

# With IWIF

Injured Workers' Insurance Fund • News and Information For Our Policyholders

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**SPECIAL  
ISSUE**

## Employer's Guide Workers Compensation Hearing Process

to the

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Karl Aumann, Chairman  
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# Employer's Guide to the Workers Compensation Hearing Process

Injured workers file thousands of claims each year with the Maryland Workers' Compensation Commission. The vast majority of claims are resolved by the injured worker, his or her employer, and workers' compensation insurance carrier without the need for a hearing.

By Rona Finkelstein, IWIF Vice President of Legal and Human Resources, and Carmine D'Alessandro, IWIF Legal Director

## When a Dispute Arises

When the injured worker (the claimant) and the employer and insurer disagree and cannot resolve a particular issue, one of the 10 Workers' Compensation Commissioners, who comprise the Commission, will decide the case. Some common issues decided by the Commission are whether the claimant sustained an accidental injury or occupational disease under Maryland law, whether the requested medical treatment is reasonable and necessary, whether the claimant has reached maximum medical improvement and is able to return to work, and to what degree, if any, has the claimant sustained a permanent disability.

To start the hearing process and have the disagreement heard by the Commission, one of the parties will file a form known as "issues." On this form, the party will identify the specific issues on which the parties disagree and request that the Commission hold a hearing and make a ruling on those issues.

Once the Commission receives the "issues," the Commission will schedule the case for hearing.

## Preparing for the Hearing

Much of the preparation for hearing has already occurred by the time the hearing is scheduled. By this time, the claims adjuster, as part of the claims adjusting process, has gathered most, if not all, of the information necessary to analyze the issues and prepare for hearing. This process includes identifying fact witnesses, obtaining medical records, and interviewing persons with information necessary to defend the case or support the employer and insurer's position. While the adjuster is the first person to investigate the claim, the investigation is truly a team effort. The adjuster will collaborate with a nurse, legal staff, and most particularly, the employer.



“I encourage all our policyholders to read and keep for future reference this important and informative overview of the workers’ compensation claims and hearing process.”

Tom Bromwell, IWIF President and CEO

### The Essential Role of the Employer

From the time the First Report of Injury is filed by the employer, he or she becomes a critical member of the defense team. The employer’s assistance in locating witnesses is invaluable. For example, when the employer and insurer are contesting the accident, the adjuster will look to the employer to identify the claimant’s supervisor as well as other employees who were working with the claimant at the time of the alleged occurrence. The employer may also have information relating to the claimant’s physical condition before and after the accident.

In every case, the employer will also be asked to provide documentation of the claimant’s average weekly wage, and in some cases, other employment records. Finally, if the claimant’s supervisor and/or co-workers have essential testimony, the employer will be asked to make them available to testify at the hearing. Therefore, it is critical that the employer actively participate in the defense of the case.

### The Supporting Roles of Nurses and the Legal Staff

The adjuster will often call upon others to analyze the facts gathered during the investigation. With respect to medical issues, a nurse will consult with the adjuster, offering expertise in areas such as the expected recuperation time for a particular injury and an explanation of the course of treatment recommended by a medical doctor.

When the adjuster has compiled all the facts regarding the particular issue, he or she “roundtable” the claim with an attorney. The attorney will offer legal expertise to assist the adjuster in making decisions on complicated cases. If, after thorough review of all the evidence, it is determined that there is not sufficient evidence to support the defense of the case, the issue will be resolved without the need for a hearing. On the other hand, if the evidence supports the defense, the case will go forward to hearing.

### The Litigation Process

Once the case is formally scheduled for a hearing, the attorney will conduct a second review of the evidence to ensure that the case is ready for hearing. If further information is required, the attorney will ask the paralegal and/or the adjuster to obtain that information.

The attorney will notify the employer of the date, time and location of the hearing and will advise the employer of the issues that are expected to be decided at that time. If the employer’s presence is necessary at the hearing, the attorney will so indicate. If other persons will be required to testify at the hearing, the attorney will have a subpoena issued for the attendance of those individuals.

The attorney may also schedule a pre-hearing visit with the employer. The purpose of the visit will be to review the facts of the case, explain the defense, obtain additional information, if necessary, and review the proposed testimony of witnesses for the employer.

