

JUDGE'S PROCEDURAL RULES AND POLICIES

Workers' Compensation Automation and Integration System (WCAIS) is the official repository for all documents related to a Dispute (matter pending) before a Workers' Compensation Judge. All documents, including evidence and briefs, that would have been submitted to a Workers' Compensation Judge by mail or in person prior to WCAIS should now be uploaded into WCAIS. If Social Security numbers appear on any such document, they should be completely redacted before the document is uploaded, unless otherwise specified below. All communications with the Judge, including but not limited to requests, should be submitted through WCAIS unless otherwise specified by the Judge.

HEARING PROCEDURES

1. What is the first event and what will occur?

The first hearing will be a pre-trial hearing. At the hearing, the parties are to be prepared to discuss the pending petition(s) and how each party intends to proceed as far as evidence and presentation of witnesses. A mandatory trial schedule will be set. Mandatory Mediation will be discussed. On Employer-driven petitions, Employer's supersedeas exhibits are to be uploaded to WCAIS in advance of the hearing, if supersedeas is being requested.

a. List any documents required at the first event:

The controlling Bureau documents/Judges' Decisions should be uploaded by the moving party in advance of the first hearing.

b. Should documents be uploaded as Exhibits or Letters to the Judge?

They should be uploaded as exhibits. I will not accept any exhibits uploaded as letters to the Judge.

2. Describe the format of your hearings (e.g., serial, one day – one trial).

I use serial hearings. The matter will be relisted for an interim hearing approximately 90 days following the first hearing. At that time, the parties will agree on when the matter can be brought back for a final hearing. If Claimant's testimony is being presented at the final hearing, the parties are given the date and time for the final hearing and are advised that this will be Claimant's only opportunity to testify before this Judge. Short of truly extenuating circumstances, as determined by this Judge, these testimony hearings are not rescheduled, as the parties are given at least three months' notice of the hearing and are asked to agree on the date and time when scheduled.

3. Are you willing to change the hearing format upon request?

I would consider changing my hearing format only upon a showing of good cause by the parties.

4. What factors will you consider in deciding whether to conduct a hearing in-person?

By default, all cases, including testimonies, are scheduled as virtual hearings. However, if a party would like an in-person hearing, they must request the same on the record at the interim hearing, at which time the parties are given the date and time for the final hearing.

5. What factors will you consider in deciding whether to conduct a virtual hearing by audio only or by audio with video?

Video participation is required for all parties. Exceptions will be considered on a case-by-case basis if there are extenuating circumstances.

6. What procedure do you follow if a party fails to appear at a hearing?

The matter may be rescheduled for another hearing in 30 days. In certain circumstances, the matter may be disposed of without scheduling another hearing.

7. Do you have special procedures for psychological injury cases?

No.

SUPERSEDEAS PROCEDURES

1. What are your procedures for supersedeas hearings?

Employer is to have its supersedeas submission uploaded as an exhibit in advance of the first hearing.

a. Will testimony be heard?

No.

b. Is additional time generally granted to obtain medical evidence?

Presumably the Defendant already has its medical evidence in hand. Claimant will have 14 days from the first hearing to submit their documents in opposition to Defendant's request for supersedeas. In limited cases, Claimant may be given up to 21 days to submit their supersedeas exhibit if there are extenuating circumstances necessitating the extension.

c. Under what circumstances will you reconsider a supersedeas order?

Upon submission of new evidence and a WCAIS request for reconsideration.

d. Do you generally use written orders for denials?

Typically, a written order will be issued, although supersedeas may be denied from the bench if Claimant is not being paid indemnity benefits.

e. What is required for employee's counsel to obtain interim fee approval?

A denial of supersedeas based on Claimant's submission of relevant and persuasive evidence in opposition to Defendant's request for supersedeas, an affidavit from Claimant, and a copy of the Fee Agreement.

f. Describe any other procedures for supersedeas hearings:

N/A

g. Describe procedures for special supersedeas hearings, if different:

Claimant's evidence in opposition to Defendant's request for supersedeas must be uploaded to WCAIS within 7 days of the supersedeas hearing. This timeframe can be modified only by agreement of the parties.

