

NOTICE OF RIGHTS AND PROCEDURES IN WORKERS' COMPENSATION DIVISION HEARINGS [ORS 183.413(2)]

A workers' compensation hearing is similar to a trial before a judge and without a jury. The hearing is held by an Administrative Law Judge (ALJ) employed by the Workers' Compensation Board. The Board is not a party to the hearing and did not have any role in making the decision that led up to the hearing. The ALJ's function is to preside over the hearing and rule on all matters related to the hearing, and after the hearing record is closed, issue a written order that decides the issue(s) in the case. The issues to be considered are those set forth in the request for hearing and response. However, issues may be amended up to the time of the hearing.

Usually, the party who requests the hearing has the burden of proof. At the time of the hearing, the ALJ will indicate which party has the burden of proof and will explain what it is that that party must prove. The party with the burden of proof presents its case first.

Either party may offer evidence into the record at hearing. Evidence may consist of documents, real objects or sworn testimony. A witness called to testify by one party may be questioned by the other party. A party offering documentary evidence must provide copies to the other party. A party may object to evidence being received into the record on the basis that the evidence is irrelevant, immaterial, unduly repetitious or otherwise not probative (tending to prove a matter at issue) or reliable. In certain types of cases, only evidence that was in the record before the Workers' Compensation Division is admissible and no further evidence will be admitted. The ALJ will determine whether evidence is received into the record.

A recording of the hearing will be made. Ordinarily, the recording is not transcribed unless the matter is appealed to the Court of Appeals. The recorded hearing, with any real or documentary evidence, will serve as the record for review by the Court of Appeals.

Parties to workers' compensation hearings are usually represented by attorneys. The state agency involved in this matter, the Workers' Compensation Division, may or may not be represented by an attorney. During the course of the hearing, an unrepresented party may ask that the hearing be stopped so the party can retain an attorney. The ALJ will decide whether to grant such a request.

Parties may ask that the hearing be continued for a time to obtain additional evidence. It is expected, however, that the parties normally will have all the evidence they wish to offer available at the time of hearing. The ALJ will decide whether a continuance will be granted.

The written order issued by the ALJ is called a Proposed and Final Order. Copies of the Order will be mailed to all parties. The Order will become final unless, within 30 days after the date that the Order is mailed, either party files exceptions with the Administrator of the Workers' Compensation Division or the Administrator gives notice of intent to review the Order. The Order will explain the procedure and time deadlines for filing exceptions. Following receipt of exceptions, response, and reply, the Administrator will issue an Order addressing the parties' arguments. The Administrator may adopt the ALJ's Order or prepare a new order called a Final Order, which becomes a final, appealable Order upon service or mailing to the parties.

Any party who is dissatisfied with the Final Order may file a Petition for Judicial Review with the Oregon Court of Appeals within 60 days after the Final Order is served on, or is mailed to, the parties.