

**COLORADO DEPARTMENT OF PERSONNEL AND ADMINISTRATION
OFFICE OF ADMINISTRATIVE COURTS**

**PROCEDURAL RULES FOR
WORKERS' COMPENSATION HEARINGS**

These Procedural Rules for Workers' Compensation Hearings were formally adopted on October 26, 2005, and are effective January 1, 2006.

OAC Rule 1. Definitions.

As used in these Procedural Rules for Workers' Compensation Hearings:

A. "OAC" means the Office of Administrative Courts, created in the Colorado Department of Personnel and Administration by Section 24-30-1001(1), C.R.S.

B. "Judge" is defined as a judge in the Office of Administrative Courts and a pre-hearing judge in the Division of Workers' Compensation.

C. "O.A.C.R.P." means Office of Administrative Courts' Rules of Procedure.

OAC Rule 2. Applicability.

A. These rules apply to procedural orders and hearings pursuant to the Workers' Compensation Act of Colorado, Articles 40 to 47 of Title 8, C.R.S., from the date an Application for Hearing and Notice to Set is filed until the application is stricken or withdrawn, or until a hearing is held, order issued and the time to file a Petition to Review has run, or, if a Petition to Review is filed, until the file is transmitted to the Industrial Claim Appeals Office.

B. The Colorado Rules of Civil Procedure apply to Workers' Compensation hearings unless they are inconsistent with these rules and the provisions of the Workers' Compensation Act.

OAC Rule 3. Ex-Parte Communications.

With the exception of scheduling or other purely administrative matters, and with the exception of settlement conference or mediation processes, a party or counsel for a party shall not initiate any communication with a judge pertaining to a matter before the OAC unless prior consent of all other parties or their counsel has been obtained. Copies of all pleadings or correspondence filed with the OAC or directed to a judge by any party shall be served pursuant to Rule 6, O.A.C.R.P.

OAC Rule 4. Filing of Documents.

A. The originals of all pleadings and other papers filed in a proceeding before the OAC shall be filed with the OAC. Additional copies shall not be filed. Copies of pleadings and other documents may be discarded and not made part of the OAC file.

B. The date of filing shall be the date served on the OAC as indicated on the certificate of service, or, if no certificate of service is included, the date received by the OAC.

C. All pleadings and documents filed with the OAC shall contain the Workers' Compensation claim number.

D. All documents shall be filed at the OAC's office where the hearing is set to occur, unless venue has been changed by an order of a judge or designee clerk for good cause shown. The OAC has offices in Denver, Colorado Springs, and Grand Junction, Colorado.

OAC Rule 5. Facsimile Filing.

A. The facsimile capabilities of the OAC are limited. Parties are encouraged to avoid filing pleadings via facsimile, except when reasonably required by time constraints.

B. If a facsimile copy is filed in lieu of the original document, the attorney or party filing the facsimile copy shall retain the original document for production to the judge, if requested. If an original or copy of a pleading in addition to the facsimile copy is filed with the OAC, the additional copy or original may be discarded and not made part of the OAC file.

C. Pleadings or other documents in excess of ten pages (excluding the cover sheet) may not be filed by facsimile in lieu of the original documents, unless otherwise ordered by a judge. The OAC shall not accept any document in excess of ten pages submitted by facsimile for filing.

D. Facsimile copies must be accompanied by a cover sheet that states the title of the document, case number, number of pages, identity and telephone number of the transmitter, and the identity and facsimile numbers of all other parties or persons to whom the facsimile copy was sent, as well as any instructions.

OAC Rule 6. Service of Documents.

A. Service of pleadings or other papers on a party may be made by hand delivery, by mail to the address given in the pleadings, by facsimile transmission to a facsimile number given in the pleadings, by e-mail to an e-mail address given in the pleadings, or to the party's last known address as provided to the OAC. When an attorney represents a party, service shall be made on the attorney.

B. Attorneys and parties not represented by attorneys shall inform the OAC and all other parties of their current addresses and telephone numbers, and their facsimile numbers and e-mail addresses if they have such capability, and of any change of addresses during the course of the proceedings.

OAC Rule 7. Hearing Request.

Any party may request a hearing on issues ripe for adjudication by filing an Application for Hearing and Notice to Set, Application for Expedited Hearing, or an Application for Hearing - Disfigurement Only.

