoria, Rockford and Springfield. Information regarding the Workers'

Compensation Commission and all Commission forms (discussed below) are available at those offices. Documents other than briefs and payments for appeals to the Circuit Court may be filed in downstate offices. If an Application for Adjustment of Claim or an original settlement contract (a settlement for a case not on file yet) is presented to a downstate office, the office will date stamp the form to toll the limitation period but a case number will be assigned subsequently.

The Workers' Compensation Commission maintains an excellent website. It is located at www.iwcc.il.gov. A copy of the website homepage is attached and shows the information available through that site.

GETTING STARTED

Part 7020 of the Rules Governing Practice Before the Workers' Compensation Commission covers matters relating to pre-arbitration practice. Rule 7020.10 states that cases brought before the Commission are docketed and given a corresponding case number. The forms and documents filed with the Workers' Compensation Commission have to be served on all parties and require a Certificate of Service.

A case is opened by the filing of the initial document entitled "Application for Adjustment of Claim". Section 7020.20 of the rules describe the process for filing that Application. As with all forms, the Application for Adjustment of Claim is available on the Workers' Compensation Commission website or from the Workers' Compensation Commission. If properly and completely filled out, the form will contain all information necessary for the Commission to open a case. As noted above, practitioners should familiarize themselves with all of the contents of the Application for Adjustment of Claim, including all the footnotes.

The Application for Adjustment of Claim must be sent to all parties at the time it is sent to the Commission. That means that it should be sent to the Respondent or employer. If more than one employer is listed, as in the case of a borrowing/loaning employer or contractor/uninsured subcontractor, copies must be sent to all employers. Although not required, it is recommended that a copy be sent to the workers' compensation insurer for each such employer as well.

No answer to the Application for Adjustment of Claim is required to be filed by the employer.

The rules require the attorneys for each party to file with the Commission their address or the names and addresses of any agent upon whom notices are to be served. In other words, just like in Circuit Court, the parties to a case have to give the Workers' Compensation Commission and their opponents an address where service by mail can be accomplished.

DOCKET ASSIGNMENTS

According to Rule 7020.20, once an Application for Adjustment of Claim is filed the Commission sends a Notice of Hearing to the opposing party. Section 7020.60 provides that written notices are sent to the parties for the initial status call setting. Taken together, these rules mean that the Workers' Compensation Commission sends the parties a document entitled a Notice of Hearing. The Notice of Hearing identifies the name of the Petitioner and the Respondent. It also identifies the docket location where the case will be set. It gives an initial status date. It also contains the accident date, the notice date, the date the case was filed, and the case number.

VENUE

The venue of the hearing - the docket call on which the case is set - is governed by Section 7020.50. Cases are set at a hearing site located in or nearest geographically to the vicinity in which the alleged accident or exposure occurred. If the accident occurs out of state, the case is set at the hearing site nearest the applicant. Where the applicant and accident site are both outside of Illinois, then the case is set at the hearing site "most convenient to the parties".

It is important to note that under 7020.50 the venue of the hearing site can be changed upon the showing of extreme hardship or by agreement of the parties. Sometimes the Petitioner, Respondent, witnesses, and treating physicians all are located near one docket site but an accident takes place in a separate docket site. If the Commission sets the case at the docket nearest the accident site, the parties can stipulate to a change of venue.

DOCKET CALLS AND DOCKET SHEETS

The initial Notice of Hearing sent by the Workers' Compensation Commission states the date and location of the docket call where

the case will first appear. A copy of an initial notice is attached.

The Workers' Compensation Commission generates a list of each case that is on the docket each month at each docket location. The list of cases for each month are available on the Commission website under the link "Calendars, call sheets, and Chicago trials". Click on that link, look under the entry "Call sheets" and click on downstate arbitrators. Next, find the name of the Arbitrator and the call over which he or she presides and click on the month at issue. The computer will present the names of every case on the call sheet for that month. A copy of the April 2007 Taylorville docket sheet is attached as an example.

