

1 **SUBCHAPTER A. ARBITRATION.**

2 **[~~28 TAC §§144.9 and 144.12.~~]**

3 **28 TAC §§144.1 - 144.7, 144.10, 144.11, AND 144.13 - 144.16.**

4
5 **TEXT.**

6 **Chapter 144. Dispute Resolution--Arbitration.**

7 **§144.1. Authority and Duties of Arbitrators.**

8 (a) The arbitrator is authorized, but not limited to:

9 (1) set the time and location of the arbitration proceeding as provided under
10 ~~[pursuant to the applicable provisions of]~~ Labor Code §410.005 and §410.109;

11 (2) compel the parties to exchange all relevant ~~[pertinent]~~ medical reports
12 and other documentary evidence, and proposals for resolving the issues in dispute;

13 (3) conduct, at the arbitrator's discretion, preliminary conferences to identify
14 issues to resolve questions concerning evidence and witnesses, and to ~~[otherwise]~~
15 expedite the arbitration proceeding;

16 (4) exclude individuals other than the parties and the employer from the
17 arbitration proceeding;

18 (5) administer oaths;

19 (6) take official notice of ~~[the law of]~~ Texas law and other jurisdictions, Texas
20 city and county ordinances, the content of the *Texas Register*, the rules of state agencies,
21 facts that are judicially cognizable, and generally recognized facts within the division's
22 specialized knowledge;

23 (7) determine the relevancy and materiality of the evidence offered, without
24 a requirement to conform to legal rules of evidence; and

25 (8) accept stipulations by the parties on uncontested issues.

26 (b) The arbitrator has a duty to:

1 (1) disclose to all parties and the division's chief clerk of proceedings any
2 potential conflicts of interest before [~~prior to~~] and during the arbitration, including any
3 pecuniary, personal, or business-related [~~business-related~~] interest. Further, to disclose
4 any circumstances that may affect or reasonably raise a question as to the impartiality of
5 the arbitrator, including any past or present relationships with the parties;

6 (2) protect the interests of all parties, including the advisement of the injured
7 employee's rights if not represented;

8 (3) maintain the confidentiality of the arbitration proceeding;

9 (4) encourage brevity, consistent with completeness, at all stages of the
10 arbitration proceeding;

11 (5) ensure that all relevant evidence has been disclosed to the arbitrator and
12 to all parties;

13 (6) render an award based on [~~upon~~] the evidence and that is consistent
14 with the terms of Labor Code Title 5, [~~the Act~~], and the division's rules and policies [~~of the~~
15 ~~division~~];

16 (7) ensure an electronic recording is made of the proceedings;

17 (8) arrange for the provision of interpreter services if necessary; and

18 (9) comply with standards of conduct and ethical principles of the
19 arbitrator's professional group, those [~~set forth~~] in Labor Code Title 5, [~~the Act~~], division
20 rules, and the codes of professional responsibility and conduct promulgated by the
21 arbitrator's professional association.

22
23 **§144.2. Ex Parte Communications.**

24 (a) On any substantive matter regarding facts, issues, law, or rules, an arbitrator
25 may not communicate with any party outside the arbitration unless [~~the communication~~
26 ~~is~~]:

- 1 (1) the communication is in writing; and
2 (2) a copy of the communication is delivered to all parties to the arbitration.
3 (b) [~~Notwithstanding~~] Regardless of subsection (a) of this section, a [~~any~~] party may
4 communicate with the arbitrator concerning any procedural matter.

5

6 **§144.3. Delivery of Copies of Documents.**

7 A party who sends a document relating to the arbitration proceeding to the division's
8 chief clerk of proceedings or the arbitrator must [~~shall~~] also deliver copies of the
9 document to all other parties, or their representatives or attorneys. [~~Delivery shall be~~
10 ~~accomplished by presenting in person, mailing by certified mail, or electronic~~
11 ~~transmission.~~] The document sent to the division's chief clerk of proceedings or the
12 arbitrator must [~~shall~~] contain a statement certifying delivery using the following format:
13 "I hereby certify that I have on the ___ day of _____, ____, delivered a copy of the
14 attached document to _____ by
15 _____ (state manner of delivery)."

