

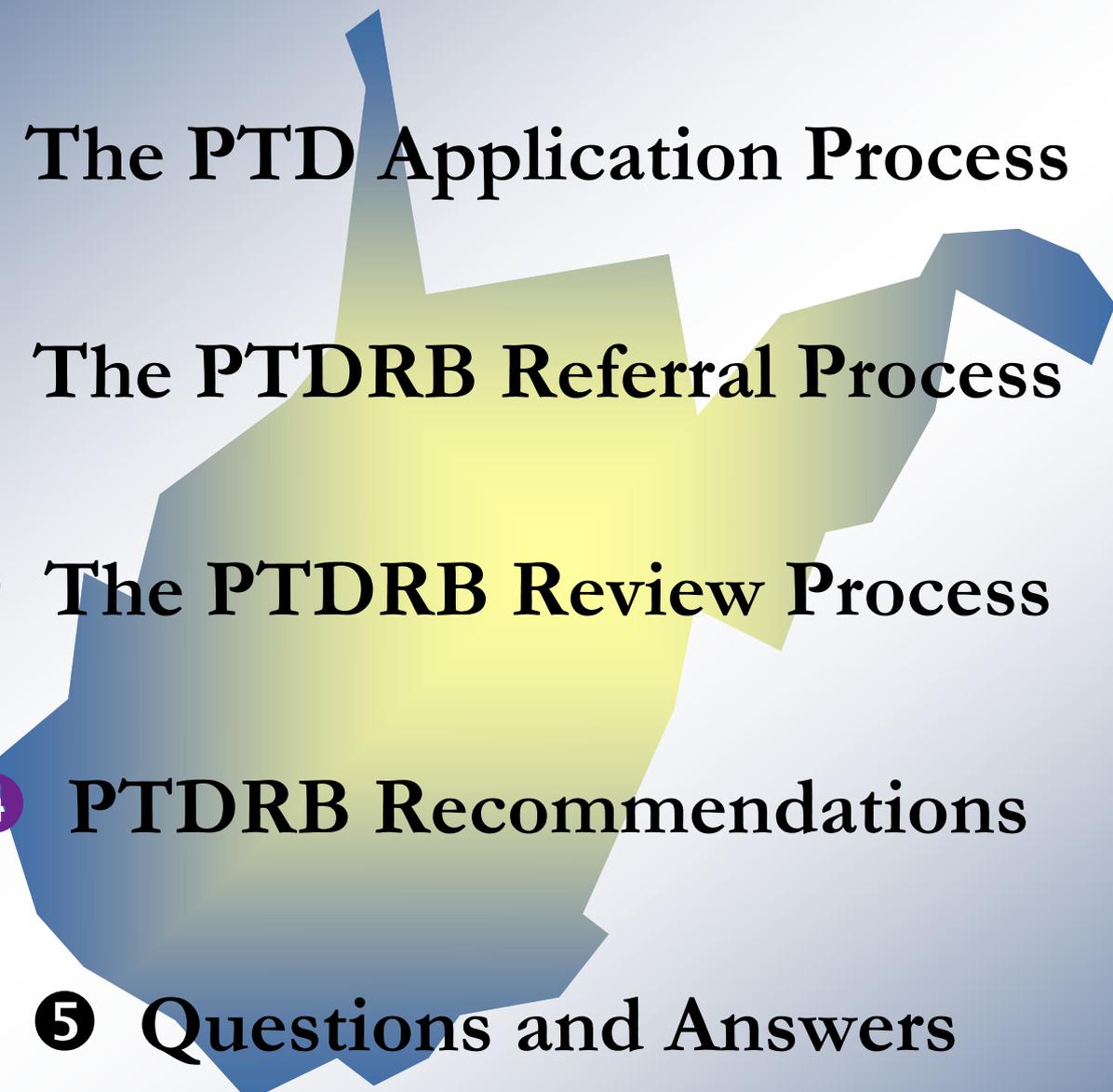
WELCOME!

