**BASIC DIFFERENCES BETWEEN**

**WORKERS’ COMPENSATION COMMISSION AND**

**THE COURT OF EXISTING CLAIMS**

|  | WORKERS’ COMPENSATION COMMISSION | COURT OF EXISTING CLAIMS |
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| 1. | Claims for injuries/deaths based on accidents occurring on or after February 1, 2014. 85A OS §3 | Claims for injuries/deaths based on accidents occurring before February 1, 2014. 85A OS §3 and 85A OS §400(A)(I). |
| 2. | Administrative System. 85A OS §19. | Court System. 85A OS 400(E). |
| 3. | Administrative Law Judges of an executive agency. 85A OS §22(B)(1). | Judges of a Court of Record. 85A OS §400(A). |
| 4. | Maximum temporary total disability is limited to 70% of the employee’s average weekly wage, not to exceed 70% of the state average weekly wage. 85A OS §45(A). | Maximum temporary total disability is limited to 70% of the employee’s average weekly wage, not to exceed 100% of the state average weekly wage. 85 OS §332(A). |
| 5. | Maximum number of weeks permanent partial disability can be awarded is 350 weeks. 85A OS §45(C)(4). | Maximum number of weeks permanent partial disability can be awarded is 500 weeks. 85 OS §333. |
| 6. | If the employee returns to the same or equivalent work after a permanent partial disability award, permanent partial disability payments are reduced for every week the employee works. 85A OS §45(C)(5). | Employee can continue to receive a permanent partial disability award after returning to work. |
| 7. | The Official Disabilities Guidelines (ODG) will be recognized as the primary standard of reference for determining the frequency and extent of medical services [85A OS §16(A)], except for prescription drugs [85A OS §16(B)] and medical services rendered by a certified workplace medical plan [85A OS 64(B)(1)]. | The ODG are the mandatory standard for the scope and duration of medical treatment, except for prescription drugs and medical care not covered by the ODG or not recommended by ODG for injuries to the spine. 85 OS §326. |
| 8. | Employee can receive vocational rehabilitation even though the employee is temporarily totally disabled and under active medical care. 85A OS §45(E)(5). | Same. 85 OS §338(D). |
| 9. | There is a closed formulary for prescription drugs. 85A OS §50(I). | There is no closed formulary limitation. |
| 10. | Attorney fees for permanent disability and death awards are limited to 20%, unless the employer’s offer to settle is rejected. In that instance, the fees are limited to 30% of the difference between the employer’s offer and the amount recovered. Attorney fees are not allowed on uncontroverted claims. 85A OS §82. | Attorney fees for permanent disability and death awards and settlements are limited to 20%, unless medical treatment is not disputed and the employer’s offer to settle is made within 30 days of the worker reaching maximum medical improvement. In that instance, the fees are limited to 35% of the difference between the employer’s offer and the amount recovered. Attorney fees are not allowed for uncontested death cases. 85 OS §343. |
| 11. | Retaliatory discharge claims shall be filed with the Commission. Damages are limited to $100,000 for back pay, costs and a reasonable attorney fee. 85A OS §7. | Retaliatory discharge claims are filed in District Court. Penalties are reinstatement and actual and punitive damages not to exceed $100,000. 85 OS §341. |
| 12. | Hearings are not governed by technical or statutory rules of evidence and may be audio recorded. 85A OS §72(A)(1). | Trials are governed by rules of evidence with a Court Reporter present. |
| 13. | ALJ Orders must contain findings of fact and conclusions of law. 85A OS §72(A)(4). | Same. Dunkin v. Instaff Personnel, 2007 OK 51, ¶14, 164 P.3d 1057. |
| 14. | The Appeal from the ALJ Order is to all three Commissioners. 85A OS §78. | An appeal from a Court Order is to the Court en banc (three judges) or directly to the Supreme Court. 85 OS 340. |