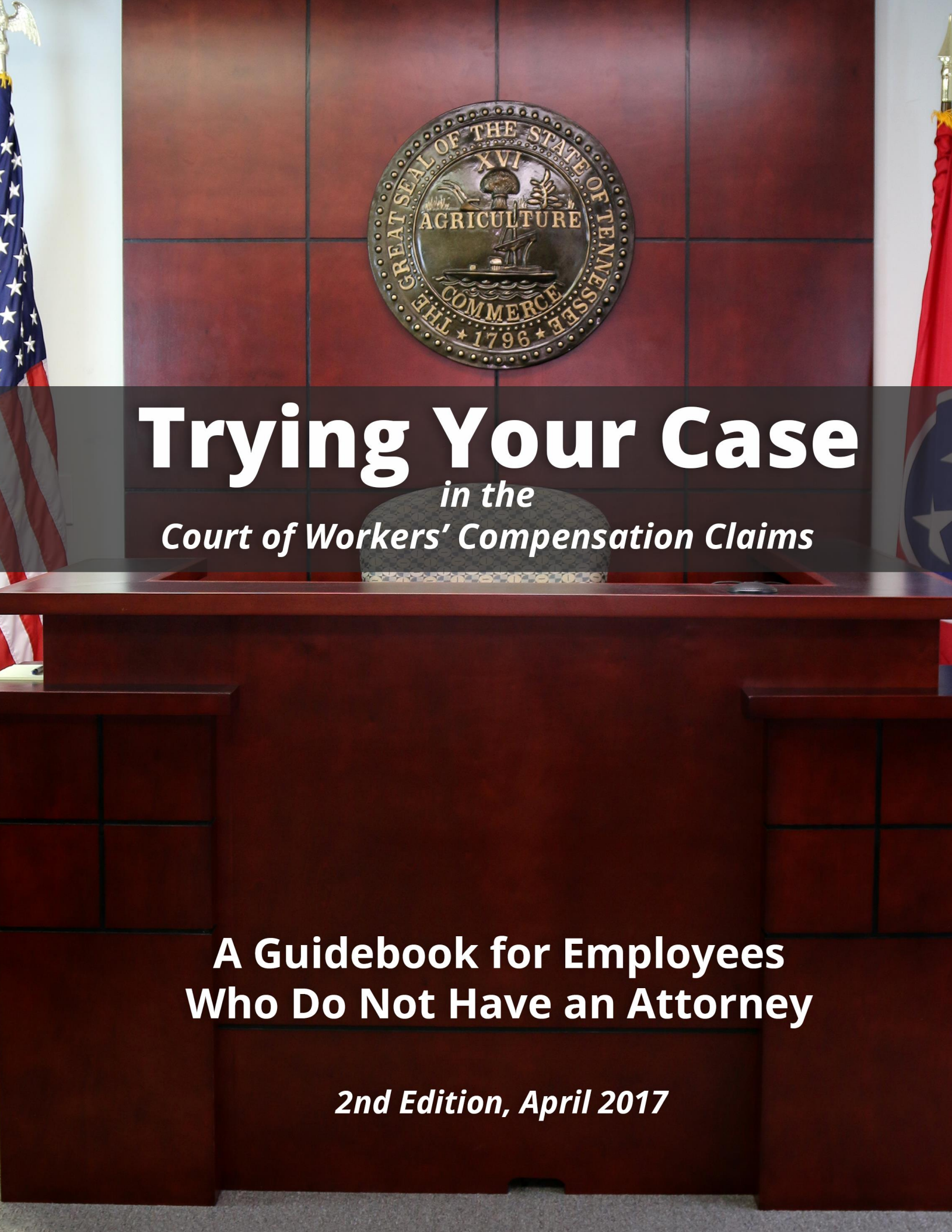


Trying Your Case

in the

Court of Workers' Compensation Claims

A Guidebook for Employees Who Do Not Have an Attorney

2nd Edition, April 2017

Publishing Information

2nd Edition

Updated April 2017, Links Updated September 2019

Administrator
Abigail Hudgens, *ARM, AIC*

Oversight
Hon. Kenneth Switzer, Chief Judge, *Nashville, TN*

Editor and Reviser
Jane Salem, Staff Attorney, *Nashville, TN*

Contributors
Hon. Joshua Davis Baker, *Nashville, TN*
Hon. Thomas Wyatt, *Chattanooga, TN*

Layout & Design
Anna Sudberry

Created by the Bureau of Workers' Compensation
Court of Workers' Compensation Claims
Nashville, Tennessee

Disclaimer: The information contained in this booklet is for informational purposes only. The Bureau's provision of this booklet does not constitute legal advice or establish an attorney-client relationship.

