

PERMANENT RULES OF THE WORKERS' COMPENSATION COMMISSION

Notices of Rulemaking Intent filed on January 19, 2022

PROPOSED RULES:

Chapter 1. General Information

810:1-1-6 [AMENDED]

Chapter 10. Practice and Procedure

Subchapter 1. General Provisions

810:10-1-3 [AMENDED]

Subchapter 3. Informal Dispute Resolution Processes

810:10-3-6 [AMENDED]

Subchapter 5. Hearings Conducted by Administrative Law Judges and Commissioners

Part 13. Dismissals

810:10-5-85 [AMENDED]

Chapter 20. Vocation Rehabilitation Services

810:20-1-4 [AMENDED]

TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION

CHAPTER 1. GENERAL INFORMATION

810:1-1-6. Requests for agency public information

(a) Public access to Commission records is subject to the Oklahoma Open Records Act, 51 O.S. § 24A.1, et seq. and 85A O.S. § 120. Any person making a request for a Commission record shall comply with the following:

(1) The request must be in writing and directed to the Clerk of the Commission when the request is to access information on workers' compensation claims, and to the General Counsel for all other requests.

(2) Requests to access information on workers' compensation claims are subject to the written request and search fee requirements of 85A O.S. § 120, unless an exemption outlined in the law applies. The Commission may request information of a requester sufficient to determine whether or not an exemption pertains.

(A) To access information on workers' compensation claims, the request must be made in writing, on a form prescribed by the Commission. The request form requires identification of the person requesting the information and the person for whom a search is being made. The request form must contain an affidavit signed by the requester under penalty of perjury stating that the information sought is not requested for a purpose in violation of state or federal law. Those making a request shall pay the Commission One Dollar (\$1.00) per search request, not to exceed One Dollar (\$1.00) per claims record of a particular worker, plus applicable copy charges set forth in 85A O.S. § 119(A), any applicable fees according to the Oklahoma Open Records Act, 51 O.S. § 24A.5(4), and certification fees, if any.

(B) Electronic searches of workers' compensation claims data using public terminals at the Commission's offices may be made. The search function permits searches using the name of a claimant or the Commission file number. Certain information related to the search criteria will be displayed on the terminal.

Access to additional information on claims pertaining to the search results is subject to the written request and search fee requirements described in this Paragraph.

(C) The one dollar (\$1.00) fee for each page copied, described in 85A O.S. § 119(A), includes physical paper pages copied and digital copies. However, digital copies that are downloaded shall be capped at \$1.00 for the complete download, regardless of how many digital pages are included in the file.

(3) Requests not subject to Paragraph (2) of this Subsection, should describe the record(s) requested, indicate the name of the party making the request, and include the party's mailing address and telephone number. The requesting party shall pay for copies and research of such records in accordance with 85A O.S. § 119(A) and the Oklahoma Open Records Act, 51 O.S. § 24A.5(4), and, if applicable, for certification of the record according to a fee established by the Commission, if any.

(4) Copy charges may be waived at the Commission's discretion for copies requested by the media or by a public officer or public employee in the performance of his or her duties on behalf of a governmental entity.

(b) This Section does not apply to records specifically required by state or federal law, or by state or federal administrative rule, or by order of a court of competent jurisdiction, to be kept confidential, including, but not limited to, financial data obtained by or submitted to the Commission for the purpose of obtaining a license or permit and records subject to proprietary agreements, confidentiality orders, and sealed exhibits.

CHAPTER 10. PRACTICE AND PROCEDURE

SUBCHAPTER 1. GENERAL PROVISIONS

810:10-1-3. Definitions

In addition to the terms defined in 85A O.S. § 2, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Acceptable Electronic Signature Technology" means technology that is capable of creating a signature that is unique to the person using it, is capable of verification, is under the sole control of the person using it, and is linked to the data in such a manner that if the data is changed, the electronic signature is invalidated.

"Administrative Law Judge" means an Administrative Law Judge of the Commission to whom the Commission has delegated by order or otherwise, the authority to conduct a hearing.

"Attorney" means an attorney licensed to practice law in Oklahoma and a member in good standing of the Oklahoma Bar Association, or an out-of-state attorney.

"AWCA" means the Administrative Workers' Compensation Act, 85A O.S. §§1, et seq.

"Business day" means a day that is not a Saturday, Sunday, or legal holiday.

"Certified workplace medical plan" means an organization that is certified by the Oklahoma State Department of Health to provide management of quality treatment to injured employees for injuries and diseases compensable pursuant to the workers' compensation laws of the State of Oklahoma.

"Claim administrator" means the trading partner sending electronic transactions to the Commission, which can be an insurer filing directly with the Commission on its own behalf, or a servicing company/third party administrator filing on behalf of the insurer.

"Claim for compensation" means a Commission prescribed form filed by or on behalf of an injured worker or the worker's dependents to initiate a claim for benefits pursuant to the AWCA for an alleged work injury, occupational disease or illness, or death.

"Claim Information" means data submitted via First Report of Injury (FROI) or Subsequent Report of Injury (SROI).