WITNESSES/EXHIBITS

1. What are your rules regarding taking testimony?

Testimony may be taken by deposition, or the parties can request a hearing for presentation of the same. However, a request for a hearing (virtual or in-person) would need to be made in a timely fashion during the mandatory trial schedule and cannot delay the proceedings. Claimant's testimony is usually scheduled to be presented at the final hearing.

2. Do you require testimony at a virtual hearing, an in-person hearing, or by deposition?

Please see above.

3. Under what circumstances will you change your requirements for presentation of testimony?

Witnesses are always permitted to testify by deposition. Other changes would depend on the specific facts of a case.

4. If counsel wishes to present the testimony of a witness (either virtually or in-person), do you require prior notice? Yes, as testimony is slotted for a 60-minute hearing. If yes, how much notice do you require? A party would need to make this request no later than the interim listing.

5. What is your procedure regarding the order of expert medical testimony when cross petitions are filed?

Usually, the party that bears the burden on the petition that was filed first would complete its evidence first, unless the parties agree to a different order.

6. Do the parties need to upload the Bureau and WCOA documents as exhibits or will you admit them electronically as Judge exhibits?

The moving party must upload the Bureau and WCOA documents as exhibits in advance of the first hearing.

7. Do you require counsel to upload exhibits to WCAIS before or after the hearing? Before the hearing. If before, how far in advance of the hearing must they be uploaded? Any time prior to the final hearing. If a party does not upload its exhibits in a timely fashion, the exhibits that are not uploaded may not be considered in the final decision. Please note that this Judge does not accept condensed transcripts, as the same are too difficult to read on a computer screen. A full-length transcript must be uploaded as an exhibit to WCAIS.

8. When will you rule on objections to exhibits?

At the hearing at which the exhibit is marked.

9. What is your procedure for handling discovery disputes?

I will usually schedule the matter for a hearing on the record, time permitting. However, in limited circumstances, a phone conference may be held if time is of the essence.

10. What is the last day to file written preservations of deposition objections?

I strictly follow the WCJ Rules regarding preservation of objections. Any written preservations of objections must be submitted as an exhibit before the final hearing.

COMPROMISE & RELEASES (C&Rs)

1. Describe your procedures regarding the review of C&R Agreements:

Both an unredacted and a redacted copy of the fully executed C&R documents are to be uploaded as separate exhibits in WCAIS at least two business days prior to the hearing. The C&R documents should contain the C&R Agreement, Act 109 documents, and fee agreement. This should be uploaded as one exhibit. Claimant's video participation is required, although in limited circumstances Claimant may participate by phone if they do not have the requisite technology to participate by video.

a. Are you willing to allow amendments of existing petitions or do you require the filing of a separate Petition Seeking Approval of a C&R Agreement?

I will allow amendments.

b. Are parties required to provide a draft of the C&R Agreement before the hearing? If yes, how far in advance of the hearing do you need to receive it?

Both an unredacted and a redacted copy of the fully executed C&R documents are to be uploaded as separate exhibits in WCAIS at least two business days prior to the hearing. The C&R documents should contain the C&R Agreement, Act 109 documents, and fee agreement. This should be uploaded as one exhibit.

c. Should the parties upload the signed C&R Agreement, including the fee agreement and any other attachments, before or after the hearing?

Both an unredacted and a redacted copy of the fully executed C&R documents are to be uploaded as separate exhibits in WCAIS at least two business days prior to the hearing. The C&R documents should contain the C&R Agreement, Act 109 documents, and fee agreement. This should be uploaded as one exhibit.

d. Should child support documents be uploaded as a separate exhibit?

The child support documents are to be uploaded attached to the C&R.

e. Should Social Security numbers and other confidential information be redacted from the C&R Agreement and Act 109 documents?

