

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 initial hearing is typically a 15-minute, virtual hearing. At that time, the parties must be prepared to discuss all of the issues presented in the Dispute in an effort to eliminate or at least narrow the issues requiring litigation. To the extent possible, the parties must identify all anticipated evidence, both in support of, and in opposition to, the pending petition(s), including the identity of any anticipated witnesses. Unless specifically excused, the claimant is expected to attend all hearings, including the first hearing. Evidentiary deadlines are established and the parties must be in a position to address the possibility of mediation. The parties must also be in a position to advise whether factual testimony is preferred at a virtual hearing or an in-person hearing. Testimony is not generally heard on the merits unless the specific circumstances dictate otherwise. Limited testimony for purposes of supersedeas is permitted.

a. List any documents required at the first event:

First hearing submissions are required in accordance with Rules 131.52(c) and 131.53(a) of the Special Rules of Administrative Practice and Procedure Before Workers' Compensation Judges. Additionally, the parties must provide copies of the controlling and relevant Bureau and WCOA documents.

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

Correspondence, Moving Party First Hearing Filings, and Responding Party 45 Day Filings should be uploaded as "Letters to the Judge" since they are not evidence, but the controlling and relevant Bureau and WCOA documents should be uploaded individually as exhibits. Anything being offered as evidence should be uploaded as an exhibit. When exhibits are uploaded, the "Exhibit Name" should actually identify the exhibit and not contain any anticipated exhibit number. For example: "Statement of Wages" and NOT "D-02" or simply "C".

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

At the time of the initial hearing, the parties are given a date for the next hearing, at which time testimony from all anticipated factual witnesses is expected. Unless the particular circumstances dictate otherwise, the second hearing is scheduled to take place after the deadline for the submission of the moving party's evidence, typically ninety (90) days following the initial hearing. The claimant will not be allowed to testify at hearing if they have not already completed the presentation of their expert evidence in support of their petition(s). Likewise, the defendants must complete the presentation of their expert evidence in support of their petition(s) before factual testimony will be heard from either party relative to their petitions. At the time of the second hearing, the parties are given the date the evidentiary record will close. It is the responsibility of the parties to ensure that all evidence is submitted prior to close of the evidentiary record and no reminders or warnings will be provided. Additional hearings may be scheduled should the circumstances dictate, and the standard procedure may be modified only when doing so would be more practical and efficient under the circumstances.

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

The hearing format will be modified only if it would be in the interest of judicial economy. Evidentiary deadlines will be strictly enforced.

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

Various factors are considered when determining whether hearings are virtual or in-person and all determinations are made on a case-by-case basis. If a hearing is being conducted in-person, all those involved, including the parties and any witnesses, must appear in-person. There will be no virtual participation at an in-person hearing. Likewise, no one should attempt to appear in-person for a virtual hearing. Virtual hearings will not be permitted on in-person hearing days. Likewise, in-person hearings will not be permitted on virtual hearing days. Timely requests to change how a hearing is to be conducted, regardless of whether it is virtual or in-person, if granted, will result in a rescheduling of the hearing.

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

If a hearing is being conducted virtually, all those involved must participate by video, unless specific approval is given to participate by way of telephone in advance of the hearing.

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

If a party fails to appear at hearing, they will be afforded ten (10) days to provide a written, reasonable explanation for the failure to appear. If the explanation is timely and reasonable, the parties will be allowed to present evidence with respect to the failure to appear. If the explanation is not reasonable or if it is not timely, the party will be precluded from presenting any evidence and the matter will be decided based upon the evidence presented by the opposing party. If the moving party fails to appear and fails to provide a timely and reasonable explanation for failing to appear, the petition(s) will be dismissed.

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

Although there are no special procedures for psychological injury cases, reasonable requests will be accommodated if possible.

SUPERSEDEAS PROCEDURES

1. What are your procedures for supersedeas hearings?

The parties are expected to present any and all supersedeas evidence at the time of the supersedeas hearing. The parties should not submit a “supersedeas packet”. All exhibits must be uploaded separately in order to be considered. Any “packet” of records will be deleted and will not be considered. A “Memorandum” in support of, or in opposition to, supersedeas is not necessary and should never be uploaded as an exhibit. However, the parties may be required to submit Letter Briefs/Memorandums of Law following the supersedeas hearing if the specific circumstances dictate.

a. Will testimony be heard?

Limited testimony for purposes of supersedeas is permitted but is not required.

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

The parties are expected to present their supersedeas evidence at the time of the first hearing. Any request for additional time for submission of supersedeas evidence will be considered on a case by case basis.

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

Reconsideration of a supersedeas ruling would be done only in extreme circumstances and such requests are typically denied.

d. Do you generally use written orders for denials?

