



CompCourses

DWC Dispute Resolution: The Who, What, When, Where, Why, and How

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Disclaimer

This presentation is for educational purposes only and provides general information. It is not a substitute for a full review of statutes and rules.

System participants are responsible for knowing and complying with the applicable sections of the Texas Insurance Code (TIC), Texas Labor Code, and Texas Administrative Code (TAC).

Any opinions expressed by the speakers are personal and do not constitute or reflect any statement of policy by the Texas Department of Insurance, Division of Workers' Compensation (DWC).



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The who



The who – DWC

- Agency that administers the workers' compensation system in Texas.

Division of Workers' Compensation



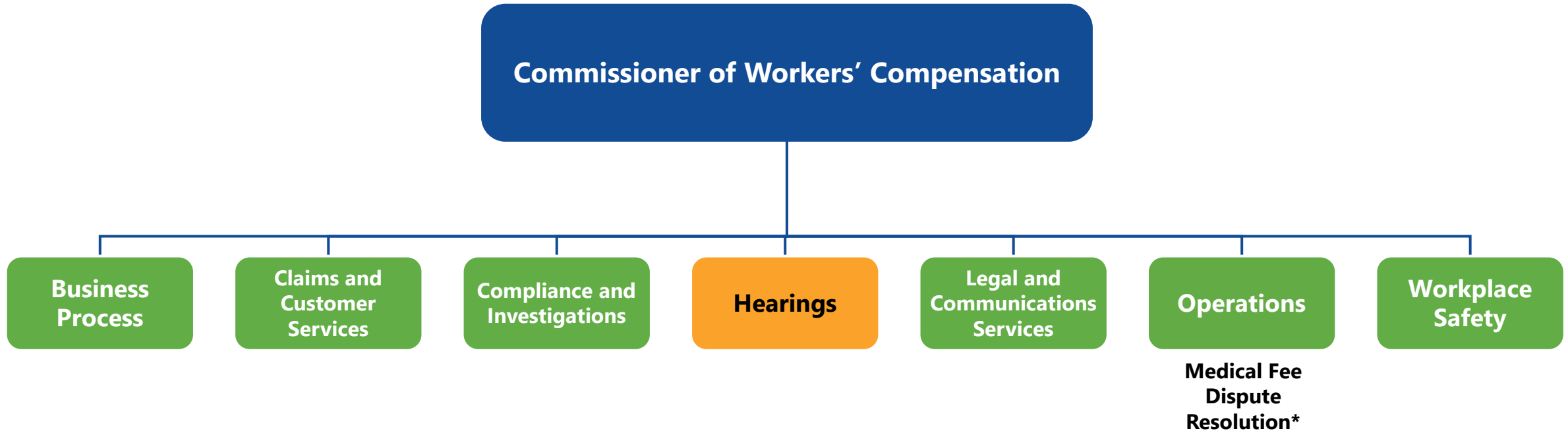
Commissioner Jeff Nelson





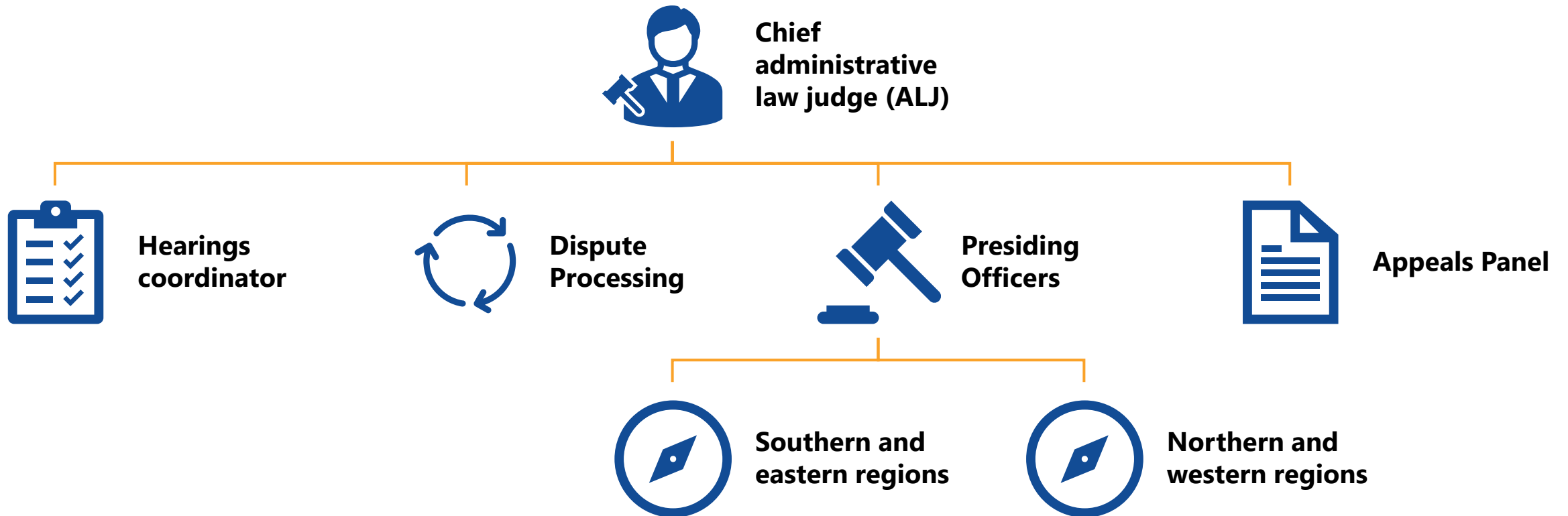
The who – DWC

- DWC program area that oversees dispute resolution.*

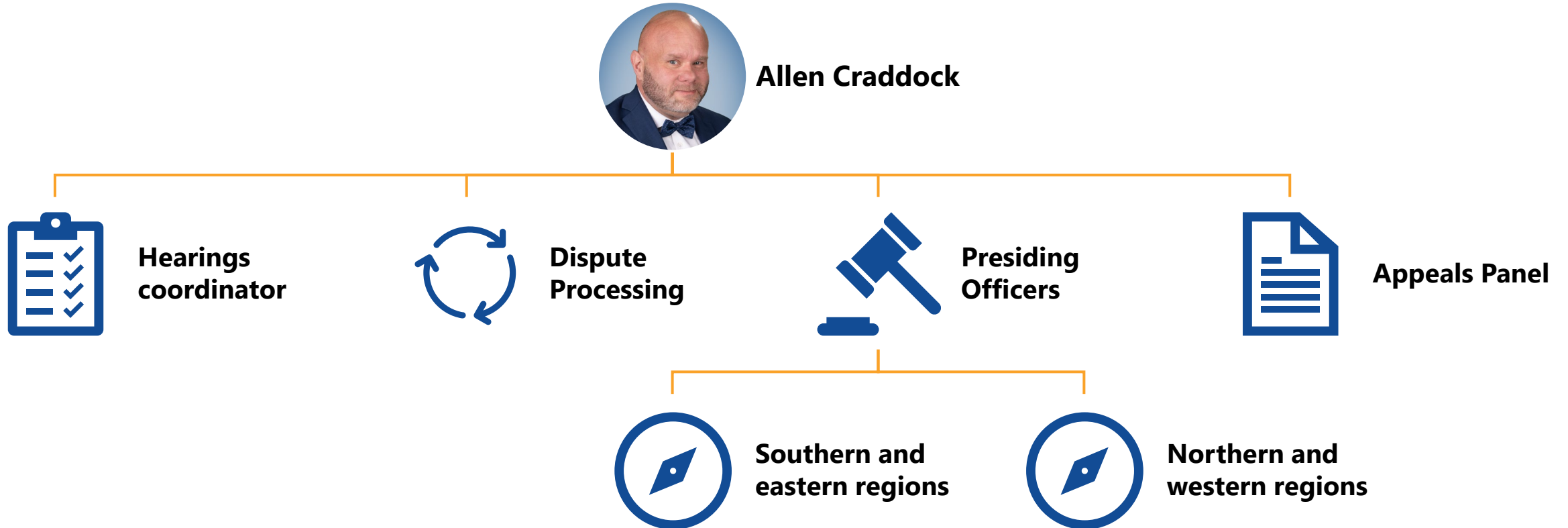




The who – DWC Hearings overview

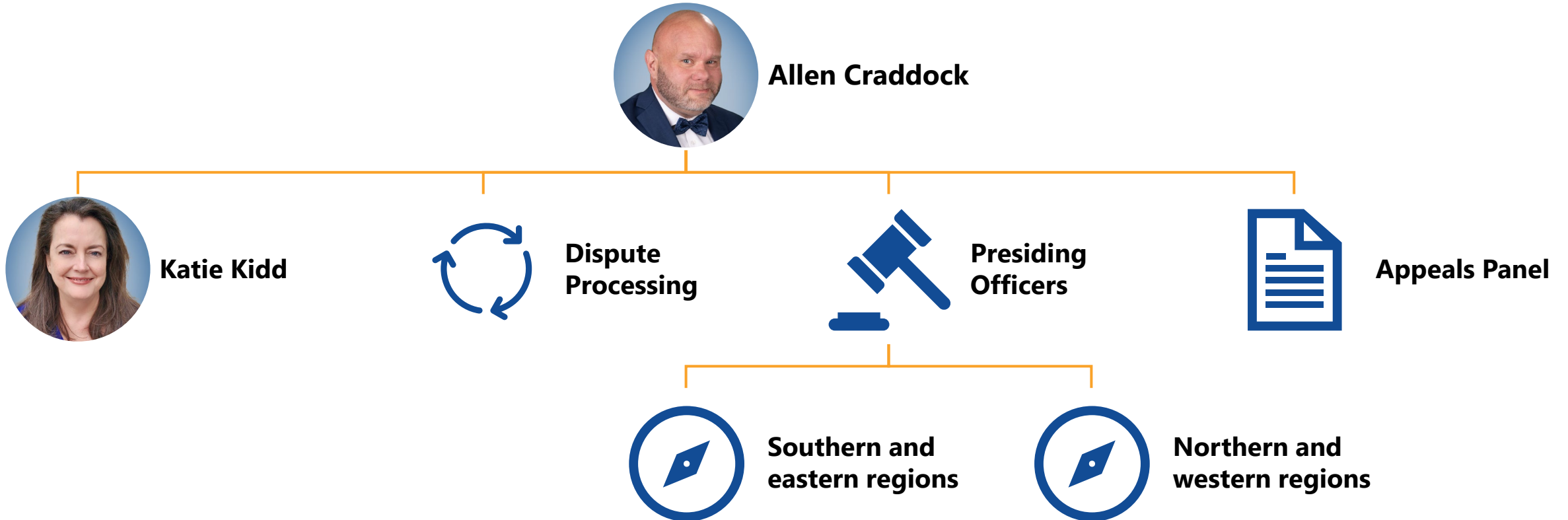


The who – DWC Hearings overview



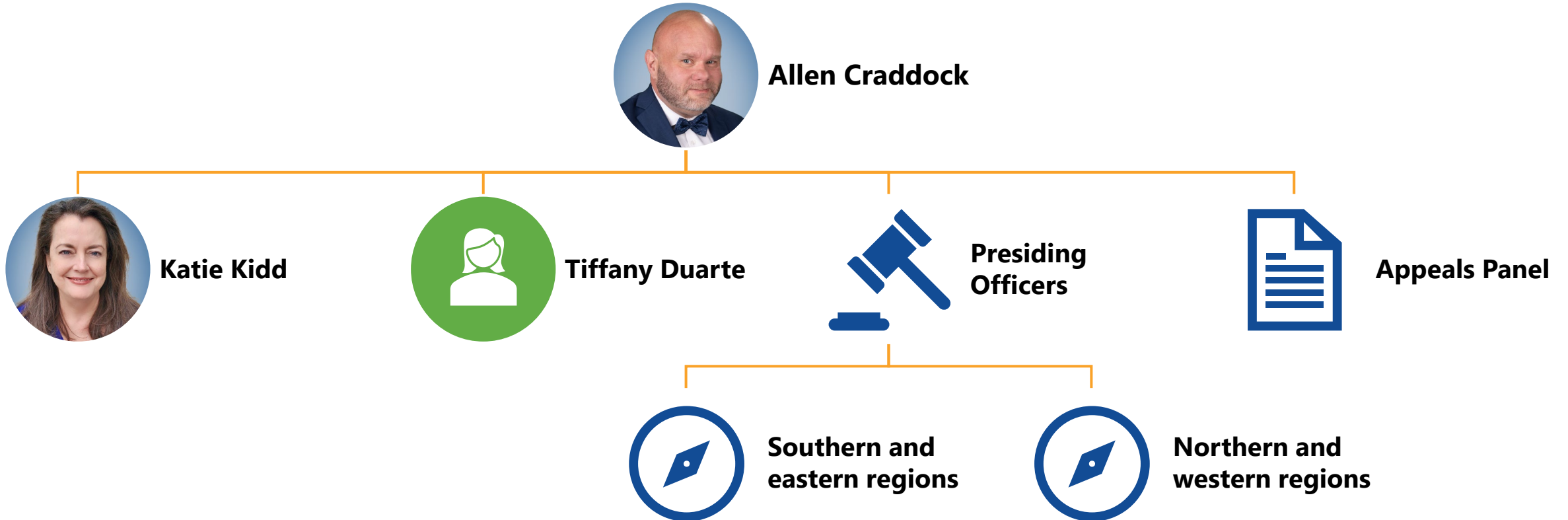


The who – DWC Hearings overview

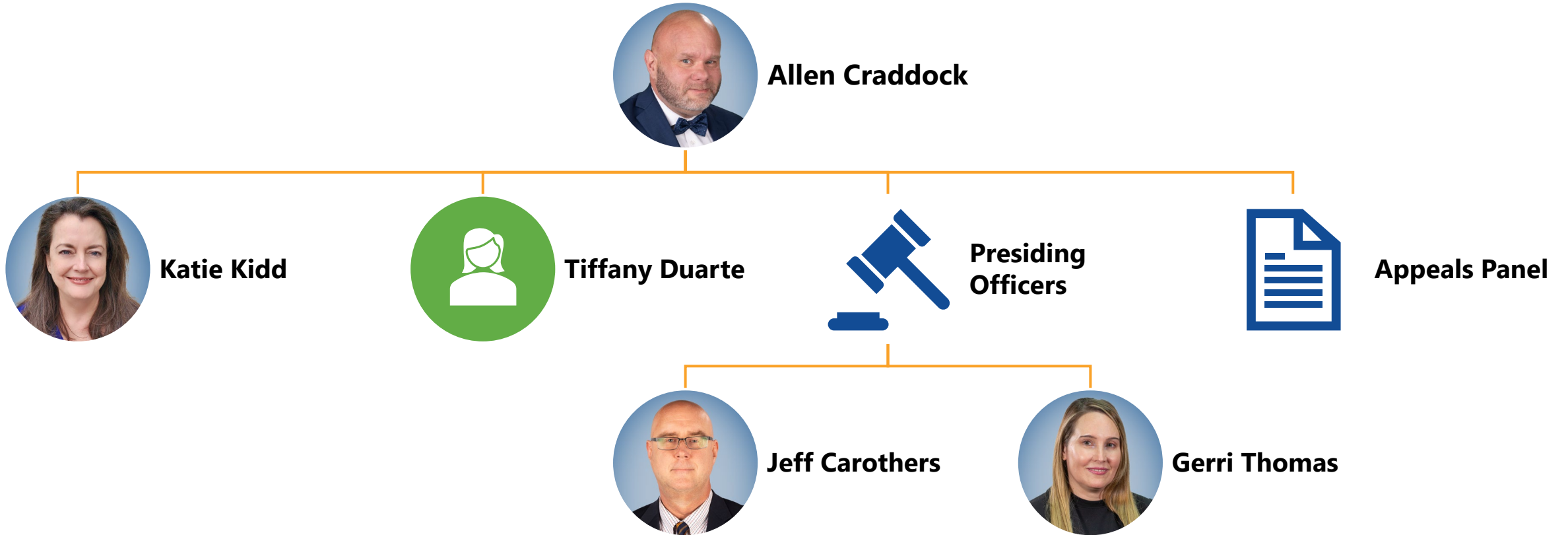




The who – DWC Hearings overview

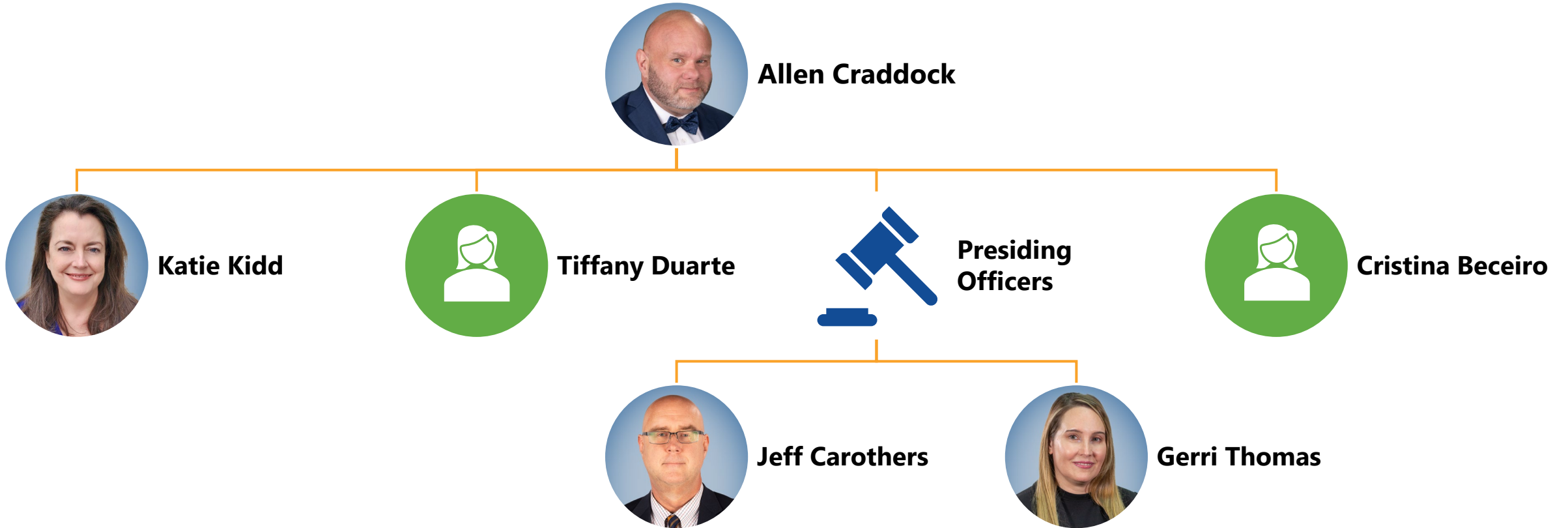


The who – DWC Hearings overview





The who – DWC Hearings overview





The who – DWC Dispute Processing

- Proceedings resolutions officers (PROs).
- Docketing.
- Dispute Processing staff.





The who – DWC Presiding Officers

- Benefit review officer-I's (BRO-I's).
- Presiding officers (BRO-II's, BRO-III's, and ALJ's).

Southern and eastern regions



Northern and western regions





The who – BROs

- **Benefit review conference (BRC)** – an informal meeting where parties work with a BRO to mediate the dispute.
- Three levels of BROs:



BRO-I: Not a presiding officer and does not conduct BRCs. If case involves maximum medical improvement (MMI) or impairment rating (IR), they work with parties before a BRC to determine if multiple certifications are needed.



The who – BROs

- **Benefit review conference (BRC)** – an informal meeting where parties work with a BRO to mediate the dispute.
- Three levels of BROs:



BRO-II: Presides over BRCs and mediates disputed issues.



BRO-III (Leads): Presides over BRCs and mediates disputed issues. They also provide oversight and guidance to other BROs.