"Claimant" means a person who claims benefits for an alleged work injury, occupational disease or illness, or death, pursuant to the provisions of the AWCA.

"Commission" means the Oklahoma Workers' Compensation Commission, a designee, or an Administrative Law Judge to whom the Commission has delegated responsibility as authorized by 85A O.S. § 21(D).

"Commission Chair" means the Chair of the Oklahoma Workers' Compensation Commission.

"Continuance" means postponing a hearing from the time or date set, and rescheduling it on a later time or date.

"Controverted claim" means there has been a contested hearing before the Commission over whether there has been a compensable injury or whether the employee is entitled to temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, or death compensation.

"Discovery" means the process by which a party may, before the hearing, obtain evidence relating to the disputed issue or issues from the other parties and witnesses.

"Document" means any written matter filed in a cause, including any attached appendices.

"Electronic Data Interchange" means the transmission of claim information through electronic means, in a format established by the Commission.

"EDI" means electronic data interchange.

"Electronic equivalent" means a Commission-approved means of filing an electronic form through the Commission's case system. In all cases where a party is required to mail a Commission form to the opposing party, a copy may be sent by electronic mail when an electronic mail address is known. In all cases where a paper form is required to be filed to effect a certain purpose, an electronic equivalent, if available, may also be filed to effect that purpose.

~~**"EDI"** means electronic data interchange.~~

"Electronic Signature" means an electronic symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Employee" means any person who meets the definition provided in 85A O.S. § 2(18). For purposes of the agriculture, ranching, or horticulture exempt status defined at 85A O.S. § 2(18)(b)(2), the exemption applies to employees engaged in agriculture, ranching, or horticulture activities as defined in 29 C.F.R. § 780.103 (agriculture), 29 C.F.R. § 780.112 (agriculture or horticulture commodity), or 29 C.F.R. § 780.120 (livestock). A list of eligible crops and commodities is incorporated by reference from the United States Department of Agriculture list found at 7 C.F.R. § 1437.13 (crops) and 7 U.S.C. § 1518 (commodity). The

crop, commodity, or livestock grown or raised by the employer must be federally funded and recognized to be eligible to claim this exemption under the AWCA.

"Executive Director" means the Executive Director of the Commission.

"FROI" means first report of injury.

"Good cause" means, in the context of a request for continuance or failure of a party to comply with the Rules of this Chapter, circumstances beyond the party's control or that the party could not reasonably foresee. In the context of a claim, defense, or order, it means a reasonable legal basis.

"Insurance carrier" means any stock company, mutual company, or reciprocal or interinsurance exchange authorized to write or carry on the business of workers' compensation insurance in this state, and includes an individual own risk employer or group self-insurance association duly authorized by the Commission to self fund its workers' compensation obligations.

"Insurer" means the entity responsible for making electronic filings as prescribed by law and these rules. This term includes self-insurers.

"Joint Petition Settlement" means a settlement between the employer/insurance carrier and the employee, of all or some issues and matters in a claim for compensation.

"Legal holiday" means only those days declared legal holidays pursuant to 25 O.S. § 82.1 or by proclamation of the Governor of Oklahoma.

"Mandatory EDI implementation date" means September 1, 2018, unless a subsequent date is adopted by the Commission.

"Mediation" means the process of resolving disputes with the assistance of a mediator, outside of a formal administrative hearing.

"Out-of-state attorney" means a person who is not admitted to practice law in the State of Oklahoma, but who is admitted in another state or territory of the United States, the District of Columbia, or a foreign country.

"Pro se" means without an attorney.

"Proceeding" means any action, case, hearing, or other matter pending before the Commission.

"Representative" means a person designated in writing by an injured employee, person claiming a death benefit, employer, insurance carrier or health or rehabilitation provider, to assist or represent them before the Commission in a matter arising under the AWCA.

"Sanction" means a penalty or other punitive action or remedy imposed by the Commission on an insurance carrier, representative, employee, employer, or health care provider for an act or omission in violation of the AWCA or a rule, judgment, order, or decision of the Commission.

"Self-insurer" means any duly qualified individual employer or group self-insurance association authorized by the Commission to self fund its workers' compensation obligations.

"SROI" means subsequent report of injury.

"Subpoena" means a Commission issued writ commanding a person to attend as a witness to testify or to produce documents, including books, papers and tangible things, at a deposition or at a hearing.

"Trading Partner" means an entity that has registered with the Commission to exchange data through Electronic Data Interchange.

"Workers' compensation fee schedule" means a state mandated schedule of maximum allowable reimbursement levels for health care providers, including hospitals, ambulatory surgical centers, and inpatient rehabilitation facilities, rendering reasonable and necessary health care services and supplies to an injured employee for a compensable injury pursuant to the Oklahoma workers' compensation laws.

"Written" means that which is expressed in writing, and includes electronic records.

SUBCHAPTER 3. INFORMAL DISPUTE RESOLUTION PROCESSES

810:10-3-6. Certified mediators

(a) **Mediator list.** The Commission shall maintain a list of private mediators to serve as certified mediators for the Commission's alternative dispute resolution program. The list shall be placed on the Commission's website at <http://www.wcc.ok.gov>.

