

**TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION
EMERGENCY RULES as approved by the Commission 1/16/2014**

CHAPTER 2 - Practice and Procedure

Subchapter 1 - General Provisions

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810:2-1-1. Purpose

This Chapter provides rules of practice and procedure, both informal and formal, to govern all workers' compensation proceedings coming before the Commission for disposition pursuant to the AWCA.

810:2-1-2. Scope

- (a) The rules of this Chapter shall be known as the "Oklahoma Workers' Compensation Commission Rules of Practice and Procedure", and may be cited as OAC 810:2.
- (b) The rules of this Chapter shall govern all proceedings before the Commission, the Commissioners, any Commission Administrative Law Judge, the Executive Director, or other officer or employee of the Commission, regarding and related to a work injury, occupational disease or illness, or death, occurring on and after February 1, 2014, as provided in the AWCA.
- (c) The rules of this Chapter shall not be construed as limiting the Commission's authority to grant an exception, for good cause shown, to any rule contained herein, unless otherwise precluded by law.

810:2-1-3. 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:

"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 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.

"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.

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

"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.

"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.

"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.

“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.

“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.

810:2-1-4. Reporting injuries or deaths

(a) **Employer’s first report of injury.**

(1) Within ten (10) days after the date of receipt of notice or of knowledge of death or injury that results in more than three days’ absence from work for the injured employee, the employer shall send a report thereof to the Commission as provided in 85A O.S. §63, on a form prescribed by the Commission that includes, in addition to other required information, the worker’s full name and date of birth, and the last four digits of the worker’s Social Security number. The report shall be known as the Employer’s First Notice of Injury. The employer also shall send the report to the employer’s insurance carrier, if any, within the ten day period.

(2) The report shall contain the information required by 85A O.S. §63 and any additional information prescribed by the Commission.

(b) **Additional reporting requirements.** Reports or additional reports with respect to the death, injury and of the condition of the employee shall be sent by the employer to the Commission at such time and in such manner as the Commission may prescribe.

(c) **Evidentiary effect of reports.** Any report provided pursuant to this Section shall not be evidence of any fact stated in the report in any proceeding with respect to the injury or death for which the report is made.

(d) **Sanctions.** Failure or refusal of an employer to comply with the reporting requirements of this Section may subject the employer to sanctions prescribed in 85A O.S. §63.

810:2-1-5. Commencing temporary total disability compensation and medical benefits

(a) Upon receipt of notice or of knowledge that an employee has been injured, the employer has an obligation under the AWCA to provide that employee with reasonable and necessary medical treatment for the injury, and to pay temporary total disability compensation if the employee is unable to perform the employee’s job, or any alternative work offered by the employer, for more than three (3) calendar days. No order from the Commission directing the employer to provide these benefits is required.

(b) The first installment of temporary total disability compensation is due on the fifteenth day after the employer has notice of the injury. By that date, all temporary total disability compensation then accrued shall be paid to the employee, and weekly installment payments shall be made thereafter, unless the employer controverts the employee’s right to compensation as provided in 85A O.S. §86 by timely filing a Commission prescribed Employer’s Intent to Controvert Claim form with the Commission. To be timely, the employer must file the Employer’s Intent to Controvert Claim within fifteen (15) days after notice of the injury, or by such later date as fixed by the Commission, in its discretion, upon the employer’s written request for a

filing extension. The request must be postmarked within the fifteen-day period after the employer has notice of the injury. The employer shall send a copy of the Employer's Intent to Controvert Claim to the employee and so certify on the form when filed. The employee may request a hearing before an Administrative Law Judge of the Commission no sooner than ten (10) days after filing a claim for compensation with the Commission as provided in 810:2-5-2.

810:2-1-6. Terminating temporary compensation

(a) Temporary compensation may be terminated if the worker has no claim for compensation on file with the Commission. If there is a claim for compensation on file, the employer may terminate temporary compensation without a Commission order only if one of the following events occurs:

- (1) The employee returns to full-time employment;
- (2) The employee, or if represented, the employee's attorney, receives written notification from the employer that the temporary total disability benefits were terminated for a cause stated in 85A O.S. §45(A)(2). The cause shall be specified in the notice;
- (3) The employee is incarcerated for a misdemeanor or felony conviction in this state or another jurisdiction;
- (4) The employee files a permanent disability rating report or a request for hearing before the Commission on permanent disability;
- (5) The parties voluntarily agree in writing to terminate temporary compensation;
- (6) The employee dies; or
- (7) Any other event that causes temporary compensation to be lawfully terminated without Commission order as provided in 85A O.S. §62, or as otherwise permitted in the AWCA.

(b) In all other instances, temporary compensation may be terminated only by Commission order. An employer may request a hearing on the termination of temporary total disability benefits by filing a CC-Form-13 Request for Prehearing Conference with the Commission and concurrently mailing a copy thereof to the opposing parties. The CC-Form-13 mailed to the opposing parties shall include a copy of all evidentiary exhibits, including any medical report, relied upon by the employer in support of terminating temporary compensation.

(c) If an employer is found to have improperly terminated temporary compensation, the Commission may require the employer to file a new CC-Form-13 Request for Prehearing Conference and show full compliance with this Section before a hearing on the employer's request to terminate temporary compensation will be conducted.

(d) If the employee files an objection to the employer's termination of temporary total disability benefits within ten (10) days of the termination, the employee may request an expedited hearing on the issue of reinstatement of the benefits as provided in 85A O.S. §45(A)(2).

810:2-1-7. Forms and other documents generally

(a) All forms, pleadings, proposed orders, correspondence or other documents submitted to the Commission shall:

- (1) be typewritten or printed legibly on 8 ½ " by 11" paper;
- (2) refer to the Commission file number if assigned;
- (3) bear the typed or printed name, mailing address, telephone number, and signature, of the person who prepared the document, including the firm name if applicable; and
- (4) include the attorney's Oklahoma Bar Association number, if the document is submitted by an attorney licensed to practice law in Oklahoma.

(b) The signature of an attorney or party constitutes the following:

- (1) a certification that the claim, request for benefits, request for additional benefits, controversion of benefits, request for a hearing, pleading, form, motion, or other paper has been read;
 - (2) that it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and
 - (3) that it is not brought for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
- (c) If a claim, request for benefits, request for additional benefits, request for hearing, pleading, motion, or other paper:
- (1) is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant; or
 - (2) is signed in violation of the AWCA, the Commission, including Administrative Law Judges, on motion or on their own initiative, shall impose an appropriate sanction as prescribed in 85A O.S. §83.
- (d) All documents filed with the Commission shall be served on all parties and shall have a certificate of service setting forth the manner of such service. A copy of all correspondence addressed to the Commission with respect to a pending matter shall be sent to all parties at the time it is sent to the Commission and shall list the parties to whom copies were sent.
- (e) All forms filed with the Commission shall be file-stamped by the Clerk of the Commission on the date of receipt.

810:2-1-8. Display and use of an individual's Social Security number

Unless otherwise ordered or as otherwise provided by law, every filer may limit the employee's or the employee's dependent's Social Security number to only the last four digits of that number in all pleadings, papers, exhibits or other documents, or Commission forms prescribed by the Commission. The responsibility for following this provision rests solely with counsel, the parties, or any other filer. The Clerk of the Commission shall not have any duty to review documents for compliance with this provision. If a filer includes the Social Security number in any document filed with the Commission, the document becomes a public record as filed. Nothing in this Section shall impact the confidentiality of any records the Legislature has determined are confidential.

810:2-1-9. Who may appear before Commission

- (a) Attorneys licensed to practice law in Oklahoma and members in good standing of the Oklahoma Bar Association may appear on behalf of parties to litigation before the Commission and in Joint Petition Settlement proceedings before the Commission. Legal interns licensed by the Oklahoma Supreme Court may appear on behalf of a party only on matters properly within the scope of their license. Out-of-state attorneys who have complied with the requirements of Chapter 1, Appendix 1, Article II, Section 5 of Title 5 of the Oklahoma Statutes may appear on behalf of a party with leave of the Commission. The attorney shall file an entry of appearance with the Commission as provided in 810:2-1-10.
- (b) A corporation, limited liability company, insurance carrier, individual own risk employer, and group self-insurance association, may appear only by its attorney, or by a designated representative with full settlement authority.
- (c) Any entity listed in subsection (b), which desires to appear by non-lawyer representative, must submit the credentials of the designated representative to the Commission in advance of the representative's first appearance at a Commission proceeding. The Commission will maintain a record of the representative's credentials to facilitate subsequent appearances.

(d) Representatives attempting to appear without complying with subsection (c) will not be allowed to proceed on behalf of their respective party. Authorization to appear as a non-lawyer representative is a privilege which may be withdrawn at any time. Non-lawyer representatives shall be held to the same ethical standards as attorneys of record in Commission proceedings, and are expected to be familiar with and follow the rules of this Chapter. Misuse or abuse of this privilege with the intent of harassment or delay may result in sanctions being imposed against the representatives and/or parties involved.

(e) Individuals may appear *pro se* at any time.

810:2-1-10. Contact information for service of notice; entry of appearance; leave to withdraw

(a) **Contact information for service of notice.**

(1) Each party, upon instituting or responding to any proceedings before the Commission, shall file with the Commission the party's address, or the name and address of any agent upon whom notices shall be served to such party or agent at the last address so filed with the Commission. A party, including a claimant acting *pro se*, shall promptly communicate any change of address to the Commission's Docket Office.