Table of Contents

Introduction **6**

Getting Started **7**

Do You Need A Lawyer? **7**

The Ombudsman Program **7**

Overview **8**

Petition For Benefit Determination **8**

Dispute Certification Notice **8**

Expedited Hearing **9**

Scheduling Hearing **9**

What Are Workers' Compensation Benefits? **11**

Types of Benefits **11**

Medical Care **11**

Temporary Disability Benefits **12**

Permanent Disability Benefits **13**

Death Benefits **13**

Important People To Know **14**

The Court Clerk **14**

Legal Assistants and Staff Attorneys **14**

The Judge **14**

Your Employer's Lawyer **14**

Rules of the Court **15**

Procedures **15**

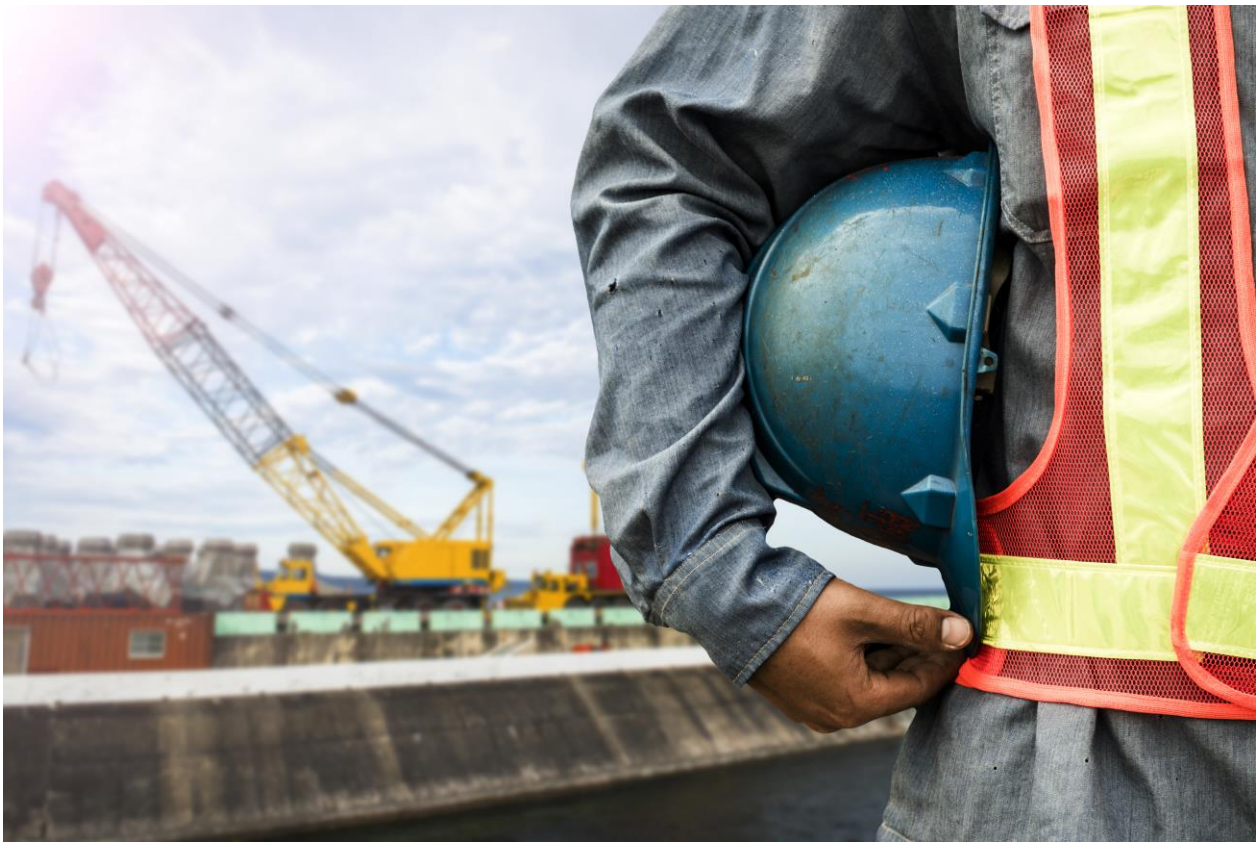
Tennessee Rules of Evidence and Civil Procedure 15
The Discovery Process 17
Types of Discovery 17
Responding to Discovery 17
Discovery Disputes 18
Preparing For Trial 19
Pre-Trial Documentation 19
Witness and Exhibit Lists 19
Medical Records 19
Proposed Exhibits 20
Pre-Compensation Hearing Statement 20
Your Day In Court 21
Order of Proceedings 21
Dress/Attire 21
Opening Court 22
Opening Statements 22
Burden of Proof 22
Questioning Witnesses 22
Presenting Exhibits 23
Rules About Proof 23
The Judge Does Not Take Sides 23
Getting More Time 23
Your Actions in Court 24
During the Trial 24

End of Trial 24
Appeal 24
Motions 26
Responding to Motions 26
Motions For Summary Judgment 27
Proving a Claim 28
Elements of a Claim 28
Medical Evidence 29
Directory 31
Dictionary of Workers' Compensation Terms 33
Abbreviations List 36

INTRODUCTION

This booklet will provide you some assistance in pursuing your claim for workers' compensation benefits if you do not have the services of a lawyer. The Bureau wants to make clear that the brief assistance provided here cannot replace the assistance an experienced lawyer can provide.

When reading this booklet, you may see some unfamiliar words. When you come across one of these words, please check the "Dictionary of Workers' Compensation Terms" at the end of the booklet for a definition. The booklet also contains a "List of Workers' Compensation Abbreviations" that your employer's lawyer may use when talking about your claim. You should review the list of terms and abbreviations, as this will make pursuing your claim easier.



GETTING STARTED

Do You Need a Lawyer? You are not required to have a lawyer to represent you. You do, however, have the option to hire a lawyer, and many people find that having an attorney representing them can resolve their cases more quickly and with more favorable results. It is important to know that the rules of the Court of Workers' Compensation Claims require all employers to have attorneys. So, whether you have an attorney or not, your employer will have one. If you choose to hire a lawyer, keep in mind that the lawyer is paid on a "contingent-fee basis." This means that the lawyer will be paid only if you win the case. Additionally, the most your lawyer can collect is twenty percent (20%) of the money awarded by the Judge plus certain expenses. If you would like to obtain the services of an attorney, but do not know how to find one, contact the local bar association or the Tennessee Bar Association at:

https://www.tba.org/index.cfm?pg=find-an-attorney.

