

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?

If a case involves substantive witness testimony on a litigated issue (typically, but not always, testimony on Claim, Suspension, Reinstatement, Termination, and certain Modification and Review Petitions), the first hearing will be scheduled as a live 45-minute hearing. It is expected that Claimant will testify at the hearing. If the parties do not anticipate substantive testimony at the first hearing, or there is a scheduling conflict, the parties should advise my office through a WCAIS request at the earliest opportunity. If the case does not involve substantive lay witness testimony on a litigated issue (such as a Compromise and Release hearing), or is an Employee Challenge Petition, the first hearing will be a virtual 20-minute hearing. Regardless of the initial hearing format, the legal issues will be discussed, and the trial schedule and mediation date will be set.

a. List any documents required at the first event:

None are required, but it is expected that the moving party will have assembled the medical records to the extent possible prior to filing a petition. In addition, Claimant counsel should submit a fee agreement if they are expecting an interim fee where there is a supersedeas request.

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

Exhibits.

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

I do serial hearings. It is expected that the claimant will testify during a live hearing, and other lay witnesses be heard at subsequent in-person hearings. Again, any substantive live lay witness testimony will likely be presented during a live hearing. Generally, I allow the parties to explore mediation before having to take expert depositions. In claimant-driven petitions, I typically give the employer 45 to get any necessary medical examinations, with mediation scheduled 4-6 weeks after the IME. In employer-driven petitions, assuming all parties are ready to mediate, mediation is scheduled for the next realistic date. After the mediation is conducted, the moving party will have 60 days to complete its case, with an additional 60 days thereafter provided for the responding party to complete its case.

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

Yes

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

It is expected that all substantive lay witness testimony will be presented during an in-person hearing.

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

Any hearings that do not involve substantive lay witness testimony will be conducted virtually by video. Counsel should take all necessary preparations to ensure their witnesses are available by video, including practicing beforehand on the provided TEAMS link for the hearing. Audio-only attendance is discouraged.

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

I go on the record to recount the details of the hearing occurring and the notice given to the absent party. I then write to the absent party to advise of the hearing and ask that the party let me know in writing whether there is a contest to the petition. I will schedule another hearing in 45 days. If I do not hear from the absent party, and the party fails to appear for the second hearing, I will receive any evidence and entertain motions to dismiss the petition or close the record, as the case may be.

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

No.

SUPERSEDEAS PROCEDURES

1. What are your procedures for supersedeas hearings?

The first hearing also serves as the supersedeas hearing, using the protocols described above. All exhibits should be uploaded as if being submitted for the case in chief. All uploaded documents are considered for supersedeas, so they do not need to be separately uploaded as supersedeas exhibits.

a. Will testimony be heard?

Yes, if applicable. See my first hearing procedures.

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

Yes, if requested.

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

I will entertain a request to reconsider a supersedeas order any time additional relevant evidence is acquired or developed.

d. Do you generally use written orders for denials?

Yes

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

The fee agreement must be offered into evidence.

f. Describe any other procedures for supersedeas hearings:

None.

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

None, other than the parties should expect that they may be scheduled with shorter notice. In addition, on Employee Challenge Petitions, the claimant may briefly testify by video, limited to only those few issues germane to ruling on an Employee Challenge.

WITNESSES/EXHIBITS

1. What are your rules regarding taking testimony?

I do serial hearings. It is expected that Claimant will testify during a live hearing, and other lay witnesses be heard at subsequent in-person hearings. Again, any substantive live lay witness testimony will likely be presented during a live hearing. Generally, I allow the parties to explore mediation before having to take expert depositions. In claimant-driven petitions, I typically give the employer 45 to get any necessary medical examinations, with mediation scheduled 4-6 weeks after the IME. In employer-driven petitions, assuming all parties are ready to mediate, mediation is scheduled for the next realistic date. After the mediation is conducted, the moving party will have 60 days to complete its case, with an additional 60 days thereafter provided for the responding party to complete its case.

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

Any substantive testimony on disputed issues should be presented during a live hearing. Testimony on settlements, Employee Challenges, or involving non-disputed issues may be presented by video. Expert testimony can be done by deposition.

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

I will consider any reasonable request to change how testimony is presented, especially if the parties are in agreement.

4. If counsel wishes to present the testimony of a witness (either virtually or in-person), do you require prior notice? Yes. If yes, how much notice do you require?