Yes.

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

In order for employee's counsel to obtain an interim fee approval, the fee agreement must be offered in the presence of Claimant and confirmed by Claimant at hearing. Moreover, counsel must have actually obtained some benefit to claimant, such as a denial of a supersedeas request, to obtain interim fee approval.

f. Describe any other procedures for supersedeas hearings:

N/A

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

N/A

WITNESSES/EXHIBITS

1. What are your rules regarding taking testimony?

All witnesses must be properly identified in advance of hearing or they will not be allowed to testify. Claimants, and all other fact witnesses, are expected to testify live at hearing. Expert witnesses will not be required to testify live at hearing. Deposition testimony is allowed in accordance with Rule 131.62 et seq. of the Special Rules of Administrative Practice and Procedure Before Workers' Compensation Judges. "Discovery depositions" are not permitted, and Claimant is not permitted to testify at deposition except under extreme circumstances and with specific prior approval.

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

Claimant is not permitted to testify at deposition except under extreme circumstances and with specific prior approval. It is preferred that all other fact witnesses testify at hearing as well, but deposition testimony is permitted on a case-by-case basis and only with specific, prior approval. Whether testimony will be at a virtual hearing or an in-person hearing is decided on a case-by-case basis. Certain factors weigh more heavily when deciding whether the testimony will be virtually or in-person, including, but certainly not limited to, whether an interpreter is required; whether there are numerous parties; whether one or more of the parties have already demonstrated difficulties attending virtually; whether there will be a number of documents that will require authentication, and whether it's a Claim Petition.

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

Consideration will be given to the geographical location of the witness, the nature of the expected testimony, and the physical needs of the witness. However, the parties must understand that no one factor is determinative and each decision is made on a case-by-case basis.

4. If counsel wishes to present the testimony of a witness (either virtually or in-person), do you require prior notice? All witnesses must be properly identified in advance of hearing or they will not be allowed to testify.

If yes, how much notice do you require? The parties are expected to adhere to Rules 131.52(c), 131.53(a) and (e), and 131.54(c).

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

If cross petitions are filed, the party initiating the litigation will generally be considered to be the moving party for purposes of submission of evidence, but the order for the presentation of evidence will be determined by the particular issues raised.

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

The parties must upload the controlling and relevant Bureau and WCOA documents.

7. Do you require counsel to upload exhibits to WCAIS before or after the hearing?

Exhibits will not be considered unless they are properly uploaded in advance of the hearing and must be specially offered and admitted on the record. Exhibits must be uploaded separately. Packets of records will not be accepted.

If before, how far in advance of the hearing must they be uploaded?

The parties are expected to upload exhibits sufficiently in advance of the hearing to afford the parties a reasonable opportunity to view same. The parties should not wait until the day of the hearing to upload exhibits.

8. When will you rule on objections to exhibits?

Objections to exhibits will be ruled upon when, and if, they are timely raised. Depending upon the issue presented, an expedited informal conference call and/or formal hearing may be conducted before the objection is ruled upon.

9. What is your procedure for handling discovery disputes?

If there is a discovery dispute, each party shall submit their respective position in writing. If necessary, an expedited informal conference call and/or formal hearing may be conducted in order to facilitate resolution of the dispute.

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

Written preservation of deposition objections must be submitted prior to the close of the evidentiary record and must be uploaded as an exhibit. Deposition objections preserved in the parties' Briefs and/or Proposed Findings of Fact and Conclusions of Law will not be considered. Objections must be preserved with specificity and any objection not properly preserved is deemed waived.

COMPROMISE & RELEASES (C&Rs)

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

Compromise and Release Agreements will be reviewed to ensure conformance with the Workers' Compensation Act. If there is some error or deficiency, when possible, the parties will be notified in the "Instructions from the Judge" on the "General Information" tab of the "Dispute Summary" page, so that the necessary corrections could be made prior to the hearing.

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?

Petitions may be amended to Petitions for Approval of Compromise and Release.

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?

The parties are not required to provide a proposed draft of the Compromise and Release Agreement in advance of the hearing, but the finalized Compromise and Release Agreement and Act 109 Documents must be uploaded at least forty-eight (48) hours in advance of the hearing.

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

The parties are required to upload the finalized Compromise and Release Agreement and Act 109 Documents at least forty-eight (48) hours in advance of the hearing. Failure to properly upload these documents in advance of the hearing may result in the matter be continued or possibly dismissal of the Petition for Approval of Compromise and Release Agreement if the parties repeatedly fail to adhere to these Rules. The parties are expected to ensure the claimant has a physical copy of the Compromise and Release Agreement and Act 109 Documents at the time of hearing so that we may go over them with the claimant. If the claimant does not have a copy of the Compromise and Release Agreement and Act 109 Documents at the time of hearing, the matter will be continued.