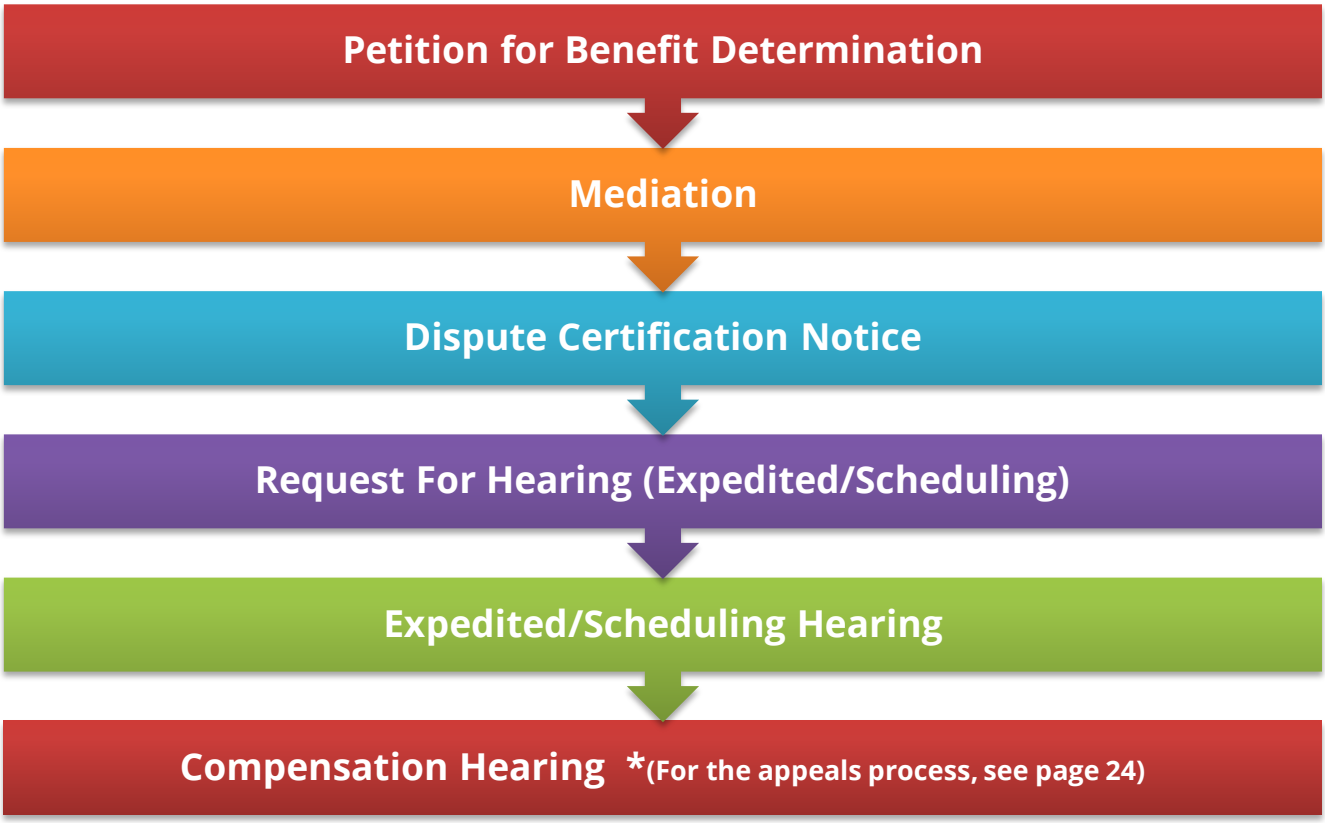
The Ombudsman Program: The Ombudsman Program is part of the Bureau of Workers' Compensation and is a no-cost option if you decide not to hire a lawyer. An Ombudsman is not a lawyer and cannot give you legal advice, but he/she can provide you with helpful information and assistance with the workers' compensation process. If you do not have a lawyer, the Court encourages you to take advantage of the Ombudsman Program. You can reach an Ombudsman by calling 1-800-332-2667.

For more information about the Ombudsman Program, please see page 3 of "The Tennessee Workers' Compensation Program in Plain English," which can be found at:

https://www.tn.gov/content/dam/tn/workforce/documents/Ombudsman_Workbook_with_Forms.pdf .

OVERVIEW

The Tennessee Court of Workers' Compensation Claims hears all cases involving an injury at work on or after *July 1, 2014.* If you have been hurt in an accident at work and your company has not provided you medical care or disability payments, you may need to file a claim with the Court to receive medical care or disability benefits.



Petition for Benefit Determination: The first step in beginning your claim is to file a Petition for Benefit Determination. Once this form is filed, your case will be assigned to a Mediator for Alternative Dispute Resolution (ADR), also known as mediation. The Mediator works with you and your employer to reach an agreement on your claim without having a hearing before a Judge. For additional information, please see pages 4 and 20 of "The Tennessee Workers' Compensation Program in Plain English," which can be found at:

https://www.tn.gov/content/dam/tn/workforce/documents/Ombudsman_Workbook_with_Forms.pdf.

