

CHAPTER 142. DISPUTE RESOLUTION--BENEFIT CONTESTED CASE HEARING

§142.1. Application of the Administrative Procedure Act.

The following sections of the Government Code, apply to benefit contested case hearings: §2001.201, relating to enforcement of subpoenas.

The provisions of this §142.1 adopted to be effective February 12, 1991, 16 TexReg 463; amended to be effective May 10, 2000, 25 TexReg 3990.

§142.2. Authority of the Hearing Officer.

The hearing officer is authorized to:

- (1) issue subpoenas;
- (2) rule on requests;
- (3) issue orders, including interlocutory orders;
- (4) use summary procedures as provided by §142.8 of this chapter (relating to Summary Procedures);
- (5) direct parties to appear at a prehearing conference to resolve evidentiary and procedural issues;
- (6) establish time limits for conducting a hearing;
- (7) administer oaths;
- (8) rule on the admissibility of evidence;
- (9) determine the relevancy, materiality, weight, and credibility of evidence;
- (10) request additional evidence;
- (11) take official notice of the law of Texas and other jurisdictions, Texas city and county ordinances, the contents of the *Texas Register*, the rule of state agencies, facts that are judicially cognizable, and generally recognized facts within the Commission's specialized knowledge;
- (12) examine parties and witnesses, and permit examination and cross-examination of parties and witnesses;
- (13) recess, postpone, or dismiss a hearing; and
- (14) take any other action as authorized by law, or as may facilitate the orderly conduct and disposition of the hearing.

The provisions of this §142.2 adopted to be effective February 12, 1991, 16 TexReg 463; amended to be effective May 10, 2000, 25 TexReg 3990.

§142.3. Ex Parte Communications.

- (a) No person, except as otherwise provided in subsection (c) of this section may communicate, either directly or indirectly, with the hearing officer regarding any facts, issues, law or rules relating to the benefit contested

case hearing after the hearing has been set, and until all administrative and judicial remedies have been exhausted, unless all parties to the hearing are present, except where the communication is:

- (1) written; and
 - (2) delivered to all parties, as provided by §142.4 of this title (relating to Delivery of Copies to All Parties).
- (b) Notwithstanding subsection (a) of this section, any of the individuals named in subsection (a) may communicate with the hearing officer in any manner regarding procedural issues.
- (c) hearing officer assigned to render a decision in a benefit contested case hearing, may communicate ex parte with other Commission employees for the purpose of utilizing their special skills or knowledge in evaluating the evidence.

The provisions of this §142.3 adopted to be effective February 12, 1991, 16 TexReg 463; amended to be effective May 10, 2000, 25 TexReg 3990.

§142.4 Delivery of Copies to All Parties

A party who sends a document relating to a benefit contested case hearing to the Commission shall also deliver copies of the document to all other parties, or their representatives or attorneys. Delivery shall be accomplished by presenting in person, mailing by first class mail, facsimile or electronic transmission. The document sent to the Commission shall contain a statement certifying delivery. The following statement of certification shall be used: "I hereby certify that I have on this _____ day of _____, _____, delivered a copy of the attached document to (state the names of all parties to whom a copy was delivered) by (state the manner of delivery)."

The provisions of this §142.4 adopted to be effective February 12, 1991, 16 TexReg 463; amended to be effective May 10, 2000, 25 TexReg 3990.

§142.5. Sequence of Proceedings to Resolve Benefit Disputes.

- (a) Usual sequence. Except as provided in this section, parties to a benefit dispute are required to attempt to resolve the dispute by mediation at a benefit review conference before proceeding to a contested case hearing or to arbitration by mutual election.
- (b) Guidelines for proceeding directly to a benefit contested case hearing. Parties may proceed directly to a contested case hearing without attending a benefit review conference if the Commission determines that:
- (1) mediation would not prove effective to resolve the dispute;
 - (2) necessary evidence cannot be obtained without subpoena; or
 - (3) the situation of the parties or the nature of the facts or law of the case is such that the overall policy of the Act would be advanced by proceeding directly to a contested case hearing.
- (c) Requesting a hearing. A party may request the Commission to set a benefit contested case hearing. The request shall be made in the following manner:
- (1) If the party is represented, the request shall:
 - (A) be made in writing and signed by the requestor;
 - (B) identify and describe the disputed issue or issues;

- (C) state the reason for requesting the hearing;
- (D) be sent to the Commission; and
- (E) be delivered to all the other parties, as provided by §142.4 of this chapter (relating to Delivery of Copies to All Parties).