(2) An attorney of record, as defined in Subsection (d) of this Section, shall give notice of a change of address by providing the Commission's Docket Office with a copy of the letterhead containing the new address and a list containing the Oklahoma Bar Association number of each attorney member of the firm who regularly appears before the Commission.

(3) Notice and service of documents may be made as prescribed in 12 O.S. § 2005(B). It is the responsibility of parties to an action before the Commission to provide a current mailing address, and email address if available, to Commission staff. Notices and documents sent to the last known address or email address on file with the Commission, are presumed delivered in a timely manner, and presumed received.

(b) **Entry of appearance.**

(1) An entry of appearance shall be filed by any attorney or law firm representing any party in any proceeding before the Commission. No attorney or law firm will be recognized in any case before the Commission unless the attorney or law firm duly entered their written appearance. When an entry of appearance has been duly filed by a law firm, any attorney member of that firm may appear and be recognized by the Commission. All entries of appearance when filed shall be accompanied by a written authorization signed by the client and attorney identifying the attorney or law firm as the client's representative, as defined in 810:2-1-3, to provide services in the workers' compensation matter, including the presentation of evidence as provided in 85A O.S. §71(C)(1)(a).

(2) An appearance on behalf of the employer/insurance carrier shall be filed no later than ten (10) days after the employer/insurance carrier's receipt of a file-stamped copy of a claimant's claim for compensation filed pursuant to 810:2-5-2. The entry of appearance for the employer/insurance carrier shall identify whether or not the employer is an active member of a certified workplace medical plan in which the claimant is potentially enrolled, and if so, the name of the plan.

(c) **Leave to withdraw.**

(1) Once an entry of appearance has been filed, Leave to Withdraw can only be had upon written order of the Commission following appropriate notice to the client and the opposing side. Substitution of Counsel may be had by filing with the Commission and serving on the opposing party a notification of the substitution, signed by the attorney of record, the substituted attorney and the client. Notification of the substitution when filed shall be accompanied by a written authorization signed by the client and substituted attorney identifying the attorney as the client's representative to provide services in the workers' compensation matter, including the presentation of evidence as provided in 85A O.S. §71(C)(1)(a).

(2) Except when an attorney's representation has been terminated at the client's initiative, no attorney shall be allowed to withdraw as an attorney for a party when that attorney has signed the pleadings necessary to perfect an appeal to the Commission en banc. This prohibition shall apply until the appeal has been fully submitted to the Commission en banc for consideration. This prohibition shall not apply if another attorney has entered an appearance for the appealing party before the filing of the application to withdraw.

(d) **Attorney of record.**

(1) The attorney of record for the claimant in a case shall be the attorney signing the first claim for compensation filed in the case for the claimant as provided in 810:2-5-2. Any other attorney who files an entry of appearance on behalf of any party in the case or who is identified as a substitute attorney pursuant to a notice of substitution of attorney shall also be considered an attorney of record. The Commission shall send notices to all attorneys of record until a substitution of attorney has been filed or an Application for Leave to Withdraw has been filed and granted by the Commission. Various attorneys may appear before the Commission in a matter, but notice shall be sent only to those attorneys who are an "attorney of record" as defined in this Subsection.

(2) Attorneys of record who change law firms shall notify the Commission of the status of the representation of their clients, and shall immediately seek Leave to Withdraw, when appropriate.

810:2-1-11. Designation of agent for service of notice

(a) Each insurance carrier, as defined in 810:2-1-3, shall designate a single agent for service of notice by filing a Designation of Service Agent form with the Commission. A copy of the form may be obtained from the Commission at its main offices, or from the Commission's website.

(b) Once a claim for compensation is filed as provided in 810:2-5-2, if the employer is self-insured or insured by an insurance carrier, the Commission shall send all notices and correspondence to the designated agent, until an entry of appearance is filed as provided in 810:2-1-10. If no agent for service of notice is designated on a Designation of Service Agent form, notices and correspondence shall be sent to the:

(1) signatory on the self-insurance application, if the insurer is an individual own risk employer;

(2) Administrator of the group self-insurance association, if the insurer is a group self-insurance association;

(3) person designated to receive notice of service of process for an insurer as provided in 36 O.S. §621, if the insurer is a foreign or alien insurance carrier;

(4) President and Chief Executive Officer of CompSource Oklahoma, if the insurer is CompSource Oklahoma; or

(5) service agent on file with the Oklahoma Secretary of State, if the insurer is a domestic insurance carrier.

(c) If the employer is uninsured or the Commission cannot determine insurance coverage, notice and correspondence shall be sent to the employer at the address supplied by the claimant on the claim for compensation form prescribed in 810:2-5-2. If the notice is returned to the Commission because the claimant has supplied the wrong address for the employer, the Commission shall so inform the claimant. The claimant has the obligation of providing the Commission with the proper address so notices and correspondence can be sent to the employer.

810:2-1-12. Prohibited communications

(a) Ex parte communications by an Administrative Law Judge of the Commission with any party, witness or medical provider are proscribed in 85A O.S. §105, and may subject the Administrative Law Judge to disqualification from the action or matter upon presentation of an application for disqualification.

(b) Parties, attorneys, mediators, case managers, counselors, vocational rehabilitation evaluators, witnesses and medical providers shall have no ex parte communications with the assigned Administrative Law Judge regarding the merits of a specific matter pending before the judge.

(c) Direct or indirect ex parte communications by a party or their attorney, agent, employees, or anyone else acting on their behalf, with a Commission appointed professional regarding specific cases or claimants are prohibited except as authorized in Paragraph (2) of this Subsection.

(1) For purposes of this Subsection, "Commission appointed professionals" means independent medical examiners, vocational rehabilitation counselors, case managers, and others who have been appointed by the Commission to provide services or treatment to the claimant. The term also includes the office staff of the professional and any physician who accepts a referral from a Commission appointed professional for treatment or evaluation of the claimant when such referral is authorized by the Commission. The term excludes a treating physician selected pursuant to 85A O.S. §56 regarding change of physician.

(2) The following communications are permitted communications:

(A) Joint letter of the parties requesting information or opinions from the Commission appointed professional after approval by the assigned Administrative Law Judge;

(B) Communication with the staff of a Commission appointed independent medical examiner to schedule or verify an appointment, or to authorize diagnostic testing, treatment or surgery;

(C) Communication with a Commission appointed medical case manager concerning light duty issues consistent with the physician's restrictions;

(D) Any communication between the claimant and the Commission appointed professional necessary to complete the claimant's treatment, testing or evaluation; and

(E) Communication between Commission appointed professionals.

(3) Failure to comply with this Subsection may, in the discretion of the assigned Administrative Law Judge, result in the imposition of costs, a citation for contempt, or sanctions against the offending party.

(4) Instances of prohibited communications with a Commission appointed professional shall be communicated by the Commission appointed professional to the assigned Administrative Law Judge and all parties or counsel, in writing.

810:2-1-13. Time computation

(a) **Generally.** The time within which an act is to be done, as provided in the AWCA or this Title, shall be computed by excluding the first day and including the last day. If the last day is a legal holiday, it shall be excluded, and performance of that act shall be required on the next regular business day. Time limits related to filing dates shall be computed as provided in this Section from the date of filing as reflected by the date of the file stamp on the document.

(b) **Time period of less than eleven days.** When the period of time prescribed or allowed is less than eleven (11) days, intermediate legal holidays and any other day when the office of the Clerk of the Commission does not remain open for public business until the regularly scheduled closing time, shall be excluded from the computation.

CHAPTER 2 - Practice and Procedure

Subchapter 3 - Informal Dispute Resolution Processes

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810:2-3-1. Purpose

This Subchapter establishes procedures and standards governing alternative dispute resolution, including mediation, as an informal dispute resolution process for workers' compensation claims and issues, as authorized in 85A O.S. §70 regarding preliminary conferences, 85A O.S. §109 regarding the Commission counselor program, and 85A O.S. §110 regarding alternative dispute resolution and mediation.

810:2-3-2. Policy

The Oklahoma Workers' Compensation Commission is committed to the use of alternative dispute resolution procedures in workers' compensation claims, and all parties to workers' compensation claims are encouraged to voluntarily consider mediation as an alternative to traditional trials for the resolution of their disputes. Such informal procedures can achieve the just, efficient and economical resolution of controversies while preserving the right to a full administrative hearing on demand.

810:2-3-3. Counselor program

(a) The Commission shall maintain a workers' compensation counselor program to assist injured employees, employers and persons claiming death benefits under the AWCA. The program shall be administered by the Counselor Division of the Commission.

- (b) A Division counselor shall:
 - (1) meet with or otherwise provide information to injured employees;
 - (2) investigate complaints;
 - (3) communicate with employers, insurance carriers, individual own risk employers, group self-insurance associations, and health care providers on behalf of injured employees;
 - (4) provide informational seminars and workshops on workers' compensation for medical providers, insurance adjustors, and employee and employer groups; and
 - (5) develop informational materials for employees, employers and medical providers.
- (c) Notice of the availability of the services of the counselor program and of the availability of mediation and other forms of alternative dispute resolution to assist injured workers shall be mailed to the injured worker within ten (10) days of the filing of the Employer's First Notice of Injury as provided in 810:2-1-4. Information about the counselor program and the availability of alternative dispute resolution also shall be made part of the Commission's training materials for self-insurers and claims representatives handling Oklahoma workers' compensation claims.