16

17 **§144.4. Election to Engage in Arbitration.**

18 (a) Following a benefit review conference where disputed benefit issues [~~issue(s)~~]
19 remain unresolved, the parties may mutually agree to engage in arbitration on those
20 issues.

21 (b) Parties agreeing to engage in arbitration must complete and sign a form
22 prescribed by the division and file it with the division's chief clerk of proceedings no [~~not~~]
23 later than the 20th day after the last day of the benefit review conference.

24 (c) A party may submit a response to the disputes identified as unresolved in the
25 benefit review officer's report. The response must [~~shall~~]:

- 26 (1) be in writing;

1 (2) describe and explain the party's position on the unresolved dispute or
2 disputes;

3 (3) be sent to the division's chief clerk of proceedings no later than 20 days
4 after receiving the benefit review officer's report; and

5 (4) be delivered to all other parties, as provided by §144.3 of this title
6 (~~relating to~~ Delivery of Copies of Documents).

7 (d) Except as provided by §144.10 of this title (~~relating to~~ Stipulations,
8 Agreements, and Settlements), the decision to proceed with arbitration in place of a
9 division contested case hearing, once filed with the division's chief clerk of proceedings,
10 is binding and irrevocable for the resolution of all disputes arising out of the claims that
11 are under the jurisdiction of the division. For medical fee disputes arising from Labor Code
12 §413.0312, except as provided by §144.10 of this title, the decision to proceed with
13 arbitration in place of a contested case hearing at the State Office of Administrative
14 Hearings is binding and irrevocable for the resolution of that dispute.

15

16 **§144.5. Statement of Disputes.**

17 (a) Statement of disputes. The statement of disputes is a written description of the
18 disputes [~~dispute(s)~~] to be considered by the arbitrator. A dispute not expressly included
19 in the statement of disputes will not be considered by the arbitrator.

20 (b) Statement of disputes after a benefit review conference. The statement of
21 disputes for an arbitration proceeding conducted after a benefit review conference
22 includes:

23 (1) the benefit review officer's report, identifying the disputes remaining
24 unresolved at the close of the benefit review conference;

25 (2) the parties' responses to the benefit review officer's report, if any; and

1 (3) additional disputes by unanimous consent, as provided by subsections
2 (c) and (d) of this section.

3 (c) Additional disputes by unanimous consent. Parties may, by unanimous consent,
4 submit for inclusion in the statement of disputes one or more disputes not identified as
5 unresolved in the benefit review officer's report. Additional disputes submitted by consent
6 must [~~shall~~]:

7 (1) be made in writing;

8 (2) identify the dispute and explain each party's position on it;

9 (3) be signed by all parties;

10 (4) be sent to the division's chief clerk of proceedings no later than 10 days
11 before the arbitration proceeding; and

12 (5) explain why the issue was not raised earlier.

13 (d) The statement of dispute in the arbitration of a medical fee dispute may not
14 include a dispute regarding compensability, extent of injury, liability, or medical necessity
15 for the same service for which there is a medical fee dispute. Chapter 133, Subchapter D
16 of this title (~~[relating to]~~ Dispute of Medical Bills) requires parties to resolve such disputes
17 before [~~prior to~~] requesting medical fee dispute resolution by the division. If a party
18 provides the arbitrator with documentation listed in §133.307(d)(2)(H) or (I) of this title
19 (Medical Fee Dispute Resolution [~~relating to MDR of Fee Disputes~~]) that shows unresolved
20 issues regarding compensability, extent of injury, liability, or medical necessity for the
21 same service subject to the fee dispute, then the arbitrator must [~~shall~~] abate the
22 arbitration proceedings until those issues have been resolved.

23

24 **§144.6. Assignment of Arbitrator.**

25 (a) An arbitrator must be:

26 (1) a member of the National Academy of Arbitrators;

1 (2) on an approved list of the American Arbitration Association or Federal
2 Mediation and Conciliation Service; or

3 (3) an administrative law judge with at least two years of experience as an
4 administrative law judge with the division.

