

# Dispute Resolution

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## Information for Injured Workers from the Division of Workers' Compensation

Workers' compensation is a state-regulated insurance program that pays your medical bills and replaces a portion of your lost wages if you have a work-related injury or illness and your employer has workers' compensation insurance under the Texas Workers' Compensation Act.

If a dispute arises about your injury the first thing you should do is call the insurance carrier and discuss your problem(s) with your adjuster. If you cannot resolve the dispute or if you are unable to talk with your adjuster, you may contact the Texas Department of Insurance, Division of Workers' Compensation for assistance.



Customer service employees can:

- explain your rights and responsibilities;
- help you complete required forms;
- explain the dispute resolution process;
- explain how to gather facts and evidence to support your side of the dispute;
- explain the deadlines for requesting the next level of dispute resolution or for responding to requests for documents; and
- help you attempt to resolve disputes informally.

If you are unable to resolve the dispute, you may request dispute resolution through the Division. You may be required to attend one or more dispute resolution proceedings held at the local Division office. Once a Benefit Review Conference is scheduled, an Ombudsman can help you if you do not have an attorney or other representative to present your side of the dispute.

### What is Dispute Resolution?

There are several steps in the dispute resolution process in a workers' compensation claim:

- Benefit Review Conference
- Arbitration or Contested Case Hearing
- Appeals Panel
- Judicial Review

This publication is a summary and is presented for informational purposes only. It is not a substitute for the statute and Division rules. For questions about Division rules, please call Customer Assistance at 1-800-252-7031. CS05-012D(11-06)

### Benefit Review Conference (BRC)

[Sections 410.021 - 410.034, Rules 141.1 – 141.7]

The benefit review conference (BRC) is an informal meeting held at the local Division office. At the BRC, you will meet with someone from the insurance company to discuss the disputed issues in front of a Benefit Review Officer, who is a Division employee. During a BRC, you and the insurance carrier will discuss all information in an attempt to resolve your dispute. If the dispute is resolved, an agreement may be written and signed by you and the insurance carrier. If an agreement cannot be reached at the BRC, you may be required to attend a formal contested case hearing where the Hearing Officer will make a decision on the disputed issues.

Before you attend a benefit review conference or a contested case hearing, the Office of Injured Employee Counsel (OIEC) can provide you with an Ombudsman. An Ombudsman is a specially trained OIEC employee who can assist you before and during any conference or hearing you attend. Please review the Ombudsman Assistance section for more information.

### Arbitration

[Sections 410.101 – 410.121, Rules 144.1 – 144.6]

If the dispute was not resolved at the benefit review conference, the injured worker and other parties to the dispute may agree to resolve the dispute through arbitration instead of proceeding to a contested case hearing. The purpose of arbitration is to have an independent arbitrator hear both sides of a dispute and make a decision which is binding to all parties.

If arbitration is chosen, the Division will randomly assign a certified arbitrator to the dispute. The injured worker and other parties may reject an arbitrator selected by the Division. Each party is allowed only one rejection of the assigned arbitrator. **The decision of the arbitrator is final and cannot be appealed.**

For further assistance, call

1-800-252-7031

or visit

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

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## Contested Case Hearing (CCH)

[Sections 410.151 – 410.169, Rules 142.1 – 142.20]

Following a Benefit Review Conference, if you do not choose arbitration, a contested case hearing (CCH) is the next level of dispute resolution. The CCH is a formal hearing conducted by a Division Hearing Officer who makes a decision about the disputed issue(s) that were not resolved at the benefit review conference. You and the insurance carrier must attend the CCH. The CCH is recorded, an official record is made, and sworn testimony is taken.

During the CCH you may:

- present your side of the dispute;
- bring witnesses and question witnesses;
- introduce evidence to support your case; and
- request discovery of information you think the other side has that may be helpful to you.

Following the CCH, you will receive the Hearing Officer's written decision and order by mail. If you disagree with the Hearing Officer's decision, the decision may be appealed to the Division's Appeals Panel.

Along with the a copy of the Hearing Officer's decision and order, you will receive instructions regarding the timeframe to appeal.

## Appeals Panel

[Section 410.201 – 410.209, Rule 143.1 – 143.5]

If a party disagrees with the decision and order of the Hearing Officer, the dissatisfied party may request review of the decision by the Appeals Panel. The request for appeal must be in writing. A hearing is not held. Instead, the parties submit written statements describing their position that are reviewed by the Appeals Panel along with the Hearing Officer's decision and the record from the contested case hearing.

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

1) "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

2) "reverse and render" by issuing a new decision when it is determined that the 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 a case, a new decision is entered by the Appeals Panel.

The Appeals Panel decision is the final step in the Division's dispute resolution process. If a party disagrees with the Appeal Panel's decision, the decision may be appealed to a court of law.

## Judicial Review

[Sections 410.251 – 410.258, Rules 147.1 – 147.11]

An injured worker or other parties may appeal the Appeals Panel decision to district court. However, workers' compensation claim disputes may not be heard in court unless the dispute has first gone through the Division's dispute resolution process and the Appeals Panel has issued a decision. If the insurance carrier appeals to district court, it is important for the injured worker to respond to the court if you wish to protect your workers' compensation benefits.

## Attending Proceedings

You must attend any dispute resolution proceeding related to a dispute about your claim, even if you did not request the proceeding. If you do not attend, the proceeding may be held without you present to give your side of the dispute. In addition, you may be fined if you do not attend a scheduled dispute resolution proceeding.

## Ombudsman Assistance

An Ombudsman is a specially trained employee of the Office of Injured Employee Counsel (OIEC) who can assist you free of charge if you have a dispute related to your claim. You may ask for help from an Ombudsman if you have not hired an attorney to represent you and you do not have any other type of representation. Ombudsmen may not give you legal advice, make any decisions for you or sign agreements or forms.

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An OIEC Ombudsman can help you with a dispute resolution proceeding by:

- giving you information to help you make decisions;
- communicating with employers, insurance companies, and health care providers on your behalf;
- explaining how to gather and prepare facts and evidence for dispute resolution proceedings;
- helping you present your facts and evidence at dispute resolution proceedings;
- helping you ask questions of witnesses and raise questions about evidence at dispute resolution proceedings; and
- giving you information about how to appeal a dispute resolution decision.

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>.

## Attorney Representation

You may hire an attorney to represent you for your claim. An attorney may attend dispute resolution proceedings with you and present any evidence that supports your side of the dispute.

If you hire an attorney, the attorney's fees will be deducted from your income benefit payments as ordered by the Division. The attorney's fees are limited to no more than 25 percent of the total amount of your income benefits, and payments may not exceed 25 percent of any one income benefit check.

An attorney may charge up to a maximum of \$150 per hour, plus expenses, for work performed on your workers' compensation claim. If you dismiss your attorney for any reason, the fees that have been ordered by the Division will continue to be deducted from your income benefit check until all ordered fees have been paid.

You may contact the State Bar of Texas for assistance in obtaining an attorney to represent you at [www.texasbar.com](http://www.texasbar.com) or by phone at 1-800-252-9690.

**For more information on the dispute resolution process see the following fact sheets:**

- Benefit Review Conference