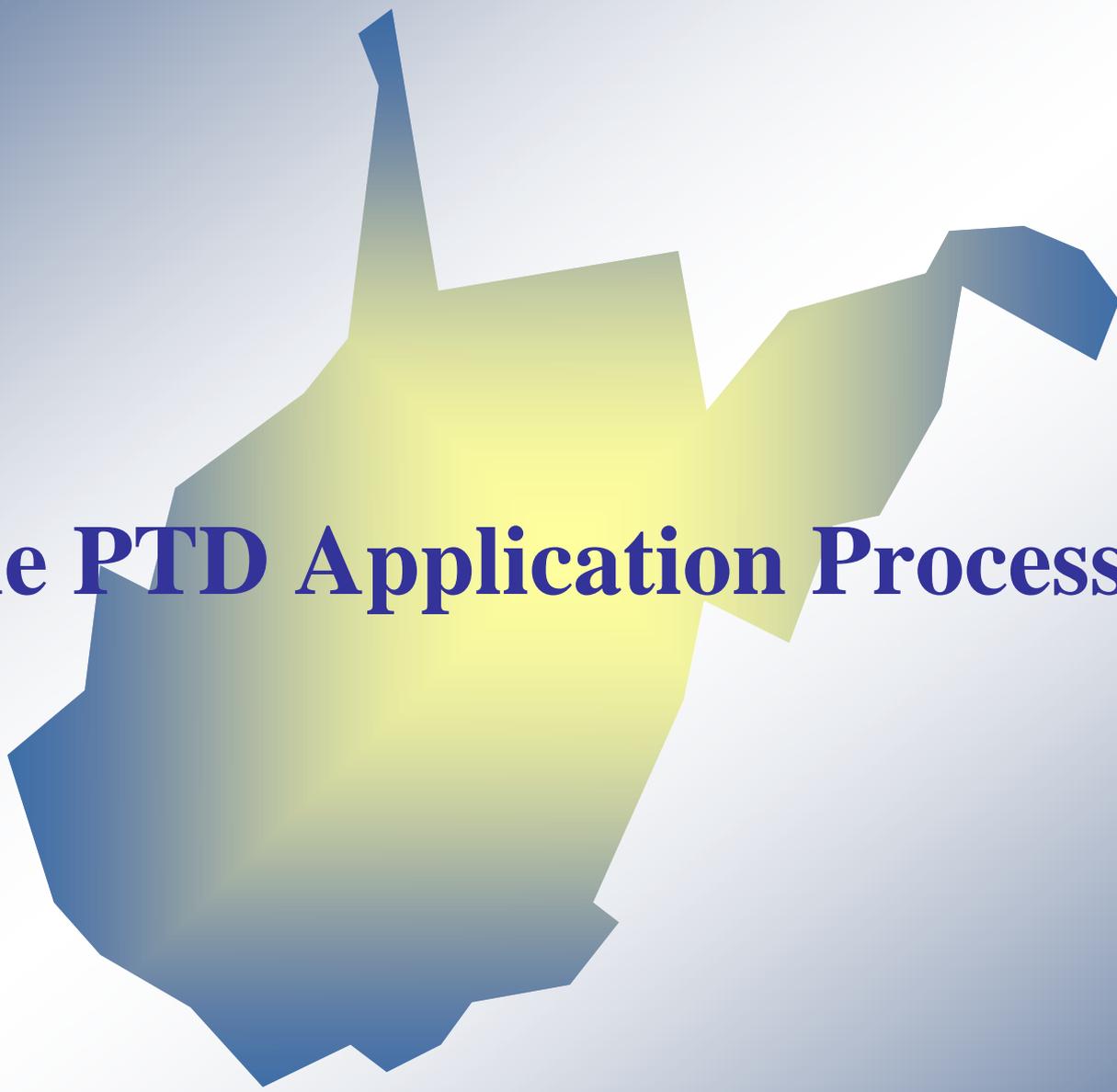
**The OIC's Permanent Total Disability
Review Board
Webinar**

