

2950 PUBLIC SECTOR WORKERS COMPENSATION CASES - SCOPE

2950.1 Sections 2950 through 2969 contain the Rules for OAH hearings of appeals of certain Public Sector Workers Compensation decisions of the District of Columbia Office of Risk Management (ORM).

2950.1 If Sections 2950 through 2969 do not address a procedural issue, the Rules in Chapter 28 of this Title apply.

2950.2 Beginning October 31, 2016, OAH shall hear the following appeals from ORM.

- a) Initial awards for or against compensation benefits pursuant to D.C. Code § 1-623.24(b);
- b) Final decisions concerning the necessity, character or sufficiency of medical care or services following an appeal of a utilization review pursuant to D.C. Code § 1-623.23(a-2)(4);
- c) Modifications of awarded benefits pursuant to D.C. Code § 1-623.24(d); and
- d) Requests for determinations of whether a claimant has a permanent disability pursuant to D.C. Code § 1-623.06a.

2951 PUBLIC SECTOR WORKERS' COMPENSATION — BEGINNING A CASE

2951.1 Appeals shall be initiated by filing a written hearing request at OAH. The request shall be made on a form supplied by the Public Sector Workers' Compensation Program (the Program) and approved by OAH. A hearing request must contain:

- a) The name and address of the claimant and of the claimant's representative, if any;
- b) The type of claim;
- c) Claimant's employing agency when the injury occurred;
- d) A statement identifying the date and nature of the decision being appealed;
- e) The reason(s) why the claimant considers the decision to be incorrect;
- f) A detailed statement of facts in support of each reason;
- g) The specific nature and extent of the relief sought;
- h) A statement that the person signing the hearing request has read it and attests that the contents are true and accurate to the best of his or her knowledge; and

i) The signature of the claimant or the claimant's representative, if any.

2951.2 A hearing request must be accompanied by a copy of the decision being appealed.

2951.3 The claimant or claimant's representative shall sign the request for hearing and file it with OAH within 30 days of service of the decision. OAH Rule 2809 prescribes procedures for filing.

2951.4 No hearing request shall exceed 15 pages, exclusive of the cover page. The Clerk may reject hearing requests that do not conform to these rules.

2952

PUBLIC SECTOR WORKERS COMPENSATION — SCHEDULING

2952.1

After a hearing request is filed, OAH shall send a copy to the Program and shall issue a scheduling order. Unless otherwise directed by an Administrative Law Judge (ALJ), the scheduling order shall establish deadlines for the following discovery and hearing activities:

Serving and Filing of Discovery Requests
Exchange of Fact Witness Lists
Claimant's Expert Witness Designation
Agency Expert Witness Designation
Claimant's Expert Witness Reports
Agency Expert Witness Reports
Close of Discovery
Joint Pre-Hearing Statement
Deadline for Motions *in Limine*
Deadline for Responses to Motions *in Limine*
Pre-Hearing Conference
Hearing

Absent unusual circumstances, the hearing will take place within 180 days of receipt of the hearing request.

2952.2

Discovery Deadlines

- a) Discovery Requests. No interrogatories, requests for admission, requests for production or inspection, or other discovery requests may be served after the deadline for discovery requests without approval of an ALJ.
- b) Depositions. Depositions for any purpose must be noticed at least 10 days before the scheduled deposition date and the deposition date must be before the close of discovery.
- c) Exchange Lists of Fact Witnesses. On or before the applicable scheduling order deadline(s), each party must serve and file a list of all the party's fact witnesses, including the witness's name, address, and telephone number. No witness who is not designated in the lists may be called to testify at the hearing except for impeachment or rebuttal or upon a showing that the party did not learn of the witness until after the deadline.
- d) Expert Witness Report. If either party intends to offer expert opinion, the party must serve and file the report required by § 2954.2 by the scheduling order deadline.
- e) Close of Discovery. No deposition or other discovery may be had after the applicable scheduling order deadline except by permission of an ALJ upon a showing of good cause.

2952.3 Any motion to modify the scheduling order must provide a detailed discovery plan listing the methods of discovery to be used, the persons or materials to be examined, the reason why the discovery could not be completed within the existing schedule, and the date or dates by which the discovery will be completed. Before filing a motion to extend discovery, a party must seek consent of the opposing party as required by OAH Rule 2813.5.

2953 PUBLIC SECTOR WORKERS COMPENSATION — PRE-HEARING CONFERENCE

2953.1 In accordance with the scheduling order, the parties must file a joint pre-hearing statement that includes the following:

- a) A joint statement of the case, including all stipulated facts.
- b) A statement of the remaining issues in dispute.
- c) A statement of any objections to admissibility of proposed exhibits, including the specific grounds for the objections.
- d) A list of each party's proposed witnesses together with a summary of their expected testimony, excluding witnesses offered solely for impeachment or rebuttal.
- e) A list of the exhibits each party proposes to offer, together with a copy of the exhibit. Claimants' exhibits shall be numbered 100 through 199. Agency exhibits shall be numbered 200 through 299.
- f) Designation of portions of deposition transcripts and discovery responses to be used at the hearing (except for transcripts of depositions of expert witnesses).

2953.2 Each party must serve and file any motion *in limine* or other motion concerning the conduct of the hearing prior to the applicable scheduling order deadline.

2953.3 At the prehearing conference the ALJ shall discuss and make rulings on the following matters:

- a) Whether the parties will agree to additional stipulations of fact or to the admissibility of exhibits.
- b) The need to exchange any additional medical or vocational reports or other documents.
- c) The approximate time that each party will require for the hearing and whether it may be appropriate to set time limits or to limit the number of witnesses.
- d) Resolution of any pending motions.