(b) **Qualifications.** To be eligible for appointment by the Commission to the list of certified workers' compensation mediators for a five-year period, the individual must:

(1) be an attorney or non-attorney who has worked in the area of Oklahoma workers' compensation benefits for at least five (5) years; and

(2) otherwise have complied with the requirements of 85A O.S. § 110.

(c) **Application for appointment.** To request appointment to the list of certified workers' compensation mediators, an individual shall:

(1) Submit a signed and completed Commission prescribed Mediator Application form and resume to the following address: Oklahoma Workers' Compensation Commission, Attention: Legal Operations Director ~~COUNSELOR DIVISION~~, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105. Illegible, incomplete, or unsigned applications will not be considered by the Commission and shall be returned. A copy of the Mediator Application form may be obtained from the Commission at the address set forth in this Paragraph, or from the Commission's website at <http://www.wcc.ok.gov>; and

(2) Verify that the individual, if appointed, will:

(A) schedule a mediation session within thirty (30) days of the order appointing the mediator, unless otherwise agreed to by the parties;

(B) schedule mediation sessions for a minimum two (2) hour block of time, and not schedule more than one mediation session to take place at a time;

(C) submit biennially to the Legal Operations Director ~~Counselor Division~~ written verification of compliance with the continuing education requirements prescribed by 85A O.S. § 110(H); and

(D) accept as payment in full for services rendered, compensation not exceeding the rate or fee provided in 810:10-3-12.

(d) **Renewal process.**

(1) The Commission shall notify a certified mediator of the end of the mediator's five-year qualification period at least sixty (60) calendar days before the expiration of that period.

(2) Criteria for reappointment is the same criteria as for initial appointment in effect at the time of reappointment.

(e) **Revocation.**

(1) Removal of an individual from the list of certified workers' compensation mediators shall be by request of the mediator or by the Commission after notice and opportunity for hearing.

(2) The Commission may remove a mediator from the list of certified workers' compensation mediators for cause, including, but not limited to the following grounds:

(A) a material misrepresentation in information submitted to apply for appointment to the Commission's list of certified workers' compensation mediators;

(B) refusal or substantial failure to comply with this Section or other applicable Commission rules, and statutes.

(3) Proceedings related to revocation shall be governed by 810:10-5-50 on show cause hearings and the contested hearings rules set forth in Subchapter 5 of this Chapter.

SUBCHAPTER 5. HEARINGS CONDUCTED BY ADMINISTRATIVE LAW JUDGES AND COMMISSIONERS

PART 13. DISMISSALS

810:10-5-85. Dismissals

(a) **Generally.** Except as otherwise required by law, unless good cause is shown, dismissal of a complaint shall be without prejudice.

(b) **Untimely prosecution or failure to prosecute claim.** Pursuant to 85A O.S. § 69(A)(4), the Commission, on motion and after notice and hearing, shall dismiss a claim for compensation with prejudice to the refiling of a claim if the employee does not:

(1) make a good-faith request for a hearing to resolve a dispute regarding the right to receive benefits, including medical treatment, under the AWCA within six (6) months of the date the claim is filed, or

(2) receive or seek benefits, including medical treatment, under the AWCA for a period of six (6) months.

The Commission may set such claims on a disposition docket.

~~(1) The Commission, on motion and after notice and hearing, may dismiss a claim for compensation with prejudice if no bona fide request for hearing with respect to the claim has been made within six (6) months of the filing of claim. The Commission may set such claims on a disposition docket.~~

~~(2) The Commission shall dismiss a claim for additional compensation without prejudice to refiling of the claim within the limitation period specified in 85A O.S. § 69(B), if no bona fide request for hearing with respect to the claim has been filed within six (6) months after the filing of the claim for additional compensation. A claim for additional compensation is described in 85A O.S. § 69(B)(C)(D).~~

(c) **Request of party filing claim for compensation.** Voluntary dismissal of a claim for compensation pursuant to a request of the worker is authorized in 85A O.S. § 108. This law gives the injured worker, upon order of the Commission and payment of the \$140.00 final award fee provided for in 85A O.S. § 118, the right to dismiss the worker's claim for compensation at any time before final submission of the case to the Commission for decision. The worker's application for dismissal shall be made on a Commission prescribed CC-Form-100 upon payment of the \$140.00 final award fee or execution of a payment plan approved by

the Commission's business office. The dismissal shall be without prejudice, unless the Commission's order on the CC-Form-100 clearly identifies the dismissal as with prejudice. Prior to entering an order for dismissal with prejudice, the Commission may require notice and an evidentiary hearing.

CHAPTER 20. VOCATION REHABILITATION SERVICES

810:20-1-4. Vocational Rehabilitation Director

To carry out the vocational rehabilitation provisions of AWCA and this Chapter, the Commission ~~shall~~ may hire or contract for a Vocational Rehabilitation Director to oversee the vocational rehabilitation program of the Commission and focus on helping injured workers return to the work force. The Commission may hire such additional personnel, within budgetary constraints, as may be deemed necessary to assist the Vocational Rehabilitation Director.