810:2-3-4. Mediation process, generally

All workers' compensation issues may be mediated except for disputes related to medical care under a certified workplace medical plan or claims against the Multiple Injury Trust Fund. Mediation shall be voluntary, informal, nonbinding (unless the parties enter into a settlement agreement) and strictly confidential. If an agreement is not reached, the results and statements made during the mediation are not admissible in any following proceeding except as provided in 810:2-3-10. Mediation may be by mutual agreement of the parties to a workers' compensation dispute or pursuant to a referral order by the assigned Administrative Law Judge as provided in 85A O.S. §110(E) following the filing of a request for administrative hearing and assent of the parties to mediate. Parties may waive mediation and proceed directly to an administrative hearing. General information about mediation in workers' compensation may be obtained from the Commission's Counselor Division.

810:2-3-5. Preliminary conferences

- (a) Pursuant to 85A O.S. §70, the Counselor Division is directed to:
 - (1) assist unrepresented claimants to enable those persons to protect their rights in the workers' compensation system; and
 - (2) facilitate informal dispute resolution and settlement of workers' compensation claims and issues through preliminary conferences, called Mediation Conferences.
- (b) Division counselors are authorized to advise unrepresented claimants and to approve Joint Petition Settlements which may result from a preliminary conference; provided, the same counselor who conferred with the claimant may not also approve the Joint Petition Settlement.
- (c) A Mediation Conference as provided in this Section may be conducted by agreement of the parties to a workers' compensation dispute or pursuant to a referral order by the assigned Administrative Law Judge following the filing of a request for hearing and assent of the parties to mediate as provided in 85A O.S. §110. All workers' compensation issues may be mediated except for disputes related to medical care under a certified workplace medical plan or claims against the Multiple Injury Trust Fund.
- (d) A Mediation Conference set and conducted as provided in this Section shall be voluntary, informal, nonbinding and strictly confidential. The mediator is authorized to compel attendance at the conference, but is not authorized to compel settlement. Attendance by the parties, and/or a representative of each party having full authority to settle all issues, is required. Failure to attend

a Mediation Conference pursuant to this Section without good cause is subject to sanctions for contempt as provided in 85A O.S. §73(B).

(e) The Mediation Conference may be held in the county where the accident occurred, if the accident occurred in Oklahoma, unless otherwise agreed to by the parties, or as otherwise directed by the Commission. Mediation Conferences involving a nonresident claimant or an accident occurring outside Oklahoma shall be held at the main offices of the Commission in Oklahoma City, Oklahoma, unless otherwise agreed to by the parties, or as otherwise directed by the Commission.

(f) A Mediation Conference may be concluded by any party at any time, by the mediator if in the mediator's discretion it is necessary or an impasse exists, or upon an agreement or settlement being reached by the parties. Whether or not an agreement or settlement is reached, upon conclusion of the conference, the mediator shall complete the Commission prescribed Report of Mediation Conference form and send a copy to each party. The original Report of Mediation shall be filed in the Commission case file, and if there is none, then shall be retained by the Counselor Division.

(g) Except as otherwise provided in Subsections (c) through (f) of this Section, a Mediation Conference conducted by the Counselor Division shall be conducted according to the policies and procedures applicable to mediation conferences of workers' compensation matters by private mediators as provided in 810:2-3-4, 810:2-3-7 through 810:2-3-11.

810:2-3-6. 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: 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 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 810:2-3-12.

(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 810:2-5-50 on show cause hearings and the contested hearings rules set forth in Subchapter 5 of this Chapter.

810:2-3-7. Mediation without Commission order of referral

Mediation shall be voluntary and shall not be conducted without the consent of the parties. Parties to a workers' compensation dispute subject to mediation may mutually agree to mediation by a mediator certified by the Commission, to a preliminary conference pursuant to 810:2-3-5, to a Commission mediator pursuant to 85A O.S. §110(D), or may schedule and proceed with mediation independent of the Commission's processes and with a mediator of their choice. A party may initiate voluntary mediation with a Commission certified mediator by submitting a request for mediation in writing to the Commission's Counselor Division. The Division shall contact the opposing party to ascertain whether or not there is an agreement to mediate. Failure of the opposing party to respond to a request for mediation within fifteen (15) days of notification thereof shall be deemed a refusal to mediate. If mediation is agreed to, the parties shall enter into and submit to the Division a signed, written consent to mediate. If the parties are unable to agree upon a mediator from the Commission's list of certified mediators or elect not to mediate using the preliminary conference process, the Division shall assign a certified mediator, taking into consideration the availability and location of the certified mediator.

810:2-3-8. Mediation by Commission order of referral

The Commission may order referral to mediation pursuant to an order by the assigned Administrative Law Judge as provided in 85A O.S. §22(C)(9) and 85A O.S. §110(E) following the filing of a request for administrative hearing and assent of the parties to mediate.

810:2-3-9. Mediator powers and responsibilities

The mediator:

(1) has a duty to be impartial and to advise all parties of any circumstances bearing on possible bias, prejudice or partiality;

(2) does not have the authority to impose a settlement upon the parties, but shall assist the parties to reach a satisfactory resolution of their dispute;

(3) may direct questions to any of the parties or their respective representatives to

supplement or clarify information;

(4) may obtain expert advice concerning technical aspects of a claim, whenever necessary and with the consent of the parties;

(5) may conduct separate meetings know as caucuses with each party, but shall not use these meetings as a time to coerce any party to settle. No information from a caucus may be divulged without permission of the party participating in the caucus; and

(6) immediately following conclusion of mediation proceedings, report the results of the mediation to the Counselor Division on a Report of Mediation Conference form prescribed by the Commission. The report is required for all cases mediated by mutual agreement of the parties or pursuant to Commission order of referral, whether or not the parties reached an agreement.

810:2-3-10. Confidentiality of proceedings; attendance

(a) Mediation sessions are private and shall not be recorded or transcribed in any way. Those in attendance may take notes during the mediation but all notes shall be collected by the mediator at the end of each session and held in a confidential file until the mediation process is completed. When the mediation process is completed, whether or not an agreement is reached, all notes and other writings produced while a mediation is in session, except the written agreement or memorandum of understanding, shall be destroyed.

(b) The parties and one representative for each party may attend mediation sessions. The claimant shall be in attendance, unless all parties agree otherwise. A claimant may participate in mediation without counsel. Other persons may attend only with the consent of all parties and the mediator. Non-parties to the claim shall be advised by the mediator regarding confidentiality and are not allowed to participate in the mediation, but may confer privately with their sponsoring party. All persons attending a mediation session shall respect and maintain the total confidentiality of the session. Attendance at a mediation session shall be in person, except as otherwise authorized in advance by the assigned Administrative Law Judge, if any, or by agreement of the parties and the mediator.

(c) Evidence of statements made and conduct occurring in a mediation conference shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim. However, no evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediation conference.

(d) No mediator shall be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediation conference in any civil proceeding for any purpose, except for proceedings of the State Bar Association, disciplinary proceedings of any agency established to enforce standards of conduct for mediators, and proceedings to enforce laws concerning juvenile or elder care.

(e) Statistical information regarding use of mediation in workers' compensation is subject to public disclosure.

810:2-3-11. Concluding mediation

During the mediation conference, the parties may agree to resolve a particular issue, settle the entire claim or conclude the mediation without reaching an agreement or settlement. A mediation conference may be concluded by any party at any time, by the mediator if in the mediator's discretion it is necessary or an impasse exists, or upon an agreement being reached by the parties. If an agreement is reached, the agreement shall be reduced to writing by the mediator, then read and signed by the parties and their counsel, if any, and the mediator. If the agreement requires a Commission order, the order must be presented for approval. Whether or not the parties

reached an agreement or mediated by mutual agreement or pursuant to Commission order of referral, the mediator shall report the results of the mediation as provided in 810:2-3-9.

810:2-3-12. Mediator fees

(a) A mediator certified by the Commission as provided in 810:2-3-6 shall be entitled to a fee that does not exceed One Hundred Dollars (\$100.00) per hour, or portion thereof, for mediation conferences, not to exceed a total fee of Eight Hundred Dollars (\$800.00) for any mediation conference, even though the conference may recess and reconvene subsequently on one or more dates. The employer or insurance carrier shall pay the mediator Two Hundred Dollars (\$200.00) on or before the initial mediation session. This payment shall be applied against the Eight Hundred Dollars (\$800.00) owed for the mediation conference. If the mediation is concluded at the initial mediation session, the mediator shall bill the employer or insurance carrier the remaining balance of the total fee. If the mediation conference is recessed and reconvened by the mediator, the respondent shall pay the remaining balance to the mediator on or before the first reconvened date. The mediator shall disclose the mediator's fees to the parties when scheduling the initial mediation session. Mediators shall be entitled to reimbursement for mileage and necessary lodging expenses, limited to the provisions of the State Travel Reimbursement Act, 74 O.S. §§500.1, et. seq. These reimbursements shall be in addition to the fees set forth in this Subsection.

(b) Nothing in this Section shall prohibit a certified mediator from charging a flat fee for a mediation conference, subject to the limits specified in this Section.