### The Hearing

Hearings before the Workers’ Compensation Commission are held at various locations throughout the State. These sites include Cumberland, Abingdon, Baltimore City, Beltsville, LaPlata, Frederick and Cambridge. The zip code of the Claimant determines the site of the hearing. The hearings generally start at 9:30 a.m., although, in the rare case, a Commissioner may schedule the case for 9:00 a.m.

A hearing before the Workers’ Compensation Commission is a judicial proceeding. Therefore, proper attire is required. **If at all possible, the employer and the employer’s witnesses should wear proper business attire.**

Hearings assigned to IWIF in '05 **10,166**

Source: IWIF Legal Dept.

Total Hearings by the Maryland WCC  
in '05 **44,282**  
in '04 **43,545**  
in '03 **40,811**

Source: MD WCC 2005 Annual Report

In 2005 **15,823** Permanency, Fatality & Compromise Awards Totaled **\$262,967,940**  
In 2004 **19,574** Totaled **\$299,936,282**

Source: MD WCC 2005 Annual Report

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# Employer's Guide to the Workers Compensation Hearing Process

IWIF has a  
dedicated legal  
staff of  
**32** attorneys  
and support  
professionals

The need for the employer's cooperation cannot be stressed enough. Without the employer's assistance in identifying witnesses, providing job descriptions and the like, the defense of a workers' compensation claim becomes far more difficult.

As in court, many cases are scheduled for the same start time. There are twenty cases or more scheduled to be heard by each Commissioner on any given morning. That schedule of cases is called a "docket." Some cases on the docket may be postponed or resolved at the last minute, and, thus, it is impossible to know for certain when a particular case on that docket will be heard.

**Regardless, if the attorney asks the employer or co-workers to be present at the hearing, the witnesses should be sure to arrive at the hearing site before the hearings begin, at the time suggested by the attorney. The attorney will use that opportunity to review last minute matters and answer any questions.**

During the hearing, the claimant and any witnesses will testify, after being sworn in by the Commissioner. Both the claimant's attorney and the attorney for the employer and insurer will ask questions of the witnesses. The presiding Commissioner may also ask questions. **At no time will the employer be permitted to ask questions of the witnesses. However, the employer may consult with the IWIF attorney and suggest additional questions. While a Workers' Compensation Commission hearing is, by nature, adversarial, the Commission emphasizes that proper decorum is expected of all persons in attendance at the hearing. All parties and their attorneys are expected to act in a professional and courteous manner at all times.**

After the hearing, the Commissioner will dismiss the parties and their witnesses. The Commissioner's decision will not be announced at that time. Instead, all parties will be mailed a written Order containing the Commissioner's decision within two to three weeks of the hearing.

The adjuster, in consultation with the attorney who tried the case, will review the order. If the decision was not supported by the evidence

introduced and testimony given at the hearing, the decision will be appealed. Likewise, the claimant may take an appeal. The appeal must be filed within thirty (30) days of the date of the Order.

The appeal will be filed with the Circuit Court for the county in which the accident occurred or in which the appealing party resides. Either party may ask that the case be tried before a jury instead of a judge. In the Circuit Court proceeding, the decision of the Workers' Compensation Commission will be presumed to be correct, and it will be up to the appealing party to overcome that presumption.

**It is important to note that, even though a case has been appealed, the decision of the Workers' Compensation Commission must be complied with in the meantime. Therefore, if the claimant sought surgery and the Commissioner ordered the employer and insurer to pay for that surgery, the adjuster will have to authorize the payment for the surgery, even though the court on appeal may later overturn the Commission's ruling.**

## Truly a Team Effort

The process of investigating a claim for hearing and, subsequently, litigating that claim before the Workers' Compensation Commission is truly a team effort. Claims professionals, nurses, attorneys and employers come together in a common effort to ensure that the proper compensation is provided to an injured worker. The need for the employer's cooperation cannot be stressed enough. Without the employer's assistance in identifying witnesses, providing job descriptions and the like, the defense of a workers' compensation claim becomes far more difficult. Employers must always remember that their involvement and cooperation in the hearing process is in their best interest, as it will help to ensure the proper handling of the claim. ■