The who – ALJs

- **Contested case hearing (CCH)** – a formal hearing on issues that were raised and not resolved at the BRC. An administrative law judge (ALJ) will preside over the CCH and issue a written decision.
- ALJs will:



Swear in
witnesses



Receive
testimony



Allow exam and
cross-exam of
witnesses



Accept
exhibits



Hear
arguments

Texas Labor Code Section [410.163](#)



The who – Appeals Panel

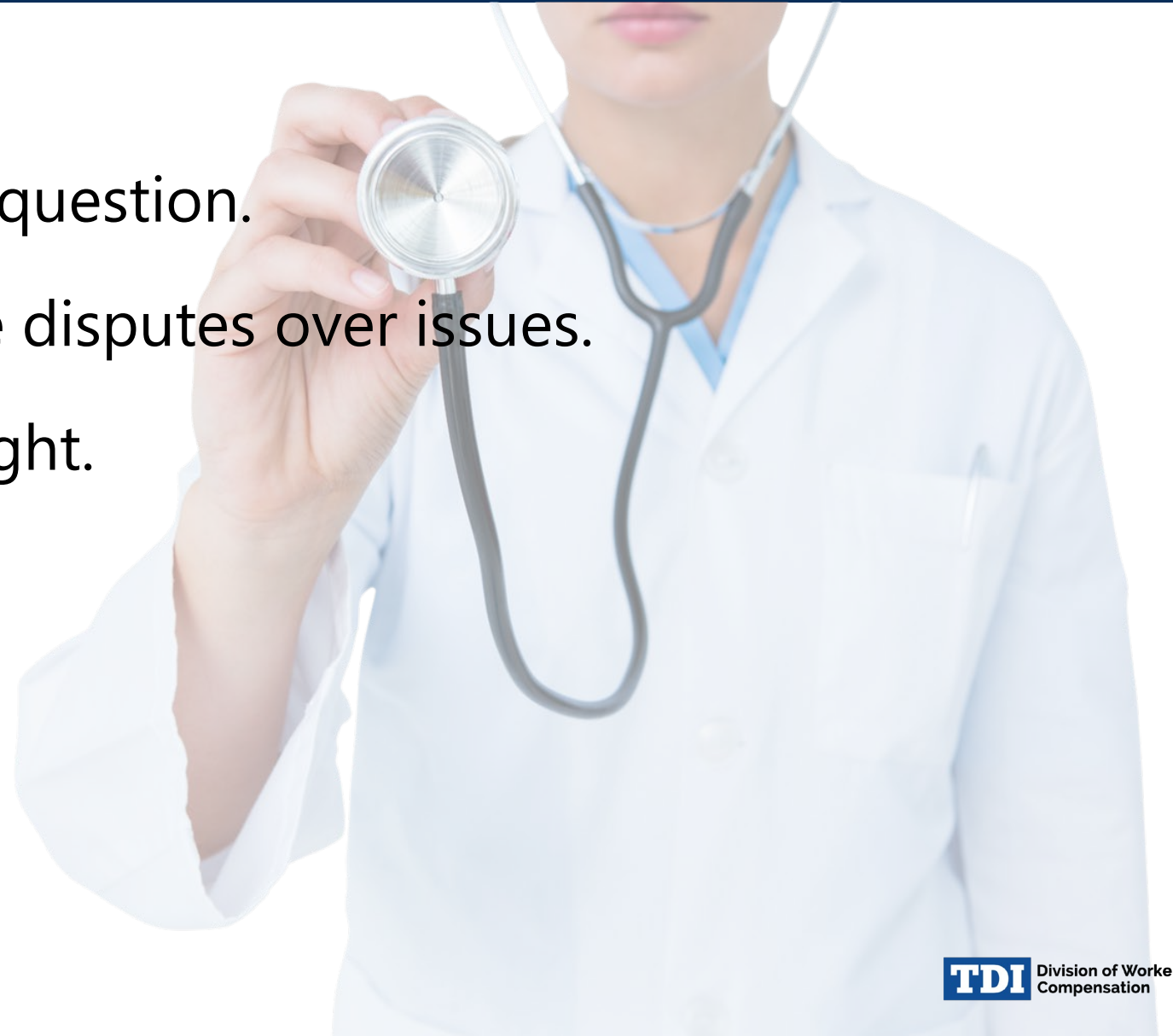
- **Appeals** – If a party is dissatisfied with the ALJ's decision, they may appeal the decision to the Appeals Panel.
- The Appeals Panel is a reviewing body – they don't hold hearings.



The who – designated doctor (DD)

- Neutral.
- Qualified to assess injuries in question.
- Appointed by DWC to resolve disputes over issues.
- Opinion has presumptive weight.

Labor Code Section [408.0041](#)
28 Texas Administrative Code (TAC) Section [127.130](#)





The who – parties to a dispute

**Injured
employees**

**Legal
beneficiaries**

Insurance carriers

Employers*

Subclaimants

28 TAC Section [140.1](#)
Labor Code Section [409.009](#)



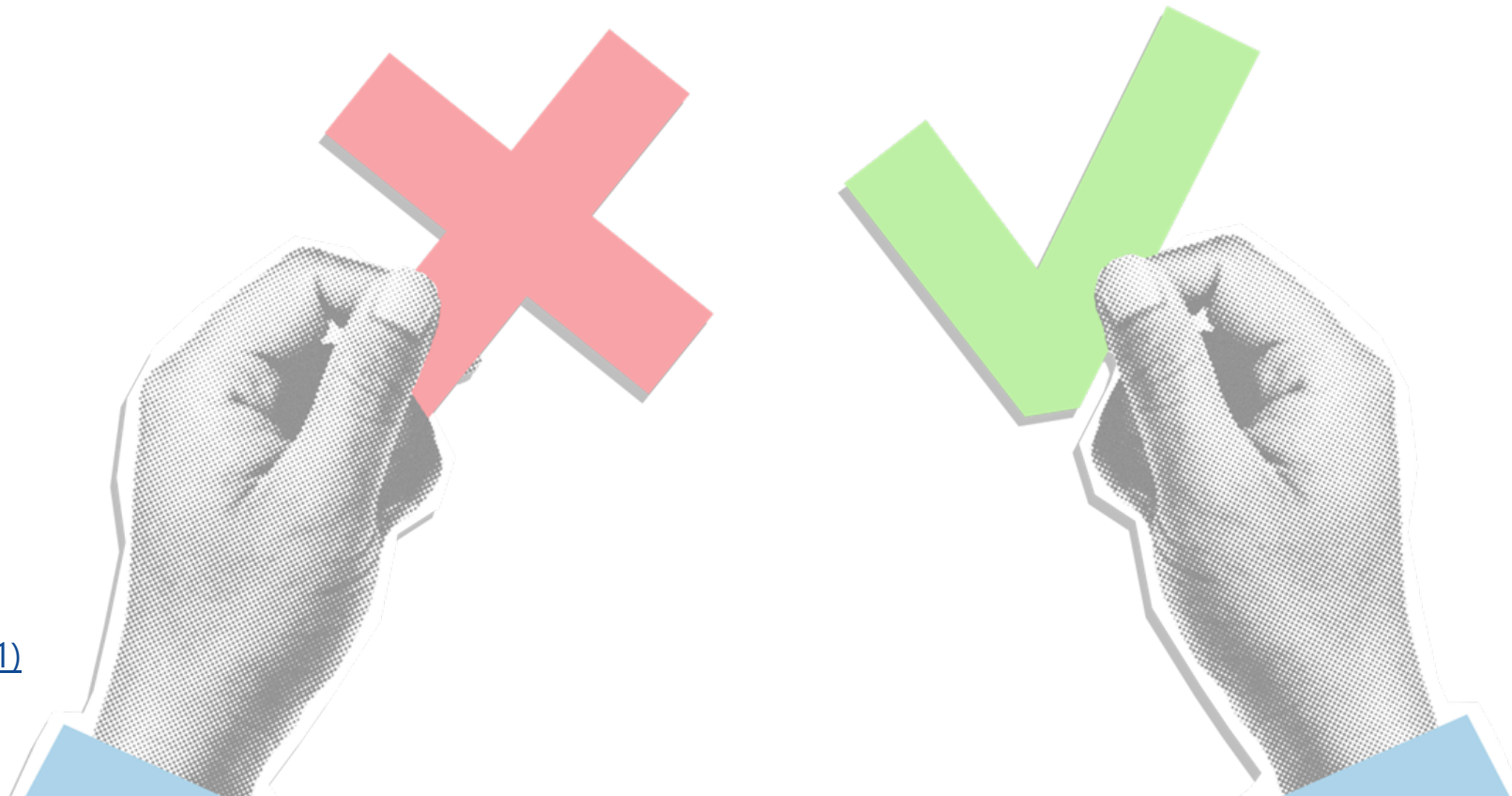
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The what



The what – benefit disputes

A disputed issue arising under the Texas Workers' Compensation Act in a workers' compensation claim regarding compensability or eligibility for, or the amount of, income or death benefits.