CHAPTER 2 - Practice and Procedure

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PART 1 - COMMENCEMENT OF CLAIMS

Section 810:2-5-1	Purpose
Section 810:2-5-2	Claim for compensation
Section 810:2-5-3	Claim against the Multiple Injury Trust Fund
Section 810:2-5-4	Claim for death benefits
Section 810:2-5-5	Review of adverse benefit determination by qualified employers

810:2-5-1. Purpose

This Subchapter establishes procedures and standards governing the commencement of claims for disposition by the Oklahoma Workers' Compensation Commission as provided in the AWCA.

810:2-5-2. Claim for compensation

(a) A claim for compensation for benefits for an injury, including a cumulative trauma injury and death, or occupational disease or illness, occurring on or after February 1, 2014, shall be commenced by filing, in quadruplicate, an executed notice form with the Commission that includes the employer's Federal Employer Identification Number and the worker's full name and date of birth, and the last four digits of the worker's Social Security number. The following forms shall be used, as appropriate:

- (1) CC-Form-3 claim for compensation for benefits for a single event or cumulative trauma injury;
- (2) CC-Form-3A claim for compensation for death benefits; and
- (3) CC-Form-3B claim for compensation for occupational disease or illness benefits.

(b) A proceeding under 810:3-15-3 to address payment of disputed fees for health services

(e.g. physician fees, hospital costs, etc.), vocational rehabilitation or medical case management, shall be commenced by filing an MFDR Form 19. A CC-Form-9 shall be filed to request a hearing on an MFDR Form 19 dispute.

(c) Within ten (10) days of the filing of a claim for compensation (i.e. CC-Form-3, CC-Form-3A or CC-Form-3B), the Commission shall mail a copy of the claim form bearing the assigned file number to the service agent designated by the self-insured employer, group self-insurance association, insurance carrier or CompSource Oklahoma as provided in 810:2-1-11, or as otherwise directed in that Section.

810:2-5-3. Claim against the Multiple Injury Trust Fund

(a) A claim against the State Treasurer as custodian of the Multiple Injury Trust Fund shall be commenced by filing an executed CC-Form-3F. The CC-Form-3F shall list each of the claimant's prior adjudicated claims, the date of each injury, the file number and the percentage of permanent partial disability awarded for each injury. If the claimant claims a pre-existing obvious and apparent disability, the disability shall be fully described on the CC-Form-3F, but no percentage of impairment need be included. A CC-Form-9 shall be filed to request a hearing. Upon filing the CC-Form-9, the claimant or the claimant's attorney, if any, shall mail a copy thereof to the Multiple Injury Trust Fund.

(b) The CC-Form-3F filed with the Commission shall be served on the State Treasurer and the Multiple Injury Trust Fund and shall have a certificate of service setting forth the manner of such service as required by 810:2-1-7.

(c) A notation on the CC-Form-3 or CC-Form-3B that the claimant is a previously impaired person shall not be deemed to commence a claim against the Multiple Injury Trust Fund. The CC-Form-3F must be filed in the claim in which benefits are sought and shall use that same Commission file number.

(d) All requests by the Multiple Injury Trust Fund for the appointment of an independent medical examiner shall be governed by 85A O.S. §112 and 810:2-5-45.

810:2-5-4. Claim for death benefits

(a) Death claims must be filed by the personal representative of the deceased employee's estate if probate proceedings have begun. If no probate proceeding has been brought, a death claim may be filed by the surviving spouse, or where there is no such spouse, then by the next of kin of the deceased employee. If the latter is incompetent or a minor, the guardian of such person shall be the proper party-claimant.

(b) All persons who have or may assert a claim for death benefits shall be named in the claim and their addresses and relationship to the deceased shall be given.

(c) If there are any beneficiaries named in the claim whose current whereabouts are not known, notice to such persons shall be obtained by publication in the county in which the decedent last resided, and the county of the last known address of any such beneficiary. Publication shall be for one time per week for three (3) successive weeks.

810:2-5-5. Review of adverse benefit determination by qualified employers

(a) A claim for review of a qualified employer's adverse benefit determination pursuant to the Oklahoma Employee Injury Benefit Act, 85A O.S. § 211, may be commenced by filing a claim for compensation as provided in 810:2-5-2. The claimant should note clearly on the appropriate form that the employer is a qualified employer, and attach supporting documentation from the employer which details the facts of the determination, as well as a position statement from the claimant.

(b) The qualified employer may file a response as provided below in 810:2-5-15.

- (c) Within fifteen (15) days of receipt of notice that the claim has been filed, the employer shall transmit to the Commission a copy of the complete record of the case from the employer's internal appeals process.
- (d) Upon receipt of the claim for review, the Commission may hear the matter *en banc* or refer the case to an Administrative Law Judge. Findings of fact contained in the employer's record shall be considered conclusively established, and shall not be disturbed unless clearly erroneous. The Commission may request additional information from either party prior to rendering a decision.
- (e) The Commission may reverse all or part of the employer's benefit determination if contrary to applicable law, or to the terms of the employer's plan. Any such judgment of the Commission shall contain specific findings relating to the reversal.

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PART 3 - SUBSEQUENT PLEADINGS

- Section 810:2-5-15 Response to initial pleading; notice of contested issues
- Section 810:2-5-16 Request for administrative hearing and pretrial stipulations
- Section 810:2-5-17 Joinder and consolidation of proceedings
- Section 810:2-5-18 Continuances
- Section 810:2-5-19 Pauper status

810:2-5-15. Response to initial pleading; notice of contested issues

- (a) An employer or its insurance carrier may respond to any issue related to a claim and liability therefor, including a claim for compensation, a claim for payment of health care or rehabilitation expenses, or a claim against the Multiple Injury Trust Fund for combined disabilities, by timely filing a CC-Form-10 Answer and Notice of Contested Issues or an MFDR Form 10M, pursuant to 810:2-5-16 or 810:3-15-3, as appropriate.
- (b) A general denial or failure to timely file a CC-Form-10 or MFDR Form 10M shall be taken as admitting all allegations in the claim form except jurisdictional issues; and
 - (1) the extent, if any, of the claimant's disability, for a CC-Form-3 or CC-Form-3B claim; or
 - (2) the amount due, if any, for a death claim.
- (c) Unless excused by the Commission for good cause shown, denials and affirmative defenses shall be asserted on the CC-Form-10 or MFDR Form 10M, or shall be waived. No reply to the CC-Form-10 or MFDR Form 10M is required.

810:2-5-16. Request for administrative hearing and pretrial stipulations

- (a) Any party may request an administrative hearing before the Commission on any issue by filing a CC-Form-9 Request for Hearing. As provided in 85A O.S. §71(B)(2), the request for hearing shall clearly set forth the specific issues of fact or law in controversy and the contentions of the party applying for the hearing.
- (b) When a CC-Form-9 is filed on the issues of permanent partial disability or permanent total disability, the claimant shall deliver a medical report to the opposing party. The name of the physician and the date of the report shall be noted on the CC-Form-9. No CC-Form-9 may be filed less than ten (10) days from the date the claimant has filed a claim for compensation as provided in 810:2-5-2 or 810:2-5-3.
- (c) Objections to termination of temporary compensation made pursuant to 85A O.S. §45(A)(2), and requests for temporary compensation or medical treatment, shall be set by the

Commission on the assigned Administrative Law Judge's prehearing conference docket for expedited hearing, prior to being docketed for an administrative hearing, unless otherwise directed by the assigned judge. At the time of the prehearing conference, all parties, to the best of their ability, shall advise the Commission and all parties of the number of witnesses expected to be called at the administrative hearing.

(d) The procedure to request an administrative hearing for the termination of temporary compensation is governed by 810:2-1-6.

(e) In all cases, the employer or insurance carrier shall file a CC-Form-10 Answer and Notice of Contested Issues or MFDR Form 10M no later than thirty (30) days after the filing of the CC-Form-9. The CC-Form-10 or MFDR Form 10M may be amended at any time, not later than twenty (20) days before the date of the administrative hearing.

(f) Both the CC-Form-9, and the CC-Form-10 or MFDR Form 10M, shall list the names of all witnesses, including any expert witnesses, which the party intends to call at the time of the administrative hearing. Absent waiver by the opposing party, failure without good cause to comply with this Subsection may, in the discretion of the hearing officer or the Commission, result in a witness not listed being prohibited from testifying, or in the exclusion of the evidence if submitted at the administrative hearing.

(g) Except as otherwise provided in Subsection (h) of this Section, no later than twenty (20) days before the date of the administrative hearing, all parties shall exchange all documentary evidence, exhibits and a complete list of witnesses with all opposing parties.

(h) As provided in 85A O.S. §72(C), any party proposing to introduce a medical report or testimony of a physician at the hearing on a controverted claim, shall furnish a copy of the written report of the physician's findings and opinions to the opposing party and to the Commission no later than seven (7) days before the date of the hearing. If no written report is available to a party, that party shall notify the opposing party and the Commission in writing of the name and address of the physician proposed to be used as a witness and the substance of the physician's testimony no later than seven (7) days before the date of the administrative hearing. Cross-examination of the physician is governed by 85A O.S. §72(C)(2)(b).

(i) The time periods specified in Subsections (g) and (h) of this Section may be waived by agreement of the parties.

(j) Absent waiver by the opposing party, failure without good cause to comply with Subsections (g) or (h) of this Section, may, in the discretion of the hearing officer or the Commission, result in exclusion of the evidence if submitted at the administrative hearing.