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December 12, 2008**



West Virginia
OFFICES OF THE
INSURANCE
COMMISSIONER

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The PTD Application Process

The PTD Application Process

A claimant cannot be considered for a permanent total disability award until a proper and fully completed PTD application is received by the Claims Administrator

A proper and fully completed PTD application should provide, at a minimum, the following information:

- The Claimant's name
- The Claimant's Social Security number
- The Claimant's injuries and dates of injuries.
- The Claimant's date of birth
- The Claimant's address
- The Claimant's telephone number
- The Claimant's current employment status
- Details regarding any efforts by the Claimant to apply for and/or receive Social Security benefits
- Details regarding any efforts by the Claimant to apply for and/or receive a retirement benefit of any type.
- A complete listing of all the Claimant's workers' compensation claims along with the claim number, date of injury, the injured body part, the impairment rating (if any) and the name of the Employer and the Employer's insurer.
- All federal disability claims filed by the Claimant with any other state or federal agencies;
- Copies of all medical reports indicating that the Claimant has a permanent impairment.
- Information regarding any non-work related injuries or diseases.
- The Claimant's prescription drug history
- The Claimant's Employment history, including date of employment for each Employer
- The Claimant's Military history
- The Claimant's Education history
- The Claimant's Medical history

The PTD Application Process

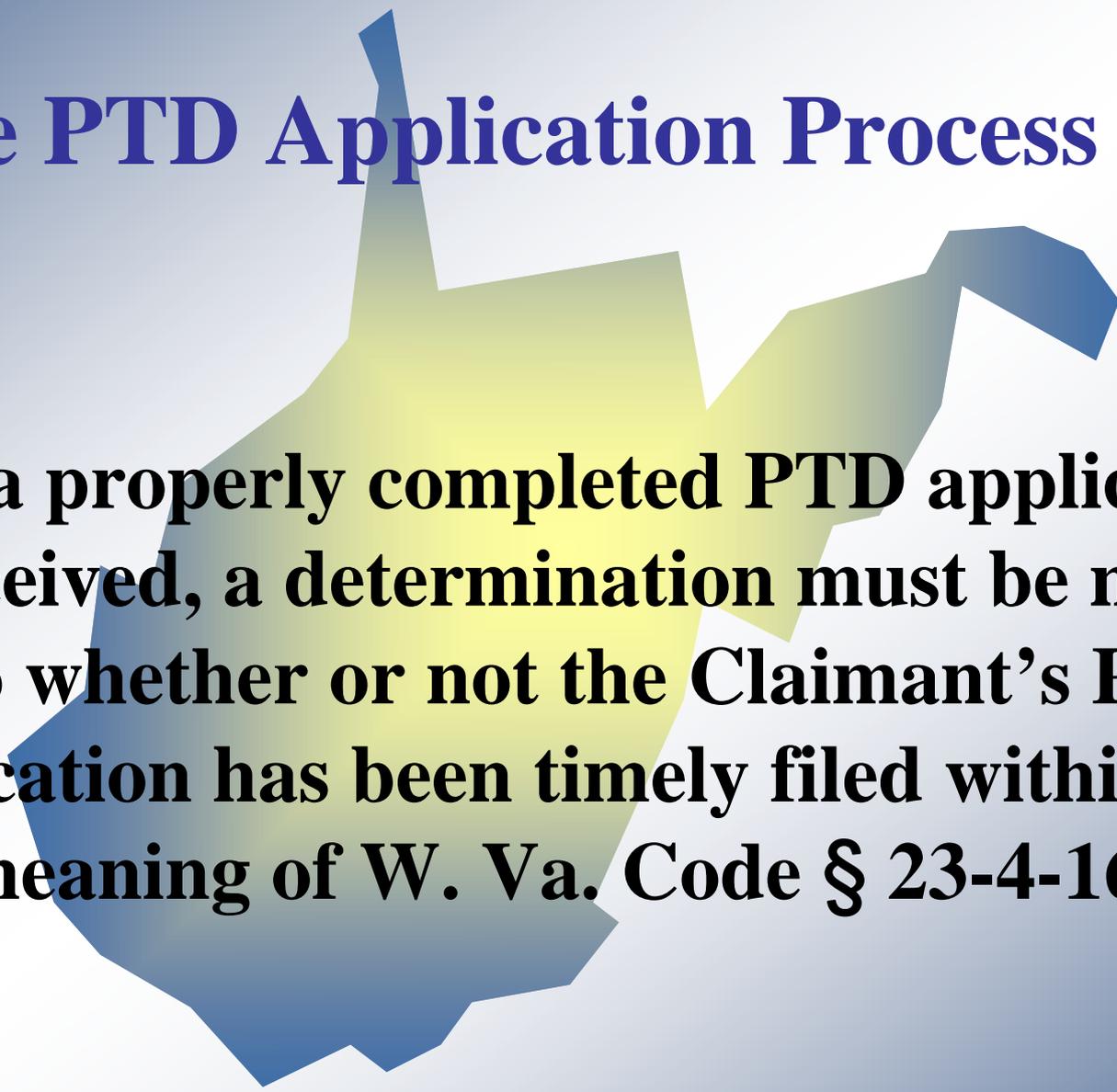
As part of the application process, the Claimant must execute and update any and all releases or authorizations required by the Claims Administrator (i.e., releases or authorizations for medical records, federal tax records, social security records, etc)

