

**TEXAS DEPARTMENT OF INSURANCE
DIVISION OF WORKERS' COMPENSATION**

**PRACTICES AND PROCEDURES
RELATING TO
CONTESTED CASE HEARINGS**

The following practices and procedures provide guidance for all contested case hearings (CCHs) held by Administrative Law Judges (ALJs) employed by the Texas Department of Insurance, Division of Workers' Compensation (Division). Their purpose is to facilitate the orderly conduct of CCHs statewide by encouraging uniform practices and procedures.

**I.
PRE-HEARING MATTERS**

Motions for Continuance

Section 410.155 of the Act provides that the Division should grant a continuance only if it determines that there is good cause for doing so. For this reason, motions for continuance, *including those which are agreed or unopposed*, should be granted only upon a finding by the ALJ that the grounds upon which the motion is based constitute good cause. The ALJ may consider the agreed or unopposed nature of a continuance request as a factor in assessing whether good cause exists to continue the hearing.

Trial or Social Security Hearing Conflicts

When a continuance is requested due to counsel for one of the parties having been set for trial, the ALJ may require the requesting party to provide the following information, to the extent known:

- Style, Cause Number and Court
- Coordinator's (or Clerk's) name and telephone number
- Date of trial setting (or date range of docket)
- Case position on the docket

With this information the ALJ or docket clerk can verify the conflict if they choose to do so. If there is insufficient information provided to verify the court setting or assignment, the ALJ may deny the continuance subject to reconsideration upon receipt of additional specified information.

Continuances will normally be granted for earlier set docket conflicts in federal courts, state courts, county courts, city courts, and Social Security administrative hearings.

Early Requests for Continuance Encouraged

A request for continuance by a represented party or a party assisted by OIEC prior to a hearing should be submitted to the Division in writing as early as possible. The Division has a limited docket capacity. If a continuance is granted 45 days or more before the scheduled CCH date, there is a reasonable chance for another CCH to be scheduled in its place. When a continuance is granted and another CCH cannot be scheduled in its place, the Division's capacity to conduct CCHs is diminished, compromising its ability to meet the requirement to schedule a CCH within 60 days after the date of the BRC.

Firms with Multiple Attorneys

Firms with multiple attorneys should provide a substitute attorney where feasible rather than request a continuance. If coverage by a substitute attorney is not feasible, the motion should explain this.

Discovery Requests

ALJs will normally review and act on pre-hearing motions and subpoena requests on a daily basis. In the case of depositions on written questions or other pre-hearing matters which the ALJ does not deny and in which there is reason to believe the opposing party may file an objection, response or cross-questions to be propounded to a witness, the ALJ will cause such opposing party to be contacted to determine whether a response will be filed. If the opposing party indicates a response will be filed, the ALJ will delay ruling on the request until the responding party has had an opportunity to object, respond or propound cross-questions.

Motions to Compel Answers to Interrogatories

If a party fails to answer an interrogatory, that party may be prohibited from presenting evidence pertaining to the unanswered interrogatory. Alternatively, the party propounding the unanswered interrogatory may file a motion to compel the opposing party to answer. Such a motion should be filed no later than 10 days prior to the CCH. Unless a motion to compel answers to interrogatories is filed, continuances to obtain information due to the opposing party's failure to answer interrogatories will not be granted. A motion to compel is not a substitute for acquiring information that could be obtained through subpoena.

Prehearing Conferences and Discovery

With the maximum of two BRCs, it is critical that parties thoroughly evaluate their cases so that issues are fully developed at the BRC.¹ In the event further development of the evidence or issues is necessary to a complete resolution of the matter at the CCH, such as seeking clarification from a designated doctor, the parties are encouraged to timely take such action as necessary to ensure full development of the case so that the CCH will not be delayed. Such action may include a request that the ALJ conduct a pre-hearing conference, either by telephone or with parties present in the Field Office, or submit questions to the designated doctor. Such requests should be made as soon as possible following the BRC so that (1) the ALJ may consider clarification/addition of issues or obtain answers to questions submitted to the designated doctor far enough in advance of the CCH that such hearing may be held as scheduled; or (2) the case may be continued for further development sufficiently early that another CCH may be scheduled in its place. (When a replacement hearing cannot be scheduled, it diminishes the capacity of the Division to hear the disputes of other system participants and may cause a delay in hearings beyond the statutory 60-day limit.)

Pre-Hearing motions and discovery requests should be submitted with a proper order and subpoena form, if applicable, attached. Subpoenas should be submitted in completed form ready for signing by the ALJ. Copies of approved or suggested forms for such documents are attached for the convenience of CCH participants, although use of any legally sufficient form is appropriate and nothing herein should be construed as requiring the exclusive use of the attached forms.

