

**Notice of Rights and Procedures in Contested
Workers' Compensation Cases
(O.R.S. 183.413)**

(1) Workers' Compensation hearings are conducted in much the same manner as nonjury civil cases in the district and circuit courts. The hearing is conducted by a Administrative Law Judge who functions the same as a judge and jury in a court case.

(2) The Administrative Law Judge is an employee of the Oregon Workers' Compensation Board who has authority to make a final independent decision (subject to review, as discussed below).

(3) Usually a worker who is injured, or claims to be injured, requests the hearing and is called the "claimant". Sometimes a person or business without workers' compensation insurance is classified a "non-complying employer" and he or she requests a hearing. Anyone who is affected can request a hearing regarding any matter concerning a claim.

(4) Claimants are almost always represented by lawyers. The employer and its insurance company are always represented by lawyers. Any corporation that intends to appear in a workers' compensation hearing must be represented by a lawyer.

(5) The Workers' Compensation Board sends a notice of the date, time, and place of a hearing by mailing notice at least 60 days before the hearing.

(6) At the hearing, the burden of proof is on the person who asked for the hearing. If claimant requested the hearing, claimant must present evidence to persuade the Administrative Law Judge to find in claimant's favor. If an employer or insurer requested the hearing, it is the employer or insurer who must present evidence to persuade the Administrative Law Judge to find in the employer's or insurer's favor. The person with the burden of proof has the right to be first and last in presenting evidence and has the right to the first and last say in arguments. In order to obtain an award of benefits, the evidence must be persuasive that benefits should be awarded. For most cases, claimant is required to prove that it is more likely than not that claimant is entitled to benefits. **Special Notice of Burden of Proof for Mental Disorder cases:** In cases involving mental stress disorders, claimant must prove by clear and convincing evidence that the major contributing cause of the mental stress disorders is work related and the disorder was not caused by conditions generally inherent in every working situation; or reasonable disciplinary, corrective or job performance evaluation actions by the employer; or by the end of employment.

(7) Evidence: Evidence may be in the form of documents or sworn testimony. All evidence must be related to the issues raised for determination at the hearing.

(a) Documents must be readable. Each document must be given a number in date order from oldest to newest. The person submitting documents must submit an index of documents. The index of documents must go in date order from oldest to newest. Copies of all documents with an index must be provided to the other party[ies] at the same time the documents are sent to the Administrative Law Judge.

(b) Each party is allowed to subpoena witnesses. All witnesses give testimony under oath or affirmation. All testimony is recorded by the Workers' Compensation Board for future reference. The witnesses may not be allowed to talk to each other about their testimony during the hearing.

(8) Objections to Evidence: A party may object to any document, or to any question asked of a witness, if it is felt that the document or the answer to that question should not be considered by the Administrative Law Judge in deciding the case. The Administrative Law Judge will grant or deny objections based on considerations of fairness and substantial justice, not according to strict rules of evidence (though the Oregon Evidence Code is loosely followed).

(9) Presentation of Evidence: Usually documents are presented and objections to them, if any, considered before the witnesses testify.

(10) Determination of Issues: The issues to be considered are those set forth in the request for hearing and response. Usually the Administrative Law Judge will ask the parties to make the issues clear before the witnesses testify. Amendments to issues may be allowed up to the time of hearing. However, if a new issue is raised too close to the hearing or at the hearing, the hearing may be postponed.

(11) Opening Statements: Usually the Administrative Law Judge asks each party to explain briefly what the case is about. This is not a time to present arguments. The opening statements inform the Administrative Law Judge about evidence which may be presented and what each party seeks.

(12) Testimony: All witnesses and potential witnesses must be ready at the hearing to testify when called into the hearing room. Hearings are usually not postponed to allow a party to call any witness who was not present at the hearing. All questions and answers must be related to the issues at the hearing. The party who requested the hearing calls the first witness. The parties ask the witness questions for the purpose of proving facts. When the first party finishes asking questions, the other party may ask questions of the same witness. When the other party is through asking questions, the first party may ask some more questions. The process of calling witnesses and asking questions continues until all of the witnesses have testified. In extraordinary circumstances, the Administrative Law Judge may allow more time to produce witnesses or documents. More time is not usually allowed.

(13) Closing Arguments: After the documents and testimony are presented to the Administrative Law Judge, the parties submit closing arguments. Usually, the closing arguments are made at the end of the hearing. The parties sometimes submit their closing arguments in writing. The party who requested the hearing goes first and gets the last say. Closing arguments are sometimes recorded by the Workers' Compensation Board for later reference. In closing arguments, the parties explain what evidence is in their favor, and why the Administrative Law Judge should rule in their favor.

(14) If at any time during the course of the hearing, a party who is representing himself/herself feels he/she should be represented by a lawyer, he/she can request the hearing be halted to obtain the services of a lawyer. The Administrative Law Judge will decide if such a request should be granted.

(15) After all the evidence has been presented and the hearing is concluded, the Administrative Law Judge will issue a written decision. If, within 30 days of the case being closed, a party feels additional evidence should be presented, the party may ask the Administrative Law Judge to reopen the hearing and consider the evidence. The opposing party may object to the request. The Administrative Law Judge will decide if the hearing should be reopened and additional evidence considered. The Administrative Law Judge's order will contain a written notice of additional rights that begin when the Administrative Law Judge mails an order.

(16) Appeals: The decision of the Administrative Law Judge is final unless someone requests review by the Workers' Compensation Board within 30 days after the Administrative Law Judge mails the order. Copies of the request for review must be sent to all the claimants, employers, insurers, and attorneys involved in the hearing. If someone requests review, the court reporter will make a printed copy of the things that were said at the hearing. The Workers' Compensation Board will mail a copy of the hearing record at no charge to each party. If anybody needs a copy of an exhibit, the Workers' Compensation Board will provide a copy of the exhibit. Each party is allowed to file additional arguments with the Workers' Compensation Board, but no new evidence is considered. The Workers' Compensation Board may affirm, modify, or reverse the order of the Administrative Law Judge based on a review of the whole record. The order of the Workers' Compensation Board will contain a notice of additional rights which become effective when the Board mails its order. If someone is unhappy with the decision of the Workers' Compensation Board, they are entitled to request a review by the Court of Appeals. The Court of Appeals and Supreme Court have technical rules of their own, which they will provide, if a case reaches them on appeal.