

AJUDGE NAME: Kevin C. Allen **DISTRICT:** Central **ASSIGNED OFFICE:** Harrisburg, Chambersburg, and Gettysburg

Assistant's Name: Janet Bonawitz **Assistant's email:** jbonawitz@pa.gov

Assistant's Commonwealth Direct Dial Phone Number: (717) 772-3509

JUDGE'S PROCEDURAL RULES AND POLICIES

Workers' Compensation Automation and Integration System (WCAIS) is the official repository for all documents related to a Dispute (matter pending) before a Workers' Compensation Judge. All documents, including evidence and briefs, that would have been submitted to a Workers' Compensation Judge by mail or in person prior to WCAIS should now be uploaded into WCAIS. If Social Security numbers appear on any such document, they should be completely redacted before the document is uploaded, unless otherwise specified below. All communications with the Judge, including but not limited to requests, should be submitted through WCAIS unless otherwise specified by the Judge.

HEARING PROCEDURES

1. What is the first event and what will occur?

A hearing will be scheduled in accordance with the Rules soon after the assignment of the petition. The parties should be prepared to summarize the issues and allegations as well as state what proofs will be presented in the case. Testimony will be expected at the first hearing on a Claim, Reinstatement, or Review Petition filed by Claimant as well as a Challenge Petition. The first hearing on a Penalty Petition will be a pre-trial hearing. The first hearing on Employer Petitions to Terminate, Suspend or Modify benefits will be treated as a pre-trial/supersedeas hearings. Supersedeas exhibits should be uploaded to WCAIS before the hearing and a record will be made as to the content of those exhibits. A trial schedule will be given to the parties and a mandatory mediation will be scheduled.

a. List any documents required at the first event:

No first hearing filings are required. However, the parties should identify and submit into evidence the controlling bureau documents and any past relevant decisions.

b. Should documents be uploaded as Exhibits or Letters to the Judge?

Exhibits. The admissibility of the exhibits will then be addressed on the record.

2. Describe the format of your hearings (e.g., serial, one day – one trial).

I use the serial hearing format. Generally, the claimant will testify at the first hearing on all claimant-initiated petitions (Claim, UEGF Claim, Reinstatement, Review, Challenge). The matter will be relisted for employer testimony, or, if none is required, a status hearing. A final hearing will be scheduled for receipt of any additional evidence. For other claimant-initiated petitions such as a penalty petition, hearings/testimony are scheduled on an as needed basis. For employer-initiated petitions (Termination, Modification, Suspension), the first hearing will be a supersedeas hearing. The matter will be relisted for employer witnesses or claimant's testimony depending on need. A final hearing will be scheduled for receipt of any additional evidence. This standard hearing format may be modified by necessity.

3. Are you willing to change the hearing format upon request?

Yes.

4. What factors will you consider in deciding whether to conduct a hearing in-person?

Generally, if testimony will be presented, I prefer a live hearing. I will consider factors such as public safety, safety of the parties and attorneys, transportation issues and other relevant considerations brought to my attention by the parties or their attorneys. For matters that will not require testimony or C&R hearings with represented Claimants, a virtual hearing, preferably by video, will be scheduled.

5. What factors will you consider in deciding whether to conduct a virtual hearing by audio only or by audio with video?

Generally, if testimony will be presented, I prefer a live hearing. I will consider factors such as public safety, safety of the parties and attorneys, transportation issues, the ability of the witnesses, parties, or counsel to access the appropriate technology, and other relevant considerations brought to my attention by the parties or their attorneys.

6. What procedure do you follow if a party fails to appear at a hearing?

I will first try to determine if the absent party had Notice of the hearing. If my determination is the party had Notice, my normal practice is to reschedule the hearing. If my determination is that they did not have Notice, my office attempts to obtain a current address before rescheduling. If a claimant had Notice and fails to appear at a supersedeas hearing absent emergency circumstances and the evidence supports, I will grant supersedeas. If a party fails to appear for successive hearings, any motions raised by the opposing party concerning the lack of participation will be considered.