- e) Whether interpreters will be needed.
- f) Any other matters that may be appropriate.

2954 PUBLIC SECTOR WORKERS COMPENSATION — DISCOVERY

2954.1 Each party shall disclose the identity and proposed testimony of any expert witness in accordance with the scheduling order issued pursuant to § 2952.1.

2954.2 Unless otherwise stipulated, any expert witness report must contain the following:

- a) A statement of all opinions the witness will express and the basis for those opinions.
- b) The data or other information considered by the witness in forming them.
- c) Any exhibits that will be used to summarize or support them.
- d) The witnesses' qualifications, including a list of all publications authored in the previous 10 years.
- e) A list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition.
- f) A statement of the compensation to be paid for the study and testimony in the case.
- g) The following certification signed by the witness: "I hereby certify that this report is a complete and accurate statement of all my opinions, and the basis and reasons for them, to which I will testify under oath."

2954.3 A party may depose any person who has been identified as an expert and whose opinions may be presented at the hearing.

2954.4 Interrogatories. Unless otherwise stipulated or ordered, a party may serve on any other party no more than 12 written interrogatories, including subparts. The interrogatories must be answered as follows:

- a) By the party to whom they are directed or, if by the District, by any officer or agent, who must furnish the information available to the party.
- b) The responding party must serve answers or objections within 21 days after being served.
- c) Objections to interrogatories must be stated specifically. Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath. Answers and objections must identify and quote each interrogatory in full immediately preceding the answer or objection.

- d) The person who makes the answers must sign them, and the attorney who objects must sign any objections.
- e) If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records, including electronically stored information, and if the burden of deriving or ascertaining the answer is substantially the same for either party, the responding party may answer by:
 - (1) specifying the records that must be reviewed in sufficient detail to enable the interrogating party to locate them as readily as the responding party; and
 - (2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

2954.5 Requests for Production of Documents. Requests shall be made and responded to in accordance with D.C. Superior Court Civil Rule 34.

2954.6 Requests for Admission. Unless otherwise stipulated or ordered, a party may serve no more than 15 requests for admission on the other party. Requests shall be made and responded to in accordance with D.C. Superior Court Civil Rule 36.

2954.7 Depositions. Depositions will be conducted in accord with D.C. Superior Court Civil Rules 30 and 31.

2954.8 Motions To Compel. No party shall file a motion to compel discovery without permission of the presiding ALJ. Permission shall be granted only after the parties or counsel have conferred in an effort to resolve the dispute or a party or counsel has made at least three attempts to contact the opposing party or counsel without success to set up a meeting to confer.

- a) If the parties are unable to resolve the dispute after discussing it for a reasonable period of time, they shall request a telephone conference with the presiding ALJ.
- b) If the dispute cannot be resolved by conference call with the ALJ, the ALJ may direct the moving party to file a motion to compel discovery.
- c) Before filing a motion to compel discovery without having conferred with the opposing party or counsel, the moving party or counsel must submit a written description of three separate attempts to contact the opposing party or counsel by telephone or email, including dates and times, and describe any response that was received. If an ALJ finds that a party has made a good faith effort to resolve the issue, the ALJ may direct the moving party to file a motion to compel discovery. The ALJ may also impose appropriate sanctions on the opposing party.

- d) Any motion to compel discovery shall state specifically the discovery that was requested and any objections raised by the opposing party and specify the information or documents that the opposing party declined to provide.
- e) An opposing party may respond to a motion to compel within the time specified in OAH Rule 2813.6 or such other time as the presiding ALJ shall specify.

2954.9 Sanctions. If the District's motion to compel is granted, in addition to other sanctions that the presiding ALJ may impose, the ALJ shall deduct any reasonable expenses, costs, and fees incurred by the District, including attorney's fees, from any award of attorney's fees to the Claimant.

2955 PUBLIC SECTOR WORKERS COMPENSATION — HEARINGS

2955.1 The rules for hearings and evidence set forth in OAH Rule 2821 shall apply to Public Sector Workers Compensation hearings except as modified in this chapter.

2955.2 All hearings will be recorded. Any party may obtain a copy of the recording at the party's expense. Except where OAH is required by law to prepare a transcript, parties who want written transcripts must prepare them at their own expense in accord with OAH Rule 2827.3.

2955.2 Burden of Proof. The burden of proof is that established in the Public Sector Workers' Compensation Benefits Rules found in Title 7 of the DCMR.

2956 PUBLIC SECTOR WORKERS COMPENSATION — ATTORNEYS' FEES

2956.1 An attorney who has represented a claimant who seeks to recover attorney's fees shall file a motion within 30 days of the issuance of a decision. The motion shall contain the following information:

- (a) An itemized description of each service rendered, including the date and the amount of time spent. Time must be recorded in intervals of at least ¼ hour. Intervals of 1/10 hour are preferred.
- (b) The amount of the fee which the attorney seeks; and
- (c) A statement explaining the basis for the requested fee.

2956.2 In determining the amount of any award, the ALJ shall consider at least the following factors:

- (a) The nature, novelty, and complexity of the case;
- (b) The time and labor required;
- (c) The amount of benefits awarded;
- (d) Customary local charges for similar services; and

(e) The professional qualifications of the attorney or other representative.

2956.3

Claims for attorney's fees are governed by D.C. Official Code § 1-623.27 and the Public Sector Workers' Compensation Benefits Rule on Attorney's Fees in Title 7 of the DCMR.