

TDI **InsurED**

Resolving Disputes in the Texas Workers' Compensation System

August 17, 2023

TDI | Benefit disputes

The Texas Administrative Code defines benefit disputes as:

“A disputed issue arising under the Texas Workers' Compensation Act (the Act) in a workers' compensation claim regarding compensability or eligibility for, or the amount of, income or death benefits.” [28 Texas Administrative Code \(TAC\) 140.1\(1\)](#)

- Compensability.
- Disability.
- Extent of injury.
- Maximum medical improvement.
- Impairment rating.
- Entitlement to supplemental income benefits.
- Travel expenses.
- Change of doctor.
- Appeal of medical fee reimbursement denial.

TDI | Initiating a dispute

Plain language notices (PLN)

- [PLN-1: Notice of Denial of Compensability/Liability and Refusal to Pay Benefits.](#)

See [28 TAC 124.2](#) – This notice must be used by an insurance carrier to notify the injured employee/beneficiary and TDI-DWC of the insurance carrier's denial of compensability or liability for an injury.

- [PLN-11: Notice of Disputed Issue\(s\) and Refusal to Pay Benefits.](#)

This notice must be used to notify and injured employee/beneficiary and TDI-DWC of the insurance carrier's dispute of an issue such as disability, extent of injury, or death benefits.

TDI | Plain language notice for fatalities

- [PLN-12: Notice of Potential Entitlement to Workers' Compensation Death Benefits.](#)
 - See [28 TAC 132.17\(d\)](#) and (f). An insurance carrier shall send a plain language notice within seven days of date they became aware of the identity of a beneficiary and a means of contacting them.
 - Send notice of the time, date, and place of any hearings on a claim to the necessary parties. In Appeals Panel Decision 130472, the decision of administrative law judge was reversed and remanded to ensure that the next friend and minor beneficiary in a death benefit case received notice of the time, date, and place of any hearings in the claim.

Benefit review conferences

TDI | Attempt to resolve dispute

[Texas Labor Code 410.023\(b\)](#) and [28 TAC 141.1\(d\)](#)

- [DWC Form-045: Request to Schedule, Reschedule or Cancel a Benefit Review Conference.](#)
- "I certify that prior to this request I have made reasonable efforts to resolve the disputed issue(s)..."
- The parties are required to talk to each other and attempt to reach a resolution before requesting dispute resolution assistance from DWC. It means the relevant parties should be involved in a discussion of the details and options specific to the individual claim. This means exchanging information or documents and looking for common ground.

- [DWC Form-045: Request to Schedule, Reschedule, or Cancel a Benefit Review Conference.](#)
- [DWC Form-045M: Request to Schedule, Reschedule, or Cancel a Benefit Review Conference to Appeal a Medical Fee Dispute Decision.](#)
- Keep in mind the specific timeframes for filing the DWC Form-045 in the following cases:
 - 90 days for maximum medical improvement and impairment rating. [28 TAC 130.12](#)
 - 10 days for supplemental income benefits. [28 TAC 130.108](#)
 - 10 days for change of treating doctor. [28 TAC 126.9](#)
 - 20 days for DWC Form-045M medical dispute resolution appeal. [28 TAC 133.307\(g\)](#)

TDI | Benefit review conference exchange

Sending and exchanging pertinent information

- "Pertinent information" means all information relevant to the resolution of the disputed issue or issues..." [28 TAC 141.4](#)
- All "pertinent information must be sent to the opposing party or parties before the time the request for a benefit review conference is sent to the division."
- The opposing party must send all pertinent information to the requesting party and other parties within 10 working days after receiving a copy of the request for a benefit review conference.
- Exchanged with opposing party or parties, and filed with DWC, at least 14 days before the benefit review conference or five days if expedited.

The purpose of the benefit review conference is to:

- Explain the rights of the parties and the procedures necessary to protect those rights.
- Discuss the facts of the claim, review available information in order to evaluate the claim, and delineate disputed issues.
- Mediate and resolve disputed issues. [Labor Code 410.021](#)

A party or its representative commits an administrative violation if that person:

“Attends a dispute resolution proceeding within the division without complete authority or fails to exercise authority to effectuate agreement or settlement.” [Labor Code 415.001\(2\)](#) and [415.002\(a\)\(9\)](#).

TDI | Scheduling order

- Approval of a continuance by an administrative law judge for good cause.
- See [Labor Code 410.155](#) on continuances:
 - (a) A written request by a party for a continuance of a contested case hearing to another date must be directed to the division.
 - (b) The division may grant a continuance only if the division determines that there is good cause for the continuance.
- An administrative law judge may consider the parties' efforts to complete their scheduling order commitments.

