Guide for Injured Workers Who Do Not Have Lawyers

Practical information about how to represent yourself in the Court of Workers' Compensation Claims and the Appeals Board

Updated June 2022

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PART ONE

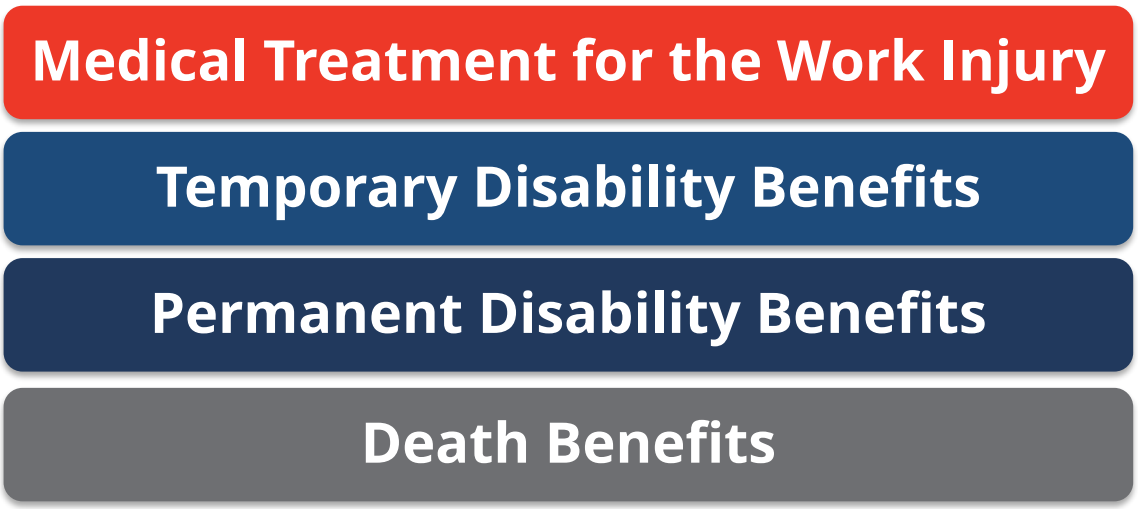
In the Tennessee Court of Workers' Compensation Claims

This booklet will help with your workers' compensation claim if you do not have a lawyer. The Ombudsman Program can also help. Call 1-800-332-2667. For more information about the Ombudsman Program, go to the Bureau's website.

WHAT ARE WORKERS' COMPENSATION BENEFITS?

The Workers' Compensation Law requires employers to provide certain benefits when you are recovering from a workplace accident.

There are four basic types of workers' compensation benefits:



Medical Benefits: If your employer does not know that you were hurt at work, you should immediately notify your supervisor, in writing if possible. If you do not give immediate notice, you must give written notice within fifteen days from the date of the injury, or the date you know or should know that your injury is work-related. Then your employer will give you a list of at least three doctors. You will pick one doctor, who will become the "authorized treating physician." Any treatment this physician recommends should, in most cases, be approved by the insurance adjuster.

Temporary Disability Benefits: If the authorized treating physician takes you completely off work while you are recovering from your work injury, you may be entitled to **temporary total disability benefits** to help replace some of your lost wages. These benefits are generally two-thirds of the weekly wages you were earning in an average week during the year before your work injury.

If the authorized treating physician returns you to work temporarily but prohibits certain tasks, restricts your activities, or reduces your hours while you recover, you may be entitled to **temporary partial disability benefits** if your employer does not return you to work under the doctor's restrictions. Temporary partial disability benefits are not calculated in the same way as temporary total disability benefits. Regardless, your employer must pay you two-thirds of the difference between your pre- and post-injury wages.

Temporary disability benefits end when you return to work or your treating physician determines that you have recovered as much as possible. This is known as "**maximum medical improvement**" and occurs even if you have a permanent impairment.

If you were denied temporary disability benefits and believe that you are entitled to them, you must provide the workers' compensation judge a doctor's note showing: you missed work due to the work injury; the work days that you missed or the hours that you lost; **and** you were not at maximum medical improvement.

Permanent Disability Benefits: You may be entitled to permanent disability benefits if a doctor states in writing that your work injury leaves you with a permanent impairment. This is determined after the doctor places you at maximum medical improvement for your injury. The impairment rating is expressed as a percentage. The amount is calculated by multiplying this percentage times your compensation rate (two-thirds of your average weekly wage) times 450 weeks.

In some cases, if you have not returned to work after reaching maximum medical improvement earning the same or greater wages, you might be entitled to increased permanent partial disability benefits as well. Considerations for increased benefits include if you lack a high school diploma or equivalent certificate; if you are forty or older; and the unemployment rate in the county where you worked. However, no increased benefits are available if you were fired for cause or if you are undocumented.

Death Benefits: If you are the spouse or dependent child of someone who died in a work accident, you may be entitled to death benefits, including burial expenses. Certain relatives of an employee who died in a work accident might also be entitled to benefits, if the relative was financially dependent on the deceased employee. You must prove that the work accident caused your spouse's, parent's, or relative's death. This will require a doctor's opinion.