The PTD Application Process

Once a fully completed PTD application is received, there are a number of issues a Claims Administrator must consider prior to a referral to the Reviewing Body:

- 1. Can the Claim be reopened for PTD consideration?**
- 2. Does the Claimant meet the Eligibility Threshold?**

The PTD Application Process



Once a properly completed PTD application is received, a determination must be made as to whether or not the Claimant's PTD application has been timely filed within the meaning of W. Va. Code § 23-4-16

The PTD Application Process

A claim will not be reopened for PTD consideration unless the PTD application is filed within five years of the date of the initial permanent partial disability award in that claim

W. Va. Code §23-4-16(a)(2).

The PTD Application Process

Only *two* requests to reopen a claim for PTD consideration may be filed within 5 years of the date of the initial permanent partial disability award in the claim

W. Va. Code §23-4-16(a)(2).

If the request to reopen is in regard to an occupational disease or occupational pneumoconiosis claim, a new five year period begins upon the date of each subsequent permanent partial disability award

W. Va. Code §23-4-16(a)(2).

The PTD Application Process

If it is determined that the Claimant's PTD application was not filed within five years of the date of the initial permanent partial disability award in the claim, then a protestable decision should be issued denying reopening of the claim

W. Va. Code §23-4-16

If, on the other hand, it is determined that the Claimant's application has been timely filed within the meaning of W. Va. Code § 23-4-16, a protestable decision should be issued reopening the claim for PTD consideration

The PTD Application Process

Once a claim has been reopened for PTD consideration, the next issue to be determined is whether the Claimant is *eligible* for a PTD award. In order to be eligible for a PTD award, the Claimant must pass the ***ELIGIBILITY THRESHOLD***

The PTD Application Process

In order for a Claimant to be eligible for a PTD award, he or she must meet one of the following three eligibility requirements as set forth in W. Va. Code § 23-4-6(n)(1):

1. The Claimant must have been awarded the sum of 50% in prior permanent partial disability awards;
2. The Claimant must have suffered a single occupational injury or disease which results in a finding that the Claimant has suffered a medical impairment of 50%;
3. The Claimant must have sustained a 35% statutory disability pursuant to the provisions of W. Va. Code § 23-4-6(f).

Most often the eligibility threshold is determined by simply adding the Claimant's prior PPD awards.