OAC Rule 8. Application for Hearing and Notice to Set.

A. The Application for Hearing and Notice to Set shall be on a form provided by the OAC, or on a substantially similar form.

B. The hearing shall be set in the hearing venue closest to the claimant's residence, unless a different venue is agreed upon by the parties and approved by a judge, or as otherwise ordered by a judge.

C. If the hearing is to be set in Denver, Greeley, or Fort Collins, the Application for Hearing and Notice to Set shall be filed at the OAC's Denver office. If the hearing is to be set in Colorado Springs, Pueblo, or Alamosa, the Application for Hearing and Notice to Set shall be filed at the OAC's Colorado Springs office. If the hearing is to be set in Grand Junction, Glenwood Springs, or Durango, the Application for Hearing and Notice to Set shall be filed at the OAC's Grand Junction office.

D. Copies of the Application for Hearing and Notice to Set must be mailed or delivered to the opposing party or parties, as provided by Rule 6, O.A.C.R.P.

E. A clerk of the OAC may reject any Application for Hearing and Notice to Set that is not complete. The rejection of an Application for Hearing and Notice to Set by a clerk shall be without prejudice.

F. The setting date shall be on a Tuesday, Wednesday, or Thursday, between the hours of 8:00 a.m. and 12:00 p.m., or 1:00 p.m. and 3:00 p.m. The setting date shall be at least 10 days and no more than 20 days from the date of the filing of the Application for Hearing and Notice to Set.

G. A Response to Application for Hearing and Notice to Set or a Notice of Entry of Appearance shall be filed before the date of the setting, as indicated on the Application for Hearing and Notice to Set. If a Notice of Entry of Appearance is filed, the Response to Application for Hearing and Notice to Set shall be filed no more than 30 days from the date the Application for Hearing and Notice to Set was filed.

H. A party who is not represented by an attorney may request that the OAC set the matter for hearing. In that instance, Paragraph I below shall not apply.

I. On the setting date, the applicant shall obtain available hearing dates from the OAC that are no more than 100 days from the date the Application for Hearing and Notice to Set was filed and, if a Response to Application for Hearing and Notice to Set or a Notice of Entry of Appearance was filed, contact the opposing party and agree on the date and time for the hearing. The applicant shall send the OAC a written confirmation of the date and time selected. If the parties are unable to agree on a date and time, the applicant shall notify the OAC in writing that there is no agreement, and the OAC shall set the matter for hearing at a date and time of its choosing.

J. Upon motion and good cause shown, a judge may grant the parties a non-trailing setting for a hearing to be held in Colorado Springs, Denver, Grand Junction or Pueblo. Non-trailing settings in other hearing locations may only be granted with the approval of the Director of the OAC, or his designee. Before granting a motion for a non-trailing setting, the judge shall consider whether discovery has been completed, whether all documents have been exchanged, and docket availability. No extensions of time to commence a non-trailing hearing shall be granted unless the request is made at least twenty days prior to the date of the hearing.

K. If no written confirmation of the hearing is received by the OAC from a party within five days after the date of the setting, the application shall be stricken without prejudice. Any party may, as permitted by law, file a new Application for Hearing and Notice to Set regarding issues that are ripe for adjudication.

OAC Rule 9. Application for Expedited Hearing.

A. The Application for Expedited Hearing shall be on a form provided by the OAC, or on a substantially similar form.

B. A claimant may file an Application for Expedited Hearing if the respondent filed a Notice of Contest and less than 45 days have passed since the Notice of Contest was filed. The issues in an expedited hearing shall be limited to compensability, medical benefits, and affirmative defenses to those issues raised by the respondent, and other issues as agreed upon by the parties.

C. A claimant may file an Application for Expedited Hearing if there is an urgent need for prior authorization of health care services, as recommended in writing by an authorized treating provider, and prior authorization has been denied. The issue will be limited to liability for those health care services, and other issues as agreed upon by the parties.

D. A respondent may file an Application for Expedited Hearing if it has filed a Petition to Suspend, Modify, or Terminate Compensation, and the claimant has filed an objection. The issue at the hearing shall be limited to a

determination of the Petition to Suspend, Modify, or Terminate Compensation. The issue will be limited to the Petition to Suspend, Modify or Terminate Compensation, and other issues as agreed upon by the parties.