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

Act 109 Documents should be uploaded separately from the Compromise and Release Agreement and will be admitted as a separate exhibit. They should not be attached to the Compromise and Release Agreement.

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

The parties are required to upload a copy of the Compromise and Release Agreement and Act 109 Documents containing the Social Security numbers, as well as a second copy with the Social Security numbers and date of birth redacted. The unredacted copies will be deleted following the hearing and the redacted copies will be the actual exhibits.

f. Will you sign bench orders?

No.

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

Compromise and Release Agreements must be specific as to the payment of medical benefits. When the defendants retain the right to either subsequently fund a set-aside account or continue payment of medical bills at the defendants' sole discretion, the parties are unable to confirm that medical benefits are, in fact, being resolved or what consideration is being provided in exchange for resolving medical benefits. As such, any Compromise and Release Agreement in which the defendants will subsequently decide whether they intend to fund a set aside, must contain language specifying that medical benefits are being kept open and that the parties must present a second, subsequent Compromise and Release Agreement for approval by a Workers' Compensation Judge in order to effectuate any resolution of medical benefits. The parties must be properly identified in the Compromise and Release Agreement. The fee agreement must be attached to the Compromise and Release Agreement. The claimant will not be allowed to testify in support of the Compromise and Release Agreement unless and until a finalized, correct copy of the Compromise and Release Agreement has been properly uploaded.

STIPULATIONS RESOLVING DISPUTES

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

Stipulations must conform to Rule 131.91 of the Special Rules of Administrative Practice and Procedure Before Workers' Compensation Judges.

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

Fee agreements must be uploaded as a separate exhibit.

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

Act 109 Documents must be uploaded as a separate exhibit.

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

Any document(s) referred to within the stipulation should be uploaded as an exhibit.

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

Other exhibits should all be uploaded separately.

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

The Stipulation should not contain the Social Security number. A copy of the Act 109 Documents containing the Social Security Number and date of birth must be uploaded separately and a second copy with the Social Security number and date of birth redacted must also be uploaded separately.

7. Describe any other procedures you have for stipulations:

The petition(s) will be decided consistent with the overall terms of the stipulation regardless of the outcome that may have been requested by the parties.

BRIEFS AND PROPOSED FINDINGS

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

Typically, the parties are provided the date the evidentiary record will close at the conclusion of the final hearing at which time all factual testimony has been heard, which is usually the second hearing. However, there are occasions where an Interlocutory Order is required to establish evidentiary deadlines and the close of the evidentiary record. The parties are expected to be aware of the evidentiary deadlines and will not be provided any subsequent warnings or reminders. All evidence must be submitted before the close of the evidentiary record or it will not be considered. The parties are provided more than reasonable notice as to the close of the evidentiary record, such that untimely requests for an extension of time or requests to re-open the evidentiary record will not likely be granted.

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

Following the close of the evidentiary record, a briefing schedule is issued, affording the parties an opportunity to submit Proposed Findings of Fact and Conclusions of Law and/or Briefs. Untimely submissions will not be considered. Items attached to Proposed Findings of Fact and Conclusions of Law and/or Briefs will not be considered or admitted as exhibits, including itemizations of litigation costs or itemized attorney fee exhibits.

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

The Parties are afforded an opportunity to submit Proposed Findings of Fact and Conclusions of Law and/or Briefs. Briefs should contain a concise statement of the case, a statement of the actual issues presented, a summary of the relevant evidence, a discussion of the applicable law, and an ultimate conclusion. It is inappropriate to simply restate all of the evidence of record. It is also inappropriate to provide or refer to additional information that is not part of the actual evidentiary record. Any itemized attorney fee exhibits may be submitted simultaneously with the submission of Briefs/Proposed Findings of Fact and Conclusions of Law but must be submitted separately as an exhibit and not attached thereto. Any attachments to Briefs/Proposed Findings of Fact and Conclusions of Law will not be considered.

MANDATORY MEDIATIONS

1. List the offices where you conduct mandatory mediations:

Wilkes-Barre, PA

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

Mediations will be conducted virtually or in-person depending upon the needs of the parties.

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

Virtual mediations will be conducted by video. If a party is unable to participate by video, the mediation will be canceled.

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

No. If the mediation is in-person, all parties are required to appear in-person. Likewise, if the mediation is virtual, no one will be allowed to participate in-person.

5. Do you require a Mediation Statement? Yes.

If yes:

a. What information do you require in that Statement?