The parties should let me know about any lay witnesses other than the claimant within 30 days of the claimant's testimony, the expected time needed for the testimony, and whether it is essential that the testimony be presented prior to the mediation. I will then schedule a live hearing accordingly for the testimony.

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

This is addressed on a case-by-case basis and will be clearly reflected in the trial schedule formulated after discussion with counsel. Consideration is given to allowing the parties to develop all necessary evidence to engage in a meaningful mediation as early as practicable, and to minimize the need for unnecessary litigation expenses.

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

I will do it.

7. Do you require counsel to upload exhibits to WCAIS before or after the hearing? Before. If before, how far in advance of the hearing must they be uploaded?

Exhibits should be uploaded any time prior to a hearing so their admissibility can be addressed during the hearing. Last minute uploads are discouraged, simply because opposing counsel may not have an opportunity to review them prior to a hearing.

8. When will you rule on objections to exhibits?

I rule on the admissibility of exhibits during the hearings. If I permit the parties to complete the evidentiary record by a date after the final hearing, any objections must be lodged in writing within 10 days of any exhibit being uploaded. If no objection is lodge, the exhibit is admitted. If an objection is lodged, I will rule on it either by letter or entering my ruling in WCAIS.

9. What is your procedure for handling discovery disputes?

Discovery disputes can be handled either on the record or with a conference call, depending on the issues and the parties' needs.

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

The parties may file written preservations of deposition objections along with submission of their post-hearing findings and/or briefs.

COMPROMISE & RELEASES (C&Rs)

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

See below.

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?

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?

The Compromise and Release Agreement should be uploaded as an exhibit two days before the hearing. If the C&R Agreement is not finalized by then, at the very least, a draft of the Agreement should be uploaded as Correspondence two days before 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?

Before the hearing.

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

The parties should upload a redacted and unredacted copy of the child support documents as two separate exhibits. The unredacted copy will be deleted after confirming the pertinent information with Claimant at the hearing.

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

See above.

f. Will you sign bench orders?

No.

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

DHS (formerly DPW) liens, Medicare liens, and applicable domestic relations orders must be addressed in the settlement paperwork, or the parties risk continuance of the settlement hearing until those items are addressed. Pro se Claimants should have the settlement paperwork well in advance of the hearing, so they have time to review the terms and can consult with counsel if they desire.

STIPULATIONS RESOLVING DISPUTES

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

The Stipulation should be uploaded to WCAIS as an exhibit. I will then mark and admit it as a Joint Exhibit. Counsel should submit a WCAIS request advising of the Stipulation. The Stipulation should indicate which Petitions are resolved with the Stipulation, and how (e.g., the Petition is withdrawn, granted, dismissed, etc.). Attorney fees and litigation costs should also be mentioned in the Stipulation. If fees or cost need to be approved, the fee agreement and litigation costs should be uploaded as separate exhibits to WCAIS. If Act 109 documents are needed, they should also be uploaded separately to WCAIS. I will then write a Decision approving and adopting the Stipulation, if appropriate.

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

Separate exhibit.

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

Yes.

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

I leave that up to the parties.

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

I leave that up to the parties.

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

There is no need for a social security number being on a Stipulation. The parties should upload a redacted and unredacted copy of the child support documents as two separate exhibits. The unredacted copy will be deleted after confirming the pertinent information.

7. Describe any other procedures you have for stipulations:

None. Please be sure to submit a WCAIS request to approve the Stipulation once it is uploaded.

BRIEFS AND PROPOSED FINDINGS

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

I generally use a final hearing to close a case. However, if there are a few small items that still need to be developed (e.g., acquiring the transcript of a recently deposed physician, preparing an uncontested Statement of

Wages, submission of updated costs, etc.), I will set a deadline for submission of any additional items through WCAIS at the final hearing. Any objections to those items must be lodged in writing within 10 days; otherwise, they will be marked and admitted.

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

Typically, briefs and/or findings are due from both parties 30 days after the close of the evidentiary record. Additional time will be given if testimony was offered at the final hearing so the parties can acquire the transcript before drafting their briefs. I will modify the briefing schedule freely upon request or based on the nature of the issues and testimony.

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

I ask for proposed Findings of Fact. In almost all cases, findings should not exceed 8-10 pages. The parties may also submit briefs if they feel that it will be helpful. The brief should simply consist of the party's argument as to why that party should prevail, with appropriate citation to critical evidence and legal authority.