E. Copies of the Application for Expedited Hearing must be mailed or delivered to the opposing party or parties, as provided by Rule 6, O.A.C.R.P.

F. If the applicant qualifies for an expedited hearing, the OAC shall set the matter for hearing to occur within 40 days of the date of mailing or delivery of the Application for Expedited Hearing. The OAC shall determine the location, date, and time of the expedited hearing, and shall send notice of the hearing to the parties, as provided by Rule 11, O.A.C.R.P.

G. The opposing party may file a Response to Application for Expedited Hearing within 10 days of the mailing or delivery of the Application for Expedited Hearing.

H. A clerk of the OAC may reject any Application for Expedited Hearing that is not complete. The rejection of an Application for Expedited Hearing and Notice to Set by a clerk shall be without prejudice.

I. If the applicant does not qualify for an expedited hearing, the Application for Expedited Hearing shall be rejected. The applicant may then file an Application for Hearing and Notice to Set.

OAC Rule 10. Disfigurement Award.

A claimant may request a determination of additional compensation for disfigurement to areas of the claimant's body normally exposed to public view by filing an Application for Hearing – Disfigurement Only or by submitting a Request for Disfigurement Award form with photographs.

A. Application for Hearing – Disfigurement Only.

1. The Application for Hearing – Disfigurement Only shall be on a form provided by the OAC, or on a substantially similar form.
2. Copies of the Application for Hearing – Disfigurement Only must be mailed or delivered to the opposing party or parties, as provided by Rule 6, O.A.C.R.P.
3. An opposing party may file a Response to Application for Hearing – Disfigurement Only within 10 days of the mailing or delivery of the Application for Hearing – Disfigurement Only.
4. The OAC shall set the matter for hearing to occur no more than 40 days after the Application for Hearing – Disfigurement Only was filed, at a location, date, and time of its choosing, and shall send notice of the hearing to the parties, as provided by Rule 11, O.A.C.R.P.

5. A clerk of the OAC may reject any Application for Hearing – Disfigurement Only that is not complete. The rejection of an Application for Hearing – Disfigurement Only shall be without prejudice.
- B. Disfigurement Award – Photographs.
1. A party may submit a Request for Disfigurement Award form to the OAC. A photograph or photographs clearly showing the disfigurement and the face of the claimant shall accompany the request. The backs of the photographs shall be signed by the claimant and shall state the date each photograph was taken. The date the photograph was taken must be at least six months after the date of the injury or surgery, or after the date of maximum medical improvement. The signature of the claimant is the claimant's certification that the photograph accurately depicted the disfigurement on the date the photograph was taken. A copy of the request, and a copy of the photographs, shall be provided to all opposing parties, as provided by Rule 6, O.A.C.R.P. Any party may request reconsideration of a disfigurement award by photograph within twenty days of the date of the certificate of mailing of the disfigurement award by filing an Application for Hearing – Disfigurement Only. If such an application is filed, the disfigurement award shall be withdrawn and vacated.
 2. The employer or insurer may credit any disfigurement award by any amount previously paid for disfigurement, unless provided otherwise in the disfigurement award. If the amount of the credit exceeds the disfigurement award, the employer or insurer may credit any permanent disability benefits not yet paid to the claimant.

OAC Rule 11. Notice of Hearing.

The OAC shall send a Notice of Hearing to the address on the application. If a Notice of Entry of Appearance or a response to the application is filed, the OAC shall send a Notice of Hearing to the address on the notice or response. If no Notice of Entry of Appearance or no response is filed, the OAC shall send a Notice of Hearing to the respondent's address given on the application. The Notice of Hearing shall be mailed or delivered within 20 days of the date of the confirmation.

OAC Rule 12. Issues for Hearing.

Issues for hearing may be added before the date of the setting by written notice to the OAC and the opposing party. After the date of the setting, issues may only be added by written agreement of the parties or order of a judge or designee clerk for good cause shown.

OAC Rule 13. Witnesses.

Only endorsed witnesses may testify in a party's case-in-chief. Endorsed witnesses are witnesses listed on either the application or the response to the application, witnesses added by written notice before the date of the setting, witnesses added by written agreement of the parties, or witnesses added by order of a judge or designee clerk.

