

What to expect after appealing a Department of Labor and Industries' Order

All parties have the same appeal rights. Any party (employer or injured worker) can appeal an Order from the Department of Labor and Industries (Department) to the Board of Industrial Insurance Appeals (Board.) This is a general outline of the definitions and procedures which govern these appeals.

BOARD OF INDUSTRIAL INSURANCE APPEALS

The Board is a state agency which is separate from the Department of Labor and Industries. The Board's only job is to hear appeals from decisions of the Department. The Board is composed of three members, one a representative of business, one a representative of labor, and one who is the chairperson.

GRANTING OR DENYING THE APPEAL

When the Board receives an appeal, a copy is sent to the Department to allow a Claims Consultant to review and reconsider the appealed determination. Claims Consultants have years of experience and a better understanding (usually) of the legal issues than the Claims Manager.

The Claims Consultant reviews the determination to make sure (at least in theory) that the Department is following its own policies, regulations, statutes and case law. Claims Consultants have some freedom to seek and reach a settlement. They can also direct the Claims Managers to take certain action on a claim. Claims Consultants are working on a short time line so time can be of the essence.

If you have some new medical or vocational evidence, it could be in your best interest to save it for litigation. Also, you might not want to give the Department the opportunity to rebut your new evidence. You do not want to walk yourself into a "Independent Medical Examination."

If the Department decides to reconsider its decision, it will enter an order taking the claim back for further consideration. This stops the appeal, and the Board will send out an order denying the appeal and returning the case to the Department. Any party can appeal any further decision the Department makes.

If the Department does not decide to reconsider the case, then the Board reviews the matter to make sure that it has the right to hear the appeal and make a decision. If it decides that it does, it will enter an order granting the appeal. If it decides it does not, it will enter an order denying the appeal. The two top reasons the Board denies appeals are 1) when the Department reassumes jurisdiction; and 2) when there is already a protest to the same Department Order that is on appeal. A protest can come in many forms, including a chart note from your doctor that is contrary to the Department's decision.

Once the Board has granted an appeal, you can participate in proceedings pro se (without an attorney) or hire an attorney to represent you. Normally the Department will be represented by an assistant attorney general, and self-insured employers will be represented by their private attorneys.

MEDIATION CONFERENCE

After the appeal is granted, the Board will probably assign a mediation Judge and schedule a mediation conference. It takes about thirty days to schedule a mediation conference. Mediation can take place by telephone or in person. Pro se conferences are usually held in person. Most attorneys do not have their clients participate in the mediation.

At the mediation conference, you will identify and narrow the issues, and explore settlement options. This is a rather informal setting and parties choose whether they want to share information. If a settlement is reached, the Board will usually memorialize it in an Order on Agreement of the Parties. The Department must then act in accordance with the terms of the agreed order. Sometimes settlements can be reached, but if they cannot, then a new Judge will be assigned to conduct hearings and write a Proposed Decision and Order. The mediation Judge is not involved with the decision making process.

THE HEARING PROCESS

The hearing judge schedules and conducts the hearings. It normally takes about six months from filing the Board appeal before the hearings are completed. This allows time for discovery, settlement negotiations and scheduling of witnesses. The hearings are like trials in Superior Court, with testimony under oath, exhibits being introduced, objections being made, motions, etc. The judge will rule on all matters in accordance with the Rules of Evidence, the Board's rules, statutes, Civil Practice Rules and case law.

Once the hearing is completed, and all the evidence has been submitted, the judge enters what is called a Proposed Decision and Order. This is his or her recommendation as to how the case should be decided, with proposed findings of fact and conclusions of law.

PROPOSED DECISION

If a party is dissatisfied with the Proposed Decision and Order, the party can submit a request for the transcripts and extension of time, in writing, within twenty days of the date received. Once a request for additional time has been filed and the transcripts reviewed, the party will need to prepare a "Petition for Review."

The Petition for Review sets out, in detail, what the party thinks is wrong with the Proposed Decision, including any errors that were made in evidentiary rulings during the course of the hearing.

Once the Board receives the Petition for Review, it will either enter an order denying Petition for Review, which means it has decided the Proposed Decision and Order is correct, or it will enter an order granting the Petition for Review. If it grants the Petition for Review, then the Board has 180 days to consider the record and all the evidence which was presented, and to enter its own decision and order, which might affirm or reverse the proposed decision. The Board normally takes from 60 to 90 days to enter its decision, rather than the full 180 days.

APPEAL TO SUPERIOR COURT

If any party is still unhappy with the decision that has been reached, then that party can appeal the matter to the superior court. The Department of Labor and Industries cannot appeal questions of fact, but it can appeal questions of law. Self-insured employers and claimants can appeal both factual and legal questions. The superior court trial is conducted before a judge or jury. However, no new evidence is presented. Rather, the transcripts are read to the judge or jury; the judge or jury are shown the exhibits which were introduced; and then the judge or jury enters their own decision or verdict.

FURTHER APPEALS

If there are still questions of law which a party believes were incorrectly decided, those questions can be appealed to higher courts for resolution. This, however, rarely happens.

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