7. Do you have special procedures for psychological injury cases?

No

SUPERSEDEAS PROCEDURES

1. What are your procedures for supersedeas hearings?

I expect to receive all documents, exhibits and affidavits consistent with 34 Pa. Code Sec. 131.43. These documents should be uploaded into WCAIS before the hearing and a record will be created as to the content of supersedeas exhibits. I may permit the responding party a brief extension of time, if necessary, to obtain medical records, reports, or affidavits and to present the same through WCAIS subsequent to the first hearing. Counsel for Claimant should present a written fee agreement at the first hearing, uploaded on the merits in WCAIS, in order to obtain interim approval of his/her counsel fee. Special supersedeas hearings will be conducted consistent with Section 413(a) of the Act and current case law concerning conduct of such hearings.

a. Will testimony be heard?

No.

b. Is additional time generally granted to obtain medical evidence?

Yes.

c. Under what circumstances will you reconsider a supersedeas order?

I will reconsider supersedeas in any case where additional evidence is submitted by the party requesting reconsideration. A hearing on reconsideration is required unless both parties waive their right to a hearing. .

d. Do you generally use written orders for denials?

Yes.

e. What is required for employee's counsel to obtain interim fee approval?

The fee agreement should be uploaded into WCAIS prior to the first hearing and will generally be approved if the request for supersedeas is denied. Claimant's counsel should file a request through WCAIS if it appears the fee agreement has not been approved.

f. Describe any other procedures for supersedeas hearings:

N/A

g. Describe procedures for special supersedeas hearings, if different:

If requested, brief testimony from a party or witness will be heard. Otherwise, aside from the timing required pursuant to the Act for holding the first hearing, there are no other or different procedures.

WITNESSES/EXHIBITS

1. What are your rules regarding taking testimony?

Generally, I prefer that all lay/fact witnesses, especially party witnesses, appear live at a hearing for testimony. If a party cannot testify live, a request should be made through WCAIS for either a virtual hearing or deposition with reasons stated specifically as to why the witness cannot appear and the position of opposing counsel to the request. I will consider lay/fact witness depositions on a case-by-case basis. If a lay witness cannot physically appear at the hearing, it is preferred that that witness appear by videoconference during a hearing as opposed to conducting a deposition. Expert testimony may be taken by deposition. A fee agreement offered into evidence should specify whether the fee is based upon indemnity benefits, medical benefits, or both and counsel should be prepared to elicit testimony from the Claimant concerning his or her understanding of the fee agreement.

2. Do you require testimony at a virtual hearing, an in-person hearing, or by deposition?

Generally, if testimony will be presented, I prefer a live hearing. Upon request, I will accept testimony at a virtual hearing considering factors such as public safety, safety of the parties and attorneys, transportation issues and other relevant considerations brought to my attention by the parties or their attorneys. For matters that will not require testimony or C&R hearings with represented Claimants, a virtual hearing, preferably by video, will be scheduled.

3. Under what circumstances will you change your requirements for presentation of testimony?

If a witness cannot testify live, a request should be made through WCAIS for either a virtual hearing or deposition with reasons stated specifically as to why the witness cannot appear and the position of opposing counsel to the request. I will consider lay/fact witness depositions on a case-by-case basis. If a lay witness cannot physically appear at a hearing, it is preferred that that witness appear by videoconference during a hearing as opposed to conducting a deposition. If health or safety dictates, I may change my requirements for the presentation of testimony.

4. If counsel wishes to present the testimony of a witness (either virtually or in-person), do you require prior notice? Yes. If yes, how much notice do you require? 14 days.

5. What is your procedure regarding the order of expert medical testimony when cross petitions are filed?

Generally, the party with the burden of proof is expected to proceed first with its evidence, including the completion of medical evidence. If cross petitions are filed, the Judge will establish the order for taking and presentation of medical evidence at the first hearing.

6. Do the parties need to upload the Bureau and WCOA documents as exhibits or will you admit them electronically as Judge exhibits?

The parties should upload Bureau and WCOA exhibits.