Dispute Certification Notice: If you are unable to reach an agreement regarding medical and disability benefits, the Mediator will issue a Dispute Certification Notice

(DCN) and send you a copy. After you receive the DCN, review it carefully. If you believe information is missing, you have five (5) business days to notify the Mediator of any information you want to add to the DCN. For example, if you believe you are entitled to temporary disability benefits, you must notify the Mediator to request that it is checked on the DCN form. After adding the information, the Mediator will issue a final DCN. This document, filed with the Court Clerk, will note the matters that you and the employer agreed upon, as well as those issues that are still in dispute. The Mediator will send you a copy of the DCN when it is filed with the Clerk. The Judge can only decide the issues checked on the form.

Once the DCN is filed with the Clerk, you only have sixty (60) days to request a hearing before a Judge. If you fail to file a request for hearing within sixty (60) days of the date the DCN is filed with the Clerk, your claim may be dismissed.

There are two different types of hearings you can request: an Expedited Hearing or a Scheduling Hearing.

Expedited Hearing: If you are asking the Judge to order your employer to provide medical care or to pay temporary disability benefits, you will need to file a Request for Expedited Hearing. You must file an affidavit – a sworn, notarized written statement of the facts – and other information showing why you are entitled to medical or temporary disability benefits.

If you request an Expedited Hearing, the Judge may set a formal hearing (trial) to consider your request. If the Judge does hold a hearing, you and your employer will present documents, medical records and affidavits (sworn statements) to the Judge. You and your witnesses will testify.

After the Expedited Hearing, the Judge will decide whether your employer must provide medical care and/or temporary disability benefits and will provide reasons for the decision in a written Order.

Scheduling Hearing: If you have already received medical care, recovered from your injury, and your doctor has assigned you a permanent medical impairment rating, you should request a Scheduling Hearing instead of an Expedited Hearing. A Scheduling Hearing is a hearing conducted over the telephone where the Judge will set deadlines for completing the case.

If the Court Clerk does not receive a Request for Expedited Hearing or a Request for Scheduling Hearing within sixty (60) days of the filing of the DCN, you will be required to participate in a "Show Cause" hearing. In a Show Cause hearing, you must give the Judge a reason why you have not requested a hearing. It is at this point that your case might be dismissed.

After the Scheduling Hearing and after you and your employer's lawyer have collected all the evidence, you will appear before the Judge for a final hearing, known as a Compensation Hearing. After the hearing, the Judge will write an Order explaining whether you will receive permanent workers' compensation benefits.

WHAT ARE WORKERS' COMPENSATION BENEFITS?

Workers' compensation is a specialized area of law, and the type of proof needed to prove a workers' compensation case is very specific. This section will provide helpful guidance on the type of assistance available and what you will need to show the Judge in order to win your case.

Types of Benefits: An employee (or in the case of death, the spouse and/or dependents of the deceased employee) who suffered an injury at work may be entitled to one or more of the following benefits:

- **Medical Treatment for the Work Injury**
- **Temporary Disability Benefits**
- **Permanent Disability Benefits**
- **Death Benefits**

As stated before, you have the responsibility of proving that you are entitled to receive these benefits.

Medical Care: After you tell your supervisor that you were hurt at work, your employer must give you a list of at least three (3) doctors. From that list, you will pick one doctor to treat you. The doctor you choose will become the "authorized treating physician" for your injury.

It is important to remember that you must obtain approval from your employer to receive medical care from the doctor you select before you see him/her. While you have the ultimate responsibility of proving in Court that the medical care you

receive is "reasonable" and "necessary" to treat your work injury, any treatment recommended by the authorized treating physician is presumed to be reasonable and necessary.

Temporary Disability Benefits: If the authorized treating physician takes you off work while you are recovering from your work injury, you are entitled to **Temporary Total Disability benefits** to help replace your lost wages. The amount of these benefits depends on the amount of money you earn at work. In general, the law requires your employer to pay you two-thirds (2/3) of the weekly wages you averaged during the year prior to your work injury. For example, if you made $750 per week for the last year, you could receive $500 for each week you could not work starting from the date the doctor stated that you could not work because of your work injury.

If the authorized treating physician allows you to return to work but prohibits you from doing certain things at work (assigns work restrictions), you may be entitled to **Temporary Partial Disability benefits** if your employer cuts your hours or reduces your pay because you cannot perform the work as you did before the injury. Temporary Partial Disability benefits are calculated in the same manner as are Temporary Total Disability benefits, except your employer pays you two-thirds (2/3) of the difference between your pre-injury and post-injury wages. For example, if you made $900 per week before you were injured but only made $300 after you were hurt, your employer would have to pay you $400 per week (two-thirds of the difference between $900 and $300) until you were able to earn your full weekly salary.

Temporary Disability benefits end when you return to work or the doctor places you at "maximum medical improvement." The date of maximum medical improvement is usually assigned by the authorized treating physician.

You have the responsibility of proving to the Court that your employer should pay you Temporary Disability benefits. **You cannot prove your right to collect Temporary Disability benefits just by stating that you are unable to work due to the work injury.** To prove your right to collect Temporary Disability benefits, you must provide an opinion from a doctor that states:

- You are disabled from working or are under restrictions that prohibit working due to the work injury; **and,**
- You are not at maximum medical improvement.

Permanent Disability Benefits: You will be entitled to Permanent Disability benefits to replace wages you would have earned had you not been injured if you can prove that your work injury will permanently affect your ability to work. Once again, you have the responsibility of proving that your injury is permanent. You cannot prove that your injury is permanent without an opinion from a doctor.