The list of cases, or "docket sheets", are important to the practitioner. At the start of every call, arbitrators go through that sheet to determine action to be taken on cases during that call. Generally, the arbitrators call all older cases, or cases above the "red line" (discussed below) individually. Generally, arbitrators announce the cases below the red line on a page by page basis.

Once a case is set on a Workers' Compensation Commission arbitration docket it will reappear on the arbitration call list every other month. If the initial trial notice states that a case has been set on the January call, it will reappear on the call sheet on March, May, July, etc. The case will continue to appear on the call sheet for that docket until it is disposed of. As the case ages, it moves to a higher position on the call sheet.

RED LINE CASES

Once a case has been on file with the Workers' Compensation Commission for three years, it moves up the docket sheet to the "red line". A case which is not "above the red line" is continued automatically for two months to the next applicable docket call.

The "red line" represents the imaginary line on the docket sheet above which cases are three years old or older. Once a case reaches that age, it is subject to automatic dismissal if action is not taken at the docket call. Cases that are above the red line must either be tried, settled, or continued by specific written request of the parties.

The Workers' Compensation Commission goes to some significant effort to remove old cases from the docket and it does so by dismissing red line cases which are not continued by the parties or set for trial. Continuance of the red line cases is obtained by submitting to the arbitrator in advance of the call date a letter giving specific reasons why the case is not ready for trial.

In recent years, the Workers' Compensation Commission has intensified its efforts to remove old and stale cases from the call sheet. Accordingly, an attorney must be careful to send a request for a continuance on red line cases, and to include in that request specific information justifying a continuance. That information would include facts like the Petitioner is still on TTD, the Petitioner is receiving vocational rehabilitation, or the parties have scheduled but not completed evidence depositions of treating physicians.

Attached hereto are orders from the Chairman of the Workers' Compensation Commission setting forth the requirements for continuance of red line cases. The practitioner should pay attention to those requirements and ensure a continuance letter is sufficient. Additionally, the practitioner is advised to attend the docket call when red line cases are pending to ensure that the case is in fact continued. Red line cases that are not set for trial and are not properly continued are subject to involuntary dismissal by the Workers' Compensation Commission.

SETTING THE CASE FOR TRIAL

If a party is seeking emergency relief, as with a 19(b) or 8(a) Petition, that party can set that case for trial at the assigned docket location during any month. Similarly, motions can be set and heard on any month. Trials of cases, however, are generally allowed only on months where the case appears on the docket. If the arbitrator and the parties agree, a case can be presented for trial "off the docket," or on a month when it does not appear on the regular call sheet.

The rules for setting a case for trial are general set forth in Section 7030.20. that rule generally provides that a request for hearing should be served on the opposing party through its attorney fifteen (15) days in advance of the docket date. The request should be served by certified mail if any objection to trial is anticipated. Employers can only serve requests for hearing if the injured employee has not received medical

treatment or been temporarily totally disabled for six (6) months prior to the proposed trial date.

The majority of medical evidence is presented by the admission of medical records. If medical testimony is required, it generally comes by deposition of the medical treatment provider, rather than by live testimony. Most arbitrators strongly prefer that such depositions be obtained in advance of trial, rather than leaving the proofs open for completion of such depositions.

Upon completion of trial, each party is required to submit Proposed Decisions to the arbitrator, objectively and succinctly summarizing the trial evidence and suggesting proposed findings for the arbitrator's consideration. Rather than writing their own decisions, most arbitrators usually adopt the proposed decision of one party or the other.

OVERVIEW

Read the Act and the Practice Rules thoroughly. Fill out the Application for Adjustment of Claim form fully and completely and serve it in triplicate on the Workers' Compensation Commission. Serve a copy of the Application for Adjustment of Claim on the Respondent. Await receipt of the Workers' Compensation Commission's Notice of Hearing. Diary that case to appear on your calendar every two months after the initial Notice of Hearing date.

Pay attention to each docket call sheet. Note the imaginary red line and for your own protection, quite literally draw a red line across a copy of that docket sheet. Make sure none of your cases appear above the red line. If they do, you must file a written request for a continuance or be prepared for trial.

When you want to set the case for trial, set it on a date when the case appears on the docket call. The case will appear every two months after the initial hearing date.

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