PROVING YOUR CLAIM

Elements of a Claim: You, as the injured worker, must prove all elements of your claim, including:

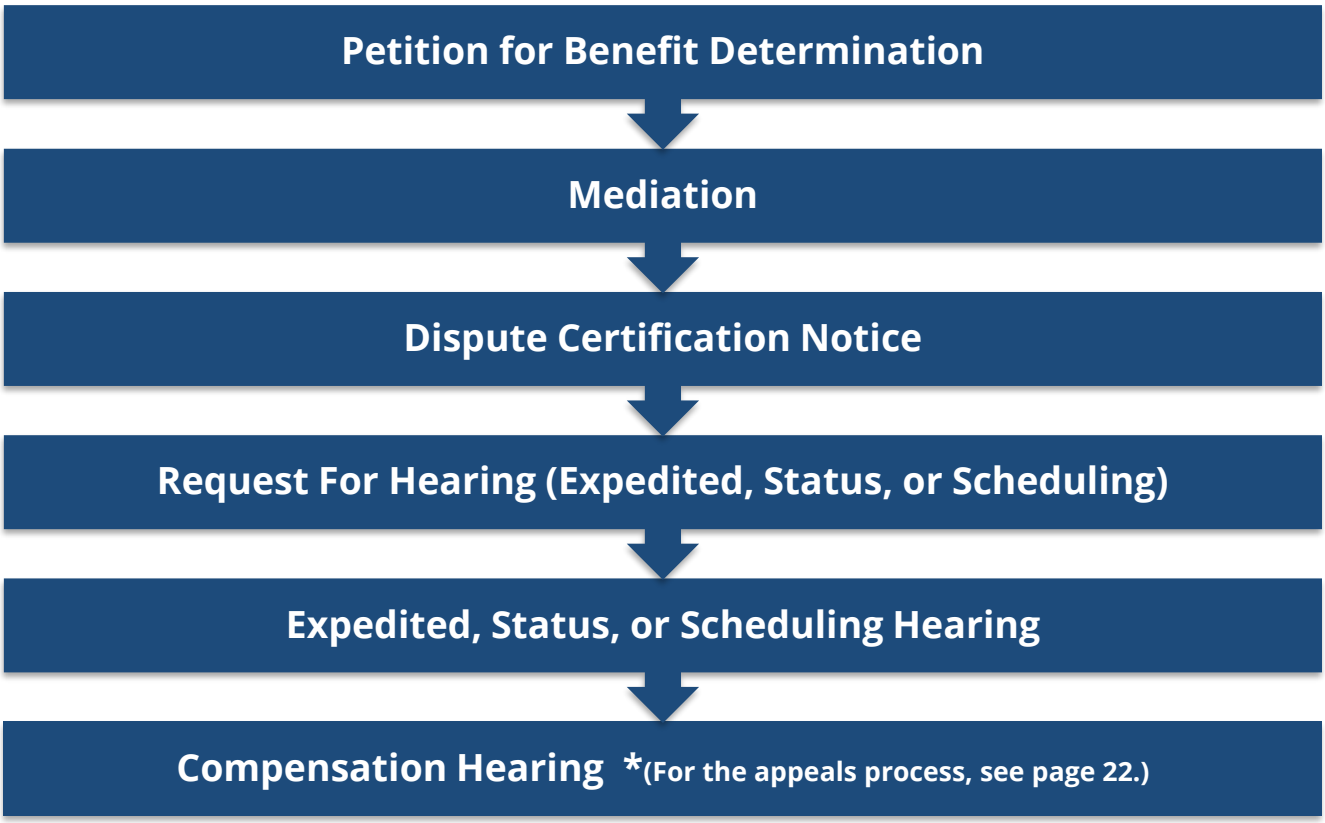
- ✓ How and when your injury occurred or developed.
- ✓ A doctor's opinion that:
  - The accident at work caused your injury, condition, or disease and the need for medical treatment; and
  - The treatment you received for the injury is reasonable and necessary.
- ✓ In a claim for temporary disability benefits:
  - The authorized treating physician has taken you completely off work while you are recovering from your work injury and for which dates; or
  - Your employer cannot accommodate the doctor's restrictions or can accommodate the restrictions but with fewer hours.
- ✓ In a claim for permanent disability benefits, the fact that your injury is permanent and how that affects your ability to work.

Legal Definition of "Injury": The Workers' Compensation Law requires you to prove that your injury "arose primarily out of and in the course and scope of employment." This means **you must prove the accident or incident "contributed more than fifty percent (50%) in causing the death, disablement, or need for medical treatment, considering all causes."** In almost all cases, **you will need a doctor's opinion to prove this.**

The authorized treating physician usually provides this opinion, which is presumed correct. However, if you disagree with the authorized treating physician, you can always ask another doctor for a different opinion and present that to the judge.

HOW A CLAIM MOVES THROUGH THE TRIAL COURT

The Tennessee Court of Workers' Compensation Claims, also known as the "trial court," hears cases involving a work injury on or after *July 1, 2014,* when injured workers are not receiving benefits they believe that they are entitled to receive. The chart below shows the stages of a typical case as it moves through the trial court.



Petition for Benefit Determination: The first step is to file a "Petition for Benefit Determination" with the Bureau. The petition is available on the "Forms" link of the Bureau's website. The petition is a written request for the Bureau to assist in resolving issues, and it initiates your claim in court. Complete the petition in full and to the best of your ability. At a minimum, it must contain the following information:

1) Your contact information;
2) The name of the employer;
3) The date of the alleged injury or accident;
4) A short plain statement describing the alleged injury or accident; and
5) Your signature.

You must file your petition with the Court Clerk and give a copy to the employer and/or the carrier. Generally speaking, you must file the petition within one year of the date of injury or the date that your employer/the carrier last paid benefits. After you file the petition, your case will be assigned to a mediator.

