

28 TAC §§142.13 AND 142.19

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC or division) adopts amendments to 28 TAC §142.13, concerning Discovery, and §142.19, concerning Form Interrogatories, to update the interrogatories to increase the time to respond to the interrogatories and to describe the questions that a party may ask using the interrogatories. The amendments are adopted without changes to the proposed text published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 9165).

REASONED JUSTIFICATION. Texas Labor Code §410.159 requires that the commissioner of workers' compensation prescribe standard form interrogatories for parties to use in a contested case proceeding before DWC. Under Rule 142.13(b)-(d), interrogatories may be presented after the required exchange of documentary evidence, which is to take place no later than 15 days after a benefit review conference, and no later than 20 days before a contested case hearing, unless otherwise agreed. In these amendments, DWC increases the time to respond to an interrogatory from five days to 10. To accommodate the additional five days to respond within the allotted time for a contested case, interrogatories would now be required to be presented no later than 25 days before a hearing, unless the parties agree otherwise.

DWC amends Rule 142.13(d) to set out the rule text in paragraphs and to make other editorial changes to conform the section to DWC's current style and to improve the rule's clarity. Paragraph (1) is amended to clarify that the interrogatories may be used by all parties, including subclaimants. Rule 140.1(3) defines a "party to a proceeding" as "a person entitled to take part in a proceeding because of a direct legal interest in the

outcome." Rule 140.6(b) states that "a subclaimant as described in [Labor Code] §409.009 [relating to Subclaims] is a party to a claim concerning workers' compensation benefits." Paragraph (2) is amended to require that interrogatories must be presented no later than 25 days before a hearing, rather than 20 days. Paragraph (3) is amended to increase the time to respond to interrogatories from five days to 10. The amendments will go into effect 20 days from filing with the *Texas Register*, and the allowance for 10 days for a response will apply to interrogatories sent after the amendments have gone into effect.

DWC amends Rule 142.19 to describe in new subsection (a) the information that may be sought through interrogatories. That information includes the name and contact information of the person answering the interrogatories; the issues in dispute; any certification of maximum medical improvement and impairment rating; any statement obtained from any person on the issues in dispute; the name and contact information for each health care provider the claimant has seen since the date of injury; the conditions the health care provider treated; and any recordings, photographs, videotapes, or similar material showing the claimant since the date of injury. In addition, for each health care provider the claimant has seen during the five years before the date of injury for treatment of a body part the claimant believes to be part of the claim, a party may request the health care provider's name and contact information, the dates the health care provider treated the claimant, and the conditions the health care provider treated. For each expert witness expected to testify, a party may be asked to provide the expert witness' name and contact information, the subject matter the expert witness may or will testify on, the general substance of the expert witness' opinions, and a brief summary of the basis for those opinions. Also, the interrogatories provide space for five additional questions that a party may use to get specific information relevant to an individual dispute.

Rule 142.19 is also amended to add new subsection (b) to note that DWC will develop and make available standard form interrogatories in a form and manner consistent with this rule as required under Labor Code §410.159. The form interrogatories for claimants may be found at www.tdi.texas.gov/wc/documents/clainterrcar.pdf. The form interrogatories for insurance carriers may be found at www.tdi.texas.gov/wc/documents/carinterrcla.pdf.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received one written comment in support of the proposal from the Office of Injured Employee Counsel.

Comment: The commenter requested that the form interrogatories include a definition for "certification of maximum medical improvement and impairment rating."

Agency Response: DWC appreciates the comment but disagrees on the need for these definitions. Definitions for both terms are provided under Labor Code §401.011. However, in response to this comment, DWC has added a reference to DWC Form-069, *Report of Medical Evaluation*, which is used to report a certification of maximum medical improvement and impairment rating.

Comment: The commenter also requested that the form interrogatory for claimants to send to insurance carriers include a question for the insurance carrier to state each ICD-10 Code or diagnosis accepted for a compensable injury.

Agency Response: DWC appreciates the comment but disagrees on the need for this question. This question would be overly specific and burdensome. If a claimant wishes to

ask a question specific to their claim, they may use one of the blank spaces provided for additional questions. No change was made in response to this comment.

28 TAC §142.13

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to Rule 142.13 under Labor Code §§402.00128, 402.021, 402.061, 410.157, 410.158, and 410.159.

Section 402.00128 describes the general powers and duties of the commissioner, including to hold hearings; take testimony directly or by deposition or interrogatory; and prescribe the form, manner, and procedure for the transmission of information to the division.

Section 402.021(b)(8) describes the Legislature's intent that DWC "effectively educate and clearly inform each person who participates in the system ... of the person's rights and responsibilities under the system and how to appropriately interact within the system."

Section 402.061 provides that the commissioner shall adopt rules as necessary to implement Labor Code, Title 5, Subtitle A.

Section 410.157 provides that the commissioner shall adopt rules governing procedures under which contested case hearings are conducted.

Section 410.158 provides for the scope of discovery in contested case hearings.