810:2-5-17. Joinder and consolidation of proceedings

(a) **Joinder.**

(1) A claimant who desires to add additional employers and/or insurance carriers, shall promptly amend the claim for compensation (CC-Form-3, CC-Form-3A, or CC-Form-3B) and mail a copy of the amended claim form to all parties, including the additional employers and/or insurance carriers named. Mailing shall constitute service upon the additional parties.

(2) An employer or insurance carrier that desires to add additional employers and/or insurance carriers shall file a CC-Form-13 Request for Prehearing Conference on the issue, and mail a copy of the CC-Form-13 to all parties, including the additional employers and insurance carriers named. The Commission shall notify all parties of the date of the prehearing conference. At the prehearing conference, the Commission shall hear argument, and based upon its discretion, enter its order granting or denying the request.

(3) The additional employers and insurance carriers shall comply with 810:2-5-15.

(4) The Commission, in its discretion, may impose an appropriate sanction prescribed in 85A O.S. §83(B) against a party or the party's attorney who, without good cause shown, frivolously joins another party.

(b) **Consolidation of proceedings.**

(1) **Consolidation to afford the parties a joint hearing stage.** Consolidation of multiple cases involving the same claimant may be made for hearing purposes only at the discretion of the Administrative Law Judge assigned to the lowest case number, upon request of either party. Cases consolidated for purposes of hearing only shall maintain individual case numbers and shall remain subject to separate filing fees prescribed in 85A O.S. §118 and costs.

(2) **Consolidation of cases involving the same claim.** Cases involving the same claim shall be consolidated to the lowest case number.

(3) **Prehearing conference on consolidation request.** All motions and requests to consolidate shall be set for prehearing conference before the entry of a Commission order sustaining or overruling the motion for case consolidation.

810:2-5-18. Continuances

(a) A request for a continuance will not be granted as a matter of course. Any motion for a continuance may be granted only by the assigned Administrative Law Judge for good cause shown. All motions for continuance shall be signed by the party on whose behalf the motion is made.

(b) No continuance of an appeal scheduled for review by the Commission en banc is permitted before the date of an oral argument authorized as provided in 810:2-5-66 without approval of the Commission Chair, or in the absence of the Commission Chair, the Commission Vice Chair. Continuances requested on the date of the oral argument will be granted only upon a majority vote of the Commission en banc.

810-2-5-19. Pauper status

(a) A party may proceed without payment of fees and costs required under the AWCA or this Title upon a determination by the Commission or an Administrative Law Judge of the individual's pauper status. Any party making application to proceed as a pauper shall complete and file a CC-Form-99 with the Commission and serve a copy thereof on all other parties in the proceeding. The CC-Form-99 shall be prescribed by the Commission.

(b) The CC-Form-99 shall be set for prehearing conference before the assigned Administrative Law Judge before any hearing on the merits, with notice to all other parties in the proceeding. If filed at the time an appeal on an underlying issue is filed with the Commission en banc, the CC-Form-99 shall be addressed by the assigned Administrative Law Judge before the appeal is docketed for hearing.

(1) If the Administrative Law Judge denies the request for pauper status, the applicant may appeal the denial order to the Commission en banc within ten (10) days of its issuance as reflected by the file-stamped date on the order. The appeal to the Commission en banc shall be set on a priority basis. Payment of the cost of the appeal, including transcript costs and the filing fee, will be deferred pending resolution of the appeal.

(2) If the Commission en banc affirms the denial of pauper status, the applicant must either pay all of the deferred costs of the appeal or seek review of the Commission en banc's order by appealing it to the Supreme Court within twenty (20) days of when the Commission en banc's order was sent. Failure to do either shall result in dismissal of the underlying appeal to the Commission en banc upon motion of the opposing party. Only

one appeal fee is due because the pauper status appeal is part of the original, underlying appeal.

(3) If pauper status is found by the Commission en banc, the deferred costs and fees shall be borne by the Commission, and the underlying appeal will be docketed for hearing.

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PART 5 - PREHEARING PROCEEDINGS

Section 810:2-5-30 Prehearing conference

Section 810:2-5-31 Discovery

810:2-5-30. Prehearing conference

(a) Any party shall have the right to request a prehearing conference before the Commission on any issue by filing a CC-Form-13 Request for Prehearing Conference. The requesting party must certify on the request that the parties have conferred or attempted to confer in good faith, but have reached an impasse and are unable to resolve the issue.

(b) The purpose of the prehearing conference is to permit an informal hearing between the parties and the Administrative Law Judge in an effort to resolve the case or issues in the case before an administrative hearing, and to discuss the facts, identify the legal issues, present discovery requests, make all appropriate stipulations, and discuss such other matters as may facilitate consideration of the case.

(c) The Administrative Law Judge shall set the matter for prehearing conference at the earliest available time after the filing of the CC-Form-13. Notice of the date, time and place of the prehearing conference shall be provided by the Commission to all parties or their attorneys of record.

(d) Nothing in this Section shall limit a party's right to request a conference with the assigned Administrative Law Judge at the time of the administrative hearing.

(e) The Commission, in its discretion, may order the appearance of any party or attorney at any prehearing conference or conference requested with the Administrative Law Judge at the time of the administrative hearing. Nothing in this Section shall limit the authority of an Administrative Law Judge to order a prehearing conference or conference at the time of the administrative hearing.

(f) The Commission may, in its discretion, impose an appropriate sanction prescribed in 85A O.S. §83(B) against an offending party for failure to appear at a conference, appearance at a conference substantially unprepared, failure to participate in the conference in good faith, or for seeking the conference in an effort to delay, harass or increase costs.

810:2-5-31. Discovery

(a) **Generally.** Discovery in administrative proceedings before the Commission is governed by this Section.

(b) **Authority of the Administrative Law Judge.** The Administrative Law Judge, upon the judge's own motion or on the motion of either party, may permit or perform such discovery or other appropriate action as the judge decides is appropriate in the circumstances, taking into account the needs of the parties to the proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective. If discovery is permitted or performed, the Administrative Law Judge may order a party to the proceeding to comply with the judge's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, including a deposition, and

take action against a noncomplying party as appropriate and consistent with 85A O.S. §73(B) and 85A O.S. §83(B).

(c) **Protective orders.** The Commission may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state, including any orders with respect to subpoenas and attendance of a witness as may be appropriate for the protection of persons, including an order quashing a subpoena, excusing attendance of witnesses, or limiting documents to be produced.

(d) **Subpoenas; costs; fees; service.** When a witness is required to appear or to produce documentary evidence, a subpoena shall be issued under the seal of the Clerk of the Commission. The party requesting the subpoena shall fill it in before issuance. The subpoena may be served by certified mail with return receipt requested or it may be hand delivered. The party requesting the subpoena shall bear the cost of serving it. Except as otherwise provided by law or this Title for physician testimony, fees of a nonparty witness who is subpoenaed to appear before the Commission shall be the same as those allowed to witnesses appearing before the district courts of this state. Party witnesses are not entitled to witness fees.

(e) **Completion of discovery by the employer or insurance carrier in contested claims.** Pursuant to 85A O.S. §111, if the compensability of a claim is contested, the employer or insurance carrier shall complete and secure a medical evaluation of the claimant within sixty (60) days of the filing of a claim for compensation pursuant to 810:2-5-2.

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PART 7 - INITIAL AND SUBSEQUENT PROCEEDINGS

Section 810:2-5-45	Submission to medical examination; appointment of medical or vocational expert; travel expenses
Section 810:2-5-46	Evaluation of permanent impairment
Section 810:2-5-47	Attorney fee disputes
Section 810:2-5-48	Sessions, hearings and venue, generally
Section 810:2-5-49	Rules of evidence
Section 810:2-5-50	Setting of matters
Section 810:2-5-51	Assignment of Administrative Law Judge; notice of hearing
Section 810:2-5-52	Disqualification of assigned Administrative Law Judge
Section 810:2-5-53	Hearings
Section 810:2-5-54	Judgment or award of the Administrative Law Judge

810:2-5-45. Submission to medical examination; appointment of medical or vocational expert; travel expenses

(a) **Submission to medical examination.** Upon reasonable advance notice from the employer or insurance carrier, the employee must submit to a medical examination by a physician selected by the employer or insurance carrier. If the claimant refuses to submit to the examination, the employer or insurance carrier may file a CC-Form-13 requesting the claimant's compensation and right to prosecute any proceeding under the AWCA be suspended during the period of refusal as provided in 85A O.S. §50(E). The claimant must show cause at the hearing why the request of the employer or insurance carrier should not be granted.

(b) **Appointment of medical or vocational expert.** Appointment of an independent medical examiner is governed by 810:3-9-4. Appointment of a medical case manager is governed by 810:3-11-4. Appointment of a vocational rehabilitation provider is governed by 810:4-1-4.

(c) **Travel expenses.** The employer or insurance carrier shall reimburse the employee for the actual mileage in excess of forty (40) miles round-trip to and from the claimant's home to the location of a medical service provider for all reasonable and necessary medical treatment, for vocational rehabilitation or retraining, for an evaluation by an independent medical examiner and for any evaluation, including an evaluation for vocational rehabilitation or vocational retraining, made at the respondent's request, but in no event in excess of six hundred (600) miles round-trip. Mileage and necessary lodging expenses are limited to the provisions of the State Travel Reimbursement Act, 74 O.S. §§500.1, et. seq. Meals will be reimbursed at the rate of Fifteen Dollars (\$15.00) per meal per four hours of travel status, not to exceed three meals per day.