Mediation: The mediator will contact all parties to learn about the issues and may bring everyone together, over the phone, by videoconference, or in person, to try to resolve the dispute. All parties should mediate in good faith, which means you must cooperate in scheduling, attend at the agreed time, and show an honest and sincere attempt to resolve the dispute.

You should promptly provide copies of medical records and other relevant documentary information to the mediator and other parties. As additional medical records are received, you should continue to forward copies to the mediator and other parties. In addition, the employer's attorney may ask you to sign a medical release so that the employer can get medical records directly from your doctor(s). Signing the release will alleviate your responsibility to provide your employer copies of medical records. Failure to provide these records or sign a release might cause treatment delays.

Dispute Certification Notice: If you do not reach an agreement, the mediator will complete a "Dispute Certification Notice" (DCN). After you receive the DCN, review it carefully. If information is missing, you have five business days to notify the mediator of any information you want added to the DCN. After adding the information, the mediator will file the DCN with the trial court clerk. The judge can only decide the issues listed on the DCN.

Once the DCN is filed, you have 60 days to request a hearing. As explained below, you have three options: 1) an expedited hearing, 2) a status hearing, or 3) a scheduling hearing.

If you do not file a hearing request within that time, you will be required to participate in a telephone "show cause" hearing. At that hearing, you must explain why you have not requested a hearing. The judge might dismiss your case if you do not call.

Expedited, Status, or Scheduling Hearing:

Expedited Hearing: If you have not received temporary disability benefits or medical benefits and you want these benefits, you should request an expedited hearing.

If you request an expedited hearing, you must also file an "affidavit" or a "declaration" to explain your claim. Notably, a declaration does not require notarization. Both are available in one form, which is labeled "Affidavit/Rule 72 Declaration General" under Downloadable Templates on the Court's website. You should also file any other information, including medical records, showing why you should receive benefits.

After the expedited hearing, the judge will write an order explaining why your employer must provide some or all of the medical care and/or temporary disability benefits you requested, or why the judge denied your request. Even if your request is denied, you can still proceed to a compensation hearing. You may also request another expedited hearing if you obtain new information.

Status Hearing: If you are receiving treatment but are not fully recovered, the judge will monitor your progress via a telephone hearing(s) until your claim is ready for a scheduling hearing.

Scheduling Hearing: If you have recovered from your injury and have a permanent impairment rating but cannot agree on the benefits you are owed, you should request a scheduling hearing. A scheduling hearing is held by telephone. A judge will set deadlines for preparing the case for the next stage, which is a compensation hearing.

Compensation Hearing: After the parties have collected all the evidence, including proof of an impairment rating, you will appear before the judge for a final hearing, known as a "compensation hearing" or simply a "trial." After the hearing, the judge will write an order explaining whether you will receive workers' compensation benefits, including permanent disability benefits.

Uninsured Employers: If you believe that your employer did not have workers' compensation insurance coverage for your injury, you may still get an order for your employer to pay benefits. You may also be eligible to receive benefits through the

Uninsured Employers Fund. You should write on your petition that your employer was uninsured, and a Bureau compliance specialist will investigate and write a report.

If you receive an order awarding benefits after an expedited hearing, the order will explain how to request assistance from the Fund, which has *discretion* to pay *limited* temporary disability benefits and medical benefits if you meet the following requirements:

1) You worked for an uninsured employer;
2) You suffered an injury primarily in the course and scope of employment on or after July 1, 2015;
3) You were a Tennessee resident on the date of injury;
4) You notified the Bureau of the injury and of the employer's lack of coverage within the requisite timeframe after the injury; and
5) You were awarded workers' compensation benefits.

You must complete a form for consideration of a *discretionary* payment through the Fund. The Fund does not pay any permanent disability benefits.

Post-Judgment: Sometimes after a case has concluded, either by the judge approving a settlement agreement or after a compensation hearing, disputes arise regarding additional medical care with the authorized physician. You may file another petition using the same docket number, and go through mediation. If the parties cannot agree, the mediator will file another DCN, and the case will return to the same judge to decide the dispute over medical care at a compensation hearing.

HEARING CHECKLISTS

Be prepared for your hearing with these helpful checklists. You might need every item on the list. Your documents should be filed with the Clerk at least ten business days before the hearing, and you should copy all other parties when you file them.

Expedited Hearing: Unless otherwise stated, **all items** must be filed with your Request for Expedited Hearing:

- ☐ Your affidavit or declaration
  A Bureau ombudsman may notarize the affidavit.
- ☐ Affidavits/declarations from other witnesses (if applicable)
- ☐ Medical records (see page 15.)
  - Medical records signed by the medical provider
    (Electronically signed is permissible)
    or
  - Authenticated medical records. A "medical record certification" form is available at the Court's website.
- ☐ Proof of Causation
  - Signed causation letter from the doctor stating that your work caused your injury or current need for treatment.
    or
  - A statement within the medical records that relates your injury to your work.
- ☐ Proof of your earnings
  such as pay stubs.
- ☐ Proof of Work Restrictions
  - Off-work notes
    or
  - Statements restricting you from performing certain tasks or engaging in certain activity (like lifting more than ten pounds.)
- ☐ Medical bills **and** a doctor's signature and opinion stating that the medical bills are related to treatment required for your work injury, and the treatment and bills were reasonable and necessary.
- ☐ Subpoenas for persons you want to testify. *You can obtain these from the trial court clerk and **personally serve** them on the person(s) you wish to call to testify at the hearing. You must serve a subpoena at least five business days before the hearing, or the judge might not enforce it.*
- ☐ Witness list (see page 15.)
  If you have listed your witnesses on page 2 of your Hearing Request, you do not need to submit a separate list.

