

1. THE WV WORKERS' COMPENSATION APPEALS SYSTEM

Workers' compensation claims are administered and paid by one of the following:

- a third party administrator of the state's funds (for injuries prior to 7/1/05); or
- the employer's private insurance carrier; or
- employers who provide their own coverage (**self-insured employers**).

Most claim adjuster decisions can be objected to by the injured worker (and, in some cases, by the employer). The objection – called a “protest” – is filed with the Workers' Compensation Office of Judges. The Office of Judges is independent of the private carrier, self-insured employer, or the third party administrator of the state's funds.

The Offices of the West Virginia Insurance Commissioner is a state agency which regulates all workers' compensation insurance carriers and matters. The Workers' Compensation Office of Judges and the Workers' Compensation Board of Review are both part of the Offices of the West Virginia Insurance Commissioner.

2. DISPUTES BETWEEN CARRIERS or ADMINISTRATORS

Sometimes a dispute may exist between carriers or third party administrators about which has responsibility for the claim. There are a couple of things that you should know about those circumstances.

First, all employers working in West Virginia are required to have workers' compensation insurance coverage. If your employer fails to provide workers' compensation coverage, then you may receive notice that your claim must be filed against the State's Uninsured Fund. This is done by submitting your claim application form to:

**The Offices of the WV Insurance Commissioner
Claims Services
P.O. Box 50541
Charleston WV 25305**

Second, if a dispute exists between carriers or third party administrators about which has responsibility for the claim, The Offices of the Insurance Commissioner will provide a process to resolve that conflict without delaying administration of your claim.

3. WHY YOU RECEIVED THIS BROCHURE

Your case is now before the Office of Judges because either you or the opposing party (the employer or the claimant) has objected to a claim management decision of the claim adjuster.

4. WHAT THE OFFICE OF JUDGES WILL DO

The Office of Judges will set a time limit for filing evidence and arguments, consider any evidence or arguments filed with the Office of Judges, and mail to you a written decision explaining our ruling in the claim.

5. SOME DEFINITIONS OF WORDS THAT WE OFTEN USE

- You will be called the **protesting party** in many of our notices if you protested the claim adjuster's decision.
- You will be called the **responding party** if you did not protest the claim adjuster's decision.
- The injured worker is often called the **claimant**.
- The employer is usually referred to as the **employer**.
- The private carrier, or the administrator for the state's fund, or for the self-insured employer, is often referred to as the **claim administrator**.



6. HERE'S WHAT YOU MUST DO NEXT IF YOU PROTEST

The protesting party must give to the Office of Judges either evidence or some explanation of why the claim adjuster's order was wrong. Usually, evidence already submitted to the claim adjuster, with nothing else submitted, will not be sufficient to convince the Office of Judges to overrule the claim adjuster.

Because the Office of Judges is independent of the claim adjuster, we do NOT have copies of documents submitted to the claim administrator. Therefore, you will need to submit new copies to us.

YOU WILL LOSE your protest if you do not submit new evidence or sufficient explanation for the protest!

Evidence, or explanation for why you protested, must be filed with us in writing and a copy must be mailed to all other parties (the employer or claimant, or their attorney if represented).

In claims involving the State's Fund, The Offices of the West Virginia Insurance Commissioner is formally involved and will appear as a party. In those cases, the Insurance Commissioner must also receive copies of any filings. Copies to the Insurance Commissioner are normally filed with the third party administrator, whose name and address you should have. If an attorney has made an appearance on behalf of the State Fund, then you should send copies to the attorney.

7. DEADLINES FOR FILING EVIDENCE

The Office of Judges will mail to you an **Automatic Time Frame Order**. The Time Frame Order tells you a date by which you have to submit evidence and argument to the Office of Judges.

If you cannot, for a good reason, get us your evidence before the Time Frame deadline, you can ask us in writing to extend the Time Frame. If you do:

- You must explain in your request why you need more time.
- You must also send us the request at least ten days before the Time Frame deadline.

8. EXPEDITED (FAST) DECISION PROCESS FOR CLAIMANTS

For certain protest issue types the Office of Judges offers a faster decision process as an option to the claimant. For those issues, the Automatic Time Frame will notify the claimant of the available option.

Once a claimant elects the faster process, we will not usually allow either the employer or the claimant to change the option.

Choosing the faster decision process may seem like the best choice. However, there are some drawbacks to the expedited process.

First, the time limits for both claimant and employer are very short and are difficult to extend. Remember, if you do not submit new evidence you will lose automatically so limiting your time to obtain evidence can also limit your chances of winning.

Second, a hearing will be conducted that limits both sides to thirty (30) minutes each. That is a very short amount of time to get everything said and presented. If you are a claimant you may be limiting your ability to present your case.

Finally, if you are represented by a lawyer, **DO NOT ELECT THIS OPTION** without first consulting with your attorney.

9. FORMAL HEARINGS

Unlike most other legal systems, you do not automatically get a hearing for your protest (except for those expedited processes described immediately above).

Instead of, or in addition to, filing your evidence in writing with us, you may also ask us to schedule a hearing so that you or other witnesses may testify.

Often both sides agree to take testimony under oath at an agreed time and place (a deposition) instead of at a hearing.

You must request a hearing at least 30 days before your Time Frame ends.