

# Appeal Rights and Procedures Notice Sent to Parties

Information for Injured Employees from the Division of Workers' Compensation

Any party, including the injured employee, may appeal in writing any decision issued in a contested case hearing to the Appeals Panel of the Texas Department of the Insurance, Division of Workers' Compensation (TDI-DWC). The written appeal should explain why the injured employee or party believes the decision on each issue in the contested case hearing is wrong. If a party files an appeal, the other parties to the dispute must file a written response to the appeal. The response should explain why the party believes the decision is correct.

### Ombudsman Assistance

If an injured employee has not hired an attorney and does not have any other type of representation, assistance is available from an Ombudsman. Ombudsmen can help an injured employee, free of charge, with their appeal or response to an appeal. Ombudsmen may not give legal advice, make any decisions for an injured employee or sign agreements or forms. Ombudsmen have sample forms for an appeal or a response to an appeal, and can help complete the forms. The forms are available in English and Spanish, and there is no charge for the forms. You may request Ombudsman assistance by calling 1-866-EZE-OIEC (1-866-393-6432). For more information on Ombudsman assistance see <http://www.oiec.state.tx.us/topics/ombudsman.html>.

### Appeals Panel Review Procedure

Appeals Panel Judges will review the appeal, any responses to the appeal, the hearing officer's decision, and the record from the contested case hearing.

The parties cannot attend any portion of the appeal review process. Unless the appeal clearly indicates there is a legal error, it is likely the decision of the hearing officer will not be reversed. Under Section 410.204(c) of the Texas Workers' Compensation Act, the Appeals Panel may only write a decision that reverses the decision of the hearing officer, otherwise the hearing officer's decision becomes the decision of the Appeals Panel. In more than 95 percent of all appeals, the hearing officer's decision is legally correct and becomes the decision of the Appeals Panel.

If a decision is written as a result of an appeal, the Appeals Panel will either:

- “reverse and remand” the decision by returning it to the hearing officer, because it has been determined that corrective action must be taken by the hearing officer to reach a legally correct decision; or
- “reverse and render” by issuing a new decision when it is determined that that hearing officer's decision is against the great weight of the evidence presented, or that the hearing officer has misapplied the law and reached an incorrect result; in such case, a new decision is entered by the Appeals Panel.

**If an appeal submitted by an injured employee or another party does not include clear reasons why an injured employee or party believes the hearing officer's decision is wrong, the review of the appeal will probably result in the hearing officer's decision becoming the final decision of the Appeals Panel.**

### Writing an Appeal or a Response to an Appeal

An appeal received by TDI-DWC must explain why the party believes the decision in the contested case hearing is wrong. That explanation may include references to testimony and documents presented as evidence at the contested case hearing. Also, the explanation may include references to the Texas Workers' Compensation Act, TDI-DWC rules, court cases, other TDI-DWC Appeals Panel decisions, and the Appeals Panel Decision Manual.

A response to an appeal should explain why a party believes the decision issued in the contested case hearing is still correct. That explanation may include references to testimony and documents presented as evidence at the contested case hearing. Also, the explanation may include references to the Texas Workers' Compensation Act, TDI-DWC rules, court cases, other TDI-DWC Appeals Panel decisions, and the Appeals Panel Decision Manual.

### Time Deadline to File an Appeal

A party has 15 days to file an appeal of a contested case hearing. The 15 days are counted starting on the day after the date the cover letter and decision is received by the injured employee and the other parties, not counting Saturdays and

**For further assistance, call**

**1-800-252-7031**

**or visit**

**[www.tdi.state.tx.us](http://www.tdi.state.tx.us)**

This publication is a summary and is presented for informational purposes only. It is not a substitute for the statute and TDI-DWC rules. For questions about TDI-DWC rules, please call Customer Assistance at 1-800-252-7031. AP04-068G(3-08)

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Sundays and holidays listed in Section 662.003 of the Texas Government Code (the first day of January, New Year's Day; the third Monday in January, Martin Luther King, Jr. Day; the 19<sup>th</sup> day of January, State Confederate Heroes Day; the third Monday in February, President's Day; the second day of March, Texas Independence Day; Good Friday; the 21<sup>st</sup> day of April, San Jacinto Day; the last Monday in May, Memorial Day; the 19<sup>th</sup> day of June, Emancipation Day in Texas; the fourth day of July, Independence Day; the 27<sup>th</sup> day of August, Lyndon Baines Johnson Day; the first Monday in September, Labor Day; Rosh Hashanah; Yom Kippur; the 11<sup>th</sup> day of November, Veteran's Day; the fourth Thursday in November, Thanksgiving Day; the Friday after Thanksgiving Day; the 24<sup>th</sup> day of December; the 25<sup>th</sup> day of December, Christmas Day; and the 26<sup>th</sup> Day of December).

The start date of the 15-day period is:

- five days after the date of the cover letter or the next working day if the 5th day is not a working day, if it is mailed, unless the great weight of the evidence indicates otherwise;
- the same working day if the cover letter was faxed or sent electronically by the TDI-DWC during normal business hours;
- the next working day if the cover letter was faxed or sent electronically by the TDI-DWC, but not during normal business hours on a working day; or
- (for insurance carriers only) the next working day after the cover letter was placed in the insurance carrier's Austin representative box.

## Time Deadline to File a Response to an Appeal

After an appeal is filed with the TDI-DWC, an injured employee and the other parties to the dispute have 15 days to file a response to that appeal. The 15 days are counted starting the day after an injured employee or other party receives an appeal filed by the other party, not counting Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code.

## Filing an Appeal or a Response to an Appeal

An appeal or response to an appeal should be filed with the Chief Clerk of Proceedings in the TDI-DWC Central Office in Austin as stated in the cover letter. If an appeal or response to an appeal is filed in any of the TDI-DWC local offices, it may delay processing of the appeal or response to an appeal.

An appeal or response to an appeal must be filed within the 15-day deadline to be considered. **A late appeal or response to an appeal will not be considered.**

## Serve the Other Party or Parties

An appeal or response to an appeal must be served on the other party or parties on the same day that the appeal or response to an appeal is filed with the TDI-DWC. To serve the other party means to give the other party or parties a copy of the appeal or response to an appeal. Serving an appeal or a response to an appeal must be by personal delivery, certified mail with return receipt requested, fax, or any other verifiable means of delivery to a home or business address. You are advised to maintain proof of the delivery.

A certificate that the other party or parties have been served must be included with the appeal or response to an appeal. Here is an example of such a certificate:

"I hereby certify that I have on this \_\_\_\_ (date) day of \_\_\_\_\_ (month), \_\_\_\_ (year), served a copy of the attached request for appeal on \_\_\_\_\_ (state the name of the other party receiving the copy) by \_\_\_\_\_ (state the manner of service).  
\_\_\_\_\_ " (Signature)

## Mail or Fax all Appeals and Responses to Appeals to:

Chief Clerk of Proceedings  
Texas Department of Insurance  
Division of Workers' Compensation  
P.O. Box 17787  
Austin, Texas 78744  
512-804-4021(fax number)

**WARNING NOTICE: Delivery of appeals to the Appeals Panel sent by certified mail through the United States Postal Service in some instances has taken 30 days before delivery to the Chief Clerk of Proceedings. As a result, those appeals which were not delivered within the 15-day deadline, were not considered and the hearing officer's decision became final.**

**If you choose to file an appeal with the Appeals Panel by certified mail through the United States Postal Service, we suggest you also send a copy of the appeal by regular mail or by fax to 512-804-4021.**