Late Documents: If you obtain additional documentation that supports your request for benefits after filing your hearing request, you may file it with the trial court clerk before the hearing and/or bring this to the hearing. You must **provide a copy** of the new information to the employer's lawyer as soon as possible after you obtain it.

With all documentary evidence, the judge will decide if it is "admissible," meaning that, under the Tennessee Rules of Evidence, the judge may consider the document to make a decision on your entitlement to benefits.

Compensation Hearing: Unless otherwise stated, or unless the judge gives other instructions, **all documents** must be filed no later than ten business days before the compensation hearing.

- ☐ Medical records regarding your workers' compensation injury
- ☐ Form C-32 Standard Medical Report
  You can find this form at the "Forms" link on the Bureau's website. See page 17.
- ☐ Deposition transcripts
  See page 13 for a definition.
- ☐ Pre-hearing Statement
  You must file a prehearing statement with the trial court clerk only before the compensation hearing. The "Pre-Compensation Hearing Statement Template" is available at the Court's website.
- ☐ Witness and exhibit lists
  If this information is not provided in the Pre-hearing Statement.
- ☐ Subpoenas for anyone whom you want to testify
  *You can obtain these from the trial court clerk and must **personally serve** them on the person(s) you wish to call to testify at the hearing. You must serve a subpoena at least five business days before the hearing, or the judge might not enforce it.*
- ☐ Proof of your earnings
  Such as pay stubs.

Late Documents: If you obtain additional documentation that supports your request for benefits after filing your Pre-hearing Statement, you may file it with the trial court clerk before the hearing and/or bring this to the hearing. You should **provide a copy** of this additional information to the employer's lawyer as soon as possible after you obtain it.

With all documentary evidence, the judge will decide if it is "admissible," meaning that, under the Tennessee Rules of Evidence, the judge may consider the document to make a decision on your entitlement to benefits.

RULES OF THE TRIAL COURT

This section provides a brief overview of trial court rules and procedures. Even if you do not have an attorney, you still must **follow all Court rules**.

Rules: The Court follows the "Rules of the Court of Workers' Compensation Claims and Alternative Dispute Resolution," available at the Court's website.

Tennessee Rules of Evidence and Civil Procedure: The Tennessee Rules of Evidence and the Tennessee Rules of Civil Procedure apply at all hearings. They are available at the Tennessee Administrative Office of the Courts' website, tncourts.com.

The Tennessee Rules of Evidence guide the judge in deciding whether evidence—any paper, item, recording, or testimony—can be considered when deciding the case. The Tennessee Rules of Civil Procedure guide the judge and the parties in preparing and trying a case.

THE DISCOVERY PROCESS

Types of Discovery: Before your hearing, each side wants to see the information and documents the other side has about the case. Discovery is the process through which you and your employer gather and exchange information. The most common discovery methods are:

1. **Interrogatories:** These are written questions asking for information about your case and must be answered under oath.
2. **Depositions:** These are verbal questions asked of any witness by you or your employer's lawyer under oath. A court reporter records all questions and answers. The written transcript is available from the court reporter for a fee.
3. **Requests for Production:** These are written requests for copies of specific documents, recordings, photographs, or other items and must be answered under oath.
4. **Requests for Admission:** These are written statements asking you to admit the truth of a statement relating to facts, the application of law to facts, or opinions about either. The statements will be deemed admitted unless, within 30 days after you receive them, you provide a signed, written response objecting to them.

Responding to Discovery: Whenever you receive interrogatories, a request for production of documents, or a request for admissions, you *must* provide the answers, requested documents, or other response within 30 days unless the judge gives an extension. When answering the interrogatories, your responses *must* be signed and notarized. The Court rules place a 20-item limit on interrogatories, requests for production of documents, or requests for admission, but this number may be increased if either party files a motion asking the judge's permission to do so.

Unless specifically requested by the judge or filed with a "Motion to Compel Discovery," you should not file discovery responses or requests with the trial court clerk. Instead, you should send these responses to the employer's lawyer.

Depositions: You must cooperate in scheduling depositions. If you wish to depose a witness, you must hire a court reporter to record the deposition. If you did not request the deposition, you can still ask the witness questions on cross-examination.

If the employer's lawyer objects to a question, you might consider re-phrasing it. Generally speaking, however, a witness must answer the question; the judge will decide if the question was improper at a later date.

At all depositions, whether you are being deposed or another witness is giving testimony, you should avoid arguing with the witness or employer's attorney. If you are being deposed, listen carefully and answer the questions truthfully and completely. You can clarify your responses during your testimony.

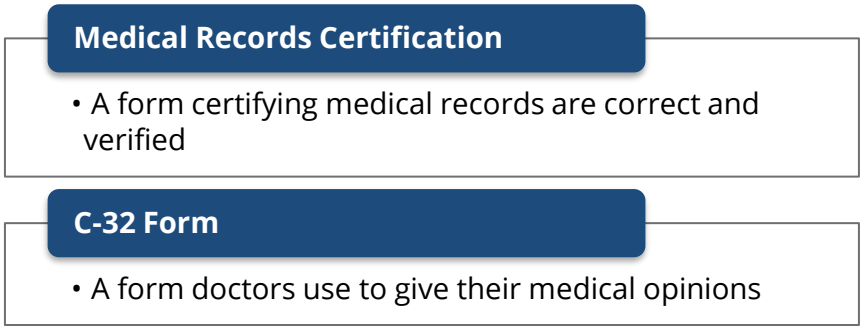
Discovery Disputes: When you and your employer disagree over whether a discovery response is required, you may file a "Motion to Compel Discovery." In the motion, you should describe what you are seeking, explain how you tried to resolve the dispute with your employer's lawyer before filing the motion, and ask the judge to order your employer's lawyer to provide it. You must provide your employer's lawyer a copy of the motion when you file it.