(2) An unrepresented claimant may request a hearing by contacting the Commission in any manner.

- (d) Commission action on a request for hearing. The Commission will rule on the request, and notify the parties. A ruling granting the request will include a notice of hearing, as provided in §142.6 of this chapter (relating to Setting a Benefit Contested Case Hearing). A ruling denying the request may include a notice of benefit review conference.
- (e) Response. If a hearing is set upon request, the other party or parties may submit a response. The response shall:
 - (1) be made in writing and signed;
 - (2) describe and explain the party's position on the dispute or disputes;
 - (3) be sent to the Commission no later than five days before the hearing; and
 - (4) be delivered to all other parties, as provided by §142.4 of this title (relating to Delivery of Copies to All Parties).
- (f) An unrepresented claimant may respond by contacting the Commission in any manner.

The provisions of this §142.5 adopted to be effective February 12, 1991, 16 TexReg 463; amended to be effective May 10, 2000, 25 TexReg 3990.

§142.6. Setting a Benefit Contested Case Hearing.

- (a) Setting with prior benefit review conference. The commission shall set a benefit contested case hearing to be held:
 - (1) no later than 60 days from the date of the benefit review conference; or
 - (2) if the commission determines that an expedited setting is appropriate, as provided by §140.3 of this title (relating to Expedited Hearings), no later than 30 days from the date of the benefit review conference.
- (b) Setting without prior benefit review conference. For those disputes determined not to require a benefit review conference, as defined in §142.5 of this title (relating to Sequence of Proceedings To Resolve Benefit Disputes), the commission may set a benefit contested case hearing on its own motion, or at the request of a party. When requested, the hearing shall be set on a date:
 - (1) no later than 60 days from receipt of the request; or
 - (2) if the commission determines that an expedited setting is appropriate, no later than 30 days from the commission's receipt of the request.

(c) Notice of hearing. After setting a hearing, the commission shall furnish to the parties, by first class mail or personal delivery, written notice of the date, time, duration, and location of the hearing. The notice shall be furnished:

- (1) at the same time that the notice of the benefit review conference is given;
- (2) not later than 45 days before a hearing set under subsection (b)(1) of this section; or
- (3) not later than 10 days before a hearing set under subsection (b)(2) of this section.

The provisions of this §142.6 adopted to be effective February 12, 1991, 16 TexReg 463.

§142.7. Statement of Disputes.

(a) Statement of disputes. The statement of disputes is a written description of the benefit dispute or disputes to be considered by the hearing officer. A dispute not expressly included in the statement of disputes will not be considered by the hearing officer.

(b) Statement of disputes after a benefit review conference. The statement of disputes for a hearing held after a benefit review conference includes:

- (1) the benefit review officer's report, identifying the disputes remaining unresolved at the close of the benefit review conference;
- (2) the parties' responses, if any;
- (3) additional disputes by unanimous consent, as provided by subsection (c) of this section; and
- (4) additional disputes presented by a party, as provided by subsections (d) and (e) of this section, if the hearing officer determines that the party has good cause.

(c) Party response to the benefit review officer's report. A party may submit a response to the disputes identified as unresolved in the benefit review officer's report. The response shall:

- (1) be in writing;
- (2) describe and explain the party's position on the unresolved dispute or disputes;
- (3) be sent to the commission no later than 20 days after receiving the benefit review officer's report; and
- (4) be delivered to all other parties, as provided by §142.4 of this title (relating to Delivery of Copies to All Parties).

(d) Additional disputes by unanimous consent. Parties may, by unanimous consent, submit for inclusion in the statement of disputes one or more disputes not identified as unresolved in the benefit review officer's report. Additional disputes submitted by consent shall:

- (1) be made in writing;
- (2) identify the dispute, explain the party's position on it;
- (3) be signed by all parties;
- (4) be sent to the commission no later than 10 days before the hearing; and

- (5) explain why the issue was not raised earlier.
- (e) Additional disputes by permission of the hearing officer. A party may request the hearing officer to include in the statement of disputes one or more disputes not identified as unresolved in the benefit review officer's report. The hearing officer will allow such amendment only on a determination of good cause.
 - (1) If the party is represented, the request shall:
 - (A) be made in writing;
 - (B) identify and describe the dispute or disputes;
 - (C) state the reason for the request;
 - (D) be sent to the commission no later than 15 days before the hearing; and
 - (E) be delivered to all other parties, as provided by §142.4 of this title (relating to Delivery of Copies to All Parties).
 - (2) An unrepresented claimant may request additional disputes to be included in the statement of disputes by contacting the commission in any manner no later than 15 days before the hearing.
 - (3) The hearing officer will rule on the request, and notify the parties of the ruling.
- (f) Statement of disputes without prior benefit review conference. The statement of disputes for a hearing held without a prior benefit review conference includes:
 - (1) the request for hearing, as described in §142.5(c) of this title (relating to Sequence of Proceedings To Resolve Benefit Disputes); and
 - (2) the other party's response, as described in §142.5(e) of this title (relating to Sequence of Proceedings To Resolve Benefit Disputes), if any.

