

JUDGE NAME: Jennifer R. Etkin DISTRICT: Southeastern ASSIGNED OFFICE: Philadelphia

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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. A mandatory trial schedule will be set, whereby Claimant will testify by deposition on direct or as-on-cross within 30 days from the first hearing, depending on the Petition. Mandatory mediation will also be scheduled. On a Defendant-driven petition, the Defendant's supersedeas exhibit is to be uploaded to WCAIS in advance of the hearing, if supersedeas is being requested.

I expect the parties to be prepared to discuss the merits of the pending petition(s) as well as anticipated evidence and witnesses.

a. List any documents required at the first event:

Bureau documents/Judges' Decisions should be uploaded to WCAIS 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 conduct serial hearings. The matter will be re-listed for an interim hearing approximately 90 days following the first hearing, at which time the moving party's evidence will be expected. At that time, the parties will agree on when the matter can be brought back for a final hearing. Claimant's testimony will be expected at the final hearing. The parties are advised that this will be Claimant's only opportunity to testify before me. Short of truly extenuating circumstances, as determined by me, these testimony hearings are not rescheduled, as the parties are given at least three months' notice of the hearing.

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.

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 scheduled, they must request the same on the record at the interim hearing, at which time a hearing date and time will be discussed.

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.

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

The matter may be rescheduled for another hearing, or disposed of without scheduling another hearing, depending on the specific circumstances.

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

I have no special procedures.

SUPERSEDEAS PROCEDURES

1. What are your procedures for supersedeas hearings?

The Defendant 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, including 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 seven 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?

Following the issuance of the trial schedule at the time of pre-trial hearing, testimony may be taken by deposition, or the parties can request a live hearing. Other than for good cause, I will direct Claimant's trial deposition to take place within 30 days of the pre-trial hearing. 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 live 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?

Only upon good cause shown.

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 time specified hearings, scheduling adjustments would be required to reserve adequate time for testimony. If a party would like to present witness testimony in addition to the presumed testimony of Claimant at the final listing, such request must be made no later than the interim/status hearing.

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

The moving party will first be required to present medical expert testimony followed by the responding party. On cross petitions, the party that filed first proceeds 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 is required to upload any applicable Bureau and WCOA documents prior to 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 day of 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 I will 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?

If there is an objection to the submission of the exhibit itself, I will rule on the objection as it is raised at a hearing. If it is an objection contained in a deposition transcript, I will rule on the objection in the final decision if the objection is properly preserved in accordance with the WCJ rules.

9. What is your procedure for handling discovery disputes?

The parties should reduce their dispute to writing and submit it as a Document or Correspondence in WCAIS. The writing should be no longer than one page and should outline the exact nature of the dispute, records involved, and efforts undertaken to resolve the issue amicably. I will issue a Judge Communication or Interlocutory Order ruling on the dispute. At my discretion, if further argument is needed, a hearing will be scheduled. I will deny any request

to rule on discovery disputes where there has been no attempt by the parties to resolve the dispute amicably. The parties should conduct discovery in accordance with the WCJ Rules.

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

I strictly follow the WCJ Rules regarding preservation of objections. Written preserved objections must be submitted no later than at the time of the final hearing. Failure to adhere to the WCJ Rules will result in a waiver of objections.

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, with the agreement of the parties. It is preferred that Claimant have a copy of the C&R documents in their possession when testifying.

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?

While a separate petition is preferred, 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?

No, 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?

No.

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 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 Claimant may participate by phone if they do not have the requisite technology to participate by video, with the agreement of the parties.

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 separate 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?

The fee agreement should be uploaded as part of the stipulation and attached thereto, not as a separate exhibit.

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

No, the child support documents should be attached to the Stipulation, not uploaded as a separate exhibit.

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

I do not require any other exhibits/attachments. If the parties wish to attach other exhibits, they must be attached to the stipulation and not as a separate exhibit, identified in the body of the stipulation and redacted as necessary.

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

If the parties wish to submit attachments to the stipulation other than the fee agreement or child support documents, then it should be redacted as necessary and 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 at which time the evidence of record will be certified and a briefing schedule issued.

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 30 days for submission of their brief. The responding party will then have 30 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.