MANDATORY MEDIATIONS

1. List the offices where you conduct mandatory mediations:

Pittsburgh, Johnstown, and Indiana.

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

With rare exception, that mediations will be held virtually. I would consider doing an in-person mediation if there is compelling reason for it.

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

Mediations should be attended through the TEAMS invitation. From a technological standpoint, it can difficult to conduct a mediation through TEAMS with participants who simply call in, as I cannot move them into breakout rooms.

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

On the rare occasion when I may do an in-person mediation, I would entertain a request for a person to participate remotely. The claimant and counsel are expected to attend in person, however.

5. Do you require a Mediation Statement? Yes If yes:

a. What information do you require in that Statement?

I don't have a set Mediation Statement form. A mediation Statement should contain a summary the critical background information of the case (Bureau documents, status of claim, wage calculations, pending petitions), a brief summary of the evidence and issues involved, a recitation of the negotiation history, and most significantly, a meaningful discussion of the strengths and weaknesses of each side's case.

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

None

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

The parties should upload their Mediation Statements to WCAIS at least two days before the mediation.

6. **If there is a request to postpone a mandatory mediation, will it be rescheduled?** It depends on the reason for the postponement **If so, how long until it is rescheduled?** It depends on the reason for the postponement, and the availability of future mediation slots.

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

Yes

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

10 days before the mediation is preferred.

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

Any request to cancel or postpone a mediation in which I am the adjudicating judge should be sent to the mediating judge. Any such request should include the reason for the request and the position of opposing counsel. Counsel should ensure that their clients are able to join the meeting at the time scheduled, including practicing using the TEAMS link for the mediation beforehand.

VOLUNTARY MEDIATIONS

1. **Do you conduct Voluntary Mediations?**

Yes

2. **How should the parties request a Voluntary Mediation?**

Through a WCAIS request

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

Pittsburgh and Johnstown.

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

Yes. I will conduct voluntary virtual mediations for any case throughout the Commonwealth.

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

7. What factors will you consider in deciding whether to conduct a voluntary mediation virtually or in-person?
I expect, with rare exception, that mediations will be held virtually. I would consider doing an in-person mediation if there is a compelling reason for it.

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

Mediations should be attended through the TEAMS invitation. From a technological standpoint, it can difficult to conduct a mediation through TEAMS with participants who simply call in, as I cannot move them into breakout rooms.

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

On the rare occasion when I may do an in-person mediation, I would entertain a request for a person to participate remotely. The claimant and counsel are expected to attend in person, however.

10. Do you require a Mediation Statement? Yes If yes:

a. What information do you require in that Statement?

I don't have a set Mediation Statement form. A mediation Statement should contain a summary the critical background information of the case (Bureau documents, status of claim, wage calculations, pending petitions), a brief summary of the evidence and issues involved, a recitation of the negotiation history, and most significantly, a meaningful discussion of the strengths and weaknesses of each side's case.

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

None

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

The parties should upload their Mediation Statements to WCAIS at least two days before the mediation.

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

Typically, 4-6 weeks, depending on availability of mediation slots and the parties' needs.

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?

For voluntary mediations, 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?

10 days is preferred.

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

Counsel should ensure that their clients are able to join the meeting at the time scheduled, including practicing using the TEAMS link for the mediation beforehand.

REQUESTS/MISCELLANEOUS

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

10 days before the scheduled event

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

I am always available for a conference call unless I am in hearings or in a mediation. Parties should be aware that I will not take a phone call unless all counsel are on the line.

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

If there is a circumstance that can't be addressed promptly through a conference call or WCAIS request. Any emails must be copied to opposing counsel. I regularly check WCAIS requests throughout the day.

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

I am willing to go beyond the allotted time for hearings if there is flexibility in my hearing schedule. If there is not, then I will end the hearing and ask the parties when they need to have it rescheduled and for how long. For mediations, I do not end the mediation if the parties are still discussing matters in a productive fashion. However, if I have another mediation scheduled later, I will start that mediation and continue mediating the first one during breaks.

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

The parties can either email me, put in a WCAIS request, or contact my assistant, Pat McMahon.

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.)?

For live hearings, if there is an impending weather event, I will advise the parties through a WCAIS Judge Instruction and/or email in advance (likely the day before) whether the hearing will still be held live, or converted to a virtual hearing. Virtual events will proceed as scheduled unless there is an office closing. Emergency cancellations are addressed on a case-by-case basis.