The Social Security number and date of birth should be redacted from the redacted copy only.

f. Will you sign bench orders?

Not at this time.

g. Describe any other procedures you have for C&R Agreements:

Both an unredacted and a redacted copy of the fully executed C&R documents are to be uploaded as separate exhibits in WCAIS at least two business day prior to the hearing. The C&R documents should contain the C&R Agreement, Act 109 documents, and fee agreement. This should be uploaded as one exhibit. Claimant's video participation is required, although Claimant may participate by phone if they do not have the requisite technology to participate by video.

STIPULATIONS RESOLVING DISPUTES

1. What are your usual procedures regarding the submission, review, and adoption of stipulations?

A copy of the fully-executed unredacted and redacted Stipulations are to be uploaded as exhibits to WCAIS with the appropriate attachments (i.e. fee agreement and child support documents) as part of the Stipulation. A WCAIS request should then be submitted requesting approval of the Stipulation.

2. Should the fee agreement be part of the stipulation or separate exhibit?

No, the fee agreement should be attached to the Stipulation.

3. Should child support documents be uploaded as a separate exhibit?

No, the child support documents should be attached to the Stipulation.

4. What other exhibits should be uploaded (i.e. medical bills, etc.)?

I do not require any other exhibits/attachments.

5. Should other exhibits uploaded as be part of the stipulation or as separate exhibits?

If the parties wish to submit something other than the fee agreement or child support documents, then it should be uploaded as part of the stipulation.

6. When should Social Security numbers and other confidential information be redacted from the stipulation and Act 109 documents?

These should be redacted from the redacted copy of the Stipulation.

7. Describe any other procedures you have for stipulations:

N/A

BRIEFS AND PROPOSED FINDINGS

1. Will you close a case via WCAIS submission or is a final hearing required?

A final hearing is required.

2. What are the time requirements for final submissions and what procedures are taken when time requirements are not met?

A briefing schedule is set at the final hearing. The moving party will typically have 45 days for submission of their brief. The responding party will then have 45 days from the date that the moving party's brief is due. The responding party's brief is due within the time specified per the briefing schedule regardless of when or whether the moving party's brief has been submitted, unless an extension is expressly requested. This is to ensure that there is a definitive date by which the parties can expect to receive a Decision. If an extension is required by either side, the parties are to submit a WCAIS request prior to when their respective briefs are due. If the briefing schedule expires without the submission of one or both briefs, a Decision will be issued accordingly.

3. Describe any preferences regarding the format and content of final submissions:

Proposed Findings of Fact and Conclusions of Law are appreciated and preferred. A letter brief or full brief may be submitted in addition for purposes of fleshing out the legal arguments. When submitting Proposed Findings of Fact, the following guidelines are to be followed: (a) Each piece of evidence that is submitted by either party is to be summarized by both parties in their respective Proposed Findings of Fact. (b) The summary of the evidence in the Proposed Findings of Fact should be objective. There should be no mischaracterizations, misrepresentations, or material omissions in the same. Candor before the tribunal applies even with respect to Proposed Findings of Fact. Both the direct and cross-examinations are to be summarized. Your credibility determinations and legal argument in the brief can be subjective, but not the summary of the evidence in the Proposed Findings of Fact. (c) Summaries of testimonies are not to be combined. For example, if Claimant testified by deposition and at a hearing, these should be summarized separately in the Proposed Findings of Fact. (d) Citations to the record are required in the Proposed Findings of Fact. It is up to the respective parties if they wish to cite in their briefs, but there should always be citations in the Proposed Findings of Fact. (e) Credibility determinations should be

included in your Proposed Findings of Fact. You should tell this Judge why she should find your evidence more credible and persuasive than your opponent's evidence.