7. Do you require counsel to upload exhibits to WCAIS before or after the hearing? Before. If before, how far in advance of the hearing must they be uploaded? 24 hours

8. When will you rule on objections to exhibits?

This Judge rules on objections to exhibits as they are raised during litigation. Objections within a deposition that are preserved in writing will be ruled upon in the final decision unless the parties request an earlier ruling.

9. What is your procedure for handling discovery disputes?

I will utilize a conference call on occasion, but my preference is to address these issues on the record with a court reporter present. I will attend a deposition when requested.

10. What is the last day to file written preservations of deposition objections?

The written preservation of deposition objections should be filed simultaneously with the party's post-trial submission.

COMPROMISE & RELEASES (C&Rs)

1. Describe your procedures regarding the review of C&R Agreements:

The C&R and Act 109 documents should be uploaded to WCAIS in both redacted and unredacted form at least 24 hours prior to the hearing requesting approval of the C&R. Following the hearing the unredacted documents will be deleted and the redacted documents will be marked and admitted as Joint Exhibits.

a. Are you willing to allow amendments of existing petitions or do you require the filing of a separate Petition Seeking Approval of a C&R Agreement?

Amendments are permitted.

b. Are parties required to provide a draft of the C&R Agreement before the hearing? If yes, how far in advance of the hearing do you need to receive it?

Yes, 24 hours.

c. Should the parties upload the signed C&R Agreement, including the fee agreement and any other attachments, before or after the hearing?

Before. Parties should upload a redacted and unredacted fully executed Compromise and Release Agreement in advance of the hearing. Following the hearing the unredacted document will be deleted and the redacted document will be marked and admitted as a Joint Exhibit. This Exhibit will be circulated with the Decision and Order.

d. Should child support documents be uploaded as a separate exhibit?

e. Yes Redacted and unredacted Act 109 documents should be uploaded separately from the C&R Agreement.

f. Should Social Security numbers and other confidential information be redacted from the C&R Agreement and Act 109 documents?

Parties should upload a redacted and unredacted fully executed Compromise and Release Agreement and Act 109 Documents. Following the hearing the unredacted documents will be deleted and the redacted documents will be marked and admitted as Joint Exhibits. These Exhibits will be circulated with the Decision and Order.

g. Will you sign bench orders?

Yes

h. Describe any other procedures you have for C&R Agreements:

Represented Claimants may testify virtually.

STIPULATIONS RESOLVING DISPUTES

1. What are your usual procedures regarding the submission, review, and adoption of stipulations?

Parties that wish to have a stipulation approved should make a request through WCAIS and upload the stipulation as an exhibit. Any stipulation must be signed and dated by claimant, all counsel, and pro se participants that are subject to the stipulation. Each stipulation must set forth what petitions are being resolved/not resolved. Each stipulation must delineate whether any petitions are being withdrawn, granted, or dismissed and whether the parties are requesting an interlocutory or final order.

2. Should the fee agreement be part of the stipulation or separate exhibit?

Separate Exhibit. A fee agreement offered into evidence should specify whether the fee is based upon indemnity benefits, medical benefits, or both and counsel should be prepared to elicit testimony from the Claimant concerning his or her understanding of the fee agreement.

3. Should child support documents be uploaded as a separate exhibit?

Yes. Parties should upload redacted and unredacted fully executed Act 109 Documents. Following the hearing the unredacted documents will be deleted and the redacted documents will be marked and admitted as a Joint Exhibit.

4. What other exhibits should be uploaded (i.e. medical bills, etc.)?

Other exhibits may be uploaded as part of the Stipulation as necessary and as agreed upon by the parties.

5. Should other exhibits uploaded as be part of the stipulation or as separate exhibits?

Everything related to the Stipulation should be attached to the Stipulation as an exhibit and referenced in the text of the Stipulation as such.

6. When should Social Security numbers and other confidential information be redacted from the stipulation and Act 109 documents?

Social Security numbers and confidential information should not be referenced anywhere in the Stipulation or any of its attachments. The Act 109 documents will be marked and admitted as a separate exhibit. Parties should upload redacted and unredacted fully executed Act 109 Documents. Following the hearing the unredacted documents will be deleted and the redacted documents will be marked and admitted as a Joint Exhibit.