5 (b) ~~[(a)]~~ The division will maintain, in random name order, lists of qualified
6 arbitrators established by the division. No ~~[Not]~~ later than the 30th day after an election
7 to engage in arbitration is filed, an arbitrator will be assigned from the appropriate list.
8 Each party will be notified immediately ~~[either personally or by certified mail].~~

9 (c) ~~[(b)]~~ Assignment from the list of arbitrators must ~~[shall]~~ be from the top of the
10 list. When the list has been exhausted by assignment of each arbitrator to a case, the list
11 will be randomly reordered.

12 (d) ~~[(c)]~~ Each party to the arbitration proceeding is entitled to one rejection of an
13 assigned arbitrator and must request its ~~[exercise such]~~ rejection no ~~[not]~~ later than the
14 third day after receiving notice ~~[following receipt of notification]~~ of an arbitrator's
15 assignment. Once a rejection is exercised, the next arbitrator from the top of the list will
16 be assigned.

17 (e) ~~[(d)]~~ A rejection exercised by a party must be:

18 (1) in writing;

19 (2) signed by the party or authorized representative;

20 (3) ~~[personally delivered,]~~ sent ~~[by certified mail or electronic transmission,]~~
21 to the division's chief clerk of proceedings with a copy to all parties no ~~[not]~~ later than the
22 third day after receiving ~~[following receipt of]~~ notice of an arbitrator's assignment ~~[, to the~~
23 ~~division's chief clerk of proceedings with a copy to all parties].~~

24

25 **§144.7. Setting the Arbitration Proceeding.**

1 (a) Following any rejections under [~~as set forth in~~] §144.6 of this title (~~relating to~~)
2 Assignment of Arbitrator), the arbitrator must [~~shall~~] schedule the arbitration to be held
3 no [~~not~~] later than the 30th day following the assignment of the arbitrator.

4 (b) The arbitrator must [~~shall~~] notify, in writing, all parties and the employer of the
5 time and place scheduled for the arbitration. [~~The notification shall be by personal delivery~~
6 ~~or certified mail.~~]

7 [~~(c) Unless the assigned arbitrator determines that good cause exists for the~~
8 ~~selection of a different location, arbitration proceedings may not be conducted at a site~~
9 ~~more than 75 miles from the injured employee's residence at the time of injury.~~]

10

11 **~~§144.9. Exchange of Evidence and Proposed Resolution.~~**

12

13 **§144.10. Stipulations, Agreements, and Settlements.**

14 (a) Except as provided by subsections (d) and (e) of this section, at any time before
15 or during the arbitration proceeding, parties may:

16 (1) enter into stipulations, defined as a voluntary accord between parties to
17 an arbitration regarding any matter relating to the arbitration that does not constitute an
18 agreement or a settlement, as defined by Labor Code §401.011;

19 (2) resolve one or more benefit disputes by agreement; or

20 (3) resolve all benefit disputes by settlement.

21 (b) Stipulations must [~~shall~~] be [~~made as follows~~]:

22 (1) in writing; and

23 (2) signed by all parties to the stipulation, or their representatives.

24 (c) Agreements and settlements must [~~shall~~] be made as provided by Chapter 147
25 of this title (~~relating to~~) Dispute Resolution--Agreements, Settlements, Commutations).

26 (d) Parties to a medical fee dispute may not enter into a:

1 (1) settlement; or

2 (2) [a] stipulation or agreement on a dispute regarding compensability,
3 extent of injury, liability, or medical necessity for the same service for which there is a
4 medical fee dispute.

5 (e) Parties to a medical fee dispute may not resolve the dispute by negotiating fees
6 that are inconsistent with any applicable fee guidelines adopted by the commissioner of
7 workers' compensation.

8

9 **§144.11. Continuance.**

10 (a) Any request for a continuance by a party must be directed to the division's chief
11 clerk of proceedings and sent to [~~served personally by certified mail, or by electronic~~
12 ~~transmission, or~~] all other parties.