The PTD Application Process

If the Claimant is found to have at least 50% in prior permanent partial disability awards, then an protestable decision should be issued notifying the Claimant that he or she is eligible for consideration of a PTD award, and that further consideration will be given to their request for a PTD award

If, on the other hand, it is found that the Claimant does not have at least 50% in prior PPD awards, then a protestable decision should be issued denying the Claimant's PTD application for failure to meet the eligibility requirements of W. Va. Code § 23-4-6(n)(1)

The PTD Application Process

According to W. Va. Code § 23-4-16(b), the Claims Administrator should “pass upon” a timely and properly submitted PTD application within thirty days of receipt of the PTD application

The PTD Application Process

Eligibility Threshold – Miscellaneous:

- 1. Impairment resulting from carpal tunnel syndrome is NOT included in determining whether the claimant meets the eligibility threshold**
- 2. Impairment resulting from “any occupational disease, the diagnosis of which is based solely upon symptoms rather than specific, objective and measurable medical findings” is NOT included in in determining whether the claimant meets the eligibility threshold**



The PTDRB Referral Process

The PTDRB Referral Process

If it is determined that a **Claimant** meets the **Eligibility Threshold**, the next issue to determine is whether or not the **Claimant** meets the *Whole Body Medical Impairment Threshold*

To determine whether or not the **Claimant** satisfies the **Whole Body Medical Impairment Threshold**, the **Claims Administrator** must refer the claim to the **PTDRB** or other reviewing body to reevaluate the **Claimant's** whole person impairment

The PTDRB Referral Process

The Claims Administrator should conduct such examinations of the Claimant that he or she thinks is necessary and obtain all pertinent medical reports and examinations and forward them to the PTDRB for consideration

W. Va. Code § 23-4-6(j)(1).

All materials should be organized consistent with OIC Guidelines and submitted in the form of a packet to the PTD for consideration

The PTDRB Referral Process

Completed PTD Packets should be sent to:

Joan Abbott

Offices of the Insurance Commissioner

Claims Services Division

Post Office Box 50541

Charleston, West Virginia 25305

The PTDRB Referral Process

- **All packets must include the Carrier's Request Form**
- **The Carrier's Request Form is available on the OIC webpage**

The PTDRB Referral Process

- **All packets must be accompanied by payment of \$1400.00**
- **If payment does not accompany the packet, the claim will be returned to the Carrier and will not be submitted to the OIC PTDRB for review**

The PTDRB Referral Process

- **Upon receipt of the completed packet and required payment, the claim will be placed on the next available docket for review by the OIC Reviewing Body**
- **At the present time, the OIC Reviewing Body reviews cases once a month**

The PTDRB Referral Process

- **The PTD packet must contain a Contact Information Sheet providing contact information for the claimant, employer and attorney representatives, if applicable, for mailing of all OIC Reviewing Body correspondence.**

The PTDRB Referral Process

- **The packet must also contain a cover sheet providing the claimant's name, claim number and PTD application and the petition date**

The PTDRB Referral Process

- **The evidentiary material in the packet should be divided, utilizing the provided divider sheets, as follows:**

PTD Petition and Claimant's Supporting Evidence:

This section should contain a copy of the claimant's PTD application/petition and any specific evidence the claimant has submitted in support of the application.

The PTDRB Referral Process

➤ **PTD Research Sheet:**

This sheet provides specific information regarding each claim the claimant has filed.

The sheet should be type-written and should list all body parts/conditions accepted in each claim.

ICD-9 codes should be included with the identifying information in the top portion of the sheet where indicated.

This information is necessary to ensure all claims, injuries and conditions have been reviewed and evaluated.

The PTDRB Referral Process

Hearing Loss and OP Awards:

This section includes records from any Hearing Loss and OP claims the claimant has filed, including any audiograms and pulmonary function studies.

This section should also include any award decisions issued from the carrier, the Office of Judges, the Board of Review and the Supreme Court of Appeals.

The PTDRB Referral Process

➤ **PTD Independent Medical Examinations:**

This section contains the valid, current PTD evaluations as indicated for orthopedics, neurology, neurosurgery, psychiatry, urology and any other specialty involved.

It is important that the provided reports are current, include evaluations of all claims filed and all covered conditions, and are in accordance with the *AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition* and/or established regulations.

The PTDRB Referral Process

➤ Vocational Rehabilitation Reports and Functional Capacity Evaluations:

This section contains the current PTD FCE and PTD Vocational rehabilitation assessment following standards outlined in the statute.

