



WEST VIRGINIA INSURANCE BULLETIN No. 22-07

Insurance Bulletins are issued when the Commissioner renders formal opinions, guidance or expectations on matters or issues, explains how new statutes or rules will be implemented or applied, or advises of interpretation or application of existing statutes or rules.

Workers' Compensation Claims

► Content of Written Decisions and Information for Claimants ◀

This Insurance Bulletin is being issued to provide updated and continued guidance from the West Virginia Offices of the Insurance Commissioner (“OIC”) relating to the content of written decisions issued in West Virginia workers’ compensation claims. This guidance is intended for all insurance carriers, third-party claims administrators and self-insured employers. This guidance has been, at least in part, issued previously. However, this Insurance Bulletin is being issued with an effective date of **July 1, 2022**, due to the workers’ compensation litigation changes that are beginning to take effect, including the new duties and adjudicatory responsibilities of the Workers’ Compensation Board of Review and the subsequent termination of the Workers’ Compensation Office of Judges. As a result of these changes, it is critical that all stakeholders comply with this regulatory guidance. Failure to follow this guidance may result in regulatory action and/or monetary penalty.

- Pursuant to W. Va. Code §23-5-1a(a), regarding any issue that is ready for a decision, the private carrier or self-insured employer shall promptly send the decision to all parties, including the basis of its decision. The parties to a claim are the claimant and, if applicable, the claimant’s dependents, the employer, and, with respect to claims involving the Old Fund, the Uninsured Employer’s Fund, the Self-Insured Employer Guaranty Risk Pool, Self-Insured Employer Security Risk Pool, or the Coal Workers’ Pneumoconiosis Fund, the Insurance Commissioner.
- W.Va. Code §23-2C-15 requires that every employer ***continuously post a notice*** upon its premises in a conspicuous place identifying its workers’ compensation insurer. ***The notice must include the name, business address, and telephone number of the insurer and of the person to contact with questions about a claim.*** Additionally, the OIC maintains a coverage verification system (“CVS”), that is available to the public at www.wvinsurance.gov/Employer-Coverage. Through this database, individuals can search employers for insurance coverage information by date. W. Va. Code §23-5-1a(a) provides that, in claims in which the employer had coverage on the date of injury or last exposure, the insurance carrier has sole authority to act on the employer’s behalf in all aspects related to litigation of the claim. As such, both the employer, as the party to a claim, and the insurance carrier, as the statutory designee of the employer, have vital roles in claims litigation.
- Pursuant to W. Va. Code §23-5-1a(b)(1), upon making any decision or refusing to make any award, or upon making any modification or change with respect to former findings or orders, the insurance carrier or self-insured employer, whichever is applicable, shall give ***written notice*** to the applicable parties of its action. Pursuant to W. Va. Code R. §85-1-2.3, “decision” means any determination by a responsible party

regarding the compensability of a claim, the award or denial of any type of benefit in a claim, or any other substantive request by a claimant in a claim. Pursuant to W. Va. Code §23-5-1a and W. Va. Code R. §85-1-7.2, a copy of the written decision or notice must be sent to **all parties** to the claim. Put simply, a **written decision** must be issued by an insurance carrier or self-insured employer any time a final action is taken regarding a claim and the written notice must be sent to **all parties**, including the claimant.

- Pursuant to W. Va. Code §23-5-1a(b)(1) and W.Va. Code R. §85-1-7.2, the written decision or notice shall state the time allowed for filing an objection to the finding. The action of the insurance carrier, self-insured employer, or Insurance Commissioner is final unless an objection to the decision is properly filed within 60 days after the claimant receives such decision. Furthermore, any objection filed at the Workers' Compensation Board of Review must also be served upon the parties to the claim, as identified herein. An example of an acceptable notice provision is set forth below:

The claimant may object to this decision within 60 days from the date of receipt of this decision or notice. The claimant must send a written objection, along with a copy of this decision, to the Workers' Compensation Board of Review, P.O. Box 2628, Charleston, WV 25329-2628, and must serve a copy of the objection upon all parties to a claim.

- In addition to providing the notice for objections, all written decisions or notices issued by insurance carriers, self-insured employers, and/or third-party claims administrators must include additional basic information as set forth below:
 - **All parties to a claim**, including the claimant, the employer, and, if applicable, the Offices of the Insurance Commissioner.
 - The **complete name** of the insurance carrier, third-party claims administrator, or self-insured employer issuing the written decision or notice and the **mailing address** for the insurance carrier or claims administrator.
 - The Jurisdictional Claim Number or **JCN**.
 - The date of injury or date of last exposure.
 - The date the written decision or notice is being made or issued.
 - The specific issue being decided in the written decision or notice.
 - The decision that is being made on the specific issue being decided.
 - The basis for the decision that is being made on the specific issue being decided.
 - The time allowed for filing an objection to the decision.

This information is necessary for parties to file objections at the Board of Review. Failure to include this information on a written decision or notice, may hinder the parties in filing objections to written decisions and may delay proceedings at the Workers' Compensation Board of Review. This could further result in the parties, insurance carrier or third-party claims administrator, not timely receiving filings from the claimant or information from the Workers' Compensation Board of Review. If this information is missing from a written decision or notice, the Workers' Compensation Board of Review may find "good cause" or "excusable neglect" to expand the timeframe for filing an objection, as permitted by state law.

Claimants who do not know the name or contact information for their employer's workers' compensation insurance carrier should be able to locate that information on the employer's premises notice, as required by W.Va. Code §23-2C-15, or through CVS at www.wvinsurance.gov/Employer-Coverage.

Please e-mail any questions concerning this Insurance Bulletin to OICBulletins@wv.gov.

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