

JUDGE NAME: Judge David Torrey **DISTRICT:** Western **ASSIGNED OFFICE:** Pittsburgh

Assistant's Name: Christina Caruso **Assistant's email:** chrcaruso@pa.gov

Assistant's Commonwealth Direct Dial Phone Number: 412-209-4304

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?

The first event is a full hearing with court reporter and testimony. The Claimant is expected to testify with other witnesses as time permits.

a. List any documents required at the first event:

In an original Claim Petition, Claimant should submit medical records and/or reports establishing *prima facie* case in most instances. In Employer Petitions, Employer should submit expert medical reports and/or job availability exhibits, as appropriate.

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

Documents should be uploaded as exhibits, not letters.

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

Hearings before Judge Torrey are traditional serial hearings.

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?

The first hearing will default to a virtual hearing over Teams. If one party or both desire an in-person hearing thereafter, said request will normally be granted.

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

Hearings will default to audio with video. The parties definitely should be prepared to participate by video, and not audio only. If a party is unable to connect, the proceeding will proceed with audio only.

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

The case will be relisted. This is particularly so if a *pro se* Claimant does not appear at the hearing.

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

No. However, in sensitive cases, a Motion to have the case “sealed” will be entertained.

SUPERSEDEAS PROCEDURES

1. What are your procedures for supersedeas hearings?

At the supersedeas hearing, Judge Torrey expects that the Claimant will testify live.

a. Will testimony be heard?

Yes.

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

Yes, Judge Torrey defaults to 14 days.

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

Judge Torrey will reconsider the supersedeas ruling if new evidence is developed.

d. Do you generally use written orders for denials?

Yes. I believe this is required under the law.

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

Counsel should submit, as in all cases, the Fee Agreement. Frequently, the supersedeas ruling is delayed as other submissions are undertaken by the parties. In such cases, the Employee’s counsel is certainly permitted to contact the Judge asking for a ruling and consideration of fee approval.

f. Describe any other procedures for supersedeas hearings:

None.

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

Consistent with the Act, it is especially critical for Claimant, to resist supersedeas, to submit unequivocal medical and/or lay evidence verifying disability.

WITNESSES/EXHIBITS

1. What are your rules regarding taking testimony?

Judge Torrey hears all lay and vocational expert testimony live. Trial depositions are permitted only by request/special circumstances.

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

Testimony is by virtual or in-person hearings – consistent with the above, trial depositions of lay and other available witnesses (like vocational experts) by deposition are not normally permitted.

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

Upon good cause shown.

4. If counsel wishes to present the testimony of a witness (either virtually or in-person), do you require prior notice? Yes, if at all possible. If you do not provide notice of your witness, such testimony will only be allowed if time permits. **If yes, how much notice do you require?** Enough notice so that the opposing side is aware of the witness and the substance of his or her testimony; and enough time to allow Judge Torrey and his assistant to schedule properly.

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

Normally, the party who filed the initial Petition is expected to proceed first. This scenario can change upon good cause shown.

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

Normally, Judge Torrey will admit the document or documents on his own motion. Counsel may feel free to upload such documents as well. This action, however, is not required.

7. Do you require counsel to upload exhibits to WCAIS before or after the hearing? Preferably before the hearing so the Judge can prepare. **If before, how far in advance of the hearing must they be uploaded?** 24 hours minimum.

8. When will you rule on objections to exhibits?

Judge Torrey will rule from the bench whenever possible.

9. What is your procedure for handling discovery disputes?

Judge Torrey will address such disputes at the hearing or, if the parties desire, by conference call. To secure a conference call, the parties should use a WCAIS "Request."

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

Proposed Findings.

COMPROMISE & RELEASES (C&Rs)

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

Judge Torrey follows procedures consistent with the Act. All such hearings are, of course, live and require the Claimant to be present. All such hearings are "in open hearing" and on-the-record.

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?

A separate Petition is not required.

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?

A draft is not necessarily required. However, a copy 24 hours in advance assists the Judge to prepare.

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

Before

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

Yes.

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

Yes.

- f. Will you sign bench orders?**

No.

