

TEXAS WORKERS' COMPENSATION **Education Conference**



The Life of a Claim –

Dispute Resolution



What is a Benefit Dispute?

“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)



What is a Benefit Dispute?

- Compensability
- Disability
- Extent of Injury (EOI)
- Maximum Medical Improvement (MMI)
- Impairment Rating (IR)
- Entitlement to Supplemental Income Benefits (SIBs)
- Travel Expenses
- Change of Doctor
- Appeal of Medical Fee Reimbursement Denial
- Other, related issues

Initiating a Dispute

Plain Language Notice (PLN)

- PLN-1, *Notice of Denial of Compensability/Liability and Refusal to Pay Benefits*
- PLN-11, *Notice of Disputed Issue(s) and Refusal to Pay Benefits*

Fatalities

- *PLN-12: Notice of Potential Entitlement to Workers' Compensation Death Benefits*

Attempts to Resolve Pre-Benefit Review Conference (BRC)

**Texas Labor Code (TLC) §410.023(b)
and 28 TAC §141.1(d)**

*DWC Form-045, Request to Schedule, Reschedule
or Cancel a BRC*

“I certify that prior to this request I have made
reasonable efforts to resolve the disputed
issue(s) ...”

Requesting/Setting/Canceling a BRC

- DWC Form-045, *Request to Schedule, Reschedule, or Cancel a BRC*
- DWC Form-045M, *Request to Schedule, Reschedule, or Cancel a BRC to Appeal a Medical Fee Dispute Decision*

BRC Exchange

28 TAC §141.4 Sending and Exchanging Pertinent Information

- “pertinent information” means all information relevant to the resolution of the disputed issue or issues...”
- Exchanged with opposing party or parties at least 14 days BEFORE the BRC



Purpose of a BRC

TLC §410.021

- 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

Failing to Be Ready for a BRC

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.”

TLC§415.001(2) and §415.002(a)(9)

Scheduling Order and the Contested Case Hearing (CCH)

Approval of a continuance by a hearing officer for good cause. Hearing officer may consider the parties' efforts to complete their scheduling order commitments

The BRC report establishes the issues to be resolved at the CCH

TLC §410.031 and §410.151(b)

Purpose of a CCH

Fully develop the case and inform the hearing officer so that they may make the best possible decision based upon all the facts to resolve a benefit dispute

CCH Discovery

28 TAC §142.13

TLC §§ 410.158 – 410.162

CCH Exchange Deadline (Non-Expedited)

No later than 15 days after the BRC, 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

CCH Exchange Deadline (Non-Expedited)

- 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)

Expedited CCH or CCH Held Without Prior BRC

“...The notice setting an expedited hearing, or a hearing held without a prior benefit review conference, shall include time limits for completion of discovery.”

28 TAC §142.13(g)

Exchange After Deadline?

Hearing officer will base determination on admissibility on whether good cause existed for the failure to timely exchange the information

Request for Continuance of CCH

“A request for continuance may be made before or during a hearing.”

28 TAC §142.10(c)

Post-CCH Deadlines

A decision is effective and binding on the date signed by the hearing officer

28 TAC §142.16(e)

Appeal of Hearing Officer's Decision

“To appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the Division...”

TLC §410.202(a)

Responding to Appeal

“The respondent shall file a written response with the appeals panel not later than the 15th day after the date on which the copy of the request for appeal is served...”

TLC §410.202(b)

Counting Days for Appeal Purposes

“Saturdays and Sundays and holidays listed in Section 662.003, Government Code, are not included in the computation of the time in which a request for an appeal under Subsection (a) or a response under Subsection (b) must be filed.”

TLC §410.202(d)

Appeal of Appeals Panel Decision

“A party may seek judicial review by filing suit not later than the 45th day after the date on which the division mailed the party the decision of the appeals panel...”

TLC §410.252(a)

Appeal on Medical Necessity

File DWC Form-049, *Request to Schedule a Medical Contested Case Hearing (MCCH)* within 20 days after the date the Independent Review Organization decision is sent to the appealing party

28 TAC §133.308(s)(1)(A)

Post-BRC Medical Fee Dispute

- DWC Form-044, *Election to Engage in Arbitration*
- DWC Form-049, *Request to Schedule a MCCH*
 - to go to State Office of Administrative Hearings (SOAH)

Questions and Answers