The provisions of this §142.7 adopted to be effective February 12, 1991, 16 TexReg 463.

§142.8. Summary Procedures.

- (a) In order to expedite the presentation of a case, the hearing officer may allow summary procedures, including, but not limited to, the use of:
 - (1) sworn witness statements;
 - (2) summaries of evidence;
 - (3) medical reports;
 - (4) agreements; and
 - (5) stipulations.
- (b) The hearing officer may allow the use of summary procedures:
 - (1) on its own motion; or

(2) at the request of a party.

(c) A party may request the use of summary procedures in any manner and at any time before the hearing.

The provisions of this §142.8 adopted to be effective February 12, 1991, 16 TexReg 463.

§142.9. Stipulations, Agreements, and Settlements.

(a) At any time before or during the hearing, parties may:

(1) enter into stipulations, as provided by §140.1 of this title (relating to Definitions);

(2) resolve one or more benefit disputes by agreement; or

(3) resolve all benefit disputes by settlement.

(b) Stipulations shall be made as follows:

(1) Stipulations made before the hearing shall be:

(A) made in writing;

(B) signed by all parties to the stipulation, or their representative; and

(C) sent to the Commission no later than the day before the hearing.

(2) Stipulations may be made orally at a hearing and preserved in the record.

(c) Agreements and Settlements shall be made as provided by Chapter 147 of this title (relating to Dispute Resolution by Agreement or Settlement).

The provisions of this §142.9 adopted to be effective February 12, 1991, 16 TexReg 463; amended to be effective May 10, 2000, 25 TexReg 3990.

§142.10. Continuance.

(a) As used in this chapter, continuance means postponing a hearing from the time or date set, and rescheduling it on a later time or date.

(b) The commission may continue a hearing:

(1) on its own motion; or

(2) at the request of a party, if the hearing officer determines the party has good cause.

(c) A request for continuance may be made before or during a hearing.

(1) A request made by a represented party before a hearing shall:

(A) be in writing;

(B) state the reason for continuing the hearing;

(C) be sent to the commission no later than five days before the hearing; and

- (D) be delivered to all parties, as provided by §142.4 of this title (relating to Delivery of Copies to All Parties).
- (2) An unrepresented claimant may request a continuance before a hearing by contacting the commission in any manner.
- (3) A party may orally request a continuance during a hearing. In addition to showing good cause, the party must show that a continuance will not prejudice the rights of the other parties.
- (d) The hearing officer will rule on the request, and notify all parties of the ruling. A ruling granting the continuance will include notice of the date, time, and location of the rescheduled hearing.

The provisions of this §142.10 adopted to be effective February 12, 1991, 16 TexReg 463.

§142.11. Failure To Attend a Benefit Contested Case Hearing

Failure to attend a benefit contested case hearing without good cause, as determined by the hearing officer, is a Class C administrative violation, with a penalty not to exceed \$1,000.

The provisions of this §142.11 adopted to be effective February 12, 1991, 16 TexReg 463.

§142.12. Subpoena.

- (a) Definitions. The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:
 - (1) *Evidence* - Testimony or documents, including books, papers, and tangible things.
 - (2) *Service* - Delivery of a subpoena by an authorized individual to the person to whom it is addressed.
 - (3) *Subpoena* - A Commission order issued by the hearing officer requiring a person to attend or to produce evidence at a deposition (deposition subpoena) or at a hearing (hearing subpoena).
- (b) How issued. The Commission may issue a subpoena:
 - (1) on its own motion; or
 - (2) at the request of a party, if the hearing officer determines the party has a good cause.
- (c) Request for subpoena. A party may request a subpoena in the following manner:
 - (1) If the party is represented, the request shall:
 - (A) be in writing;
 - (B) identify the evidence to be produced, and explain why it is relevant to a disputed issue;
 - (C) state whether the subpoena is for a deposition or a hearing;
 - (D) be sent to the Commission ; and
 - (E) be delivered to all parties, as provided by §142.4 of this chapter (relating to Delivery of Copies to All Parties).