When your doctor determines that you have a permanent injury, and after you have healed as much as the doctor thinks you are likely to heal, the doctor will assign you an impairment rating. An impairment rating is a numerical rating of the amount your ability to perform everyday activities has been reduced due to your work injury. The impairment rating is expressed in the form of a percentage. For example, if you cut off your finger in a work accident, the doctor might say that you have one percent (1%) impairment to the body as a whole. Because you have one percent (1%) permanent impairment, you will receive Permanent Disability benefits if you win your case.

If you prove your case, you might be entitled to receive "reasonable and necessary" medical treatment for your work-related injury for the rest of your life. It is important to remember that the medical treatment is only for the work injury. For instance, if you break your arm on the job, you may be entitled to treatment of the broken arm for life. If, however, you break the same arm again while chopping wood at home, you are not entitled to medical treatment through workers' compensation for the new break.

Death Benefits: If you are the spouse or child of a person who died in a work accident, you are entitled to benefits. These benefits include payment of burial expenses and wage replacement benefits. To receive these benefits, you must prove that the accident at work resulted in your spouse or parent's death. In some cases, proving that the workplace accident resulted in the death of your spouse or parent will require a doctor's opinion.

IMPORTANT PEOPLE TO KNOW

The Court Clerk: The Court Clerk serves as the official record keeper for the Court. The Clerk receives all documents sent to the Court, keeps the case files, distributes all Orders and keeps the official Court calendar. If you need to file a document, you must send it to the Clerk. If you do not send the document to the Clerk, with some exceptions, the document will not be made a part of the case file, and the Judge will never see it.

It is important for you to remember that the Clerk cannot give legal advice. The Clerk can, however, provide helpful information concerning the Court's calendar and general information about filing documents.

Legal Assistants and Staff Attorneys: Legal Assistants and Staff Attorneys help Judges by preparing case files for hearings, doing legal research and editing Orders. If you need to speak with someone about your case, please contact one of the Court's Legal Assistants or Staff Attorneys. They are available to answer questions about the Court's rules and procedures. Again, they cannot give legal advice.

The Judge: The Judge is responsible for presiding over hearings, taking evidence, and issuing rulings. In addition, the Judge is responsible for managing the activities in the courtroom. It is important for you to remember that the Judge does not represent you or your employer. Additionally, you **may not** call or email a Judge directly without the Judge's permission. Also, you should never send a letter to a Judge without also sending a copy to your employer's lawyer.

For additional information on this issue, see Rule 0800-02-21-.08 of the "Rules of the Court of Workers' Compensation Claims and Alternative Dispute Resolution," which can be found on the Internet at the following address:

https://publications.tnsosfiles.com/rules/0800/0800-02/0800-02-21.20190801.pdf.

Your Employer's Lawyer: Unless you are represented by a lawyer, your employer's lawyer will be communicating with you throughout the case. Although he/she represents your employer, you have a duty to cooperate with your employer's lawyer on issues that relate to scheduling, filing papers with the Clerk, and submitting evidence for consideration by the Judge. You must send your employer's lawyer copies of all documents you file with the Clerk and all evidence you intend to submit to the Judge.

RULES OF THE COURT

The Court of Workers' Compensation Claims operates much like a state circuit or chancery court and somewhat like a court you see on TV. Like a case tried in any courtroom, it is important that the participants understand as much as they can about the law and courtroom procedures before coming to Court. For that reason, the Court asks that you be familiar with the Court's rules before coming to court.

Note: If you handle your claim without a lawyer, you will be expected to know and abide by all rules that apply to the trial of your claim.

The following section provides an overview of this information.

Procedures: The Court follows the "Rules of the Court of Workers' Compensation Claims and Alternative Dispute Resolution" and expects you to follow them. These rules can be found at:

https://publications.tnsosfiles.com/rules/0800/0800-02/0800-02-21.20190801.pdf.

If you have difficulty accessing the rules, please contact an Ombudsman.

Tennessee Rules of Evidence and Civil Procedure: All parties should review the Tennessee Rules of Evidence and the Tennessee Rules of Civil Procedure. In general, the Tennessee Rules of Evidence guide the Court in deciding whether evidence—briefly explained as any paper, recording or testimony presented to the Court—can be considered by the Judge when ruling on the case. The Tennessee Rules of Evidence can be found at:

https://www.tncourts.gov/courts/supreme-court/rules/rules-evidence.

The Tennessee Rules of Civil Procedure guide the Court and you in preparing and trying a case. A copy of these rules can be found at:

https://www.tncourts.gov/courts/supreme-court/rules/rules-civil-procedure.

Caution to Self-Represented Litigants

The rules discussed in this section are somewhat complex and can be difficult to interpret, even for experienced attorneys. For that reason, the Court advises you to seek advice from an attorney if possible. As stated above, if you handle your claim without an attorney, you will still be expected to abide by all Court rules.

THE DISCOVERY PROCESS

Which Information Does each Side Have?

Types of Discovery: During the course of a workers' compensation hearing, you will probably want to see your employer's evidence. To get copies of that evidence, you must engage in "discovery." Discovery is the process through which you and your employer exchange information about your case. Essentially, there are three basic ways to conduct discovery:

1. **Interrogatories:** These are written questions about a claim that are to be answered under oath. In the Tennessee Court of Workers' Compensation Claims, you may ask no more than twenty (20) questions seeking information about the case to anyone involved.

2. **Depositions:** This is a process where you meet with your employer's lawyer to ask questions of a witness under oath. A court reporter will record all the questions and the witness's answers. The written transcript of what was said is available to you from the court reporter at a charge based on the number of pages. This can be rather expensive.