7. Describe any other procedures you have for stipulations:

N/A

BRIEFS AND PROPOSED FINDINGS

1. Will you close a case via WCAIS submission or is a final hearing required?

A Final Hearing will generally be required.

2. What are the time requirements for final submissions and what procedures are taken when time requirements are not met?

The time limit for briefs depends on the circumstances of the case and will be addressed at the final hearing. Extensions for filing of briefs should be submitted before the deadline. Consideration of an untimely brief will be at the discretion of the Judge.

3. Describe any preferences regarding the format and content of final submissions:

Post-trial submissions should include well organized Proposed Findings of Fact, citing specifically to the record; Proposed Conclusions of Law; a brief containing argument that succinctly sets forth the issues to be decided, the relevant case law and the application of the law to the facts of the case; and a Proposed Order. Findings of Fact, Conclusions of Law and Briefs should be submitted in WORD format.

MANDATORY MEDIATIONS

1. List the offices where you conduct mandatory mediations:

Until further notice, all mediations will be by video conference (preferably) or telephone. Attendance and participation by the Claimant are strongly encouraged. Claimant's counsel is required to ensure that the Claimant has the opportunity to participate fully. Specifically, Claimant's counsel is expected to ensure that the Claimant has telephone and/or video conferencing capability and to advise the Court appropriately of any issues in that regard. It is anticipated that mediations will be held live in the future at the Harrisburg, Chambersburg, and Gettysburg offices.

2. What factors will you consider in deciding whether to conduct a mandatory mediation virtually or in-person?

Until further notice, all mediations will be by video conference (preferably) or telephone. Attendance and participation by the Claimant are strongly encouraged. Claimant's counsel is required to ensure that the Claimant has the opportunity to participate fully. Specifically, Claimant's counsel is expected to ensure that the Claimant has telephone and/or video conferencing capability and to advise the Court appropriately of any issues in that regard. I will consider factors such as public safety, safety of the parties and attorneys, transportation issues, access to the necessary technology, and other relevant considerations brought to my attention by the parties or their attorneys.

3. What factors will you consider in deciding whether to conduct a virtual mandatory mediation by audio only or by audio with video?

Until further notice, all mediations will be by video conference (preferably) or telephone. Attendance and participation by the Claimant are strongly encouraged. Claimant's counsel is required to ensure that the Claimant has the opportunity to participate fully. Specifically, Claimant's counsel is expected to ensure that the Claimant

has telephone and/or video conferencing capability and to advise the Court appropriately of any issues in that regard. I prefer using the TEAMS video platform, but if the parties or counsel cannot access TEAMS, I am willing to conduct mediations by phone.

4. Are you willing to allow counsel or a party to participate virtually in an in-person mandatory mediation? If so, under what circumstances?

Until further notice, all mediations will be by video conference (preferably) or telephone. Attendance and participation by the Claimant are strongly encouraged. Claimant's counsel is required to ensure that the Claimant has the opportunity to participate fully. Specifically, Claimant's counsel is expected to ensure that the Claimant has telephone and/or video conferencing capability and to advise the Court appropriately of any issues in that regard. Once we resume in person mediations, I will allow counsel or a party to participate virtually for good cause shown.

5. Do you require a Mediation Statement? Yes. If yes:

a. What information do you require in that Statement?

The mediation statement should include the following: 1) the case name; 2) the date and time of the mediation; 3) the name of the Judge assigned to the mediation; 4) the name of the Judge assigned to the litigation; 5) the name of Claimant's counsel; 6) the name of defense counsel; 7) a list of pending petitions; 8) the date of injury; 9) the mechanism of injury; 10) the description of injury; 11) a brief summary of the treatment to date with the names of the primary health care providers; 12) future medical treatment anticipated; 13) the average weekly wage and the weekly compensation rate; 14) a brief summary of your position in litigation; 15) what past due benefits, if any, are in controversy; 16) whether there is a lien, Medicare or otherwise and the amount; 17) Medicare eligibility; 18) the amount of outstanding medical bills; 19) Litigation Costs; 20) whether the parties have had any discussions or negotiations regarding settlement and if so outline what progress has been made; 21) whether you believe a negotiated settlement of the case is possible and set forth your proposal in order of importance outlining what components are negotiable and which are non-negotiable.

b. What documents, if any, must accompany the Statement?