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

Proposed Findings of Fact and Conclusions of Law are appreciated and preferred. 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 same. Candor before the tribunal applies. Both the direct and cross-examinations are to be summarized.

(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.

(e) Credibility determinations should be included in your Proposed Findings of Fact. You should tell me why I should find your evidence more credible and persuasive than your opponent's evidence. A persuasive brief is more than a summary of the evidence and should explain to me why the party's evidence is credible or not

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 is granted will primarily depend on whether the parties are in agreement with an in-person mediation, the specific circumstances of the individual case and whether an in-person mediation will cause delay.

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

Video participation is required.

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. If yes:

a. What information do you require in that Statement?

The mediation statement should contain in clear organized fashion (please do not submit information in singular paragraph form) the following information:

- a) Case name and submitting party
- b) Presiding Judge
- c) Date of Injury
- d) Bureau documents
- e) Description of injury and whether accepted or alleged

- f) Petitions Pending with succinct basis
- g) Average Weekly Wage/Compensation Rate
- h) Status of negotiations, please list all specific demands/offers exchanged by the parties prior to mediation
- i) Claimant's pre-injury job requirements
- j) Mechanism of injury
- k) Detailed itemization (provider and balance) of outstanding medical claimed
- l) Amounts of credits/offsets applicable
- m) Medicare Status
- n) Section 319 Subrogation implications
- o) Pending UR's, including providers under review, and amount of contested medical
- p) Resignation requirement or full separation agreement
- q) Claimant's litigation costs

Mediation statements should be uploaded under the Mediation tab in WCAIS. The parties may include a brief and succinct argument of their case.

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

None, unless the parties feel that I need to specifically review a particular item. If the IME report has not been uploaded in WCAIS as an exhibit, attaching the report to the mediation statement is requested.

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

Not later than two full business days prior to the date of 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 noting the reasons for same.

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

A demand should be provided in advance of mediation. If Employer does not have authority as of the day prior to mediation, that should be communicated to Claimant's counsel. My preference is that Claimants attend the mediation.

VOLUNTARY MEDIATIONS

1. Do you conduct Voluntary Mediations?

Yes.

2. How should the parties request a Voluntary Mediation?

Please email my Clerical Assistant to schedule.

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. The parties must either be in-person, or in separate locations virtually if one or both parties are unrepresented. The pro se party/parties would also 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 mediation, they must request the same via WCAIS at the time that the event is scheduled. Whether the request is granted will primarily depend on whether the parties are in agreement with an in-person mediation, the specific circumstances of the individual case and whether an in-person mediation will cause delay.

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

Video participation is required absent unusual or exigent circumstances.

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 If yes:

a. What information do you require in that Statement?

Please see mediation statement content and filing requirements above.

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

The Outlook invite will be sent promptly.

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?

A demand should be extended in advance of mediation. If Employer's counsel does not have settlement authority, that should be communicated to Claimant's counsel. My preference is that Claimants attend the mediation.

REQUESTS/MISCELLANEOUS

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

I will strictly follow the WCJ rules. All requests for continuances/extensions/change in hearing times should confirm with same. The parties should request the cancellations, etc. as soon as it becomes apparent that the same is needed. 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.

Short of truly extenuating circumstances, as determined by me, 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 I 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 do not conduct conference calls. If a conference call is requested by the parties a hearing will be scheduled in lieu of a conference call to address the issues.

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

In true emergency situations, a direct email is appropriate and must be copied to opposing counsel. If I have initiated email contact, replies to emails will be accepted, with copy to opposing parties. Otherwise, all communication should be through WCAIS.

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

Yes, unless time permits an extension of the time allotted on the hearing notice. The parties are permitted to complete remaining testimony as needed by deposition.

For mediations, I will go over the duration listed if scheduling permits.

The parties are strongly encouraged to log on or arrive early to any scheduled event so as to maximize their time.

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

Please call my office and/or upload a letter/request to WCAIS. In the event of a true emergency, a direct email to me at jetkin@pa.gov would also be appropriate.

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 any in-person hearings and mediations are cancelled. Virtual events remain as scheduled. The parties should check WCAIS for any emergency and/or weather-related cancellations.