¹ To help parties completely develop their case, ALJs may approve subpoena requests so parties can completely prepare their cases to resolve disputes before requesting a BRC and before filing a medical dispute. When submitting these request parties should use Rules 142.12 and 142.13 as a guide, including providing notice to potential parties.

II. AT THE HEARING

Time Allocated for CCHs

The time allocated for CCHs is two hours. The ALJ, however, may allow additional time when necessary and appropriate. The ALJ may impose reasonable time limits on the parties. If the ALJ determines that more time is required for the hearing than is available on the scheduled date, the ALJ may reconvene and conclude the hearing on a later date.

Appearance Sheet

A completed Appearance Sheet (Attachment 1) should be provided at the DWC Field Office where the CCH is being held when the parties check-in for the hearing. If the CCH is held at a location other than a DWC Field Office, the completed Appearance Sheet should be presented to the ALJ when the parties enter the hearing room.

Marking Exhibits

All exhibits which may be offered into evidence should be appropriately marked prior to the time scheduled for the CCH. Each exhibit for Claimants and Subclaimants should be identified with the party designation, exhibit number or letter, and page number. Parties designated to use letters in order to identify their exhibits (see below) may use double letters (for example "AA") in the unfortunate event that they have more exhibits than there are letters in the alphabet. Each page of each exhibit should be marked in the lower right hand corner as indicated below:

Claimant Exhibits

The exhibit identifier for Claimants is the letter 'C'.

Example: C-1 Pg 1.

Subclaimant Exhibits

The exhibit identifier for Subclaimants is the letter 'S'.

Example: S-1 Pg 1.

Carrier Exhibits

The exhibit identifier for carriers is 'CR'.

Example: CR-A Pg 1.

If more than one Carrier is appearing at the CCH, each Carrier should identify its exhibits by adding the first letter of its name to the Carrier exhibit identifier.

Example: CRL-A Pg 1.

Employer Exhibits

The exhibit identifier for employers is 'E'.

Example: E-A Pg 1.

If more than one Employer is appearing at the CCH, each Employer should identify its exhibits by adding the first letter of its name to the Employer exhibit identifier.

Example: EK-A Pg 1.

For a CCH on remand from the Appeals Panel, add an 'R' to the mark placed on each exhibit offered. Official notice should be taken of the record of the prior CCH and there is no need to re-mark, re-offer and re-admit evidence admitted at the prior CCH.

Exhibit Tabs

Exhibits should be separated with tabs extending beyond the right side of the exhibits. The tab markings should be consistent with the exhibit markings.

Exhibit List

Each party should attach an exhibit a list of all exhibits that the party intends to offer into evidence at the CCH. The Exhibit List should be in substantially the same form as that included below as Attachment 2 and should list each exhibit in its numeric or alphabetical order, include a brief description of the exhibit and the number of pages comprising the exhibit.

Example:

- A. Exhibit List
- B. Dr Jones, 3-3-96 DWC 69, 8 pgs.
- C. Dr Jones, 8-10-94 letter
- D. Dr Hays, records, 10 pgs.
- E. Dr Hays, 12-25-94 report
- F. Dr Hays, Surgical report, 2 pgs.
- G. Oaks Hospital, records, 5 pgs.
- H. Riggs' statement, 8 pgs.
- I. Off work note, 9-22-96
- J. DWC 73, 9-22-96
- K. Return to work note, 12-31-96
- L. DWC 73, 12-31-96

Exchange of Exhibits

At least 15 minutes before the CCH is scheduled to begin, the parties should meet and exchange exhibits. To the extent practical, duplicate exhibits should be removed. To revise the exhibit list for any deleted exhibits, merely line through the exhibit description and add, "NOT OFFERED".

Foreign Language Exhibits

Exhibits in a language other than English will not be admitted or considered unless accompanied by an English translation.

Evidence Summaries

Where they will enhance the understanding of the facts, summaries are encouraged. Summaries in accounting formats are particularly helpful regarding financial matters such as wages and establishing regular support for dependents.

Electronic Evidence

Evidence in electronic form should be in either DVD or CD format. The party offering electronic evidence should identify relevant portions by, for example, time and/or counter number display so that such portions may be easily accessed and identified.

Offering Exhibits into Evidence

Normally exhibits will be offered into evidence all at once. The exhibit list eliminates any need to read into the record or otherwise identify the exhibits being offered.

Copies of documents offered into evidence must be clearly legible. Relevant portions of handwritten and other not clearly legible documents may be read aloud for the record by the offering party. The interpretation of those documents read into the record will be weighed by the ALJ. Otherwise, illegible portions of documents offered into evidence will not be considered.

Portions of documents deemed important to the parties should be highlighted with a yellow highlighter. For highlighting only a yellow highlighter should be used. Although highlighted portions are given no more weight, it makes it much easier to find portions of documents deemed important to the parties.

Witness Testimony

Redirect and re-cross examination of witnesses should be limited to new matters raised in cross examination, redirect examination and questions posed by the ALJ.