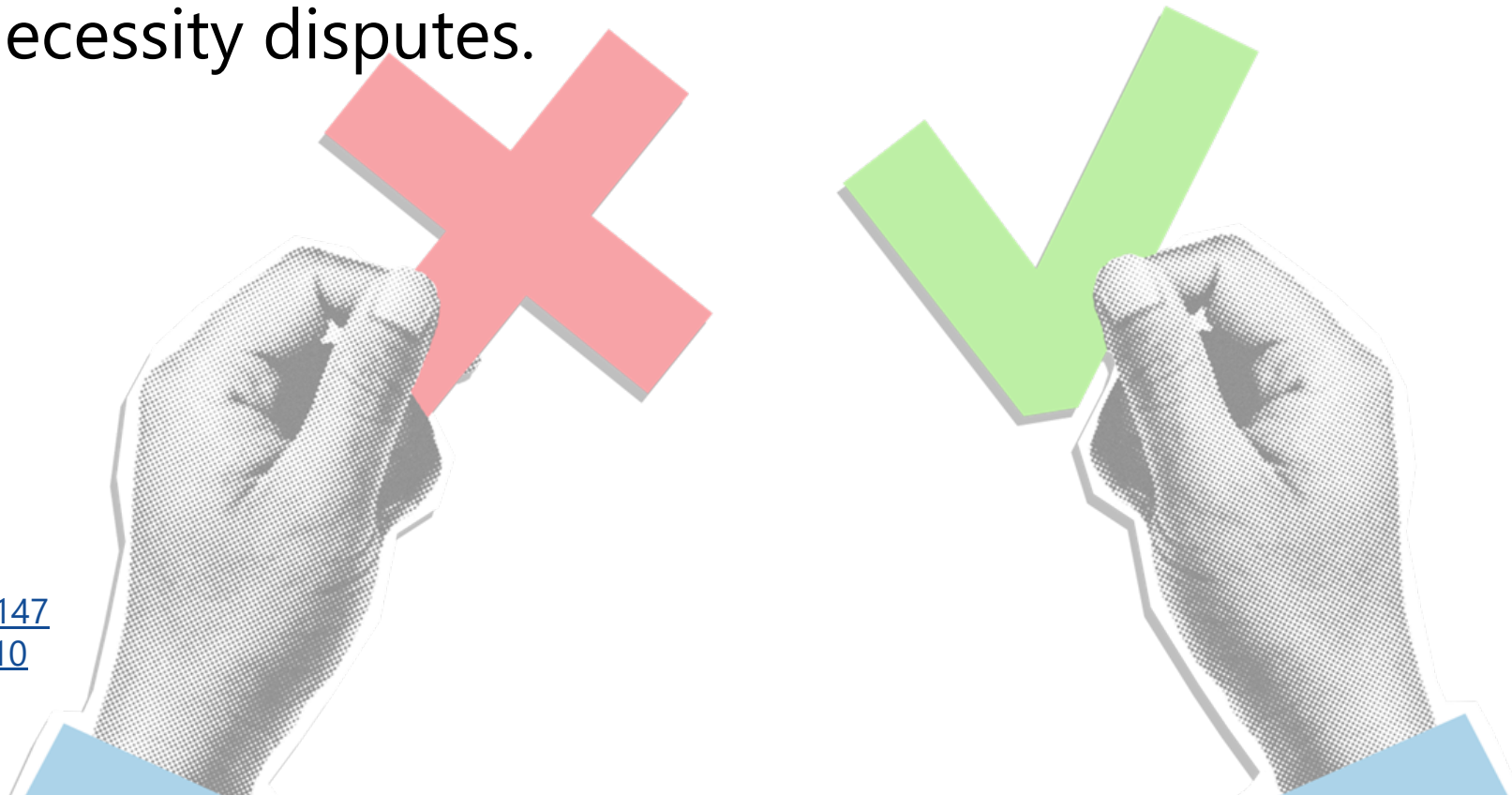


28 TAC Section [140.1\(1\)](#)



The what – other disputes

- Disputes of certain official actions by DWC.
- Medical fee disputes.
- Medical necessity disputes.



28 TAC Chapters [140-147](#)
Labor Code Section [410](#)



The what – benefit disputes

Existence of compensable injury

Compensability of an occupational disease

Date of injury

Timely reporting of injury to employer

Extent of injury (EOI)

Intoxication

Disability / existence / duration of disability

MMI

IR

90-day finality

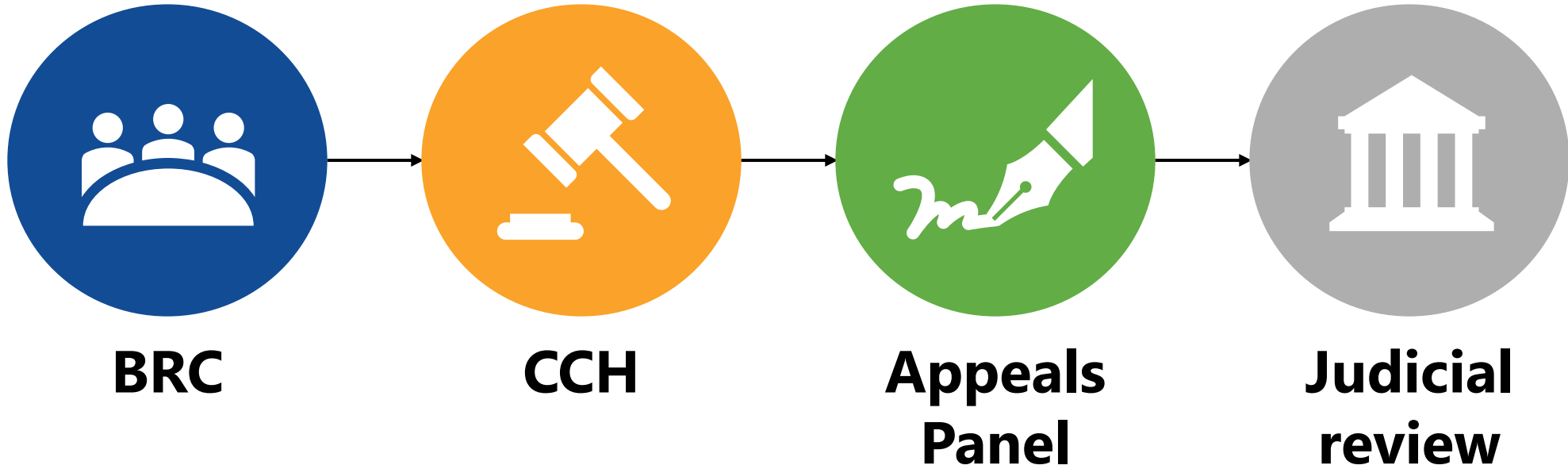
Supplemental income benefits (SIBs)