PREPARING FOR TRIAL

Pre-trial Documentation: As trial approaches, you must complete several important tasks. These are explained in the Rules of the Court of Workers' Compensation Claims and Alternative Dispute Resolution. If you do not follow these rules, the judge might not allow your witness to testify, or your document to become an exhibit.

Witness and Exhibit Lists: If your trial is an expedited hearing, you must provide a witness list when you file the Hearing Request. If your trial is a compensation hearing, you must provide a witness and exhibit list no later than 10 days before the hearing. If your trial is a compensation hearing, you must list your witnesses and exhibits in your Pre-hearing Statement (see below).

Medical Records: The law allows your employer to obtain copies of your medical records from the doctor who treated your work injury if the employer paid the bill. Additionally, the judge might require you to sign medical releases allowing your employer's lawyer to obtain records from another doctor, especially if you had a previous injury or surgery for the same body part. The employer's attorney must give you a copy of all records received under your signed authorization.



When you file medical records with the trial court clerk, make sure that your doctor has either signed the records by hand or electronically. If the medical records are not signed, you will need to attach a "Medical Records Certification" signed by staff at your doctor's office. This form is available at the Court's website.

Pre-Compensation Hearing Statement: You must, either separately or with your employer's lawyer, file a prehearing statement with the trial court clerk before the trial. Use the "Pre-Compensation Hearing Statement Template" at the Court's website.

YOUR DAY IN COURT

The chart below summarizes the events in a trial.

Opening Court: **Court begins promptly, so arrive early**. If you are going to be late, please contact the judge's legal assistant, staff attorney or the trial court clerk. Once you arrive, court staff will likely instruct you on how the hearing will proceed and explain which documents have been pre-marked as exhibits. The judge, however, makes the decision on the admissibility of documents on the record once the hearing has begun.

Opening Statements: The judge might ask for an opening statement. This is your first opportunity to tell the judge what you want him or her to do and why you are entitled to it. This is your argument, not testimony.

Testimony/Questioning Witnesses: Be prepared to testify. This is where you tell the judge how your injury occurred, when you notified your employer, the type of medical treatment you received, whether you missed work, and how the injury affected your ability to work and do other daily activities.

You cannot use "hearsay." **Hearsay** is when you say what you heard from someone else who is not present in the courtroom, and you want the judge to accept that statement as true. Most of the time, you can only testify about what you know, saw or said. You cannot testify about what someone else knows, saw or said.

Afterward, your employer's lawyer will ask you questions. This is called cross-examination.

You may also bring witnesses to testify on your behalf. You must present your witnesses' testimony by asking them questions. The employer's lawyer will then cross-examine your witnesses. Your employer will probably also bring someone to testify. After your employer's lawyer asks their witnesses questions, you may cross-examine them.

Presenting Exhibits: You might have letters, medical bills, reports, copies of emails or text messages, videos, photographs, or other proof about which a witness will testify. These are called exhibits. Generally, you can only use an exhibit if the witness personally can identify it, so ask your witness to look at the exhibit and identify it. Afterward, ask the judge to "admit the exhibit into evidence."

You must introduce a doctor's opinion on the cause of your injury or your permanent impairment. The doctor's opinion must be provided through deposition testimony, live testimony, or a form C-32 available at the Court's website. You must pay the fees associated with a doctor's testimony, including the doctor's expert fee for testimony, the court reporter's fee for taking the deposition, and/or the doctor's fee for completing the form C-32.

The form C-32 must bear the doctor's original signature, and a statement of the doctor's qualifications—commonly referred to as a "CV"—must be attached. File the completed form and attachment with the Court Clerk, and be sure to bring the original signed document to the trial. You should ask an ombudsman or ombudsman attorney to assist with meeting the C-32 requirements for admissibility. You must follow all deadlines for obtaining the doctor's testimony and filing the deposition transcript or form C-32.

Closing Arguments: After both sides have presented witnesses and proof, you will give closing arguments. This is your last chance to tell the judge how your proof

shows you should win. You will go first, then your employer's lawyer will make a closing argument. The judge might let you answer the employer's closing argument.

Remember that you, as the injured worker, have to prove that you should win the case based on the facts and the law. That means that you must have stronger evidence than your employer. The "strength" of your evidence is based on who the judge determines is more believable, which documentary evidence is more persuasive, or both.

The judge does not make a decision on the day of the hearing. Instead, after the hearing, the judge will send a written order. If you think the judge is incorrect, you may appeal the order. See part two of this booklet on how to appeal.

MOTIONS

You might receive a document from the employer's lawyer with the title "Motion." A motion is a request for the judge to do something. Many types of motions are possible, and some motions could result in dismissal of your case, such as a "Motion to Dismiss" or "Motion for Summary Judgment." You can file a motion, too. A template is available on the Court's website.

Responding to Motions: You must **timely respond** to any motion in writing, file it with the trial court clerk, and send a copy to your employer's lawyer.

