

Information About The Board of Industrial Assurance Appeals

The following information is intended to provide general answers to questions involving appeals to the Board of Industrial Insurance Appeals. If you have questions about your case, we would be happy to discuss your claim with you in more detail.

The [Board of Industrial Insurance Appeals](#) is a State agency, separate and apart from the Department of Labor and Industries, that acts as an Administrative Law Court for the purpose of resolving conflicts and disputes arising from the application of Washington State law concerning primarily workers' compensation claims and industrial health and safety statutes, including asbestos certification. The Board also hears cases involving crime victims' compensation, the Worker and Community Right to Know Act, the Charter Boat Safety Act, and the Washington State Explosives Act.

How can an attorney help me with my Board of Industrial Insurance Appeals case?

The earlier our office can be involved in a claim, the easier it is for us to obtain the documentation to support our contentions prior to litigation. In most cases, we are able to avoid litigation altogether by working in the mediation process to resolve any issues administratively with the Department of Labor and Industries and/or the self-insured employer's representative. This often results in a speedy resolution of the issues. The cost of litigation can be significant. Charges are incurred with the presentation of expert testimony. The length of time before a resolution of the issues is obtained is much greater if the case has to be tried before an Industrial Appeals Judge. We have found that, in many cases, the extra time and cost of litigation outweighs the potential benefit to be derived from filing an appeal. It is in everyone's best interest to resolve issues at the claims management level whenever possible, or in mediation before the Board when not possible.

What does a hearing involve?

Once an appeal has been filed, either by you/your attorney or your employer, to a written decision of the Department of Labor and Industries or a self-insured employer's representative, the claim is reviewed by the Board to determine the appropriateness of the Board reviewing the issues raised. The Department of Labor and Industries is given an opportunity to reassume jurisdiction of the claim if it finds that an error was made. If the Department does not reassume within a short time, the Board will issue an Order Granting Appeal. The case is then under the jurisdiction of the Board of Industrial Insurance Appeals.

The Board will issue many types of notices in each case. The first of these may be a Notice of Settlement Conference, set before an industrial appeals judge who will attempt to mediate the

case. At this conference, the parties will try to determine if the case can be resolved without the necessity of formal hearings. Many times, more than one settlement conference will take place if the parties are in ongoing negotiations. If there is no settlement in the mediation process, the case is referred to a different judge who will schedule the case for hearing.

From this point, the case is handled according to Superior Court rules concerning the handling of evidence and presentation of information to the judge assigned. Although the mediation process is designed to be relatively informal, the hearing process is more conventional. A Notice of Scheduling Conference will be issued. At the scheduling conference, trial dates are set. Witness confirmation due dates and other time limits are set at this conference.

On the trial dates assigned, the testimony of expert witnesses will be taken and made part of the permanent record, together with any evidentiary documents and deposition transcripts. When the case is completed the judge reads the entire record and issues a Proposed Decision and Order.

After the hearing, how long will it be until I receive a decision and, if the decision is favorable, when will I begin to receive benefits? What if it is not favorable?

Judges widely vary in their decision-making timetable, in part because of differing caseloads. A rough estimate for a decision is three to four months from the hearing date, sometimes up to six months or more, particularly if there are complicated issues to be decided. You will receive the Proposed Decision and Order, as will your attorney and the other involved parties. Any party to the appeal has the right to petition the Board for a further review of this decision. If no Petition for Review is received, if the petition is not granted, or subsequent to the review of the full Board in cases where the petition is granted, the Board will issue a final Decision and Order. Further appeal rights remain available. Any further appeal to the decision of the Board is heard by the Washington State Superior Court and potentially the Washington State Court of Appeals. Once the Decision and Order has been issued, the Department of Labor and Industries must issue its own ministerial order to adhere to the decision of the Board. Only after this Department order has been issued will the decision be in effect and any appropriate benefits be paid.

Do I need to have an attorney represent me before the Board of Industrial Insurance Appeals?

Although you are not required to have representation before the Board, our office strongly recommends that you retain an attorney. If an appeal to Superior Court is needed in response to a decision of the Board, the appeal is heard by a mere reading of the transcript created via the hearings at the Board. No new evidence or testimony is usually admitted. Therefore, it is important that the best possible record be created during the hearing process. The Board advises that the parties do not need an attorney during the initial mediation stages. However, we have found that we have a much better chance of success if we are involved in the appeal at the earliest possible stage.

The Department of Labor and Industries, and often the employer, has legal counsel. Even the playing field – have someone in your corner. Contact our office to discuss the details of your case.