MANDATORY MEDIATIONS

1. List the offices where you conduct mandatory mediations:

Philadelphia

2. What factors will you consider in deciding whether to conduct a mandatory mediation virtually or in-person?

By default, all mediations are scheduled as virtual events. However, if a party would like an in-person mediation, they must request the same via WCAIS at the time that the event is scheduled. Whether the request can be accommodated will depend on multiple factors, including but not limited to the following: the specific circumstances of the individual case; whether an in-person mediation will cause delay; whether all parties want an in-person mediation; and current federal, state, and local guidelines and recommendations relating to public health.

3. What factors will you consider in deciding whether to conduct a virtual mandatory mediation by audio only or by audio with video?

If a scar is at issue, then video is preferred. Otherwise, the participants may participate by audio.

4. Are you willing to allow counsel or a party to participate virtually in an in-person mandatory mediation? If so, under what circumstances?

This will depend on the specific facts of the case and position of the parties.

5. Do you require a Mediation Statement? Yes.

a. What information do you require in that Statement?

A one-page summary of the status of the litigation along with strengths/weaknesses of both parties' arguments is appreciated. The statement should contain as much of the following information as possible: Case name, submitting party, presiding judge, date of injury, accepted/alleged injury, petitions pending, average weekly wage and compensation rate, status of settlement negotiations, Claimant's age, Claimant's length of employment, medical experts, status of litigation, Claimant's pre-injury title, mechanism of injury, the amount of outstanding medical expenses (to be provided by Claimant, if applicable), the amount of the unemployment credit (to be provided by Claimant, if applicable), the amount of the short-term disability or long-term disability credit (to be provided by Employer, if applicable), whether Claimant is receiving/applied for Social Security Disability benefits and is a Medicare beneficiary, whether there is a 3rd party case (and amount of the Employer's lien, to be provided by Employer, if applicable), whether any Utilization Review Requests are outstanding, whether a resignation letter is required (to be specified by Employer), and the amount of Claimant's counsel's litigation costs to date. Mediation statements should be uploaded under the Mediation tab in WCAIS at least one day prior to the mediation.

b. What documents, if any, must accompany the Statement?

None, unless the parties feel that I need to specifically review a particular item.

c. How far in advance of the mediation must the parties submit the Statement and accompanying documents?

I prepare for my mediations the business day prior to the event, so if the parties wish for me to review the Mediation Statement, the same should be uploaded as soon as possible the day prior to the mediation.

6. If there is a request to postpone a mandatory mediation, will it be rescheduled? No If so, how long until it is rescheduled? N/A

7. Are you willing to conduct more than one mandatory mediation session per Dispute?

Yes, although the first mediation would be considered mandatory and the subsequent mediation(s) would be considered voluntary.

8. What is the latest day before the mediation that cancellation or postponement, absent an emergency, can be requested?

The parties should request the cancellation as soon as it becomes apparent that the mediation will not be productive.

9. What else should the parties know or do before the mediation?

Ideally, a demand is to have been provided prior to the mediation, and Defendant may even wish to extend an initial offer.

VOLUNTARY MEDIATIONS

1. Do you conduct Voluntary Mediations?

Yes

2. How should the parties request a Voluntary Mediation?

Please email me at keldempsey@pa.gov to schedule a voluntary mediation.

3. List the locations where you conduct in-person voluntary mediations:

Philadelphia

4. Will you conduct virtual voluntary mediations? If yes, for which WCOA Districts will you conduct them?

Yes, I conduct virtual voluntary mediations and will do so for all WCOA Districts.

5. Do you mediate Disputes assigned to you for hearing and decision?

No

6. Do you mediate Disputes in which one or both parties are unrepresented? If yes, describe any special procedures you have for such cases:

Yes, and I do not have any special procedures for such a situation, although the pro se party would be advised of their right to retain counsel.

7. What factors will you consider in deciding whether to conduct a voluntary mediation virtually or in-person?

By default, all mediations are scheduled as virtual events. However, if a party would like an in-person voluntary mediation, they must request the same at the time of scheduling. Whether the request can be accommodated will depend on multiple factors, including but not limited to the following: the specific circumstances of the individual case; whether an in-person mediation will cause delay; whether all parties want an in-person mediation; and current federal, state, and local guidelines and recommendations relating to public health.