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The where

The where





The where – where dispute resolution begins*

DWC Form-045

DWC045

TDI Division of Workers' Compensation
PO Box 12050 | Austin, TX 78711 | 800-252-7031 | tdi.texas.gov/wc

Complete if known:
DWC claim # _____
Insurance carrier claim # _____

Request to schedule, reschedule, or cancel a benefit review conference (BRC)

Este formulario está disponible en español en el sitio web de la División en www.tdi.texas.gov/forms/dwc/dwc045brcc.pdf
Para obtener asistencia en español, llame a la División al 800-252-7031.

Part 1: Request specifications

1. I want to: Schedule a BRC Reschedule a BRC Cancel a BRC (check only one box)

2. I need: (check boxes)
 Special accommodations (please specify) _____ Expedited BRC (provide reason) _____

Part 2: Information about the claim

3. Employee's name (first, middle, last)	4. Employee's physical address (street, city, state, ZIP code)	
5. Insurance carrier's name	6. Date of injury (mm-dd-yyyy)	7. Social Security number (XXX-XX-XXXX)
8. Employer's business name (at the time of the injury)	9. Employer's business address (street or PO box, city, state, ZIP code)	

Part 3: Information about the party making the request

10. Who is making the request? Injured employee Insurance carrier Employer
 Subclaimant Beneficiary Attorney for _____

11. Is the Office of Injured Employee Counsel (OIEC) assisting the injured employee?
 Yes No

12. Requester's name and mailing address (street or PO box, city, state, ZIP code)

13. Business/firm name (if applicable)	14. Phone number	15. Requester's email
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Employee's name: _____
DWC claim number: _____ For DWC Use Only

DWC045 Rev. 0721 Page 1 of 5

DWC Form-045M

DWC045M

TDI Division of Workers' Compensation
PO Box 12050 | Austin, TX 78711 | 800-252-7031 | tdi.texas.gov/wc

Complete if known:
DWC claim # _____
Insurance carrier claim # _____

Request to schedule, reschedule, or cancel a benefit review conference to appeal a medical fee dispute decision (BRC-MFD)

Este formulario está disponible en español en el sitio web de la División en www.tdi.texas.gov/forms/dwc/dwc045mbrcc.pdf
Para obtener asistencia en español, llame a la División al 800-252-7031.

Part 1: Request specifications

1. I want to: Schedule a BRC-MFD Reschedule a BRC-MFD Cancel a BRC-MFD (check only one box)

2. I need: (check boxes)
 Special accommodations (please specify) _____ Expedited BRC-MFD (provide reason*) _____
*Please state if this claim involves a first responder.

Part 2: Information about the claim

3. Employee's name (first, middle, last)	4. Employee's physical address (street, city, state, ZIP code)	
5. Insurance carrier's name	6. Date of injury (mm-dd-yyyy)	
7. Employer's business name (at the time of the injury)	8. Employer's business address (street or PO box, city, state, ZIP code)	

Part 3: Information about the party making the request

9. Who is making the request? Injured employee Insurance carrier Health care provider
 Subclaimant Pharmacy processing agent Attorney for _____

10. Is the Office of Injured Employee Counsel (OIEC) assisting the injured employee?
 Yes No

11. Requester's name and mailing address (street or PO box, city, state, ZIP code)

12. Business/firm name (if applicable)	13. Phone number	14. Requester's email
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Employee's Name: _____
DWC Claim Number: _____ For DWC Use Only

DWC045M Rev. 0721 Page 1 of 5

DWC Form-049

DWC049

TDI Division of Workers' Compensation
PO Box 12050 | Austin, TX 78711 | 800-252-7031 | tdi.texas.gov/wc

Complete if known:
DWC Claim # _____
Carrier Claim # _____

Request to Schedule a Medical Contested Case Hearing (MCCH)
Type (or print in black ink) each item on this form

I. REQUEST SPECIFICATIONS

1. Check the appropriate box to indicate the type of medical contested case hearing you are requesting:
 Appeal of an Independent Review Organization (IRO) Medical Necessity Decision to the TDI-DWC. Attach a copy of the IRO decision.
 Appeal of Medical Fee Dispute Decision to State Office of Administrative Hearings (SOAH). Enter the date the Benefit Review Conference ended (mm/dd/yyyy).
IMPORTANT NOTE: In an appeal to SOAH, the non-prevailing (losing) party is required to reimburse the TDI-DWC for the costs of the services provided at SOAH. In the event of a dismissal, the party who requested the SOAH hearing is required to reimburse the TDI-DWC. These requirements do not apply to the injured employee.

2. Check the appropriate box(es) for services you are requesting, if any:
 Expedited MCCH (specify reason*) _____
 Special Accommodations (specify) _____
*Does not include claim involving a first responder. See Section III, Box 10 regarding expedited first responder claims.

II. INJURED EMPLOYEE CLAIM INFORMATION

3. Employee's Name (Last, First, Middle)	4. Date of Injury (mm/dd/yyyy)
5. Employee's Physical Address (Street, City, State, Zip Code)	
6. Insurance Carrier's Name	
7. Employer's Business Name (at the time of the injury)	
8. Employer's Business Address (Street or PO Box, City, State, Zip Code)	

For TDI-DWC Use Only

DWC049 Rev. 11/17 Page 1 of 3

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



The where – BRC



- No record created.
- Explanation of rights and procedures.
- Discussion of facts of the claim.
- Information review.
- Issue delineation.
- Scheduling order.