OAC Rule 14. Extension of Time to Commence Hearing.

Except for an extension of time that must be granted pursuant to Section 8-43-209(1), C.R.S., a judge or designee clerk may grant an extension of time to commence a hearing upon agreement of the parties, or upon motion and good cause shown. A judge may, on the judge's own motion, extend the time to commence a hearing if time is not available on the docket. No extension of time to commence a hearing may exceed the limits of Sections 8-43-209 and 8-43-215, C.R.S.

OAC Rule 15. Hearing Vacated.

After a response to an application is filed, the application may not be withdrawn and the hearing may not be vacated except upon the agreement of all parties or upon the order of a judge. If the parties agree to the withdrawal of the application the applicant must promptly notify the OAC of the agreement to vacate the hearing. Notification shall be made by letter, facsimile or telephone.

OAC Rule 16. Motions.

A. Motions and responses or objections to motions must be filed in the same office of the OAC where the Application for Hearing was filed. Motions and responses or objections to motions filed with the OAC may be faxed, e-mailed, hand-delivered or mailed to the opposing parties, as provided in Rule 6, O.A.C.R.P. Motions and responses or objections to motions filed with the OAC shall be served upon opposing parties on the same day.

B. Every motion must include a certification by the party or counsel filing the motion that he or she has conferred, or attempted to confer, with opposing counsel and unrepresented parties, and must also include a statement

regarding whether the motion is contested, uncontested, or stipulated. If no conference has occurred, an explanation must be included in the motion.

C. The motion shall conspicuously state in the caption if the motion is unopposed or stipulated.

D. If a motion is stipulated, or if the opposing parties have no objection, the motion may be granted forthwith by the OAC's designee clerk, or may be granted or denied by a judge.

E. A response or an objection to a motion must be filed within 10 days of the date of mailing or delivery of the motion. If filed with the OAC by facsimile or e-mail, a copy of the response or objection must be faxed, e-mailed, or hand-delivered to the opposing parties within one business day.

F. The OAC may refer any matter within the jurisdiction of a pre-hearing judge to a pre-hearing judge.

G. The moving party, as well as any party opposing a motion, shall submit with each motion or response a proposed order, including either a certificate of service containing their facsimile number, or one copy of their proposed order and a self-addressed stamped envelope. The resulting order shall be sent to the moving or prevailing party, who is responsible for distribution of true and correct copies of the order to all remaining parties promptly, and in any event no later than five calendar days after the date the order is received.

OAC Rule 17. Summary Judgment.

Any party may file a motion for summary judgment seeking resolution of any endorsed issue for hearing. The motion for summary judgment shall be captioned as such. The motion for summary judgment must be supported by an affidavit or affidavits, transcripts of testimony, or by medical reports or employer records that show that there is no disputed issue of material fact and that the party is entitled to judgment as a matter of law. The motion must refer to this Rule 17, O.A.C.R.P., and to the section of the Workers' Compensation Act upon which the party seeks relief. The motion for summary judgment must be accompanied by a proposed order that includes findings of fact, conclusions of law, and an order. An objection to a motion for summary judgment may be filed within 20 days of the date of filing of the motion. If there is a disputed issue of material fact, the objection must specifically identify the disputed issue of material fact.

OAC Rule 18. Subpoenas.

A subpoena to compel the attendance of witnesses or parties and the production of books, papers, or records at a scheduled deposition or hearing may be issued on behalf of the OAC by a judge or by a licensed attorney for a party.

OAC Rule 19. Hearings Open to the Public.

Hearings are open to the public. However, when necessary and reasonable to protect the claimant's confidential medical information, a judge may, upon a request made during the hearing, clear all persons from the hearing room except counsel, a party or its representative, expert witnesses, interpreters, and employees of the OAC and Division of Workers' Compensation.

OAC Rule 20. Case Information Sheet (CIS).

A. Unless otherwise ordered by a judge, and except for disfigurement only hearings under Rule 10, O.A.C.R.P., the parties jointly, or each party individually, shall file and serve pursuant to Rule 6, O.A.C.R.P., a Case Information Sheet (CIS) on a form provided by the OAC, or on a substantially similar form. Case Information Sheets shall be filed and served no more than twenty days and no less than five days prior to the date set for the commencement of the hearing, or such other date established by a judge.