Parties and participants should conduct themselves with dignity, should show courtesy and respect for one another and for the ALJ, and should follow the decorum prescribed by the ALJ.

Speaker Telephone Use at CCHs

Parties may request to have a witness testify by speaker telephone. Such requests should be in writing with notice to the other parties.

Stipulations

Parties should be ready and willing to stipulate to facts not in dispute that are required to be established to support any CCH issue.

Opening Statements

Usually, in the opening statement the party with the burden of proof should briefly cover each legal element (requirement) for each disputed issue and point to the evidence expected to address it. Where there is a question of law it is appropriate for the parties to identify it in the opening statement and to specifically cite the legal authority relied on. The party having the burden of proof will normally open first. The opposing party may then offer its opening statement or may reserve the same until its case in chief.

Where the case involves issues upon which more than one party has the burden of proof, the ALJ will determine, within his or her discretion, the order in which opening statements will be offered.

Closing Argument

Closing arguments should be brief and the ALJ may impose time limitations on them. They should point to specific pages of key documents relied upon.

The party having the burden of proof will normally offer its closing first and will normally be allowed a final closing in rebuttal following the opposing parties' arguments.

Where the case involves issues upon which more than one party has the burden of proof, the ALJ will determine, within his or her discretion, the order in which closing statements will be offered.

CONTESTED CASE HEARING APPEARANCE SHEET

Style of Case:	
CCH Date & Time:	
Docket Number:	
Administrative Law Judge:	

Please Print Clearly And Legibly. Fill In All Requested Information

Print Name	<p style="text-align: center;"><u>Check One:</u></p> <input type="checkbox"/> Claimant <input type="checkbox"/> Claimant Rep <input type="checkbox"/> Ombudsman <input type="checkbox"/> Carrier Rep <input type="checkbox"/> Employer <input type="checkbox"/> Witness <input type="checkbox"/> Interpreter <input type="checkbox"/> Court Reporter <input type="checkbox"/> Other <input type="checkbox"/> Info:
Address	
Telephone Number	
E-Mail – Attorney Representative or Carrier Representative	
State Bar / Adjuster Number	

Print Name	<p style="text-align: center;"><u>Check One:</u></p> <input type="checkbox"/> Claimant <input type="checkbox"/> Claimant Rep <input type="checkbox"/> Ombudsman <input type="checkbox"/> Carrier Rep <input type="checkbox"/> Employer <input type="checkbox"/> Witness <input type="checkbox"/> Interpreter <input type="checkbox"/> Court Reporter <input type="checkbox"/> Other <input type="checkbox"/> Info:
Address	
Telephone Number	
E-Mail – Attorney Representative or Carrier Representative	
State Bar/Adjuster Number	

Print Name	<u>Check One:</u> <input type="checkbox"/> Claimant <input type="checkbox"/> Claimant Rep <input type="checkbox"/> Ombudsman <input type="checkbox"/> Carrier Rep <input type="checkbox"/> Employer <input type="checkbox"/> Witness <input type="checkbox"/> Interpreter <input type="checkbox"/> Court Reporter <input type="checkbox"/> Other <input type="checkbox"/> Info:
Address	
Telephone Number	
E-Mail – Attorney Representative or Carrier Representative	
State Bar/Adjuster Number	

Print Name	<u>Check One:</u> <input type="checkbox"/> Claimant <input type="checkbox"/> Claimant Rep <input type="checkbox"/> Ombudsman <input type="checkbox"/> Carrier Rep <input type="checkbox"/> Employer <input type="checkbox"/> Witness <input type="checkbox"/> Interpreter <input type="checkbox"/> Court Reporter <input type="checkbox"/> Other <input type="checkbox"/> Info:
Address	
Telephone Number	
E-Mail – Attorney Representative or Carrier Representative	
State Bar/Adjuster Number	

Print Name	<u>Check One:</u> <input type="checkbox"/> Claimant <input type="checkbox"/> Claimant Rep <input type="checkbox"/> Ombudsman <input type="checkbox"/> Carrier Rep <input type="checkbox"/> Employer <input type="checkbox"/> Witness <input type="checkbox"/> Interpreter <input type="checkbox"/> Court Reporter <input type="checkbox"/> Other <input type="checkbox"/> Info:
Address	
Telephone Number	
E-Mail – Attorney Representative or Carrier Representative	
State Bar/Adjuster Number	

EXHIBIT LIST

(INDICATE CARRIER, CLAIMANT, OR EMPLOYER)

STYLE OF CASE:	
DOCKET NO:	
DATE:	ADMINISTRATIVE LAW JUDGE:

OFFERED NO.	DESCRIPTION OF EXHIBIT/DOCUMENT/DATE	DATE	OFFERED	WITH DRAWN	ADMITTED	NOTES
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						