Mediation statements should contain a concise statement of the issues at hand, including the positions of the respective parties, and the status of any prior negotiations. Mediation statements should not simply contain a recitation of all of the evidence of record or a mere statement that authority will be in place by the time of mediation.

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

Nothing specific is required.

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

Mediation Statements must be submitted at least forty-eight (48) hours in advance of the scheduled mediation. Mediation Statements are not accepted and will not be considered they are not submitted until the time of mediation.

6. If there is a request to postpone a mandatory mediation, will it be rescheduled?

Generally, mandatory mediations will not be rescheduled absent some unique circumstance.

If so, how long until it is rescheduled?

Dependent upon the availability of openings in the mediation schedule.

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

Multiple mediation sessions will be conducted if the parties feel additional sessions would be helpful.

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

Absent an emergency situation, any request for cancellation or postponement should be made as soon as possible, but no later than forty-eight (48) hours prior to the scheduled mediation.

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

The parties should actually be prepared for the mediation and be able to address all of the issues and disputes. The parties should exchange discovery prior to the mediation and should actually communicate their respective positions to the opposing parties beforehand. If there are unpaid medical bills at issue, the parties should be able to identify the bills and amounts at issue. If there is an issue as to the calculation of the average weekly wage/compensation rate, the parties should exchange the wage information prior to the mediation. Most importantly, the parties should actually be prepared to mediate.

VOLUNTARY MEDIATIONS

1. Do you conduct Voluntary Mediations?

Yes.

2. How should the parties request a Voluntary Mediation?

Any request for voluntary mediation should be submitted through WCAIS.

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

Wilkes-Barre, PA

4. Will you conduct virtual voluntary mediations?

Yes.

If yes, for which WCOA Districts will you conduct them?

No restrictions.

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?

Yes.

If yes, describe any special procedures you have for such cases:

When mediating a matter involving an unrepresented party, there will be no private discussions with either party.

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

Mediations will be conducted virtually or in-person depending upon the needs of the parties.

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

Virtual mediations will be conducted by video. If a party is unable to participate by video, the mediation will be canceled.

9. Are you willing to allow counsel or a party to participate virtually in an in-person voluntary mediation?

No.

If so, under what circumstances?

N/A

10. Do you require a Mediation Statement?

Yes.

If yes:

a. What information do you require in that Statement?

Mediation statements should contain a concise statement of the issues at hand, including the positions of the respective parties, and the status of any prior negotiations. Mediation statements should not simply contain a recitation of all of the evidence of record or a mere statement that authority will be in place by the time of mediation.

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

Nothing specific is required.

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

Mediation Statements must be submitted at least forty-eight (48) hours in advance of the scheduled mediation.

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

Voluntary mediations will be scheduled dependent upon availability.

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

Multiple mediation sessions will be conducted if the parties feel additional sessions would be helpful.

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 Judge conducting the voluntary mediation if they seek to cancel or postpone a voluntary mediation.

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

Absent an emergency situation, any request for cancellation or postponement should be made as soon as possible, but no later than forty-eight (48) hours prior to the scheduled mediation.

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

The parties should actually be prepared for the mediation and be able to address all of the issues and disputes. The parties should exchange discovery prior to the mediation and should actually communicate their respective positions to the opposing parties beforehand. If there are unpaid medical bills at issue, the parties should be able to identify the bills and amounts at issue. If there is an issue as to the calculation of the average weekly wage/compensation rate, the parties should exchange the wage information prior to the mediation. Most importantly, the parties should actually be prepared to mediate, especially if it is a voluntary 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?

Requests for continuance and extensions must be made, and will be decided, in accordance with Rule 131.13 and Rule 131.12, respectively. Requests for changes in hearing times will be accommodated if the parties are in agreement and as the schedule permits.

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

Conference calls are conducted for matters that do not require a formal hearing.

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

I do not accept e-mail communications from parties and any e-mail received will be deleted without being viewed.

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

If the schedule permits, hearings and mediations will continue beyond the allotted time, if necessary, but it is decided on a case by case basis. However, the parties are expected to present their case in a concise manner and the parties will not be permitted to spend excessive amounts of time on irrelevant or immaterial matter.

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

Contact the Wilkes-Barre Workers' Compensation Office of Adjudication.

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.)?

In-person proceedings will be cancelled if the Wilkes-Barre Workers' Compensation Office of Adjudication is closed and/or if it is the best interest of public safety to cancel proceedings. However, even if in-person proceedings are not cancelled, parties may request a continuance if there is a genuine safety concern due to weather conditions or other similar emergencies. Virtual events will generally not cancel due to weather conditions but it is conceivable that emergency situations may arise necessitating cancellation of virtual hearings.