B. The purpose of the CIS is to permit the judge to determine the priority of the cases set, and to manage the docket more efficiently. The CIS is not discovery.

C. The CIS shall advise the judge as to whether the parties have conferred and made a good faith effort to resolve the issues set for hearing, the status of any discovery, the stipulations to be offered, the issues remaining for hearing, the names of the lay and expert witnesses to testify at the hearing, whether each witness shall testify in person or by telephone, whether the witness will travel more than 100 miles for the hearing, and the area of expertise of any expert witness.

D. Should a party fail to file a CIS, the judge may: (1) strike the application for hearing without prejudice and vacate the hearing; (2) issue an order to show cause why the issues or defenses should not be dismissed with prejudice; (3) continue the hearing to a future date; (4) continue the hearing and require the parties to attend a pre-hearing conference prior to proceeding to a hearing on the merits; or (5) proceed to hearing on the merits.

OAC Rule 21. Interpreters.

A. All proceedings shall be conducted in English. A party who does not adequately speak or understand English, or any party who calls a witness who does not adequately speak or understand English, must arrange for a

foreign language interpreter to be present at any hearing. The OAC shall not provide foreign language interpreters.

B. Immediately prior to the commencement of the hearing, any interpreter must review the “Code of Conduct for Interpreters in Administrative Hearings” and agree in writing to abide by its provisions.

C. The judge shall inquire on the record as to the qualification of any proposed interpreter prior to permitting the interpreter to interpret for any witness.

OAC Rule 22. Testimony by Telephone, Videoconference or Other Electronic Means.

A. An endorsed witness may testify by telephone, videoconference or other electronic means if the party calling the witness has so advised in the Case Information Sheet or has given all parties written notice at least five working days prior to the hearing. The party calling a witness by telephone, videoconference or other electronic means must do so at its expense, and must make advance arrangements for a speakerphone in the hearing room, or other arrangements as necessary for testimony by videoconference or other electronic means. Advance arrangements for a speakerphone need not be made if the hearing is set to occur in Denver, Colorado Springs, Pueblo, or Grand Junction.

B. An opposing party, at its expense, may compel the attendance of a witness who would otherwise testify by telephone, videoconference or other electronic means by serving a subpoena upon the witness.

OAC Rule 23. Non-Appearing Party.

If a party fails to appear at a hearing after the OAC has sent notice of the hearing to that party, a judge shall not enter any orders against the non-appearing party as a result of that hearing unless:

A. The judge finds that the address to which the notice of hearing was sent is the most recent address provided by the non-appearing party to either the OAC or the Division of Workers’ Compensation; or

B. If no address for the non-appearing party is on file with the OAC or the Division of Workers’ Compensation, the judge finds on the basis of other evidence that:

1. Notice of the hearing was sent to an address at which it is likely to be received by the non-appearing party or the non-appearing party’s authorized representative; or

2. The non-appearing party in fact received notice of the hearing.

C. A copy of a record or other written statement from the OAC or the Division of Workers’ Compensation containing the most recent address provided

by the non-appearing party to either of those agencies shall be sufficient to create a rebuttable presumption that the non-appearing party received notice of the hearing.

OAC Rule 24. Closing Statement.

At the conclusion of a hearing, a party may make a closing statement or, at the discretion of the judge, submit written documents. Written documents may be submitted by mail or e-mail to the OAC, or by facsimile if ten pages or less. If the judge determines that written documents may be submitted, the written documents shall be due within 15 calendar days of the hearing date, unless good cause is shown for a longer or shorter period.

OAC Rule 25. Order.

The judge shall issue a written order within thirty days of the date of the hearing, or within thirty days from the date position statements were due, whichever is later. A copy of the order shall be mailed to each attorney who appeared at the hearing and to unrepresented parties. The OAC is authorized to serve any final order of a judge issued under the Workers' Compensation Act of Colorado on counsel or unrepresented parties by electronic mail, as permitted by Section 8-43-215(1), C.R.S., if the attorney or unrepresented party to be served with the order agrees on the record or in writing to service by electronic mail.

OAC Rule 26. Petition to Review.