The time you have to respond depends on the type of motion. If your employer is not asking the judge to dismiss your case, you must file a response within **five business days** after your employer's lawyer files the motion. The judge decides based on the motion and your response. If you receive a Motion to Dismiss or a Motion for Summary Judgment, you must respond no later than **five business days** before the motion hearing. Usually, these hearings are by phone.

Motions for Summary Judgment: A motion for summary judgment is a request to dismiss your claim because you lack the evidence to prove your claim. It may only be filed if the judge has already issued a scheduling order. A summary judgment motion has three basic parts: the motion, the statement of undisputed material facts, and the memorandum of law.

Motions for summary judgment are difficult to respond to, because the rules have very specific requirements for what must be in the response. **You must respond to the statement of undisputed material facts in writing and file it no later than five business days before the hearing, or you will likely lose your case.**

A statement of undisputed material facts is a numbered list of each important fact that will determine who wins the case. The statement will have each fact listed in a separate numbered paragraph. You must write a response to each numbered fact explaining why it is disputed and cite to *pleadings, depositions, answers to interrogatories, admissions, and/or affidavits* to support your position. You may *not* cite to medical records alone. You may also list additional undisputed facts in your response, listing each fact separately, numbering them, and citing to the record for each fact.

As an example of how to respond to an undisputed material fact, if one of the statements reads: “the treating physician found that the employee’s injury is not work-related, and the employee has not provided an opinion from another doctor to dispute the treating physician’s opinion,” you must respond that the fact is disputed and you have an opinion from another doctor, either on a C-32 or within a deposition transcript, who believes your injury is work-related. You must identify the doctor in your response.

Alternatively, you may file a motion asking for more time to respond, so you can obtain affidavits or take depositions. Explain why you need more time in the motion.

Motions to Dismiss: Your employer’s lawyer can ask the judge to dismiss your case for a variety of reasons by filing a Motion to Dismiss. Any motion to dismiss must state the reason that the opposing party requests dismissal and cite to a Rule of Civil Procedure. Be sure to read the rule before filing your written response to the motion.

Be prepared to argue your position at the hearing on dismissal or summary judgment. Consultation with the ombudsman attorney will be extremely helpful to defend against these motions.

WHO CAN HELP?

The Trial Court Clerk: To file a document, you must give it to the trial court clerk (by email, U.S. mail, fax or in-person) or upload it on TNComp, the electronic filing system. The trial court clerk also answers procedural questions.

Legal Assistants and Staff Attorneys: They help judges by preparing files for hearings, doing legal research and editing orders. If you need to speak with someone about your case, contact one of the Court's legal assistants or staff attorneys. They can answer questions about rules and procedures, but they cannot give legal advice.

An Ombudsman: An ombudsman is a Bureau employee who provides information but not legal advice to self-represented litigants. They answer general questions regarding the workers' compensation process. Call (800) 332-2667.

An Ombudsman Attorney: If you were injured at work on or after July 1, 2016, you might be eligible for assistance from the ombudsman attorney. To do so, you must file a Certificate of Non-Representation and email it to wc.ombudsman@tn.gov. The ombudsman attorney may give limited legal advice but cannot appear in court, write court documents, or communicate with your employer's lawyer on your behalf. Listen carefully, and take detailed notes when discussing your case with the ombudsman attorney.

PART TWO

In the Tennessee Workers' Compensation Appeals Board

APPEALING AN EXPEDITED HEARING ORDER

Notice of Appeal: If you wish to appeal an **expedited hearing order**, or any other trial court order that does not fully resolve all issues in the case (called an "interlocutory" order), you have **7 business days** from the date stamped on the trial court's order to file a "Notice of Appeal" with the trial court clerk. The form is available on the Appeals Board's website.

Transcript of the Hearing/Statement of the Evidence: It is highly recommended, though not required, that you file a transcript of the hearing(s) that occurred before the trial judge, or a joint statement of the evidence signed by you and the employer's lawyer. If your employer filed the Notice of Appeal, you should communicate with your employer's lawyer soon after receiving the notice to determine whether the employer intends to file a hearing transcript. If not, you might wish to file a transcript. A transcript or statement of the evidence must be filed with the trial court clerk within **10 business days** from when you or your employer filed the Notice of Appeal.

- If a court reporter was present at the hearing, you may purchase a copy of the transcript from him or her. If a court reporter was not present, you may request a copy of the trial court's recording of the hearing from the trial court clerk for a $25 fee. You must hire a licensed court reporter to transcribe the recording.

- Instead of filing a transcript, you and your employer's lawyer may file a "joint statement of the evidence," which is a written summary of the **testimony** presented at the hearing. The statement does not have to summarize documentary evidence, only oral testimony. The joint statement of the evidence must be prepared and signed by both parties and must be approved by the trial judge.

- If you do not file a transcript or a joint statement of the evidence, the Appeals Board's ability to conduct a meaningful review of your case will be limited.

Brief: **If you are the appealing party**, it is recommended that you file a brief explaining why you believe the trial judge was correct or incorrect. A brief must contain: (1) a summary of the facts; (2) how the trial judge ruled in your case; (3) each issue you wish to present on appeal; and (4) your argument as to why you believe the trial judge's order was right or wrong as to each issue. *You cannot attach any documents to your brief or rely on any evidence to support your brief unless that evidence was admitted during your hearing or was excluded by the trial judge but marked for "identification only*." You can find a list of that evidence in the "record on appeal," which is discussed further below. **If you filed the Notice of Appeal**, your brief must be filed with the trial court clerk within **10 business days** of the expiration of the time to file a transcript or statement of the evidence. Your employer will then have an opportunity to file a brief in response. You may respond to your employer's brief only if your employer raises issues on appeal that you did not raise in your brief, and you may only address the new issues.