3. **Requests for Production:** This a process where you and your employer exchange copies of documents related to the case. This is accomplished by creating a "Request for Production of Documents," where you name specific documents, video recordings, audio recordings, or other items that you would like your employer's attorney to provide. You then forward the Request to your employer's attorney, who should give you the requested information/items.

Responding to Discovery: The Court expects you and your employer's lawyer to cooperate in the discovery process. Whenever you receive "Interrogatories" or a "Request for Production of Documents," you *must* provide the answers or requested documents within thirty (30) days *unless* you have a valid excuse or objection. When answering interrogatories, you must have personal knowledge of the answers you are providing and *must* have your responses notarized.

In addition, the Court expects you to cooperate with your employer's lawyer in scheduling depositions. If you are acting as your own attorney and wish to depose

a witness (have the witness answer your questions under oath), remember that it is your responsibility to hire a court reporter to record the deposition.

Unless specifically requested by the Judge or submitted with a "Motion to Compel Discovery," as discussed below, you should not file discovery responses or requests with the Court.

Discovery Disputes: Sometimes, you and your employer's lawyer may disagree over whether a discovery response is required. When this happens, you may file a "Motion to Compel Discovery" with the Court. In filing the motion, you should describe what discovery you are seeking and ask the Court to order your employer's lawyer to provide it. Before filing a "Motion to Compel Discovery," you must first contact your employer's lawyer and ask for the discovery.

Motion to Compel Discovery

- Must include statement confirming you tried to resolve the dispute before filing the motion

A "Motion to Compel Discovery" must include a statement confirming that you tried to resolve the discovery dispute with your employer's attorney before filing the motion. For more information on this issue and all discovery-related matters, please see Rule 0800-02-21-.17 of the "Rules of the Court of Workers' Compensation Claims and Alternative Dispute Resolution," which can be found at:

https://www.tn.gov/content/dam/tn/workforce/documents/injuries/0800-02-21.20161130.pdf.

PREPARING FOR TRIAL

Pre-trial Documentation: As the time for trial approaches, there are several important tasks that you must complete. While these are all addressed in the Rules of the Court of Workers' Compensation Claims and Alternative Dispute Resolution, the following section lists some of the key tasks the Court expects you to complete before coming to trial.

Witness and Exhibit Lists: You must provide the Court and your employer's lawyer a list of all witnesses you expect to testify on your behalf at trial. You must also provide the Court a list of all documents you expect to use as evidence at your trial. If your trial is an expedited hearing, you must provide these lists at the time you request the hearing. If your trial is a compensation hearing, you must provide these lists no later than ten (10) days before the hearing.

Medical Records: Tennessee Workers' Compensation Law gives your employer's lawyer the right to obtain copies of your medical records from the doctor who treated your work injury if the employer paid the bill. Additionally, the Court may require you to sign medical releases allowing your employer's lawyer to see medical records from any doctor who treated your work injury. If you will be presenting medical records as evidence at trial, each page of medical records must be numbered. Additionally, if there are more than ten (10) pages of medical records, you or your employer's attorney must make a table of contents for the medical records.

Medical Records Certification

- Document certifying medical records are correct and verified

C-32 Form

- A form doctors use to give their medical opinion

When you are ready to present the medical records to the Court, make sure that your doctor has either signed the records by hand or signed them electronically. If the medical records are not signed, you will need to attach a "medical records certification" signed by someone at your doctor's office. You can find a medical records certification on the Internet at the following address:

https://www.tn.gov/content/dam/tn/workforce/documents/injuries/bureau-services-forms/Medical_Record_Certification_7.9.14.pdf.

Also, if you plan to present a doctor's opinion concerning the cause of your injury or the amount of permanent impairment the injury caused you, the doctor's opinion must be provided to the Judge on the correct form. The Bureau developed form C-32 for doctors to use when providing a medical opinion. You must use this form, or the Judge might not accept the opinion. You can find form C-32 on the Internet at the following address:

https://www.tn.gov/content/dam/tn/workforce/documents/injuries/bureau-services-forms/Form%20C-32--final%20fillable%2012%202016.pdf.

Proposed Exhibits: You must provide a copy of each exhibit (papers, photos, drawings, etc.) you plan to present as evidence at trial to your employer's lawyer. If your trial is an expedited hearing, you must provide these copies at the time you request the hearing. If your trial is a compensation hearing, you must provide these copies no later than ten (10) days before the hearing.

Pre-Compensation Hearing Statement: You must, either separately or jointly with your employer's lawyer, submit a prehearing statement to the Court prior to the trial. You should use the "Pre-Compensation Hearing Statement Template" when creating the statement. The template can be found at:

https://www.tn.gov/content/dam/tn/workforce/documents/injuries/templates/Pre_Compensation_Hearing_Statement.docx.

YOUR DAY IN COURT

Order of Proceedings: Court proceedings can be intimidating. They require quick thinking and timely responses to questions that are sometimes difficult. For that reason, it is very important that you are prepared. The following section provides a brief overview of your day in Court and helpful tips to make the experience as stress-free as possible.

Dress/Attire: Court proceedings are formal, serious matters, and all litigants must dress appropriately. Hats, caps, shorts, swimsuits, leotards, low-cut or open shirts or blouses, bare feet and other inappropriate attire, as determined by the Judge, are not allowed. Any litigant who comes to Court wearing inappropriate attire will be asked to leave. To be safe, dress as you would for a job interview or other formal occasion.

