

EMERGENCY ADMINISTRATIVE BULLETIN 8

TO: All Parties
FROM: Omar Hernández, Senior Judge
RE: 2021 Expectations for Dispute Resolution
DATE: February 26, 2021

I would like to take this opportunity **to remind** everyone of the changes that have been successfully implemented and **will remain in place until further notice**. These changes include:

The DIA VirtualQ Meeting System

- The VirtualQ Meeting system organizes, presents, and controls the Department's daily Conciliation and Conference online meetings.
- At approximately 2:00 PM on the evening prior to scheduled meeting, a link to the VirtualQ will be added to the Attorney Calendar.
- The link will display under the heading Today's and Upcoming Web Meetings.
- This link, in a series of prompts, grants access to the Administrative Judges and Conciliators' virtual waiting room.
- The link will be displayed and available only on the calendar of the attorney with a current Appearance Form 114 on file with the DIA (attorney of record).
- The Employee/Claimant is **required** to attend the VirtualQ Conferences.
- It is the responsibility of the attorney of record to make the link available to any other attorney presenting on his/her behalf and to their respective clients.
- Once the link has been established no other notices or notification will go out from the DIA regarding the meeting.
- Notices for scheduled Conciliations will continue to be sent out two weeks in advanced of the meeting.
- Conferences will continue to be sent out six weeks in advance of the meeting.
- Read the information provided for joining the web meeting.

- Please make sure you have an active account.

Conciliations

- Please note that Section 36 evaluations can be done virtually.
- All Conciliation submissions should be sent directly to the Conciliator by email.
- If a party would like to withdraw a claim for a case that has not yet been referred to Dispute Resolution, please email the Form 109 to the assigned Conciliator and opposing counsel.
- Please note all other Form 109's should be emailed to Deborah Keefe or Maryanne Fitzpatrick for processing.
- Cover sheets are **not necessary** for documents that are uploaded.
- We will continue to virtually conduct Conciliations through VirtualQ for the foreseeable future.

Conferences

- Parties are required to submit the Conference Memorandum (Form 140) no later than two business days BEFORE the scheduled Conference meeting.
- Parties are required to submit the Conference submissions (medical, non-medical, and hypothetical questions) no later than two business days BEFORE the scheduled Conference meeting.
- Please note that any additional medical documents that were not part of the Conference packet will only be accepted and forwarded if received by the Department at least fifteen (15) business days prior to the scheduled impartial examination.
- This rule was implemented in 2015 because impartial physicians review the board files many days before the impartial examination and the DIA cannot assure the parties that a physician will review the new medical evidence with little notice.
- It would be unreasonable for the Department to place the burden upon the physicians with busy medical practices to continuously check the file to determine whether new medical evidence had been imported.
- The Employee/Claimant is **required** to attend the Virtual Conference.

- Employee's counsel is responsible to share the VirtualQ link with the Employee.
- Employee's counsel is responsible to provide the employee with a copy of the Conference order.
- We will continue to virtually conduct Conferences through VirtualQ for the foreseeable future.

Impartial Examinations and Appeals

- Until further notice, the parties are to continue to contact the 11A physician's office to confirm whether the 11A examination will take place and whether the 11A physician requires a Covid Pre-Screening Form. The impartial physician's telephone number can be found on the examination notice.
- Please note that any appeal of a Conference order issued after March 3, 2020 will not be marked as late until further notice. Therefore, the parties do not have to petition the Director to request a petition for late appeal, a petition for late fee submission or a petition to extend time for fee submission until further notice.
- Please disregard any Late Fee Notice automatically generated for appeals that have been created for orders that have been filed after March 3, 2020.
- Please do not email a *copy* of the Impartial Fee check to the DIA as a copy of the check is not required.
- Any communication with the Impartial Scheduling Unit is best through email.

Pre-Hearing Conferences

- The DIA has implemented a **mandatory** Pre-Hearing Memorandum and Pre-Hearing Conferences for cases scheduled for Hearings.
- The parties are required to submit their Joint Pre-Hearing Memorandum **no later than 10 business days BEFORE** the scheduled Hearing date.
- The Pre-Hearing Conference must occur **no later than 10 business days BEFORE** the scheduled Hearing date.
- The Hearing may be rescheduled by the Administrative Judge if the parties fail to submit a Joint Pre-Hearing Memorandum within the mandated timeline.
- The Hearing may be rescheduled by the Administrative Judge if the parties fail to schedule a Joint Pre-Hearing Conference within the mandated timeline.

- The parties are expected to be prepared to discuss the status of negotiations, identifying claims/defenses, stipulations, all motions and the identification, anticipated testimony and time needed for testimony of each expected witness at the Pre-Hearing Conference.
- Please note that the Administrative Judge may rescheduled the Hearing if these steps are not followed.

Hearings

- The parties **must notify the judge by email forty-eight hours** in advance to advise the judge whether the Hearing is going forward.
- All parties must complete the Pre-Entry COVID Screening Form and return it **twenty-four hours in advance** of the scheduled Hearing date.
- The Insurer's and Employee's Hearing Memorandum, and the Employee Biographical Data sheet shall be received by the Administrative Judge no later than **five days prior to the Hearing**. (via email in pdf format).
- Any medical records and any agreed to exhibits must be bookmarked and received by the Administrative Judge no later than **five days prior to the Hearing**. (via email in pdf format).
- During the hearing, only the attorneys and witnesses in that case will be allowed in the room.
- Please note that the courtrooms have a maximum capacity for the number of persons allowed at one time. For those cases where the number of persons exceed the capacity limit, the witnesses will be required to wait outside of the building until they are called in to testify.
- Testimony via a virtual platform may be allowed for certain witnesses/persons who for COVID-19 reasons are not able to attend in person. **It will be up to the Administrative Judge to decide whether this option is appropriate.**

Lump Sum Settlement Agreements

- The parties can request a virtual meeting with an Administrative Judge to hear a Lump Sum Settlement Conference.
- The parties shall continue to insert a line in the lump sum agreement as well as in the employee's affidavit that states that "the parties have discussed the use of e-signatures and agree that they will have the same weight and effect as an original signature".

- Please note that a claim remittance form indicating zero balance is insufficient. Administrative Judges will not approve Lump Sum settlements without a Mass Health release.
- The Employee affidavit for the Lump Sum Settlement Agreement does not need to be notarized.
- We will continue to maintain our current practice of handling Lump Sum Settlement agreements by email.

Section 15 Petitions

- Instructions for requesting a lump sum hearing are included right on the §15 Petition form.
- If you are informed that your petition contains errors that need correcting, kindly correct the petition, and electronically resubmit the entire petition, including the signature pages, expenses, and fee agreement. The department will no longer be able to accept and substitute single or multiple corrected pages of a previously submitted petition.
- We will continue to maintain our current practice of handling Section 15 petitions by email.

Reviewing Board Oral Arguments

- We will continue to maintain our current practice of conducting all Oral Arguments through WebEx meeting or telephone conference calls.