If your employer filed the Notice of Appeal, you may respond in writing to any brief filed by your employer's lawyer. If the employer does not file a brief, you may still file your own. In your brief, explain why you agree with the trial judge's decision and/or why you disagree with the employer's arguments. You can also discuss other issues not discussed by the employer in its brief. Your brief must be filed with the trial court clerk within **10 business days** of the date the employer's brief was filed or was due. The "argument" section of your brief is limited to 15 pages. You may ask for permission from the Appeals Board to submit a longer brief if necessary.

Record on Appeal: After a Notice of Appeal is filed, the trial court clerk will create the "record on appeal." This includes the documents designated by the trial court as the "technical record," the documentary evidence presented at the hearing (the "exhibits"), the transcript or joint statement of the evidence, and the briefs. The trial court clerk will then send the record to the Appeals Board clerk with copies to the parties or their attorneys. The Appeals Board clerk will send a "Docketing Notice" to inform all parties that the Appeals Board received the appeal. You are not required to take any additional action at this point.

Appeals Board's Opinion: Within **20 business days** of the date on the Docketing Notice, the Appeals Board will issue a written decision called an "opinion" affirming, reversing, and/or modifying the trial judge's order. The opinion is binding on the parties and the trial judge. The Appeals Board will also "remand" the case, which means it will be sent back to the trial judge for any further action. Neither you nor your employer can appeal the Appeals Board's opinion reviewing an expedited hearing order or other interlocutory order.

EXPEDITED HEARING ORDER APPEAL CHECKLIST

For this type of appeal, file all documents with the **trial court clerk.**

☐ File a Notice of Appeal within **7 business days** of the date stamped on the trial judge's order.

☐ Pay the $75 filing fee within **10 calendar days** of filing the Notice of Appeal.
*If unable to pay, file an Affidavit of Indigency within **10 calendar days** of filing the Notice of Appeal* *(see page 30.)*

☐ Testimony from the Trial Court Hearing
*File **either** within **10 business days** of filing the Notice of Appeal.*

- **Hearing Transcript**
  - Was a court reporter present?
    - If so, you can **purchase a transcript** from the court reporter.
    - If not, you can **purchase a recording** of the hearing from the court and pay a court reporter to transcribe it.
- **Joint Statement of the Evidence**
  If you do not provide a hearing transcript, you can prepare and file a joint statement of the evidence, which is a written summary of witness testimony. This written summary must be approved by both sides and by the trial judge. Contact your employer's lawyer to prepare this.

☐ Brief

- If *you* filed the Notice of Appeal, file a brief within **10 business days** of the expiration of the time to file a transcript or joint statement of the evidence.
- If your *employer* filed the Notice of Appeal:
  - File a brief in response to your employer's brief within **10 business days** after it is filed.
  - If your employer did not file a brief, you may file a brief within **10 business days** after your employer's deadline to file one has passed.

APPEALING A COMPENSATION ORDER

Time: After the compensation hearing (also called a trial), the trial judge will issue a compensation order resolving all the issues in your case. You might also receive this kind of order after the filing of a motion to dismiss or a motion for summary judgment. If you wish to appeal this order to the Appeals Board, you have **30 calendar days** from the date stamped on the trial judge's order to file a Notice of Appeal with the trial court clerk.

After the case has gone through the process with the Appeals Board and the Appeals Board has issued its decision, you may appeal that decision to the Tennessee Supreme Court. You have **30 calendar days** after the Appeals Board certifies the trial court's order as final to file a notice of appeal with the Tennessee Supreme Court as allowed by the Tennessee Rules of Appellate Procedure. These rules are available at the Tennessee Administrative Office of the Courts' website.

COMPENSATION APPEALS TO THE APPEALS BOARD

Transcript of the Hearing/Statement of the Evidence: It is highly recommended, though not required, that you file a transcript of the hearing or a joint statement of the evidence. If your employer filed the Notice of Appeal, you should communicate with your employer's lawyer soon after receiving the Notice to determine whether your employer intends to file a hearing transcript. If it does not, you may wish to file a transcript. If you do not file a transcript or a joint statement of the evidence, the Appeals Board's ability to conduct a meaningful review of your case will be limited. A transcript or statement of the evidence must be filed with the trial court clerk within **15 calendar days** of the date the Notice of Appeal was filed.

- If a court reporter was present at the hearing, you may purchase a copy of the transcript from him or her. If a court reporter was not present, you may request a copy of the trial court's recording of the hearing from the trial court clerk for a $25 fee. You must hire a licensed court reporter to transcribe the recording.

- Instead of filing a transcript, you and your employer's attorney may file a "joint statement of the evidence," which is a written summary of the **testimony** presented at the trial. The statement does not have to summarize documentary evidence, only oral testimony. It must be prepared and signed by both parties and must be approved by the trial judge.

- If you choose to provide neither a transcript nor a statement of the evidence, you must file a notice with the trial court clerk within **15 calendar days** of the date the Notice of Appeal was filed, stating that no transcript or statement of the evidence will be provided.

Record on Appeal: The record on appeal consists of the documents the trial court designated as the "technical record" at the trial, the exhibits admitted into evidence during the trial, and the transcript of the hearing or joint statement of the evidence. After the trial judge has approved the "record on appeal," the trial court clerk will send the record to the Appeals Board clerk with copies to the parties or their attorneys. The Appeals Board clerk will send a Docketing Notice to all parties acknowledging receipt of the record.