No documents are required other than the mediation statement.

c. How far in advance of the mediation must the parties submit the Statement and accompanying documents?

3 days

6. If there is a request to postpone a mandatory mediation, will it be rescheduled? Yes. If so, how long until it is rescheduled? The time will vary depending upon the Judge's schedule, but as soon as practicable.

7. Are you willing to conduct more than one mandatory mediation session per Dispute?

Yes.

8. What is the latest day before the mediation that cancellation or postponement, absent an emergency, can be requested?

2 days.

9. What else should the parties know or do before the mediation?

The parties should have discussed mediation before the mediation date, i.e., demands should be made sufficiently in advance and authority should be obtained sufficiently in advance before the mediation date so that the parties can have meaningful discussions.

VOLUNTARY MEDIATIONS

1. Do you conduct Voluntary Mediations?

Yes.

2. How should the parties request a Voluntary Mediation?

Parties should contact my secretary, Janet Bonawitz via email to jbonawitz@pa.gov.

3. List the locations where you conduct in-person voluntary mediations:

Until further notice, all mediations will be by video conference (preferably) or telephone. Attendance and participation by the Claimant are strongly encouraged. Claimant's counsel is required to ensure that the Claimant has the opportunity to participate fully. Specifically, Claimant's counsel is expected to ensure that the Claimant has telephone and/or video conferencing capability and to advise the Court appropriately of any issues in that regard. It is anticipated that mediations will be held live in the future at the Harrisburg, Chambersburg, and Gettysburg offices.

4. Will you conduct virtual voluntary mediations? If yes, for which WCOA Districts will you conduct them?

Until further notice, all mediations will be by video conference (preferably) or telephone. Attendance and participation by the Claimant are strongly encouraged. Claimant's counsel is required to ensure that the Claimant has the opportunity to participate fully. Specifically, Claimant's counsel is expected to ensure that the Claimant has telephone and/or video conferencing capability and to advise the Court appropriately of any issues in that regard. It is anticipated that mediations will be held live in the future at the Harrisburg, Chambersburg, and Gettysburg offices. I will conduct virtual mediations for all WCOA Districts.

5. Do you mediate Disputes assigned to you for hearing and decision?

No. My preference is not to mediate my own cases.

6. Do you mediate Disputes in which one or both parties are unrepresented? If yes, describe any special procedures you have for such cases:

Yes, additional time will be allotted.

7. What factors will you consider in deciding whether to conduct a voluntary mediation virtually or in-person?

I will consider factors such as public safety, safety of the parties and attorneys, transportation issues, access to appropriate technology, and other relevant considerations brought to my attention by the parties or their attorneys as well as the parties' preferences.

8. What factors will you consider in deciding whether to conduct a virtual voluntary mediation by audio only or by audio with video?

I will consider factors such as public safety, safety of the parties and attorneys, transportation issues, access to the appropriate technology, and other relevant considerations brought to my attention by the parties or their attorneys as well as the parties' preferences.

9. Are you willing to allow counsel or a party to participate virtually in an in-person voluntary mediation? If so, under what circumstances?

Until further notice, all mediations will be by video conference (preferably) or telephone. Once in-person mediations resume, I will allow counsel or a party to participate virtually for good cause shown and agreement of the parties.

10. Do you require a Mediation Statement? Yes. If yes:

a. What information do you require in that Statement?