Opening Court: Everyone in the courtroom shall stand when the Judge enters the room. The Judge's Legal Assistant or Bailiff will announce the Judge's entrance. After the Judge enters and asks the people in the courtroom to be seated, the Judge or Legal Assistant will announce the case. **Court will begin promptly at the assigned time, so it is very important that you arrive on time and are seated in the courtroom before Court begins.** If you are going to be late, please contact the Judge's Legal Assistant so that he/she may inform the Judge and your employer's lawyer. Failure to appear on time for a scheduled hearing may result in the Judge dismissing your case.

Opening Statements: After calling the case, the Judge may ask you to tell him or her about your case. This is called the opening statement, and it is your first opportunity to tell the Judge your story and let the Judge know what action you would like the Court to take.

Burden of Proof: In general, 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. It is important to remember that the "strength" of your evidence is not based on having a greater number of witnesses or documents. Instead, it is based on who the Judge determines is more believable. This is called credibility. For instance, looking at the scales of justice, you must show that the evidence tilts the scales in your favor. For additional information about proving your case, see the section entitled "Proving Your Case" that appears later in this booklet.

Questioning Witnesses: You will probably have to testify at your trial. After you testify, your employer's lawyer gets to ask you questions. This is called cross-examination. You can also bring witnesses with you to testify. You can present your witness's testimony by asking questions. This is called direct examination. On direct examination, you cannot ask questions that lead the witness to answer a certain way. For instance, you cannot ask: "I lift heavy boxes at work, don't I?" However, you can ask the witness: "Where do you work? Can you see me working during the day? Do I lift boxes at work? Can you tell me how much the boxes weigh?" After you ask your witnesses questions, your employer's lawyer gets to cross-examine them.

Your employer will probably also send someone to testify. After your employer's lawyer asks the employer's representative questions, you will have the opportunity to cross-examine the representative. You must show respect and be polite during

this process. That means the Court will not tolerate interrupting, yelling, cursing, rude comments or name-calling. It is best to make your questions as simple as possible and to make sure that you are not asking more than one question at a time. For example, asking, "Isn't it true that you wore high-top sneakers to church?" would be an appropriate question, while, "Isn't it true that you wore high-top sneakers and kicked the deacon with them?" would not. Also, please do not make personal comments about the witness or what he or she says.

Presenting Exhibits: You may have letters, medical bills, reports, estimates 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. After the witness has identified your exhibit, ask the Judge to "submit the exhibit into evidence." You must give your employer's lawyer copies of all exhibits you intend to present to the Judge at the hearing. If possible, you should talk about the exhibits with your employer's lawyer before the date of the trial to see if the two of you can agree that the exhibits can be presented to the Judge. This is called a "stipulation."

Rules about Proof: As explained above, all proceedings in the Court are governed by the Tennessee Rules of Evidence. There are rules about the proof you can use. One of the rules says you cannot use hearsay. **Hearsay** is when you say what you heard from someone else. Most of the time, you can only testify about what you know or saw. You cannot testify about what someone else knows.

There are many other rules about proof. You may not know all these rules unless you are a lawyer. You may not know when to object to the other side's proof. The Judge cannot act as your lawyer. The Judge can stop a witness if the testimony is not helping to explain the case or is simply repeating another witness's testimony.

The Judge Does Not Take Sides: The Judge must be fair and treat everyone the same. The Judge must let each party tell his or her side of the story.

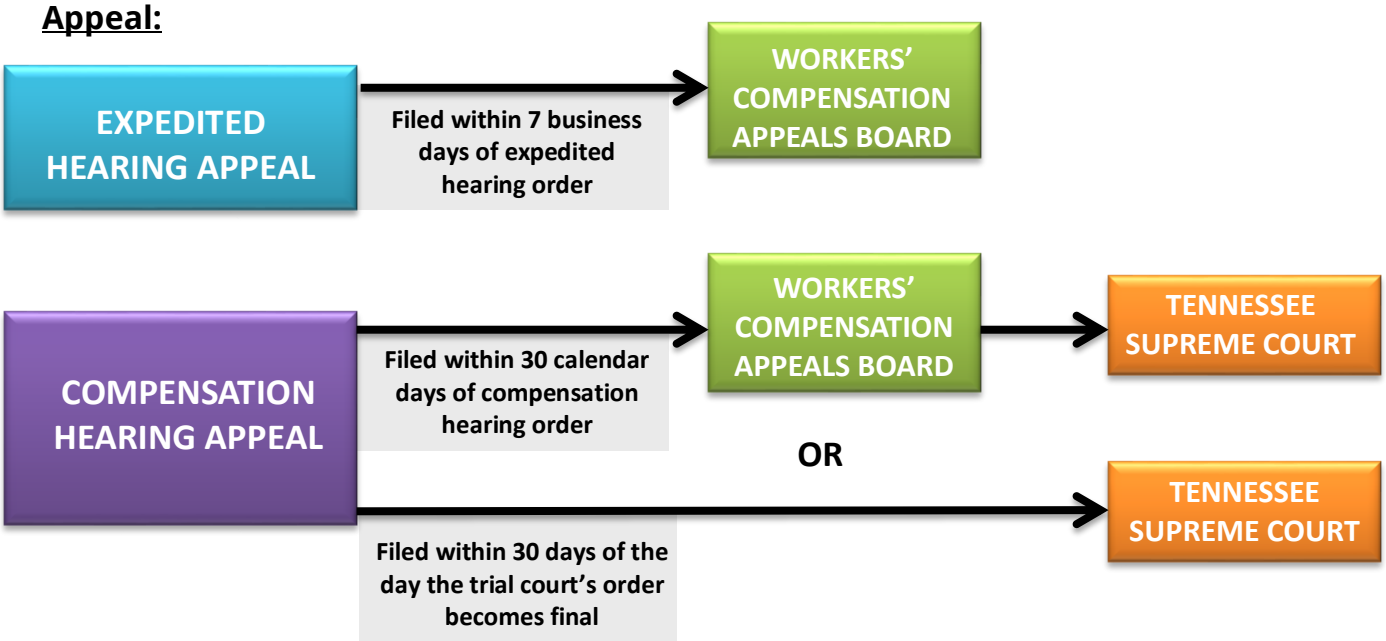
Getting More Time: There are rules that may allow you to get more time before the trial starts. This is called a "continuance." You may ask for more time by filing a motion for continuance with the Court. In the motion, you must tell the Judge why you need more time. After you file your motion, the Judge will decide whether to give you more time. Do not wait until the day of the trial to file your motion for continuance. If you do, the Judge will likely refuse to give you more time.