Brief: If you filed the Notice of Appeal, you may file a brief explaining why you believe the trial judge was right or wrong. If your employer filed the Notice of Appeal, you may respond to your employer's brief, and you may file a brief even if the employer does not file one.

A brief must contain: (1) a summary of the facts; (2) how the trial judge ruled in your case at the compensation hearing/trial; (3) each issue you wish to raise on appeal; and (4) your argument stating why you believe the trial judge's order was right or wrong as to each issue on appeal. If you filed the Notice of Appeal, your brief must be filed with the Appeals Board clerk within **15 calendar days** of the date the Docketing Notice was issued. If your employer appealed, your brief must be filed with the Appeals Board clerk within **15 calendar days** after your employer filed a brief or after their brief was due.

The "argument" section of your brief is limited to 15 pages. You may ask for permission from the Appeals Board to submit a longer brief. Also, *you cannot refer to, attach, or rely on any documents, medical records, witness statements, photographs, or other documentation unless that material was previously submitted to the trial judge and admitted into evidence during your trial or was excluded by the trial judge but marked for "identification only*."

Appeals Board's Opinion: Within **45 calendar days** after the briefing period has ended, the Appeals Board will issue a written opinion affirming, reversing, and/or modifying the trial judge's order. Depending on which of these actions the Appeals Board takes, the opinion will also either remand the case to the trial court for additional action, or it will certify the trial court's decision as final. If the Appeals Board certifies the decision as final, and if you are dissatisfied with this decision, you may appeal to the Tennessee Supreme Court as provided in the Tennessee Rules of Appellate Procedure.

COMPENSATION ORDER APPEAL CHECKLIST

Unless otherwise stated, file all documents with the **trial court clerk.**

☐ File a Notice of Appeal within **30 calendar days** of the date stamped on the trial judge's order.

☐ Pay the $75 filing fee within **10 calendar days** of filing the Notice of Appeal.
*If unable to pay, file an Affidavit of Indigency within **10 calendar days** of filing the Notice of Appeal* *(see page 30.)*

☐ Testimony from the Trial Court
*File within **15 calendar days** of filing the Notice of Appeal.*

- **Hearing Transcript**
  - Was a court reporter present?
    - If so, you can **purchase a transcript** from the court reporter.
    - If not, you can **purchase a recording** of the hearing from the court and pay a court reporter to transcribe it.
- **Joint Statement of the Evidence**
  If you do not provide a hearing transcript, you can prepare and file a joint statement of the evidence, which is a written summary of witness testimony. This written summary must be approved and signed by both sides and by the trial judge. Contact your employer's lawyer to prepare this.
- If you do not wish to file either a transcript of the hearing or a joint statement of the evidence, file a notice stating that you will be filing neither document.

☐ Brief

- If *you* filed the Notice of Appeal, file a brief with the Appeals Board clerk within **15 calendar days** after the date the Docketing Notice was issued.
- If your *employer* filed the Notice of Appeal:
  - File a brief with the Appeals Board clerk in response to your employer's brief within **15 calendar days** after it is filed.
  - If your employer did not file a brief, you may file a brief with the Appeals Board clerk within **15 calendar days** after your employer's deadline to file one has passed.

MISCELLANEOUS TOPICS

Requesting an Extension of Time: Neither you nor your employer may request an extension of time for filing a Notice of Appeal. If you fail to file your Notice of Appeal within the time period required by the law, your appeal will be dismissed.

However, for any other deadlines in the appeals process, you may file a written request, called a "Motion for Extension of Time," with the Appeals Board clerk to ask for more time. In an appeal of an expedited hearing order, the Appeals Board may extend deadlines up to **5 additional business days**. In an appeal of a compensation order, the Appeals Board may extend deadlines up to **21 additional calendar days**.

Filing Fee: If you appeal, you must pay a $75 filing fee. You may pay by check, money order, or credit card within **10 calendar days** of filing the Notice of Appeal. It can be paid in person at any Bureau office, by mail, or by any other delivery service.

Filing an Affidavit of Indigency on Appeal: If you cannot afford the filing fee, you may file an "Affidavit of Indigency" with the trial court clerk. The Affidavit of Indigency *must be fully completed* and either filed with your Notice of Appeal or within **10 calendar days** after you file the Notice. The Appeals Board might waive the fee. If not, you will be given a deadline to pay.

WHO CAN HELP?

The Clerks: The Appeals Board clerk and the trial court clerk can answer procedural questions, but they cannot give legal advice.

An Ombudsman: An ombudsman can answer general questions regarding the workers' compensation process. Call (800) 332-2667 or email wc.ombudsman@tn.gov.

An Ombudsman Attorney: If you were injured at work on or after July 1, 2016, you might be eligible for assistance from the ombudsman attorney. To do so, you must file a Certificate of Non-Representation and email it to wc.ombudsman@tn.gov. The ombudsman attorney may give limited legal advice but cannot appear in court, write court documents, or communicate with your employer's lawyer on your behalf. Listen carefully, and take detailed notes when discussing your case with the ombudsman attorney.

Notes

The Tennessee Department of Labor and Workforce Development is committed to principles of equal opportunity, equal access, and affirmative action. Auxiliary aids and services are available upon request to individuals with disabilities.

Tennessee Department of Labor and Workforce Development; Authorization No. 337685; This public document was promulgated for electronic use.