28 TAC Sections [410.021](#), [410.031](#), [410.151\(b\)](#), and [410.155](#)



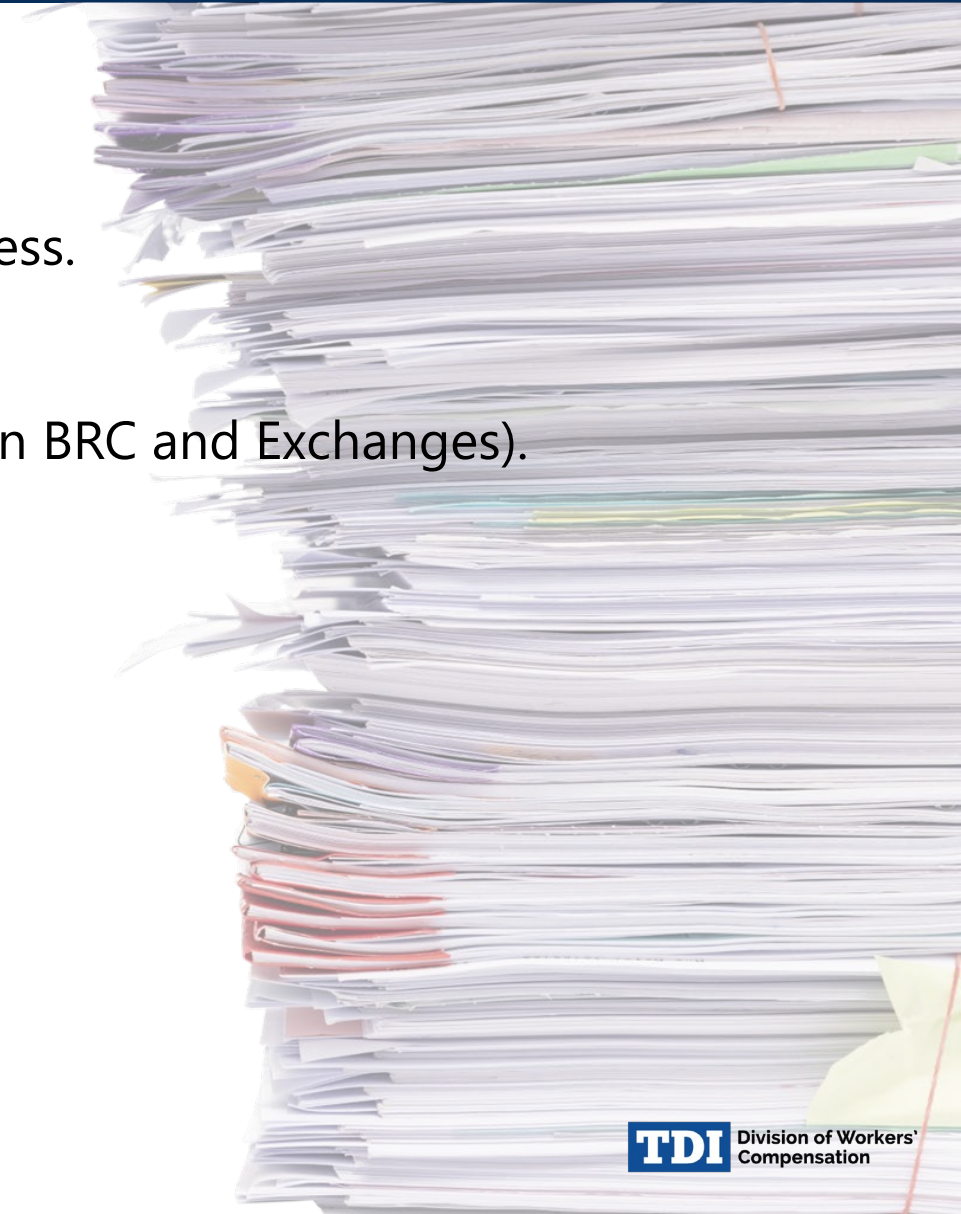
The where – exchanging information for the BRC

With other parties:

- Mail.
- Fax or email if the other party has a fax number or email address.

With DWC:

- **Email:** BRC_Exchanges@tdi.texas.gov (use underscore between BRC and Exchanges).
- **Fax:** 512-804-4011
- **Mail:**
Texas Department of Insurance, Division of Workers' Compensation
Hearings, Mail Code HRG
PO Box 12050
Austin, TX 78711-2050
- **Secure file transfer protocol (SFTP).**





The where – CCH

- Record created.
- Evidence.
- Witness testimony.
- Decision and order.



28 TAC Sections [410.151](#), [410.154](#), and [410.155](#)



The where – in-person CCH locations

Southern and eastern regions



Northern and western regions



The where – CCHs by videoconference

DWC may conduct a CCH by videoconference:

- On a determination by DWC that good cause exists for conducting the hearing in that manner.
- On mutual agreement of the parties.

Labor Code Section [410.0055](#)





The where – exchanging information for the CCH

- **Email:** CCH_Exhibits@tdi.texas.gov (use underscore between CCH and Exhibits).
- **Fax:** 512-804-4011
- **Mail:**
Texas Department of Insurance, Division of Workers' Compensation
Hearings, Mail Code HRG
PO Box 12050
Austin, TX 78711-2050
- **SFTP.**



The where – Appeals Panel

- Record-based review.
- Final step in DWC administrative dispute resolution process for most disputes.*
- Decisions:
 - Affirm.
 - Reverse and render.
 - Reverse and remand.
- Decision manual.

Labor Code Sections [410.203](#) and [410.204](#)

The screenshot shows the Texas Department of Insurance (TDI) website. The header includes the TDI logo, the text "Texas Department of Insurance", and a search bar. Below the header is a navigation menu with tabs for "Insurance", "State Fire Marshal", and "Workers' Compensation" (which is highlighted in orange). A secondary navigation bar contains links for "Home", "Employees", "Español", "Employers", "Safety", "Health Care Providers", "Carriers", and "Media / Public". The main content area is titled "Appeals Panel Decision Manual - Table of Contents" and includes sections for "Introduction", "Organization for the Manual", "How to Use the Manual On the Internet", and "Table of Contents". The "Table of Contents" section lists "Attorney Fee Issues (Intentionally left blank)" and "Liability/Compensability Issues".





The where – court

- Exhaustion of administrative remedies.
- Provide a copy of the petition to DWC.
- Must file any proposed judgment or settlement with DWC.



Labor Code Sections [410.252](#), [410.253](#), and [410.258](#)



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The when



The when – issue deadlines



BRCs must be requested within a certain timeframe for some issues:

- MMI/IR when a DD has already been appointed.
- SIBs.
- Change of treating doctor (non-network claim).
- Extension of MMI for spinal surgery.



The when – issue deadlines

Issue: finality of the first valid certification of MMI and IR

- Parties have **90 days** from the date that the certification is provided to file a dispute.
- Otherwise, the certification becomes final.
- Two paths:

DD has not been appointed

- File a [DWC Form-045](#) to request a BRC.
- File a [DWC Form-032](#) to request the appointment of a DD.

DD has been appointed

- File a [DWC Form-045](#) to request a BRC.



The when – issue deadlines

Issue: SIBs

First quarter SIBs

- DWC makes the initial determination of entitlement to SIBs.
- The insurance carrier has **10 days** to dispute DWC's finding ([DWC Form-045](#)).
- The insurance carrier's right to contest DWC's determination is waived if contest is not received in **10 days**.

Subsequent quarter SIBs

- The insurance carrier makes the initial determination of entitlement to SIBs.
- If the insurance carrier wants to dispute SIBs but paid the previous quarter, they must request a BRC ([DWC Form-045](#)) within **10 days** of the date they receive the injured employee's application.



The when – issue deadlines



Issue: change of treating doctor for a non-network claim

- Parties have **10 days** from receipt of a DWC order regarding a change to an alternate treating doctor to dispute the change by filing a request for BRC ([DWC Form-045](#)).