810:2-5-46. Evaluation of permanent impairment

(a) **Generally.** Except for scheduled member injuries as defined in 85A O.S. §2(40) and as otherwise provided in this Section, evaluations of permanent impairment for injuries occurring on or after February 1, 2014 must be based solely on criteria established by the current edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*. Deviations from the *Guides* are permitted only when specifically provided for in the *Guides*, or pursuant to an alternative method of evaluation approved pursuant to 85A O.S. §60 that deviates from or is used in place of or in combination with the *Guides*. Such deviations must be medically reasonable and necessary, as shown by clear and convincing evidence.

(b) **Change of condition.** Evaluations of permanent impairment which are prepared in support of a Motion of Change of Condition occurring on or after February 1, 2014 shall be performed using the appropriate edition of the *AMA Guides*, including any approved alternative method of evaluation developed as provided in 85A O.S. §60 that deviates from or is used in place of or in combination with the *Guides*, in effect on the date of injury.

(c) **Hearing impairment.** The current edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, or any alternative method approved pursuant to 85A O.S. §60 that deviates from or is used in place of or in combination with the *Guides*, in effect on the date of injury, shall be used to evaluate permanent impairment caused by hearing loss where the last exposure occurred on or after February 1, 2014. Objective findings necessary to prove permanent disability in occupational hearing loss cases may be established by medically recognized and accepted clinical diagnostic methodologies, including, but not limited to audiological tests that measure air and bone conduction thresholds and speech discrimination ability. Differences in baseline hearing levels shall be confirmed by subsequent testing given within four (4) weeks of the initial baseline hearing level test.

(d) **Eye impairment.**

(1) The criteria for measuring and calculating the percentage of eye impairment for an injury occurring on or after February 1, 2014 shall be pursuant to this Subsection. A physician may deviate from the method of evaluation provided for in this Subsection or may use some other recognized method of evaluation, if the deviation or the method of evaluation is fully explained.

(2) Physicians should consult the American Medical Association's *Guides to the Evaluation of Permanent Impairment* regarding the equipment necessary to test eye function and for methods of evaluating vision loss. Evaluation of visual impairment may be based upon visual acuity for distance and near, visual fields and ocular motility with absence of diplopia.

(3) Use of corrective lenses may be considered in evaluating the extent of vision loss, 85A O.S. §46(E).

810:2-5-47. Attorney fee disputes

- (a) Under 85A O.S. §82, in a controverted claim under the AWCA when the employer or insurance carrier has contested liability in whole or in part, the attorney for the employee or a dependent in whose favor the proceeding has been finally decided, is entitled to an award of attorney fees, subject to limitations in the AWCA.
- (b) When a dispute arises among several attorneys as to the identity of claimant's attorney of record, or when several successive attorneys lay claim to a fee in the same case, the Administrative Law Judge shall decide the issues raised and allocate the fee allowed in proportion to the services rendered.
- (c) Nothing in this Section precludes resolution of an attorney fee dispute by mediation or agreement of the parties, as appropriate.

810:2-5-48. Sessions, hearings and venue, generally

- (a) **Open to the public.** Hearings of the Commission or any Administrative Law Judge on matters filed with the Commission for disposition will be open to the public. As allowed in 85A O.S. §19(D), the Commission or any Commissioner may hold hearings in any city of this state. Consistent with 85A O.S. §71(B)(4), hearings before an Administrative Law Judge shall be held at the Commission's main offices in Oklahoma City, Oklahoma, or at a designated location in Tulsa, Oklahoma, as determined by the Commission.
- (b) **Time.** All hearings shall commence at the time designated in the notice of hearing or by order of the Commission.
- (c) **Conduct before the Commission.** Conduct of attorneys before the Commission shall be governed by applicable rules of the Supreme Court of Oklahoma. All parties, witnesses, and observers will at all times maintain decorum, and will conduct themselves in such manner as to reflect respect for the authority and dignity of the Commission and its Administrative Law Judges. Upon violation of this provision, any person or party attending any proceeding before the Commission may be subject to sanctions for contempt as provided in 85A O.S. §73(B).
- (d) **Record of hearing.** An audio recording of all hearings before the Commission or an Administrative Law Judge shall be made, and provided on digital media to any party upon request, and at no charge. A transcript of proceedings will be made by a court reporter at the request and expense of the person ordering it, or at the request of the Commission, in which case, a copy will be made for any person requesting it, at that person's expense.

810:2-5-49. Rules of evidence

- (a) **Generally.** The Commission and Administrative Law Judges and are not bound by technical or statutory rules of evidence or procedure, 85A O.S. §72(A).
- (b) **Presentation of evidence.** At the hearing, an opportunity shall be afforded all parties to present evidence and argument with respect to matters and issues involved, although the argument may be restricted to a presentation in written form, to cross-examine witnesses who testify, and to submit rebuttal evidence. During a hearing, irrelevant, immaterial, or unduly repetitious evidence shall be excluded.
- (c) **Taking official notice.** The Administrative Law Judge may take official notice of the law of Oklahoma and other jurisdictions, facts that are judicially cognizable, and generally recognized facts within the Commission's specialized knowledge; provided all parties shall be notified either before or during the hearing of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.
- (d) **Documents.**
 - (1) A photographic copy of a document which is on file as part of the official records of

the Commission will be received without further authentication.

(2) A photographic copy of a public record certified by the official custodian thereof will be received without further authentication. A written statement by such custodian of records that no record or entry of described character is found in his records shall be received as proof of absence of such record.

(3) A photographic copy of a document may be substituted for the original at the time the original is offered in evidence.

(4) A document may not be incorporated in the record by reference except by permission of the Commission or Administrative Law Judge. Any document so received must be precisely identified.

(5) The Commission or Administrative Law Judge may require that additional copies of exhibits be furnished for use by other parties of record.

(6) When evidence is offered which is contained in a book or document containing material not offered, the person offering the same shall extract or clearly identify the portion offered.

(7) The Commission or Administrative Law Judge may permit a party of record to offer a document as part of the record within a designated time after conclusion of the hearing.

(e) **Witnesses.** All witnesses who appear to testify during a hearing shall first be subject to oath or affirmation and any testimony submitted by deposition shall show on the face thereof that the witness was so qualified.

(f) **Prepared testimony.** Except as otherwise provided in Subsection (h) of this Section, written testimony of a witness in the form of a notarized affidavit may be received in lieu of direct examination.

(g) **Expert medical testimony.**

(1) Expert medical testimony may be offered by:

(A) a written medical report of the physician;

(B) deposition; or

(C) oral examination before the Commission or Administrative Law Judge.

(2) Medical opinions addressing compensability and permanent disability must be stated within a reasonable degree of medical certainty. Medical opinions concerning the existence or extent of permanent disability must be supported by competent medical testimony of a physician described in 85A O.S. §45(C)(1) and shall be supported by objective findings as described in 85A O.S. §2(31). The medical testimony must include the employee's percentage of permanent partial disability and whether or not the disability is job-related and caused by the accidental injury or occupational disease or illness.

(3) The fact that the medical report constitutes hearsay shall not be grounds for its exclusion; provided, objection to and request for cross-examination of a Commission appointed independent medical examiner is governed by 85A O.S. §112(J).

(h) **Vocational rehabilitation and case management evidence.**

(1) Testimony of a vocational rehabilitation expert or medical case manager may be offered by:

(A) a written report of the vocational rehabilitation expert or medical case manager, as appropriate;

(B) deposition; or

(C) oral examination before the Commission or Administrative Law Judge.

(2) The fact that the report constitutes hearsay shall not be grounds for its exclusion.

(i) **Exhibits.** All exhibits shall be identified by the case style and Commission assigned file

number before being submitted.

810:2-5-50. Setting of matters

(a) **General.** All contested hearings to decide the rights of interested persons under the AWCA shall be set before an Administrative Law Judge, except as otherwise provided by law or this Title.

(b) **Exceptions.** The Commission en banc shall hear appeals of decisions from Administrative Law Judges, 85A O.S. §78, review adverse benefit determinations made pursuant to 85A O.S. §211 of the Oklahoma Injured Employee Benefit Act, 85A O.S. §200, and hear appeals of orders of the Workers' Compensation Court of Existing Claims, 85A O.S. §400.

(c) **Show cause hearings.** When a Commission Division contests a permit or license holder's compliance with state workers' compensation laws or Commission rules, the Division may cause notice to be issued to the permit or license holder to appear before an Administrative Law Judge or an administrative hearing officer designated by the Commission to show why the holder's permit or license should not be cancelled or revoked. The notice shall contain a date certain for the hearing. Failure to appear at the hearing may result in the cancellation or revocation of the permit or license. Appearances at the hearing are governed by 810:2-1-9. The permit or license holder is to bring all reports and payments for delinquent assessments or other documentation pertinent to the hearing to the show cause hearing. Evidence and witnesses may be presented at the hearing.

810:2-5-51. Assignment of Administrative Law Judge; notice of hearing

(a) The Commission shall assign a claim for compensation filed pursuant to 810:2-5-2 to an Administrative Law Judge who shall hold a hearing upon the request of an interested party or on the judge's own motion.