13 (b) A continuance may be granted for up to 30 days only on [~~upon~~] a determination
14 of good cause. Regardless of whether good cause exists, [~~Notwithstanding the existence~~
15 ~~of good cause,~~] not more than one continuance will be granted to each party.

16

17 ~~**§144.12. Failure to Attend Arbitration.**~~

18

19 **§144.13. Rights of Parties.**

20 (a) Each party to the arbitration proceeding is entitled to be present;[;] to have a
21 full, fair, and impartial hearing of all relevant evidence;[;] and to present the party's
22 respective position on the issues [~~issue(s)~~] in dispute.

23 (b) Parties to the arbitration are entitled to be represented or assisted by counsel,
24 the Office of Injured Employee Counsel, or other representative authorized under [~~and in~~
25 ~~accordance with~~] the Labor Code [~~Texas Workers' Compensation Act~~] and division rules.

1 (c) Each party, and the arbitrator, is permitted to call witnesses who have relevant
2 information to testify (under oath if required by the arbitrator or requested by a party)
3 and to ask questions of any witnesses called.

4 (d) A party desiring to have a record made of the arbitration proceeding by
5 stenographic means may do so and is responsible for arranging for a record and the
6 expense of making a record [~~by such means~~]. A copy of the stenographic report must
7 [~~shall~~] be provided to the division's chief clerk of proceedings at no charge and may be
8 made available to the other parties.

9

10 **§144.14. Usual Order of Proceedings.**

11 (a) The arbitration proceeding will begin with preliminary matters, including the
12 introduction of copies of the election of arbitration and the assignment of the arbitrator;_;^[r]
13 the introduction of all parties and representatives;_;^[r] statements for the record of the date,
14 time, and place of the proceedings;_;^[r] and a concise statement of the disputed issues
15 [~~issue(s)~~].

16 (b) An electronic recording of the proceeding will be made by the arbitrator.

17 (c) The arbitrator will allow and may assist each party to make a brief opening
18 statement on [~~setting forth~~] its position on unresolved issues and the issues with respect
19 to which it is prepared to stipulate.

20 (d) The requester must [~~requestor shall~~] be the first party to present all relevant
21 evidence desired in support of the claim, including the testimony of witnesses.

22 (e) Following the requester's [~~requestor's~~] presentation of evidence, the other party
23 to the proceeding may present evidence [~~desired~~] to be considered by the arbitrator,
24 including the calling of witnesses.

1 (f) After each party has presented its [~~the~~] evidence [~~desired~~], the arbitrator may
2 call for additional evidence that the arbitrator considers necessary to properly understand
3 and determine [~~for a proper understanding and determination of~~] the issues.

4 (g) Each party may present closing statements [~~as desired~~], but the record may not
5 remain open for written briefs unless requested by the arbitrator.

6

7 **§144.15. Award of the Arbitrator.**

8 (a) No [~~Not~~] later than the seventh day after the last day of arbitration, the
9 arbitrator must [~~shall~~] enter the final award, which must:

10 (1) be in writing;

11 (2) be signed and dated by the arbitrator;

12 (3) include a statement of the arbitrator's decision on the contested issues
13 and the parties' stipulations on uncontested issues;

14 (4) be sent to the division and all parties [~~by certified mail, or personal~~
15 ~~delivery~~]; and

16 (5) be filed as a part of the permanent claim file.

17 (b) The award entered is final and binding on all parties. Except as provided by
18 Labor Code §410.121, there is no right of appeal or judicial review.

19 (c) The arbitrator's award is a final order of the division.

20 (d) For the purpose [~~purposes~~] of correcting a clerical error, an arbitrator retains
21 jurisdiction of the award for 20 days after the date of the award.

22

23 **§144.16. Requesting a Copy of the Record.**

24 A party or the employer may request a copy of the electronic recording of the arbitration
25 proceeding from the division. The requester must [~~requester shall~~] pay the cost of the
26 duplication, as established by the division.