28 TAC Section [126.9\(g\)](#)



The when – issue deadlines



Issue: extension of MMI for spinal surgery

- Parties may dispute the approval, denial, or length of extension granted by DWC order by filing a request for BRC ([DWC Form-045](#)) within 10 days of receiving the order.

28 TAC Section [126.11](#)



The when – BRC deadlines

Sending and exchanging pertinent information

- All pertinent info must be sent to opposing party before requesting a BRC.
- The opposing party must send additional pertinent information within **10 working days** of receiving the request.
- No later than **14 days** before the BRC (or **five days** before an expedited BRC), the parties must:
 - Send DWC all pertinent information not previously provided.
 - Exchange all remaining pertinent information with the other parties.



The when – BRC deadlines

Requests to schedule or cancel a BRC

- DWC may cancel or reschedule a BRC under certain circumstances.
- A request to cancel or reschedule a BRC must be made within **10 days** after the notice of setting is received.
 - First request to reschedule does not require a showing of good cause if received in the 10-day period.
 - Subsequent requests or any made outside the 10-day period, must demonstrate good cause.
- A BRO may schedule **up to two** BRCs on a dispute.

28 TAC Section [141.2](#)

Labor Code Section [410.026\(b\)](#)



The when – BRC deadlines

Response to a BRC report

- Parties can file a response to a BRC report if they disagree with it.
- A response to correct a party's position must be filed with DWC no later than **20 days** after receipt of the report.
- Additional disputes may be added:
 - By unanimous agreement of the parties, no later than **10 days** before the CCH; or
 - With permission of the ALJ for good cause, no later than **15 days** before the CCH.



The when – CCH deadlines

CCH after a BRC

- **Regular:** DWC will schedule a CCH within **60 days** of the BRC.
- **Expedited:** If DWC determines an expedited CCH is appropriate, DWC will schedule the hearing within **30 days** of the BRC.
- **Without a BRC:** In limited cases, a CCH will be scheduled within **60 days** of DWC receiving a request for a CCH (or **30 days** for an expedited CCH).



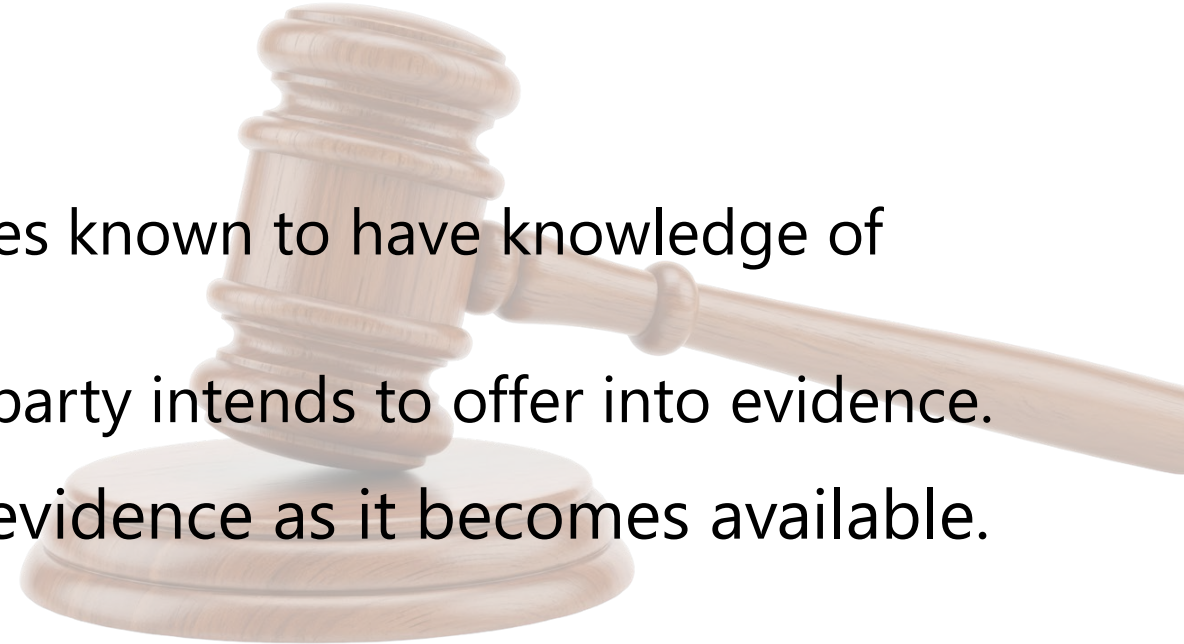


The when – CCH deadlines

Exchange of documents

- Except or expedited CCHs or disputes without a BRC, parties must exchange the following information within **15 days** of the BRC:
 - All medical reports and reports of expert witnesses who will testify.
 - All medical records.
 - Any witness statements.
 - The identity and location of any witnesses known to have knowledge of relevant facts.
 - All photos or other documents which a party intends to offer into evidence.
- After, parties must exchange additional evidence as it becomes available.

28 TAC Section [142.13\(c\)](#)





The when – CCH deadlines

Requests for continuance of CCH

- DWC may postpone and reschedule a CCH under certain circumstances.
- If a continuance is requested before a CCH, it must:
 - Be in writing.
 - State the reason for continuing the CCH.
 - Be sent to DWC no later than **five days** before the CCH.
 - Be delivered to all parties.
- Exception for pro se claimants.
- A party may request a continuance during a CCH.

28 TAC Section [142.10](#)





The when – Appeals Panel deadlines

15-day appeal and response deadlines

- A party has **15 days** to file an appeal. The start date for the 15-day period is:
 - **Five days** after the ALJ's decision was mailed by USPS regular mail;
 - The date the decision was faxed or electronically sent; or
 - The **first working day** after the decision was placed in an insurance carrier's Austin representative box.
- Copies of the appeal must be given to the other parties. Responses to the appeal must also be filed within **15 days** of receipt of the appeal.
- The Appeals Panel will not consider a late appeal or response.

28 TAC Sections [102.5](#), [143.3](#), and [143.4](#)
Labor Code Section [410.202](#)



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The why



The why – DWC's mission



Regulate Texas workers' compensation efficiently, educate system participants, and achieve a balanced system in which everyone is treated fairly with dignity and respect.



CompCourses

The how



The how

- Be ready.
- Know your case.
- Understand the process.
- Follow deadlines.



28 TAC Section [142.13](#)

Labor Code Sections [415.001\(2\)](#) and [415.002\(a\)\(9\)](#)



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Hypotheticals



Huh?

I received the BRC report, but it appears that the BRO misstated my position on the issues.





Huh?

After reading the DD report, I noticed that he didn't address three disputed conditions as part of his EOI opinion. He was asked to address the compensability of these conditions in the presiding officer directive issued after the CCH.





Huh?

The insurance carrier's attorney has requested that the CCH be held by videoconference. I want it to be in person.





Huh?

I just received my treating doctor's certification that I reached MMI on the date of injury with no permanent impairment. I want to challenge this certification. No DD has been appointed on the issues of MMI or IR.





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Thank you