



## View from the Inside: What Really Goes on in the Hearing Room?

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Within the walls of the hearing room, decisions are made that may cost employers tens or hundreds of thousands of dollars, often after a mere 15 minute hearing. In 2009 alone, Ohio's self-insured and state-fund employers through the Ohio Bureau of Workers' Compensation (BWC) paid out over one billion dollars in workers' compensation benefits. In this article, we will share with you what we have learned from our experiences on the inside.

***The Hearing Process: What is a hearing and what is accomplished at a hearing?*** A hearing is relatively self explanatory -- it is a designated time and place at which an employer and injured worker, who are party to a contested workers' compensation claim, can present evidence which will be "heard" by a person empowered by the State to make a binding decision on the issue. Self-insured employers are eligible for a hearing once they have denied a claim and the injured worker has contested the denial. State-fund employers are eligible for a hearing once they object to an order of the BWC.

There are three levels at which a contested claim may be heard at the Industrial Commission: district level, staff level and Commission level. The district level is the first place that allowance issues, disputed compensation requests, permanent partial disability requests and disputed treatment requests are heard. When an employer or injured worker notifies the Industrial

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Commission that they are contesting one of these issues, a hearing is set before a district hearing officer at the Commission office nearest the worker's residence. Representatives from both parties are invited to appear at the hearing and present evidence supporting their respective positions on the contested issue. The entire hearing is allotted 15 minutes, unless additional time is requested. For complex issues or issues that require witness testimony the representative should consider requesting additional time. At the end of the hearing, a decision will be made by the presiding district hearing officer. Within seven days of the hearing, the parties should receive a copy of a written order in the mail.

The staff level is the place where some claims are initially heard, and some claims are re-heard if one (or both) parties disagree with the findings of the district hearing officer. Applications for permanent total disability, VSSR applications and objections to hearing administrator compliance letters are all heard for the first time at the staff level, not the district level. Additionally, when a party is dissatisfied with the decision of the district hearing officer, the party is guaranteed the right to appeal that decision, but must do so within 14 days of receiving the order. All appeals of district level hearings are set for a hearing before a staff hearing officer. Representatives from both parties are invited to appear at the hearing and present evidence supporting their belief that the district order should or should not be upheld.

The Commission level is the final place a claim can be heard before leaving the Industrial Commission system. If either party is unsatisfied with the decision of the staff hearing officer, an appeal may be filed in the Commission office where the staff hearing took place within 14 days of receipt of the decision. The three Industrial Commissioners who are appointed by the governor for a term of six years, have discretion to accept the appeal for a hearing, or refuse to hear the appeal.

If either party is not satisfied with the decision of the Industrial Commission, or if the Industrial Commission refuses to hear the appeal, the party has the right to pursue their objection to the staff order in a state court.

***Hearing Room Environment: What's it like inside the hearing room?*** Industrial Commission hearings lack the formalities of a courtroom trial. The room itself is set up like a typical office conference room, with a table in the middle at which both parties sit facing each other, which differs vastly from the typical courtroom. Because of its informal nature, the hearings often lack the adversarial feeling of a trial. Additionally, the parties are not limited by the rules of evidence, and can introduce testimony that is hearsay, as well as unauthenticated documents. The parties are entitled to bring fact witnesses or doctors to the hearings, but seldom do. They also can bring a court reporter, provided they give notice to the Industrial Commission at least seven days prior to the hearing.

***Types of Hearings: What kinds of issues can the Industrial Commission resolve?*** There are eight basic categories of issues that can be heard by the Industrial Commission hearing officers:

- Allowance -- hearing officers can decide if a claimant should be "allowed" to participate in the workers' compensation system for a particular medical condition.
- Additional Allowance -- hearing officers can decide if additional conditions should be added to the claim after its initial allowance.
- Treatment Issues -- hearing officers can decide whether proposed treatment is related, necessary or appropriate.
- Temporary Total Disability -- hearing officers can decide whether, as a result of injuries sustained at work, an employee cannot perform his or her job for a certain, specified period of time.

- Permanent Partial Disability -- hearing officers can decide whether, as a result of an allowed claim, an employee has suffered permanent impairment of a certain percentage of the employee's whole person.
- Permanent Total Disability -- hearing officers can decide whether, as a result of an allowed claim, an employee has permanently lost the ability to do all work.
- Death Benefits -- hearing officers can decide whether a death was caused by a work injury or disease.
- VSSR -- hearing officers can decide whether an employer has violated a specific safety regulation which resulted in an injury to a worker.

***Representation at Hearings: Is a lawyer necessary?*** Employers and employer representatives, such as third party administrators, are allowed to attend hearings to represent the employer's interests, and often do an excellent job. However, going into the hearing process without an attorney does present some drawbacks. For example, non-lawyers cannot cross-examine a claimant or witness directly or indirectly. Additionally, non-lawyers cannot cite, file or interpret statutes, case law or administrative provisions. Non-lawyers are prohibited from making or giving legal interpretations regarding testimony or evidence and are barred from commenting on or giving opinions with respect to evidence, credibility of witnesses, nature and weight of evidence, or legal significance of the contents of the claim file. Finally, the Industrial Commission will not accept a brief, memorandum or other document necessary to request reconsideration, or any other pleading that involves documents beyond those provided by the Industrial Commission or BWC if drafted by a non-lawyer. While not all hearings require the use of these techniques, some do, and an employer who attends a hearing without an attorney may be at a disadvantage if the injured worker has an attorney who is able to cross examine witnesses, give legal opinions, interpret law and submit briefs.

In truth, our experiences inside the hearing room have taught us one important thing: no two hearings are the same, and each must be approached as the unique and individualized experience that it is. For each hearing, the representative must evaluate which issues are present, and what needs to be accomplished at the hearing. This will help to determine who should be invited into the hearing room, whether additional time is necessary and what level of representation would most effectively represent the employer's interests.



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