TDI | Benefit review conference report

- The benefit review conference report establishes the issues to be resolved at the contested case hearing. [Labor Code 410.031](#) and [410.151\(b\)](#)
- An issue that was not raised at a benefit review conference or that was not identified in the benefit review conference report may not be considered by an administrative law judge at the contested case hearing unless:
 - The parties unanimously agree to add the issue(s). [Labor Code 410.151\(b\)\(1\)](#) and [28 TAC 142.7\(b\)\(3\) and \(d\)](#).
 - The administrative law judge determines that there is good cause to add the issue(s). [Labor Code 410.151\(b\)\(2\)](#) and [28 TAC 142.7\(e\)](#).
 - The issue(s) were actually litigated by the parties. Appeals Panel Decision 041286.

Contested case hearings

TDI | Purpose

- Fully develop the case and inform the administrative law judge so they may make the best possible decision based upon all the facts to resolve a benefit dispute.
- The statutes regarding a contested case hearing start with [Texas Labor Code 410.151](#).
- A contested case hearing is presided over by an administrative law judge (an attorney that is licensed to practice law in Texas).
- A contested case hearing is a formal, adversarial proceeding that is like a non-jury or bench trial, in that the parties present evidence and make arguments on the disputed issues.
- The administrative law judges makes Findings of Fact and Conclusions of Law in a Decision.

- [28 TAC 142.13](#)
 - Parties' exchange of documentary evidence.
 - Interrogatories, as explained at [28 TAC 142.19](#).
 - Witness depositions:
 - Health Care Providers – only deposition on written questions.
 - Other witnesses – if ALJ determines good cause for this.
- [Labor Code 410.158 – 410.162](#)

TDI | Non-expedited exchange deadline

- No later than 15 days after the benefit review conference, parties shall exchange the following information:
 - All medical reports and reports of expert witnesses who will testify at the hearing.
 - All medical records.
 - Any witness statements.

TDI | Non-expedited exchange deadline

- The identity and location of any witness known to have knowledge of relevant facts.
- All photographs or other documents which a party intends to offer into evidence at the hearing. [28 TAC 142.13\(c\)\(1\)](#)

TDI | Exchange after deadline?

- An administrative law judge will base determination on admissibility on whether good cause existed for the failure to timely exchange the information.
- [Labor Code 410.165](#) discusses “evidence” and what the administrative law judge accepts as evidence.
- The administrative law judge can allow the evidence to come in, despite the exchange being after the deadline or can deny evidence to come in.
- The administrative law judge could allow record to stay open or allow a continuance to afford opposing side to review the late exchange of information.

TDI | Contested case hearings: continuances

- “A request for continuance may be made before or during a hearing.” [28 TAC 142.10\(c\)](#)
- [Labor Code 410.155\(b\)](#) and [28 TAC 142.10\(b\)\(2\)](#) both delineate a good cause standard for granting continuances.

What happens next?

TDI | Appeal administrative law judge decision

- The administrative law judge's decision is effective and binding on the date signed by the administrative law judge. [28 TAC 142.16\(e\)](#)
- To appeal the decision of an administrative law judge:
 - File in writing with the division appeals panel.
 - Not later than the 15th day after the date on which the decision of the administrative law judge is received from division. [Labor Code 410.202\(a\)](#)

TDI | Response to appeal

To respond to appeal:

- File in writing with the appeals panel.
- Not later than the 15th day after the date on which the appeal is served. [Labor Code 410.202\(b\)](#)

TDI | Counting days for appeal purposes

15-day appeal and response periods for filing with appeals panel:

Does not include Saturdays, Sundays, and holidays listed in [Government Code 662.003](#).
[Labor Code 410.202\(d\)](#)

TDI | Appeal of the panel's decision

Judicial review

File suit not later than the 45th day after the date on which the division mailed the party the appeals panel's decision. [Labor Code 410.252\(a\)](#)

TDI | Appeal on medical necessity

To appeal decision of independent review organization on the necessity of proposed health care:

File [DWC Form-049, Request to Schedule a Medical Contested Case Hearing \(MCCH\)](#) within 20 days after the date the decision is sent to the appealing party. [28 TAC 133.308\(s\)\(1\)\(A\)](#)

TDI | Medical fee dispute

Dispute over medical fee decision of Division Medical Fee Dispute Resolution:

File [DWC Form-045M: Request to Schedule, Reschedule, or Cancel a Benefit Review Conference to Appeal a Medical Fee Dispute Decision](#)

No resolution after the benefit review conference?

File [DWC Form-044: Election to Engage in Arbitration](#) or [DWC Form-049: Request to Schedule a MCCH](#)

Jennifer Hopens, Deputy Commissioner

DWC Appeals Panel

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Northern and Western Regions, DWC Hearings

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