



STATE OF WASHINGTON

BOARD OF INDUSTRIAL INSURANCE APPEALS

2430 Chandler Ct SW PO Box 42401 • Olympia, WA 98504-2401 • (360) 753-6823 • www.biia.wa.gov

May 22, 2006

Joe Smith
1234 Main St.
Tacoma WA 98404

Hearings Letter - After

Judges choose which paragraphs to include based on the issues in the appeal. All paragraph options are shown here.

In Re: Joe Smith
Claim No. N-000000
Docket No: 05 00000

Dear Mr. Smith:

Your conference is scheduled for _____. The purpose of the conference is:

- To identify the issues: what relief are you seeking?
- To identify all witnesses; and
- To schedule hearing time.

Please bring your calendar so hearing time can be scheduled. There will be no testimony or evidence presented at the conference.

Burden of Proof

Because you appealed the Department's decision dated _____, you must prove that the decision is incorrect. This is known as the "burden of proof." You must present your evidence first. If the opposing party presents evidence, yours must be more convincing.

Timeliness

Your appeal was granted subject to proof of timeliness. Before you can present further evidence, you must prove that you filed your appeal within ____ days after you received the Department's decision dated _____.

Aggravation/Worsening of Condition

In order to reopen your claim, you must have a medical witness testify that your work-related injury or condition objectively worsened between _____, and _____.

Rejection of Claim

The Department has rejected your claim because _____.

If you feel your injury is work-related, you must prove that you suffered the injury as defined by the industrial insurance laws of Washington State:

RCW 51.08.100 - "Injury"

"Injury" means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom.

If you feel that you have an occupational disease, you must prove that it meets the definition under the industrial insurance laws of Washington State:

RCW 51.08.140 - "Occupational Disease"

"Occupational disease" means such disease or infection as arises naturally and proximately out of employment . . .

If you feel you were injured in the course of employment, you must prove that, when injured, you were on your employer's jobsite or you were acting in the employer's interest. See RCW 51.08.013 - "Acting in the Course of Employment."

Treatment

If you believe you need further treatment, you must have a medical witness testify that the recommended treatment will improve your condition(s) related to your industrial injury or occupational disease.

Permanent Partial Disability

If you feel you are entitled to a permanent partial disability award, you must present a medical witness's testimony that proves:

- Further medical treatment will not improve your condition(s); **and**
- The permanent partial disability is greater than what the Department awarded. This must be based, at least in part, on objective physical findings.

Time Loss Compensation

If you believe you were unable to work due to your condition(s) related to the industrial injury or occupational disease, you must prove that you had a bodily or mental disability that prevented you from performing and/or obtaining any gainful occupation on a reasonably continuous basis.

You must show this inability to work through medical testimony. Testimony of a vocational counselor or other expert may also be helpful.

Permanent Total Disability

You are totally disabled when:

- Further medical treatment will not improve your condition(s); **and**
- You cannot perform and/or obtain any continuous regular employment, considering your age, training, education, work experience, and any disability caused by your industrial injury or occupational disease.

You must show this through medical testimony. Testimony of a vocational counselor or other expert may also be helpful.

Medical Testimony

In most cases, your doctor will be required to appear **in person** and testify on your behalf. You are responsible for arranging for your doctor to testify and for paying any witness fees the doctor may charge.

Discovery

Before the hearing, the parties to the appeal are able to learn what the opposing party's evidence will be at the hearing. This process is called "discovery." The Superior Court Civil Rules will be followed.

Hearings

For the hearing, you must:

- Decide which witnesses to call;
- Decide what evidence to present;
- Question your witnesses; and
- Question the witnesses of opposing parties.

Hearings at the Board are similar to trials in superior court. The Rules of Evidence and Superior Court Civil Rules apply. You must be very familiar with

these rules in order to ensure that all your testimony and evidence will be admitted at the hearings.

As the industrial appeals judge assigned to your case, I can help you examine your witnesses, but I will not act as your attorney. You are responsible for providing the testimony necessary to be successful in your appeal. If you need information about subpoenas, please ask me.

Attorney

I strongly suggest that you talk to an attorney. There are several attorneys in the _____ area who specialize in workers' compensation. To locate an experienced attorney, check your local phone book's yellow pages. You may also contact your county bar association.

REMEMBER:

- **You need to prove the Department's decision was wrong.**
- **You need a doctor to testify on your behalf.**
- **You need to schedule your witnesses to attend the hearing and pay any fees to have them testify.**
- **I can give you only limited help.**
- **You are encouraged to talk to an attorney.**

Sincerely,

Industrial Appeals Judge