(b) If a hearing is ordered, at least ten (10) days' notice of the hearing shall be served on the claimant and other interested parties, personally or by mail as prescribed in 85A O.S. §71(B)(4). The date, time and location of the hearing shall be specified in the notice. The hearing shall be held in Oklahoma City, Oklahoma or Tulsa, Oklahoma, as provided in 810:2-5-48. Objections to venue shall be filed and submitted to the assigned Administrative Law Judge within seven (7) days of receipt of the first hearing docket notice.

810:2-5-52. Disqualification of assigned Administrative Law Judge

(a) Any party who feels that a fair and impartial administrative hearing or other hearing cannot be received from the Administrative Law Judge to whom the matter is assigned, shall make written motion requesting the judge to withdraw from the case. That application shall set forth specific reasons constituting good cause for the motion. The Administrative Law Judge may withdraw by written order without further proceeding and immediately refer the matter to the Executive Director for reassignment.

(b) Any party aggrieved by an order of an Administrative Law Judge who refused to grant a written request to disqualify, or transfer a claim to the Executive Director for reassignment, may seek corrective relief by invoking the jurisdiction of the Commission en banc in the manner and within the time provided by 85A O.S. §78, with appeal possible thereafter to the Oklahoma Supreme Court if the relief sought by the petitioner was denied by the Commission en banc.

(c) An order of the assigned Administrative Law Judge or the Commission en banc which is favorable to the moving party may not be reviewed in any tribunal either by appeal or in any other procedural framework.

810:2-5-53. Hearings

- (a) All hearings shall be conducted in a fair, impartial and expeditious manner. Administrative Law Judges shall hear claims sitting without a jury, 85A O.S. §27(A).
- (b) Every Administrative Law Judge appointed by the Commission shall have the power to:
- (1) refer a matter to mediation as provided in 85A O.S. §110 and Subchapter 3 of this Chapter;
 - (2) administer oaths and affirmations;
 - (3) regulate the course of the hearing;
 - (4) permit discovery as provided in 810:2-5-31;
 - (5) receive written stipulations and agreements of the parties;
 - (6) rule on the admissibility of evidence and objections thereto;
 - (7) determine the relevancy, materiality, weight and credibility of evidence;
 - (8) hold conferences for settlement or simplification of the issues;
 - (9) dispose of procedural requests, motions, or similar matters, and objections thereto;
 - (10) issue orders, including interlocutory orders for the proper and expeditious handling of the case;
 - (11) grant further hearings per 85A O.S. §72(C) for the purpose of introducing additional evidence; and
 - (12) take such other action as authorized by law or this Section, or as may facilitate the orderly conduct and disposition of the hearing.
- (c) **Submission of evidence.** Submission of evidence is addressed in 810:2-5-49.
- (d) **Written arguments.** The Commission or Administrative Law Judge may require or allow the parties of record to submit written arguments and legal authority for their respective positions as an aid to the Commission or judge, and may designate the order and time for doing so and for replying to the submission.
- (e) **Closing the record.** The record shall be closed when all parties of record have had an opportunity to be heard and to present evidence, and the Commission or Administrative Law Judge announces that the record of testimony and exhibits is closed.

810:2-5-54. Judgment or award of the Administrative Law Judge

The Administrative Law Judge shall issue written findings of fact and conclusions of law within thirty (30) days of submission of the case by the parties. The order shall be signed by the judge and include a certificate of service to all parties and attorneys of record. The order shall be filed with the Clerk of the Commission.

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PART 9 - POST ORDER RELIEF

Section 810:2-5-66 Appeal of Administrative Law Judge order

Section 810:2-5-67 Appeal of order issued by judge of the Court of Existing Claims

Section 810:2-5-68 Enforcement of compensation judgment or award

810:2-5-66. Appeal of Commission Administrative Law Judge order

- (a) **Request for Review.** Any party aggrieved by a judgment or award of an Administrative Law Judge, which party for purposes of this Section shall be known as the "appellant", may appeal the order to the Commission en banc by filing an original and two (2) copies of a Request for Review with the Commission within ten (10) days of when the order was issued as reflected by the file-stamped date on the order. The Request for Review shall:

- (1) be in writing;
- (2) include a copy of the order being appealed;
- (3) clearly and concisely rebut each issue in the Administrative Law Judge's order that the appellant wants reviewed, and state the relief sought. General allegations of error do not suffice. Allegations of error concerning matters not included in a timely filed Request for Review shall be deemed waived;
- (4) be served on all other parties of record, which for purposes of this Section shall be known as the "respondents"; and
- (5) have a certificate of service setting forth the manner of such service as required by 810:2-1-7.

(b) **Timeliness of filings.** The timeliness of the filing of a Request for Review is governed by 810:2-1-13. Untimely Requests for Review do not invoke the jurisdiction of the Commission en banc and will not be reviewed by the Commission en banc.

(c) **Oral argument.**

- (1) Oral argument by the parties before the Commission en banc shall be permitted only at the discretion of the Commission.
- (2) Oral argument before the Commission en banc shall be limited to ten (10) minutes per side, unless the time is enlarged by leave of the Commission en banc. Any party failing to appear when the appeal is called for oral argument shall be deemed to have waived the right to argue the case and the appeal shall be considered as submitted on the record.

(d) **Written argument.** In any case pending on a Request for Review, the parties of record shall submit written arguments, including a statement of facts and legal authority for their respective positions, as an aid to the Commission en banc. The written argument shall not exceed five (5) pages in length, and shall be double spaced and prepared in at least ten point font size on 8 ½" x 11" paper with one inch margins. No appendix or other documents shall be attached to the written argument. The appellant has twenty (20) days after the filing of the Request for Review within which to file an original and two (2) copies of the written argument with the Commission, with a copy served on all opposing parties. The opposing parties shall have ten (10) days within which to submit a response. When submitted, the original and two (2) copies of the response shall be filed with the Commission and a copy served on the appellant.

(e) **Description of appeal proceeding.**

- (1) In appeals pursuant to this Section, the Commission en banc may:
 - (A) modify the decision of the Administrative Law Judge;
 - (B) reverse the decision of the Administrative Law Judge and render a new decision;
 - (C) reverse the decision of the Administrative Law Judge and remand the matter to the Administrative Law Judge with instructions or for a new administrative hearing; or
 - (D) affirm the decision of the Administrative Law Judge.
- (2) The Commission en banc may reverse or modify the decision of an Administrative Law Judge only if it determines that the decision was against the clear weight of the evidence or was contrary to law. Any judgment of the Commission en banc which reverses a decision of the Administrative Law Judge shall contain specific findings relating to the reversal.
- (3) All proceedings of the Commission en banc shall be recorded by a court reporter, if requested by a party. Any party requesting a transcript of the proceedings shall bear the costs associated with its preparation. During the pendency of an appeal to the

Commission en banc, the Administrative Law Judge shall retain jurisdiction over any issue not affected by the eventual ruling of the appellate body.

(f) **Appeal to Supreme Court.** An order of the Commission en banc may be appealed to the Oklahoma Supreme Court, as provided in 85A O.S. §78, within twenty (20) days of being sent to the parties as reflected by the file-stamped date on the order.

810:2-5-67. Appeal of order issued by judge of the Court of Existing Claims

(a) Any party aggrieved by an order of a judge of the Workers' Compensation Court of Existing Claims, 85A O.S. §400, entered on or after February 1, 2014, may appeal the order to the Commission in the same manner and subject to the same time lines as applicable to appeals to the Commission en banc of orders by a Commission Administrative Law Judge.

(b) An order of the Commission en banc may be appealed to the Oklahoma Supreme Court, as provided in 85A O.S. §78, within twenty (20) days of being sent to the parties as reflected by the file-stamped date on the order.

(c) Decisions by the Court of Existing Claims will be reviewed by the Commission only for procedural deficiencies and to ensure that the record is complete. If the Commission is satisfied as to the same, the Court of Existing Claims order will be affirmed and an appeal to the Oklahoma Supreme Court may be commenced thereafter, in accordance with statute.

810:2-5-68. Enforcement of compensation judgment or award

A final compensation judgment or award issued by the Commission or an Administrative Law Judge which has not been complied with by the employer or insurance carrier may be enforced as provided in 85A O.S. §79.

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PART 11 - CONTEMPT

Section 810:2-5-75 Contempt procedure

810:2-5-75. Contempt procedure

(a) **Commencement.** A cause filed for contempt for disobedience to or violation of law or a rule, order or judgment of the Commission shall be commenced by the filing of a verified complaint.

(b) **Complaint.** The complaint shall state:

(1) The name of the person, firm, trust, corporation, limited liability company or association against whom the complaint is made.

(2) Each law, rule or order of which violation is charged.

(3) In general terms, the acts or omissions constituting the violation of which complaint is made. If complaint is made of more than one violation, each violation shall be separately stated.

(c) **Citation.** When a complaint is filed, the Clerk of the Commission shall issue in the name of the state a citation directed to the person against whom complaint is made, which citation shall be accompanied by a copy of the complaint. The citation shall state:

(1) The name of the complainant and the date the complaint was filed.

(2) A brief description of the nature of the complaint.

(3) Reference to the accompanying copy of the complaint.

(4) The date upon which the complaint is set for hearing, which shall not be earlier than ten (10) days from the date the citation is served.