- g. Describe any other procedures you have for C&R Agreements:**

1. Claimant must have a copy of the signed agreement in his or her possession at the time of his or her testimony.
2. Hold harmless agreements are not authorized under the Act and will be stricken automatically.
3. If Claimant is resigning his or her employment as part of the overall settlement, this fact must be revealed in the course of the hearing. Similarly, if Claimant is tendering a general release, this fact, as well, be revealed at the hearing. The resignation and general release need not be made part of the C&R document, or otherwise submitted, at the hearing.
4. Blanket releases which purport to have the worker compromise-settling not-yet-manifested injuries and/or diseases, or unknown injuries and conditions having nothing to do with the underlying claim, are strictly prohibited and will be stricken automatically.
5. Settlement provisos not authorized by the Act maybe stricken as a matter of law.

STIPULATIONS RESOLVING DISPUTES

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

The Stipulation should, in most cases, be written and submitted as a Joint Exhibit into the Exhibit queue on WCAIS.

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

The Fee Agreement should be a separate exhibit.

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

Yes.

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

Exhibits which are critical to the Stipulation should be uploaded so that the Judge can be assured that the Stipulation is fair to all parties.

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

Generally, the supportive exhibits should be exhibits to the Stipulation and, accordingly, be part of the Stipulation.

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

SSN numbers should always be redacted.

7. Describe any other procedures you have for stipulations:

None.

BRIEFS AND PROPOSED FINDINGS

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

Final Hearing is preferred but by no means required. Yes, Judge Torrey will close a case via WCAIS.

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

Generally, final submissions are due 45 days from the date of the last hearing. This scenario allows the parties to consult the final hearing transcript, if necessary, and then confidently prepare closing documents.

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

Generally, Judge Torrey prefers Proposed Findings of Fact and Conclusions of Law. The Proposed Findings should be in Judge Torrey's format and not counsel's format or that of some other WCJ. Judge Torrey will provide samples of proposed findings upon request. An updated example of Proposed Findings is also found in Volume 9, *West's Pennsylvania Practice, Workers' Compensation* (West 4th Edition 2021), at Appendix I. This Volume is found at all law libraries and on Westlaw. Also, parties seeking Appendix I in electronic version can request a copy from the Judge. A brief position letter, no more than two or three pages, may accompany the Proposed Findings.

MANDATORY MEDIATIONS

1. List the offices where you conduct mandatory mediations:

[Currently, Judge Torrey is not hearing Mandatory Mediations as he sits as a Medical Fee Review Hearing Officer.]

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

Click or tap here to enter text.

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

Click or tap here to enter text.

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

Click or tap here to enter text.

- 5. Do you require a Mediation Statement?** Click or tap here to enter text. **If yes:**

- a. What information do you require in that Statement?**

Click or tap here to enter text.

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

Click or tap here to enter text.

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

Click or tap here to enter text.

- 6. If there is a request to postpone a mandatory mediation, will it be rescheduled?** Click or tap here to enter text.
If so, how long until it is rescheduled? Click or tap here to enter text.

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

Click or tap here to enter text.

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

Click or tap here to enter text.

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

Click or tap here to enter text.

VOLUNTARY MEDIATIONS

- 1. Do you conduct Voluntary Mediations?**

No. Judge Torrey is currently not acting as a Mediator, as he is sitting as a Medical Fee Review Hearing Officer.

- 2. How should the parties request a Voluntary Mediation?**

Click or tap here to enter text.

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

Click or tap here to enter text.

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

Click or tap here to enter text.

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

Click or tap here to enter text.

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

Click or tap here to enter text.

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

Click or tap here to enter text.

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

Click or tap here to enter text.

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

Click or tap here to enter text.

10. Do you require a Mediation Statement? Click or tap here to enter text. If yes:

a. What information do you require in that Statement?

Click or tap here to enter text.

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

Click or tap here to enter text.

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

Click or tap here to enter text.

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

Click or tap here to enter text.

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

Click or tap here to enter text.

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?

Click or tap here to enter text.

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

Click or tap here to enter text.

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

Click or tap here to enter text.

REQUESTS/MISCELLANEOUS

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

A minimum of 24 hours.

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

Judge Torrey will conduct an off-the-record conference call upon consent of both parties.

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

Judge Torrey will accept e-mails from the parties “outside of WCAIS.” However, any such e-mails must feature the other side being copied. This particularly includes petitions involving *pro se* Claimants. **Ex parte contacts with the Judge by e-mail are strictly prohibited.**

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

No, I will go over as time permits. However, it would be rare if Judge Torrey went over 20-minutes.

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

Lawyers may contact Judge Torrey by e-mail, which he regularly consults: dtorrey@pa.gov

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.)?

Judge Torrey follows WCOA/Pittsburgh protocols and has no other special procedures.