- (2) An unrepresented claimant may request a subpoena by contacting the Commission in any manner, and may also request the Commission to arrange for service, if service will be at no cost to the Commission.
- (d) Special provisions for hearing subpoenas. A request for a hearing subpoena shall be sent to the Commission and delivered to the parties, as provided by §142.4 of this chapter (relating to Delivery of Copies to All Parties), no later than ten days before the hearing. The hearing officer may deny a request for a hearing subpoena upon a determination that the testimony may be adequately obtained by deposition or written affidavit.
- (e) Service. Upon granting a request and issuing a subpoena, the hearing officer shall:
- (1) return it to the requester for service, according to §176.5, Texas Rules of Civil Procedure; or
 - (2) send it to the appropriate sheriff or constable, or any person who is not a party and is 18 years of age or older for service, if an unrepresented claimant has requested the Commission to arrange for service, as provided by subsection (c)(2) of this section.
- (f) Costs.
- (1) Except as provided by subsection (c)(2) of this section, the party requesting the subpoena is responsible for all costs associated with the subpoena, including service, witness fees, and mileage.
 - (2) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to attend a hearing or deposition to give testimony or produce documents is entitled to receive from the party requesting the subpoena:
 - (A) a fee of \$30 a day for each day or part of a day the person is necessarily present as a witness or deponent;
 - (B) mileage at the rate set for state employees in the General Appropriations Act, for going to, and returning from the place of the hearing or the place of the deposition, if the place is more than 25 miles from the person's place of residence; and
 - (C) fees for providing expert testimony relating to medical issues shall be paid according to guidelines established by the Commission pursuant to the Texas Labor Code, Chapter 413.
- (g) A subpoena may be enforced in the manner provided by the Government Code §201.201 and the Texas Labor Code.

The provisions of this §142.12 adopted to be effective February 12, 1991, 16 TexReg 463; amended to be effective May 10, 2000, 25 TexReg 3990.

§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 hearing officer 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 hearing officer 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. Interrogatories as prescribed by §142.19 of this title (relating to Interrogatories) may be used to elicit information from claimants and insurance carriers. Except as provided in subsection (g) of this section, interrogatories shall be presented no later than 20 days before the hearing, unless otherwise agreed. Answers to interrogatories shall be exchanged no later than five days after receipt of the interrogatories. Answers to interrogatories shall be made under oath.
- (e) Witness deposition. A party wishing to depose a witness shall request permission for deposition from the hearing officer. 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 commission 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 hearing officer 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.

The provisions of this §142.13 adopted to be effective February 12, 1991, 16 TexReg 463; amended to be effective February 18, 1992, 17 TexReg 949.

§142.14. Permission To Use Court Reporter.

(a) A party may request permission to have the hearing recorded by a court reporter provided by the party. The party may select, and must bear the cost of, the court reporter.

(b) A request for permission to use a court reporter may be made in any manner and at any time before the hearing. The hearing officer will rule on the request, and notify the parties only if the request is denied.

(c) A copy of the court reporter's audiotape, or transcript, if produced, shall be furnished to the commission at no charge.

The provisions of this §142.14 adopted to be effective February 12, 1991, 16 TexReg 463.

§142.16. Decision.

(a) After the record closes, the hearing officer shall issue a decision on benefits. The decision shall:

(1) be in writing;

(2) include findings of fact and conclusions of law; a determination of whether benefits are due; and, if so, an award of benefits due; and

(3) be signed by the hearing officer.

(b) On a form prescribed by the Commission the hearing officer shall issue a separate written decision regarding attorney's fees and any matter related to attorney fees. A decision on income or medical benefits may include an interlocutory order at the discretion of the hearing officer.

(c) No later than the tenth day after the close of the hearing, the hearing officer shall file all decisions with the division of hearings.

(d) No later than seven days after filing the decision, the division shall furnish to the parties, by first class mail or personal delivery:

(1) a file-stamped copy of the decision; and

(2) a statement specifying the place, manner, and time period within which an appeal must be filed.