A. If an order is subject to appeal, a party may file a Petition to Review or a Petition to Review and Transcript Request with the judge who issued the order at the address stated in the order. If no address for filing a Petition to Review was stated in the order, then a Petition to Review or a Petition to Review and Transcript Request may be filed in the office of the judge who issued the order, or with the OAC's office in Denver.

B. Forms for a Petition to Review and a Petition to Review and Transcript Request are available from the OAC.

C. A request for an extension of time to file a Petition to Review or a Petition to Review and Transcript Request may only be granted if the request is filed within the time limit for filing a Petition to Review.

D. When a Petition to Review and Transcript Request is filed, the following procedures shall apply:

1. Any party who orders a transcript in connection with filing a Petition to Review in a Workers' Compensation case is responsible for making arrangements to have the hearing transcribed from the disk or tape cassette, and for filing the written transcript with the OAC.

2. A party filing a Petition to Review in a Workers' Compensation case who wishes to order a transcript must include a statement that a transcript is requested in the caption of the Petition to Review.
3. The transcript shall be prepared by a court reporter or transcriptionist who does not have an interest in the case and whom the party requesting the transcript selects. Along with the request for a transcript, the Petition to Review shall identify, by name and mailing address, the person to whom the disk or tape cassette should be sent.
4. The OAC shall mail to all parties a notification of the date the disk or tape cassette was sent to the designated court reporter or transcriptionist. The twenty-five working day time limit for filing the transcript with OAC shall begin from the date contained in that notice, pursuant to Section 8-43-213(2), C.R.S.
5. If a transcript is not filed with the OAC within the twenty-five working day time limit, and no motion has been filed by a party and an order entered to extend the filing deadline, the OAC shall issue an Order Striking Transcript Request and Notice and Briefing Schedule. The issuance of a briefing schedule shall constitute notice to the parties that the order for the transcript has been withdrawn. The briefing schedule shall control the processing of the Petition to Review unless, within seven days of the issuance of the briefing schedule, a party makes a request, showing good cause, that the party be allowed to file a late transcript with the OAC. If such a request is made, the judge shall rule on the request and, at the same time, issue appropriate orders regarding the briefing schedule.
6. Once the original hearing transcript has been filed with the OAC, parties to the case may obtain a photocopy of the transcript from the OAC. The charge for obtaining photocopies of original hearing transcripts shall be \$1.00 per page.
7. The procedure set forth in this rule also applies to the order of a transcript by a party opposing a Petition to Review.

E. Briefs in support or in opposition to Petitions to Review may not exceed twenty pages, double-spaced and in a type face no smaller than 12 points, exclusive of pages containing the table of contents, tables of citations, and any addenda containing statutes, rules, decisions, regulations and similar material. A judge may allow a brief to exceed twenty pages for good cause shown.

F. The judge may dismiss a Petition to Review or a Petition to Review and Transcript Request without prior notice to the parties if it appears that the petition is not timely filed. A party may file a motion requesting reconsideration of such an order within twenty days of the date of mailing of the order. A denial of a motion for reconsideration is subject to a Petition to Review.

OAC Rule 27. Requests for Transcripts of Hearings Not in Connection with a Petition to Review.

A. A party or other interested person may request a copy of the audio recording or a written transcript of a hearing or part of a hearing. A party or other interested person is limited to the claimant, the respondent, the employer, the adjusting agent, or an attorney or designated representative of any of the parties. A witness may request an audio copy or a written transcript only of the witness' testimony.

B. The request for an audio recording or a written transcript must include the date, the time, and the location of the hearing. A request for a written transcript must also include the name and address of the transcriptionist designated by the person making the request. When a written transcript is requested, the OAC shall forward a copy of the audio recording to the designated transcriptionist. The requesting party is responsible for the cost of preparing the transcript.

OAC Rule 28. Retention of Reporter Notes and Audio Recordings of Hearings.

A. The OAC shall retain reporter notes and audio recordings of hearings for at least three years following the date the notes were taken or the recording was made. Reporter notes may be destroyed, and audio recordings erased or destroyed, at the conclusion of this three-year period.

B. This rule does not apply to reporter notes or audio recordings of Workers' Compensation prehearing conferences, disfigurement hearings or *pro se* settlement hearings. Those reporter notes or audio recordings may be destroyed or erased after 100 days.

APPENDIX A