

CHAPTER 141. DISPUTE RESOLUTION--BENEFIT REVIEW CONFERENCE

§141.1. Requesting and Setting a Benefit Review Conference.

- (a) A request for a benefit review conference may be made by a claimant, a subclaimant, a carrier, or an employer who has contested compensability.
- (b) Except as provided in subsection (c) of this section, a request for a benefit review conference shall:
 - (1) be made on Form TWCC 45, Request for Setting a Benefit Review Conference;
 - (2) identify and describe the disputed issue or issues; and
 - (3) be sent to the commission.
- (c) An unrepresented claimant may request a benefit review conference by contacting the commission in any manner. The commission shall acknowledge to the claimant in writing receipt of the request.
- (d) The commission shall set a conference to be held:
 - (1) within 40 days of the date the request is received; or
 - (2) if the commission determines that an expedited setting is needed, as provided by §140.3 of this title relating to Expedited Proceedings), within 20 days of the date the request is received.
- (e) After setting the conference, the commission shall provide, by first class mail or personal delivery, written notice of the date, time, and location to the parties and to the employer. The notice shall be provided:
 - (1) at least 30 days before a conference set under subsection (d)(1) of this section; or
 - (2) at least 10 days before a conference set under subsection (d)(2) of this section.
- (f) The conference will be conducted at a site no more than 75 miles from the claimant's residence at the time of injury, unless the commission determines that good cause exists for selecting another site.

The provisions of this §141.1 adopted to be effective June 7, 1991, 16 TexReg 2876.

§141.2. Canceling or Rescheduling a Benefit Review Conference.

- (a) The commission may cancel or reschedule a benefit review conference:
 - (1) on its own motion;
 - (2) at the request of the party who requested the conference; or
 - (3) at the mutual request of the parties.
- (b) A request for cancellation shall be made by notifying the docket clerk of the field office managing the claim within 10 days of the date the notice of setting is received. The date the notice of setting is received is deemed to be the fifth day after the date of the notice. Cancellation requests made during this 10-day period are unrestricted unless a pattern of abuse is detected.
- (c) Cancellation requests made after the unrestricted cancellation period defined in subsection (b) of this section will be granted only on a showing of good cause. Good cause may include, but is not limited to, the following:

- (1) the parties independently resolved the disputed issue or issues by agreement or settlement, as provided by Chapter 147 of this title (relating to Dispute Resolution--Agreements, Settlements, Commutation);
 - (2) the conference was scheduled with the wrong carrier;
 - (3) the employee no longer desires to pursue the claim;
 - (4) the employee dies and no additional benefits appear due; or
 - (5) illness of a party.
- (d) The commission will notify the parties of a cancellation in a timely manner.

The provisions of this §141.2 adopted to be effective June 7, 1991, 16 TexReg 2876.

§141.3. Failure to Attend a Benefit Review Conference.

- (a) When a party fails to attend a benefit review conference without good cause, as determined by the benefit review officer, the benefit review officer:
- (1) may hold the conference as scheduled; and
 - (2) may recommend the issuance of an administrative violation.
- (b) A representative who fails to attend a benefit review conference without good cause commits an administrative violation.

The provisions of this §141.3 adopted to be effective June 7, 1991, 16 TexReg 2876; amended to be effective May 10, 2000, 25 TexReg 3988.

§141.4. Filing and Exchanging Pertinent Information.

- (a) As used in this section, "pertinent information" means all information relevant to the resolution of the disputed issue or issues to be addressed at the benefit review conference, including, but not limited to:
- (1) information relating to the employee's wages;
 - (2) information relating to the employee's medical condition;
 - (3) witness statements; and
 - (4) the names of witnesses who will attend the conference.
- (b) Not later than 14 days before the benefit review conference, or not later than five days before an expedited conference set under §141.1(d)(2) of this title (relating to Requesting and Setting a Benefit Review Conference), all pertinent information in the parties' possession shall be:
- (1) sent to the commission by the parties; and
 - (2) exchanged with one another.
- (c) Pertinent information that becomes available thereafter shall be brought to the conference in sufficient copies for filing and exchange.

- (d) The benefit review officer may reschedule a conference upon a determination that pertinent information has not been submitted or exchanged.

The provisions of this §141.4 adopted to be effective June 7, 1991, 16 TexReg 2876.

§141.5. Description of the Benefit Review Conference.

- (a) Definitions. As used in this section, “participant” means an individual entitled or permitted to attend and take part in a benefit review conference. Participants include:
 - (1) the parties;
 - (2) the parties’ representatives;
 - (3) the employer exercising the right to present evidence relevant to the disputed issue or issues; and
 - (4) any other individual, at the discretion of the benefit review officer.
- (b) Overview of the benefit review conference. The benefit review conference consists of three parts: opening, mediation, and closing.
- (c) Opening. The benefit review officer shall:
 - (1) identify the case and introduce the parties and other participants;
 - (2) thoroughly inform the parties and participants of their rights and responsibilities under the Texas Workers’ Compensation Act;
 - (3) explain the purpose of the conference and the procedures and time frame to be observed;
 - (4) identify and describe the disputed issues to be mediated; and
 - (5) elicit each party’s statement of position regarding each disputed issue.
- (d) Mediation. The benefit review officer shall:
 - (1) ask and answer questions of the parties and other participants;
 - (2) encourage the parties to discuss the disputed issues and ask and answer questions;
 - (3) permit the employer to present evidence relevant to the disputed issues;
 - (4) permit other participants to discuss the disputed issues and ask and answer questions, to the extent the benefit review officer deems appropriate;
 - (5) if necessary, caucus individually with each party;
 - (6) assist the parties to agree on specific options for resolution; and
 - (7) assist the parties in resolving disputed issues by agreement or settlement.
- (e) Closing. The benefit review officer shall:
 - (1) assist the parties in reducing agreements or settlements to writing;

- (2) identify any issues left unresolved; and
- (3) if available information pertinent to the resolution of the disputed issue(s) was not produced at the benefit review conference, require a second benefit review conference to be scheduled if a second one has not already been conducted.

The provisions of this §141.5 adopted to be effective June 7, 1991, 16 TexReg 2876; amended to become effective September 4, 2006, 31 TexReg 7127.

§141.7. Division Actions After a Benefit Review Conference.

- (a) If all disputed issues are resolved at the benefit review conference by agreement, the benefit review officer shall make the agreement part of the claim file.
- (b) If all disputed issues are resolved at the benefit review conference by settlement, the benefit review officer shall submit the signed settlement to the Commissioner or Commissioner's designee for handling as provided by Chapter 147 of this title (relating to Dispute Resolution by Agreement or Settlement). If the Commissioner or Commissioner's designee rejects the settlement, the parties may request a subsequent benefit review conference as provided by §141.1 of this title (relating to Requesting and Setting a Benefit Review Conference).
- (c) If all disputed issues are not resolved at the benefit review conference, no later than the fifth day after the close of the benefit review conference the benefit review officer shall submit a written report, as provided by Labor Code §410.031 and any signed agreement to the Division's central office in Austin.
- (d) No later than the eighth day after receiving the benefit review officer's report, the Division shall furnish, by first class mail, electronically, or personal delivery, to the injured employee; injured employee's representative, if any; the insurance carrier; subclaimants; and the employer the following:
 - (1) a file-stamped copy of the report; and
 - (2) notice of the date, time, and location of the contested case hearing.

The provisions of this §141.7 adopted to be effective June 7, 1991, 16 TexReg 2876; amended to be effective May 10, 2000, 25 TexReg 3988; Amended to become effective September 4, 2006, 31 TexReg 7127.