- (e) A decision issued under this section shall be effective and binding on the date signed by the hearing officer unless superceded by an interlocutory order contained in the decision, if any.
- (f) A decision regarding benefits not appealed to the appeals panel, as provided by the Texas Labor Code, §410.202 and Chapter 143 of this title, becomes final on the sixteenth day after the date received from the division of hearings. Parties shall comply with a final decision or order within 20 days of the date it becomes final as provided by the Texas Labor Code, §410.208.
- (g) A decision regarding benefits appealed to the appeals panel as provided by the Texas Labor Code, §410.202 and Chapter 143 of this title, is binding on the parties and payable during an appeal to the appeals panel unless superceded by an interlocutory order contained in the decision, if any.
- (h) Parties shall comply with a decision regarding benefits appealed to the appeals panel that does not contain an interlocutory order by issuing and delivering payment of accrued and unpaid income benefits no later than the fifth day after filing a written request for appeal with the appeals panel as provided by the Texas Labor Code, §410.202, and Chapter 143 of this title.
- (i) Payment of accrued and unpaid income benefits paid in accordance with a decision shall include interest pursuant to the Texas Labor Code, §408.064 and §408.081.
- (j) Payment of medical benefits pursuant to a decision shall be made in accordance with Chapters 408 and 413 of the Texas Labor Code.

The provisions of this §142.16 adopted to be effective February 12, 1991, 16 TexReg 467; amended to be effective May 10, 2000, 25 TexReg 3990,

§142.17. Transcript or Duplicate of the Hearing Audiotape.

- (a) A party or the employer may submit a request to the commission for a transcript of the hearing audiotape. The requester shall pay the cost of the transcript, as established by the commission.
- (b) A party or the employer may submit a request to the commission for a duplicate of the hearing audiotape. The requester shall pay the cost of the duplication, as established by the commission.

The provisions of this §142.17 adopted to be effective February 12, 1991, 16 TexReg 467.

§142.18. Special Provisions for Cases on Remand from the Appeals Panel.

- (a) Priority setting for case on remand from appeals panel. When the appeals panel reverses a hearing officer's decision and remands the case for further consideration, the commission shall set the hearing to be held within 30 days of the date of the appeals panel's decision.
- (b) Notice of hearing. After setting a hearing under this section, the commission shall furnish, by first class mail or personal delivery, written notice of the date, time, and location to the parties. The notice shall be furnished at least 20 days before the hearing.
- (c) Statement of issues. For cases on remand from the appeals panel, the statement of issues includes:
 - (1) the decision of the appeals panel; and
 - (2) the parties' responses, if any.

The provisions of this §142.18 adopted to be effective February 12, 1991, 16 TexReg 467.

§142.19. Form Interrogatories.

The commission adopts the following form interrogatories by reference:

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

The provisions of this §142.19 adopted to be effective July 9, 1991, 16 TexReg 3397.

§142.20. Interlocutory Orders.

- (a) The hearing officer may enter an interlocutory to pay all or part of income benefits or medical benefits.
- (b) An interlocutory order contained in a decision supercedes the decision as it pertains to the payment of income benefits or medical benefits and remains in effect until:
 - (1) the decision becomes final in accordance with §142.16(f) of this title (relating to the Decision);
 - (2) the decision of the appeals panel is issued pursuant to the Texas Labor Code, §410.204, and Chapter143 of this title, if appealed to the appeals panel as provided by the Texas Labor Code, §410.202, and Chapter143 of this title and the decision and order are affirmed or an appeals panel decision reverses the hearing officer's decision and renders a decision;
 - (3) reversed or modified by an agreement or settlement, as provided by §147.7 of this title (relating to Effect on Previously-Entered Decisions and Orders); or
 - (4) reversed or modified by a subsequent interlocutory order or decision issued after remand from the appeals panel pursuant to the Texas Labor Code, §410.203, and Chapter143 of this title.
- (c) An interlocutory order for payment of income benefits or medical benefits shall be effective on the date signed by the hearing officer.
- (d) A party shall comply with an interlocutory order by issuing and delivering payment of accrued and unpaid income benefits no later than the fifth day after receiving the interlocutory order to pay accrued and unpaid benefits, and shall pay benefits in accordance with the interlocutory order as and when they accrue.
- (e) Payment of accrued and unpaid income benefits paid in accordance with an interlocutory order shall include interest pursuant to the Texas Labor Code, §408.064 and §408.081.
- (f) Payment of medical benefits pursuant to an interlocutory order shall be made in accordance with Chapters 408 and 413 of the Texas Labor Code.
- (g) An interlocutory order contained in a decision will be distributed to the parties as provided by §142.16 of this title (relating to the Decision).

The provisions of this §142.20 adopted to be effective May 10, 2000, 25 TexReg 3990.