Section 410.159 requires the commissioner, by rule, to prescribe standard form sets of interrogatories to obtain information from claimants and insurance carriers.

TEXT.

§142.13. Discovery.

(a) Description of discovery. As used in this chapter, discovery is the process by which a party may, before the hearing, obtain evidence relating to the disputed issue or issues from the other parties and witnesses. If the evidence is not produced voluntarily, the party may request a subpoena, as provided in §142.12 of this title (relating to Subpoena). Discovery includes:

(1) parties' exchange of documentary evidence;

(2) interrogatories, as prescribed by §142.19 of this title (relating to Interrogatories); and

(3) witness depositions, as follows:

(A) a health care provider may be deposed only on written questions;

and

(B) other witnesses may be deposed within their county of residence or employment, orally or on written questions, if the administrative law judge determines the party has good cause to request such testimony.

(b) Sequence of discovery. Parties shall exchange documentary evidence in their possession not previously exchanged, as described in subsection (c) of this section, before requesting additional discovery by interrogatory, as described in subsection (d) of this section, or deposition, as described in subsection (e) of this section. Additional discovery

shall be limited to evidence not exchanged, or not readily derived from evidence exchanged.

(c) Parties' exchange of documentary evidence.

(1) Except as provided in subsection (g) of this section, no later than 15 days after the benefit review conference, parties shall exchange with one another the following information:

(A) all medical reports and reports of expert witnesses who will testify at the hearing;

(B) all medical records;

(C) any witness statements;

(D) the identity and location of any witness known to have knowledge of relevant facts; and

(E) all photographs or other documents which a party intends to offer into evidence at the hearing.

(2) Thereafter, parties shall exchange additional documentary evidence as it becomes available.

(3) Parties shall bring all documentary evidence not previously exchanged to the hearing in sufficient copies for exchange. The administrative law judge shall make a determination whether good cause exists for a party not having previously exchanged such information or documents to introduce such evidence at the hearing.

(d) Interrogatories.

(1) Interrogatories, as prescribed by §142.19 of this title (concerning Interrogatories), may be used by all parties, including subclaimants, to obtain information from any other party.

(2) Except as provided in subsection (g) of this section, interrogatories must be presented no later than 25 days before the hearing, unless otherwise agreed.

(3) Answers to interrogatories must be exchanged no later than 10 days after receipt of the interrogatories.

(4) Answers to interrogatories must be made under oath.

(e) Witness deposition. A party wishing to depose a witness shall request permission for deposition from the administrative law judge. The request shall:

(1) be made in writing;

(2) identify the witness to be deposed;

(3) state why the testimony is needed;

(4) propose a date, time, and place for taking the deposition;

(5) include a copy of the questions to be asked, if the deposition is to be on written questions;

(6) if needed, include a request for subpoena, as provided by §142.12 of this title (relating to Subpoena);

(7) be filed with the division no later than 10 days before the hearing; and

(8) be delivered to all parties, as provided by §142.4 of this title (relating to Delivery of Copies to All Parties).

(f) Additional discovery. The administrative law judge may grant a party permission to conduct discovery beyond that described previously upon a showing of good cause at a hearing held for this purpose.

(g) Time for discovery when the hearing is expedited or held without a prior benefit review conference. The notice setting an expedited hearing, or a hearing held without a prior benefit review conference, shall include time limits for completion of discovery.

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TEXT.

§142.19. Form Interrogatories.

(a) The division has developed standard interrogatories for parties to exchange the following information:

(1) the name and contact information of the person answering the interrogatories;

(2) the issues in dispute;

(3) any certification of maximum medical improvement and impairment rating;

(4) any statement obtained from any person on the issues in dispute;

(5) the name and contact information for each health care provider the claimant has seen since the date of injury, and the conditions the health care provider treated;

(6) any recordings, photographs, videotapes, or similar material showing the claimant since the date of injury;

(7) for each health care provider the claimant has seen during the five years before the date of injury for treatment of a body part the claimant believes to be part of the claim:

(A) the health care provider's name and contact information;

(B) the dates the health care provider treated the claimant; and

(C) the conditions the health care provider treated; and

(8) for each expert witness expected to testify:

(A) the expert witness' name and contact information;

(B) the subject matter the expert witness may or will testify on; and

(C) the general substance of the expert witness' opinions and a brief summary of the basis for them.

(b) In addition to these standard interrogatories, a party may add up to five additional questions. The parties should write the questions in plain language and present them in a readable and understandable format.

(c) Parties to a dispute must use the standard form interrogatories developed and published by the division in a form and manner consistent with this rule:

- (1) Claimant's Interrogatories to Carrier; and
- (2) Carrier's Interrogatories to Claimant.

CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 29, 2021.



Kara Mace
Deputy Commissioner for Legal Services
TDI, Division of Workers' Compensation

The commissioner adopts amendments to 28 TAC §§142.13 and 142.19.



Cassie Brown
Commissioner
TDI, Division of Workers' Compensation

Commissioner's Order No. _____