The PTDRB Referral Process

➤ **Employer's Evidence:**

This section contains any specific evidence submitted by the employer in opposition to the petition.

The PTDRB Referral Process

- **If a PTD packet is submitted in accordance with a Remand Order from the Office of Judges, Board of Review or Supreme Court of Appeals, a copy of that order and any medical records or evidence considered within the order should be included with the packet directly after the PTD contact information sheet.**

The PTDRB Referral Process

- **In traumatic or catastrophic cases, it may not be possible or practical to obtain PTD evaluations.**

In such cases, a summary of the claim may be submitted, along with current clinical treatment notes and/or medical/rehabilitation assessment reports indicating the claimant's current treatment plan and prognosis.

The PTDRB Referral Process

➤ **INFORMATION NOT NECESSARY FOR REVIEW:**

It is not necessary to include hospital records, operative notes or permanent partial disability reports in the PTD packet.

This information should be included in the information sent to the PTD Independent Medical Examiner for review and consideration and should be included in the PTD IME report.



The PTDRB Review Process

The PTDRB Review Process

First, under W. Va. Code § 23-4-6(n)(1), the PTDRB must determine whether the claimant has either:

1. Suffered a whole body medical impairment of fifty percent (50%) from either a single occupational injury or disease, or a combination of occupational injuries or diseases; or
2. Sustained at least a thirty-five percent (35%) statutory disability under W. Va. Code § 23-4-6(f)

The PTDRB Review Process

If the claimant does not have at least a fifty percent (50%) compensable whole body medical impairment and has not sustained at least a thirty-five percent (35%) statutory disability under W. Va. Code § 23-4-6(f), the Board will recommend that the claimant's application be denied for failure to meet either of these thresholds

The PTDRB Review Process

If the claimant does have at least a fifty percent (50%) compensable whole body medical impairment or has sustained at least a thirty-five percent (35%) statutory disability under W. Va. Code § 23-4-6(f), the Board will consider the claimant's vocational potential under the provisions of W. Va. Code § 23-4-6(n)(2); the claimant's vocational potential will determine whether the claimant will receive the award

The PTDRB Review Process

Miscellaneous:

- 1. Impairment resulting from carpal tunnel syndrome is NOT included in the PTDRB's determination of a claimant's whole person medical impairment**
- 2. Impairment resulting from "any occupational disease, the diagnosis of which is based solely upon symptoms rather than specific, objective and measurable medical findings" is NOT included in the PTDRB's determination of a claimant's whole person medical impairment**

The PTDRB Review Process

Under W. Va. Code § 23-4-6(n)(2), the factors to be considered in determining the claimant's vocational potential are:

- 1. Disability which renders the injured employee unable to engage in substantial gainful activity requiring skills or abilities which can be acquired or which are comparable to those of any gainful activity in which he or she has previously engaged with some regularity and over a substantial period of time**
- 2. Geographic availability of gainful employment within a driving distance of seventy-five miles from the residence of the employee or within the distance from the residence of the employee to his or her preinjury employment, whichever is greater**
- 3. The comparability of preinjury income to post-disability income is NOT be a factor in determining permanent total disability**

The PTDRB Review Process

The members of the PTDRB:

Dr. Dominic Gaziano, Chairman

Dr. Luis Loimil

Dr. Robert Walker

Gina Baldwin, QRP

Deborah Frost, QRP



PTDRB Recommendations

PTDRB Recommendations

Once the PTDRB has made an initial determination on the claimant's application for a PTD award, the PTDRB will issue its Initial Recommendations

Following the issuance of the Initial Recommendations, the parties to the claim are afforded thirty (30) days to respond to those recommendations

PTDRB Recommendations

Following this thirty (30) day period, the PTDRB will review and consider responses, if any, made to its Initial Recommendations, and will then issue its Final Recommendations

The Final Recommendations of the PTDRB are BINDING, and MUST be effectuated by the Claims Administrator

Questions and Answers



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