- (5) A statement that, unless the person complained against shall on or before the date for hearing file a response to the complaint, the allegations and charges therein will be taken as confessed.
- (d) **Service of citation.** Service of the citation for contempt may be made by a person directed to do so by order of the Commission. Service shall be made by mailing the citation for contempt by certified mail to the respondent's last known address as listed in Commission records. The respondent is responsible for notifying the Commission of any change of address.
- (e) **Return of service.** The person making the service shall make his return thereof, and file the same with the Clerk of the Commission. The return shall show the time when the citation was received by him, and the time and manner the same was served by him, and such return shall be verified by the person making the service. Service of the citation for contempt on the respondent by certified mail shall be considered effective if returned from the last known address as listed in Commission records for the following reasons, including, but not limited to:
- (1) Signed for by person at the address listed.
 - (2) Undeliverable - no forwarding address, forwarding address expired, unclaimed and/or refused.
- (f) **Default.** If no response to the complaint is filed on or before the date set for hearing, or if a respondent fails to appear at the time set for hearing, as specified in the citation, the Commission may immediately proceed to hear the complaint. After hearing the evidence, the Commission shall impose such fine pursuant to 85 O.S. §73(B) as the facts and circumstances warrant, or dismiss the complaint.
- (g) **Response.** A respondent who desires a hearing shall, on or before the time specified in the citation for hearing, file a response to the merits of the cause and shall appear at the time set for hearing. The response shall include all objections and defenses of any nature to the complaint and may include a motion to dismiss the complaint for reason of insufficiency thereof or lack of jurisdiction.
- (h) **Hearing procedures.** At the hearing, the Commission shall first hear all objections and defenses other than to the merits of the complaint and shall enter an appropriate order thereon. Amendments may be permitted upon terms that are just, with or without grant of a continuance. After all preliminary questions are heard, the Commission shall hear the merits of the complaint, and at the conclusion thereof, shall impose such fine pursuant to 85 O.S. §73(B) as the facts and circumstances warrant, or dismiss the complaint.
- (i) **Hearing date.** Every cause instituted under this Section shall be tried on its merits on the date specified in the citation, or at such other time to which such cause shall be continued for hearing by the Commission.

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PART 13 - DISMISSALS

Section 810:2-5-85 Dismissals

810:2-5-85. 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.**
- (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.

(2) The Commission shall dismiss a claim for additional compensation without prejudice to refile 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. 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.

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PART 15 - SETTLEMENTS

Section 810:2-5-95 Joint Petition Settlements

810:2-5-95. Joint petition settlements.

(a) Under 85A O.S. §87 and 85A O.S. §115, upon and after the filing of a claim for compensation, or, in the absence of a claim for compensation, the filing of the Employer's First Notice of Injury in a claim involving a pro se employee, the parties may engage in a compromise and release of any and all liability which is claimed to exist under the AWCA on account of the injury or occupational disease or illness, subject to approval by the Commission, an Administrative Law Judge, or counselor of the Commission's Counselor Division.

(b) The parties in interest to a claim for compensation may settle upon and determine any and all issues and matters by agreement, subject to the terms and conditions of this Section.

(c) Any agreement submitted to the Commission, Administrative Law Judge or counselor of the Commission's Counselor Division, for approval shall be set forth in a Commission prescribed CC-Joint Petition Settlement. Nothing in this rule shall preclude the Multiple Injury Trust Fund from compromising a claim as authorized by 85A O.S. §32(F).

(d) No CC-Joint Petition Settlement agreement shall be binding on the parties in interest unless it is approved by the Commission pursuant to 85A O.S. §22, Administrative Law Judge of the Commission pursuant to 85A O.S. §115, or counselor of the Commission's Counselor Division pursuant to 85A O.S. §70. The CC-Joint Petition Settlement, including any attached appendix as provided in 85A O.S. §115(B), identifying the outstanding issues that are subject to the Commission's continuing jurisdiction and possible reopen, shall be approved unless it is determined that:

- (1) The agreement is unfair, unconscionable, or improper as a matter of law; or
- (2) The agreement is the result of an intentional misrepresentation of a material fact; or
- (3) The agreement, if for permanent disability, is not supported by competent medical evidence as required by 85 O.S. §2(33).

- (e) As used in this Section, "parties in interest" means the respondent (employer and the employer's insurance carrier if insured), and an employee. An employee who is not represented by legal counsel may effect a CC-Joint Petition Settlement upon the employer's filing of the Employer's First Notice of Injury as provided in 810:2-1-4, or the employee's filing of a claim for compensation (CC-Form-3 or CC-Form-3B), regarding the injury or occupational disease or illness which is the subject of the CC-Joint Petition Settlement.
- (f) In no instance shall the total attorney's fee amount provided for in a CC-Joint Petition Settlement exceed the maximum attorney fee allowed by law.
- (g) No CC-Joint Petition Settlement shall be made upon written interrogatory or deposition except in cases where the claimant is currently engaged in the military service of the United States, is outside of the state, is a nonresident of Oklahoma, or in cases of extreme circumstances.
- (h) The Commission is not required to stenographically report or prepare a record of joint petition settlement hearings. The Commission, an Administrative Law Judge or a Counselor Division counselor shall record the hearing at no cost to the parties. Nothing in this Subsection is intended to preclude a transcript of the settlement proceedings being made by a court reporter at the request and expense of the person ordering it.
- (i) A file-stamped copy of an approved CC-Joint Petition Settlement shall be mailed by the Commission to all unrepresented parties and attorneys of record.
- (j) A CC-Joint Petition Settlement that fully and finally resolves all issues in a claim for compensation between the employee and the employer, shall not be deemed an adjudication of the rights between the medical or rehabilitation provider and the employer for reasonable and necessary medical and rehabilitation expenses incurred by the employee due to the injury before the file-stamped date of the approved CC-Joint Petition Settlement.
- (k) Within seven (7) days of the date a medical provider provides initial treatment for a work-related accident, the medical provider shall provide notice in writing to the Commission, if and only if, a CC-Form-3 or CC-Form-3B has been filed with the Commission, and in all cases shall provide notice in writing to the patient's employer, and if known, the employer's insurance carrier. If the medical provider fails to provide the required notification, the medical provider forfeits any rights to future notification, including those circumstances where a case is fully and finally settled by a CC-Joint Petition Settlement, unless the medical provider is actually known to the employer or insurance carrier or is listed by the employee.
- (l) If the issue of medical treatment is fully and finally settled by a CC-Joint Petition Settlement, the employee shall provide to the employer or insurance carrier a list of all medical providers known to the employee. The Commission prescribed Form CC-JPS shall be used for that purpose. Within ten (10) days from the file-stamped date of the CC-Joint Petition Settlement, the employer or insurance carrier shall send notice of the CC-Joint Petition Settlement to all medical providers listed by the employee and to all medical providers known to the employer or insurance carrier. The employee is liable for payment of any medical services rendered after the CC-Joint Petition Settlement is filed. The employee also is responsible for informing any future medical providers that the case or issue of medical treatment was fully and finally disposed of by a CC-Joint Petition Settlement and that the employee, rather than the employer or insurance carrier, is the party financially responsible for such services.

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PART 17 - FEES

Section 810:2-5-105 Fees

810:2-5-105. Fees. Fees payable to the Commission include:

- (a) A fee of One Thousand Dollars (\$1,000.00), payable by each carrier writing worker's compensation insurance in this state, upon securing a license to transact business in this state [85A O.S. §29(A)];
- (b) A fee of One Thousand Dollars (\$1,000.00), payable by each self-insurer at the time it is approved to self-insure its obligations under the AWCA [85A O.S. §29(B)];
- (c) An annual fee of One Thousand Dollars (\$1,000.00), payable by third-party administrators [85A O.S. §29(C)];
- (d) A fee of One Hundred Seventy-five Dollars (\$175.00), payable by a party appealing an order or award of an Administrative Law Judge to the Commission en banc [85A O.S. §78(B)];
- (e) A fee of Fifty Dollars (\$50.00), payable by an applicant requesting a certification of noncoverage or renewal thereof [85A O.S. §36(D)(2)];
- (f) A fee of One Hundred Dollars (\$100.00), for compiling and transmitting a record for appeal of a Commission order to the Oklahoma Supreme Court, payable by the appealing party [85A O.S. §78(D)];
- (g) A fee of One Hundred Forty Dollars (\$140.00), payable by the party against whom an award becomes final (i.e. the employer or insurance carrier if there is an award of compensation, or the worker if there is a denial or dismissal of a claim for compensation) [85A O.S. §118(A)]. Ten Dollars (\$10.00) of the fee is payable by the Commission to the credit of the Attorney General's Workers' Compensation Fraud Unit Revolving Fund;
- (h) A fee of One Hundred Thirty Dollars (\$130.00), payable by the worker if the reopen request is to reopen on a change of condition for the worse, or payable by the employer or insurance carrier if the reopen request is to reopen on a change of condition for the better [85A O.S. §118(B)];
- (i) A fee of One Dollar (\$1.00) per page, payable as a copy charge [85A O.S. §119(A)];
- (j) A fee of One Dollar (\$1.00) per search request for prior claims records, not to exceed One Dollar (\$1.00) per claims record of a particular worker [85A O.S. §120(B)]; and
- (k) Such other fees as may be allowed by law or this Title.