8. What factors will you consider in deciding whether to conduct a virtual voluntary mediation by audio only or by audio with video? If a scar is at issue, then video is preferred. Otherwise, the participants may participate by audio.

9. Are you willing to allow counsel or a party to participate virtually in an in-person voluntary mediation? If so, under what circumstances? This will depend on the specific facts of the case and position of the parties.

10. Do you require a Mediation Statement? Yes.

a. What information do you require in that Statement?

Please see procedure for mandatory Mediation Statements above.

b. What documents, if any, must accompany the Statement?

None, unless the parties feel that I need to specifically review a particular item.

c. How far in advance of the mediation must the parties submit the Statement and accompanying documents?

I prepare for my mediations the business day prior to the event, so if the parties wish for me to review the Mediation Statement, the same should be uploaded as soon as possible the day prior to the mediation.

11. After you approve a Voluntary Mediation Request, how long until it is scheduled?

Once the parties agree on a date and time, the parties must submit a formal request on WCAIS for a Voluntary Mediation. Once the WCAIS Request is received, the request will be granted and the mediation will be scheduled.

12. Are you willing to conduct more than one voluntary mediation session per Dispute?

Yes

13. If the party wants to request cancellation or postponement of a voluntary mediation on a Dispute assigned to you, should they contact you or the mediating Judge?

The parties should contact the mediating judge.

14. What is the latest day before the mediation that cancellation or postponement, absent an emergency, can be requested?

The parties should request the cancellation as soon as it becomes apparent that the mediation will not be productive.

15. What else should the parties know or do before the mediation?

Ideally, a demand is to have been provided prior to the mediation, and Defendant may even wish to extend an initial offer.

REQUESTS/MISCELLANEOUS

1. How far in advance do you require Requests for continuances, changes in hearing times, and extensions to be uploaded into WCAIS?

The parties should request the cancellations, etc. as soon as it becomes apparent that the same is need. Any request submitted less than 10 business days prior to the hearing may be automatically denied. Continuance requests and requests for extension for completion of evidence need to contain sufficient information in order for me to determine whether a continuance or extension is appropriate. These requests must include the status of litigation (i.e. what evidence has been completed to date), why the continuance/extension is needed, the opposing party's position regarding the request, and the length of time the requesting party is asking for the matter to be continued or for an extension. The request may be denied if any of this information is not included.

However, short of truly extenuating circumstances, as determined by this Judge, hearings listed for Claimant's substantive testimony are not rescheduled, as the parties are given at least three months' notice of the hearing and have agreed to the date and the time when scheduled. Hearings for presentation of fact witness testimony may be rescheduled if the same is requested via WCAIS at least 30 days prior to the scheduled hearing. While this Judge will attempt to accommodate such a request, the same is not guaranteed, and is dependent on the age of the petitions and whether the rescheduling will cause a delay in the record closing, among other factors to be considered.

2. Under what circumstances do you conduct off the record conference calls?

I will very rarely conduct conference calls that are off-the-record. However, if it involves a time-sensitive issue, such as an objection to an upcoming deposition, then I may conduct a conference call.

3. Under what conditions/circumstances do you accept e-mails from parties?

If WCAIS is down, then the parties can email me with a time-sensitive request. Otherwise, all requests for cancellations, etc. are to be submitted via WCAIS. Requests for voluntary mediation dates should always be emailed to me before a WCAIS request is submitted.

4. Do you adhere strictly to the duration listed for a Hearing or Mediation?

Typically, although there is some flexibility depending on what else I have scheduled that day.

5. What is the best way to contact you in an emergency situation?

Email me at keldempsey@pa.gov.

6. What is your snow/emergency cancellation policy regarding in-person and virtual events (i.e., do you follow a specific school district closing schedule, etc.)?

If the Philadelphia School District has a delayed opening or is closed, then my in-person hearings and mediations are cancelled. Virtual events remain as scheduled.