

How does a claim get into litigation?

A claim is brought into litigation by the filing of a petition by any party. Petitions may be filed through WCAIS or by mail. WCAIS is of course preferred. Once a petition is filed, a Dispute number is created and the matter is assigned to a Workers' Compensation Judge (or, WCJ) for hearing. A party has 20 days after assignment to file an Answer, and a hearing generally takes place within 30 days of assignment.



What happens during the litigation process?

There is almost always more than one hearing on any case. Often testimony is taken at the first hearing, although each judge has his or her own rules and procedures. Medical evidence is gathered, an Independent Medical Examination may take place, and hearings may include testimony or even argument of legal issues.



Is the case decided after one hearing or several?

Most cases need more than one hearing. Decisions generally occur within 90 days of the close of record and submission of briefs. A decision must be in writing to be valid, so decisions are almost invariably not made at a hearing.



What evidence is considered?

A judge may consider a wide variety of relevant evidence. The evidence may include deposition testimony, medical reports and records, testimony of "lay" (non expert) witnesses from the employer or other witnesses, surveillance video or pictures, manuals, wage records, and other relevant evidence. A judge generally may not accept hearsay, and in cases with more than 52 weeks of disability medical testimony is required.



Investigation Level

Investigation Level: Investigation by all parties is imperative from the moment an injury has occurred. Many times, this involves recorded statements, reviewing records, searching index histories, and considering the law. Doing the hard work early on may avoid litigation.



Who testifies?

The Claimant almost invariably testifies in front of the judge at a hearing. Other potential witnesses may include spouses, coworkers, employer representatives, private investigators, health care providers and others, who may testify at hearings or by deposition.



What happens if an appeal is taken?

Appeals may involve several levels of appeal. The first level after a decision by the Workers' Compensation Judge is the Workers' Compensation Appeal Board, commonly called the WCAB. A party taking issue with a decision of a WCJ has 20 days to file an appeal, at no charge, to the WCAB. No evidence is taken on appeal except in the rarest of cases, and decisions are based on review of the evidence before the WCJ and after review of briefs. Thereafter, if a party wishes to appeal it goes to the Commonwealth Court, for a fee. Finally, if that decision is appealed, the Pennsylvania Supreme Court may accept or reject an appeal, before deciding the merits. Most cases do not make it to the Pennsylvania Supreme Court level.



Tips From The Judge

Investigation Level: Investigation by all is imperative from the moment notice comes in that an injury has occurred. Employers need to talk to witnesses and the injured worker. The injured worker may even do the same. The insurance carrier should do so as well. This means taking recorded statements, reviewing records, searching index histories, and considering the law. Doing the hard work early on can pay huge dividends down the road, and avoid litigation.



Tips From The Judge

For attorneys: Be prepared! Know your file, the case law, and the regulations. It is imperative that you know the particular rules and policies of the Judge hearing the case. The Workers' Compensation Office of Adjudication has a link to each Judge's information and policies at <http://www.dli.pa.gov/Individuals/Workers-Compensation/wcoa/judge/Pages/default.aspx>.

Utilize WCAIS to track and upload exhibits, requests, hearing status, etc. More and more, Judges are relying on WCAIS, and counsel are expected to use it.

Be respectful. It is an essential aspect of our litigation system that counsel treat all parties, opposing counsel and the Judge with respect. An overly-aggressive attitude may turn the focus to you instead of the legal and factual issues. Finally, consider carefully when to resolve matters and when to take them to decision.



Tips From The Judge

For employers: Pay attention to your mail. Ignoring mail often leads to a default due to no Answer or a late Answer. Turn important information over to your insurance carrier or TPA, and cooperate with any investigation. Finally, base your claims decisions on business rather than personal considerations.



Tips From The Judge

For claimants: Be respectful. Be on time. Dress respectfully.



Tips From The Judge

For insurance carriers and TPAs: Be thorough in your claims handling. Investigate within the time frames required by the Workers' Compensation Act. Early and prompt investigation leads to better decisions and, if it is litigated, can result in a more complete evidentiary record. Enable your counsel to comply with the judge's scheduling order. Mediate cases in litigation, and do so in good faith. Make sure the authority is given in advance and is a valid assessment of risk. Barring exceptional circumstances, you should always have realistic authority for mediations.