The mediation statement should include the following: 1) the case name; 2) the date and time of the mediation; 3) the name of the Judge assigned to the mediation; 4) the name of the Judge assigned to the litigation; 5) the name of Claimant's counsel; 6) the name of defense counsel; 7) a list of pending petitions; 8) the date of injury; 9) the mechanism of injury; 10) the description of injury; 11) a brief summary of the treatment to date with the names of the primary health care providers; 12) future medical treatment anticipated; 13) the average weekly wage and the weekly compensation rate; 14) a brief summary of your position in litigation; 15) what past due benefits, if any, are in controversy; 16) whether there is a lien, Medicare or otherwise and the amount; 17) Medicare eligibility; 18) the amount of outstanding medical bills; 19) Litigation Costs; 20) whether the parties have had any discussions or negotiations regarding settlement and if so outline what progress has been made; 21) whether you believe a negotiated settlement of the case is possible and set forth your proposal in order of importance outlining what components are negotiable and which are non-negotiable.

b. What documents, if any, must accompany the Statement?

No documents are required other than the mediation statement.

c. How far in advance of the mediation must the parties submit the Statement and accompanying documents?

3 days.

11. After you approve a Voluntary Mediation Request, how long until it is scheduled?

As soon as practicable depending on the Judge's schedule.

12. Are you willing to conduct more than one voluntary mediation session per Dispute?

Yes.

13. If the party wants to request cancellation or postponement of a voluntary mediation on a Dispute assigned to you, should they contact you or the mediating Judge?

The mediating Judge.

14. What is the latest day before the mediation that cancellation or postponement, absent an emergency, can be requested?

2 days prior to the mediation.

15. What else should the parties know or do before the mediation?

The parties should have discussed mediation before the mediation date, i.e., demands should be made sufficiently in advance and authority should be obtained sufficiently in advance before the mediation date so that the parties can have meaningful discussions.

REQUESTS/MISCELLANEOUS

1. How far in advance do you require Requests for continuances, changes in hearing times, and extensions to be uploaded into WCAIS?

In accordance with rule 131.13, a continuance request is to be made 10 calendar days prior to the hearing date, unless the circumstances necessitating the continuance arose within the 10 days.

2. Under what circumstances do you conduct off the record conference calls?

The parties may request a conference call and I will occasionally hold one, but my preference is to schedule a quick hearing and address the issue on the record.

3. Under what conditions/circumstances do you accept e-mails from parties?

The parties are directed to utilize WCAIS for all communications with respect to Requests and letters to this Judge. However, if a virtual hearing is scheduled and counsel is unable to connect, he or she may email my assistant, Janet Bonawitz at jbonawitz@pa.gov and myself at akevin@pa.gov.

4. Do you adhere strictly to the duration listed for a Hearing or Mediation?

I try to adhere to the time allotted for each case. All hearings and mediations are scheduled for a specific time slot with other disputes scheduled either before or after. As such, this Judge expects both counsel and the parties to be present and prepared to proceed at the assigned time. Failure to do so may limit the time you have to present your case or could result in the rescheduling of the dispute to another hearing date depending upon the circumstances. Unless there is fortuitously additional time in the hearing day schedule, it may be impossible to go over the allotted time scheduled for the hearing or mediation.

5. What is the best way to contact you in an emergency situation?

Through WCAIS as a request if approval is required; if informational through WCAIS as a letter to the Judge. You may also email my assistant, Janet Bonawitz, at jbonawitz@pa.gov or myself at akevin@pa.gov. You may also phone my assistant at (717) 772-3509.

6. What is your snow/emergency cancellation policy regarding in-person and virtual events (i.e., do you follow a specific school district closing schedule, etc.)?

If the WCOA does not authorize closure of our office, I will generally hold scheduled live hearings and mediations. However, the workday prior to an expected snow or weather event I strive to make a determination as to whether or not live hearings or mediations should be cancelled, and cancellation or delay information will be posted to the WCAIS dashboard. This is the only notification that the parties will receive, and counsel should monitor the WCAIS dashboard for any communication that may impact their scheduled hearings or mediations. It is expected that all virtual hearings will take place as scheduled regardless of weather conditions, however, if counsel requires rescheduling due to weather, a request through WCAIS should be submitted.

Please see the Teams/Virtual Events Tips & Training tile on our [Website](#) for more information on how to use Microsoft Teams for WCOA Hearings and Mediations.