Your Actions in Court: The rules are the same for both sides. Talk to the Judge, and do what the Judge tells you. Do not talk to or argue with your employer's lawyer or the employer's representative(s). Show respect and be polite. This is a Court of law. If you do not show respect, the Judge may say you are in contempt of Court, and you may have to pay a civil penalty. It can also make you lose your case. Your employer's lawyer and representative(s) must also follow the rules.

During the Trial: The Judge may tell you or any witnesses to stick to the point. This is to keep the case moving. The Judge may remind you to ask the witness questions and not testify yourself. Do what the Judge says. Always remember, the Court wants to find the truth. The Judge may ask questions about the case. This is to make sure you get to the point or to provide clarification. **Example**: You said that you got hurt in a workplace accident. Did this accident cause part of your body not to work correctly? What body part did the accident injure? How is this body part not working correctly?

End of Trial: After you and your employer's lawyer present witnesses and proof, the Judge may let both sides give a closing argument. The closing argument is your last chance to tell the Judge about the proof you presented and to tell the Judge why you should win. You will go first, and then your employer's lawyer will present your employer's closing argument. The Judge may let you answer the employer's closing argument. This is called rebuttal. The Judge may give you a time limit. You must stop when the time limit is up, so tell the Judge your most important points first.

Appeal:



After hearing all the proof, the Judge will issue an Order in writing stating who has won. If the Judge's Order says that you lost, you have the right to appeal. Appeal means to ask another Court to review what the Judge in your case decided. There are rules for how to appeal. You have seven (7) business days to file an appeal of an "Expedited Hearing Order" with the Workers' Compensation Appeals Board. To file an appeal of the "Expedited Hearing Order," you must complete and file with the Court Clerk an "Expedited Hearing Notice of Appeal," which can be found on the Court's website at:

https://www.tn.gov/content/dam/tn/workforce/documents/injuries/bureau-services-forms/Expedited_Hearing_Notice_of_Appeal_WC.pdf.

You must pay a seventy-five dollar ($75.00) filing fee. The Appeals Board may waive the fee if you cannot afford it.

If the Judge issued a "Compensation Hearing Order" that says you lost, you have thirty (30) days to file an appeal with the Workers' Compensation Appeals Board. To file an appeal of a "Compensation Hearing Order," you must complete a "Compensation Hearing Notice of Appeal," which can also be found on the Court's website at:

https://www.tn.gov/content/dam/tn/workforce/documents/injuries/bureau-services-forms/Compensation_Hearing_Notice_of_Appeal_WC.pdf.

For more information and rules about appeals, please consult the Rules for the Board of Workers' Compensation Appeals, which can be found at:

https://www.tn.gov/content/dam/tn/workforce/documents/injuries/Appeals_Board_Rules.pdf.

After thirty (30) days, a Compensation Hearing Order becomes final, and you then have thirty (30) days to file an appeal to the Tennessee Supreme Court. For additional information concerning appealing your case to the Tennessee Supreme Court, please consult the website for the Administrative Office of the Courts, which can be found at:

http://www.tncourts.gov.

MOTIONS

After your claim has been filed with the Court, you may receive a copy of a document from the employer's attorney with the title "Motion." A Motion is a request for the Court to do something. There are various types of Motions and some are more important than others. The more important ones could result in dismissal of your case if you are not careful. These are typically called "Motions to Dismiss" or "Motions for Summary Judgment."

A Motion to Dismiss is a request from the employer to dismiss your workers' compensation case because it failed to meet some minimal procedural threshold. For example, you failed to send a copy of your Petition to the employer when the case began or you failed to include the date you were injured in your Petition.

A Motion for Summary Judgment is a request from the employer for the Court to issue judgment in its favor because you cannot provide satisfactory proof of your case. This could arise when the doctor evaluated you and determined your injury was not work related and you have not found another doctor to state that your claim is work-related.

Responding to Motions

The most important thing to remember about any Motion is that you must respond to the motion in a timely manner. To respond to a Motion, you must prepare a written response, file it with the clerk and send a copy of the response to the employer's attorney. If you fail to do this, the Court will likely grant the motion.

The time you have to respond depends on the type of motion. As a general rule, you must file a written response to any Motion no later than five business days after the employer files the Motion. If the Motion is to dismiss your case, for summary judgment or for judgment on the pleadings, you must respond no later than thirty days after the motion is filed. For more information on the time allowed to respond to a Motion, see page 13 of the Rules of the Court of Workers' Compensation Claims and Alternative Dispute Resolution, which can be found on the Internet at the following address:

> https://publications.tnsosfiles.com/rules/0800/0800-02/0800-02-21.20190801.pdf.

Motions for Summary Judgment

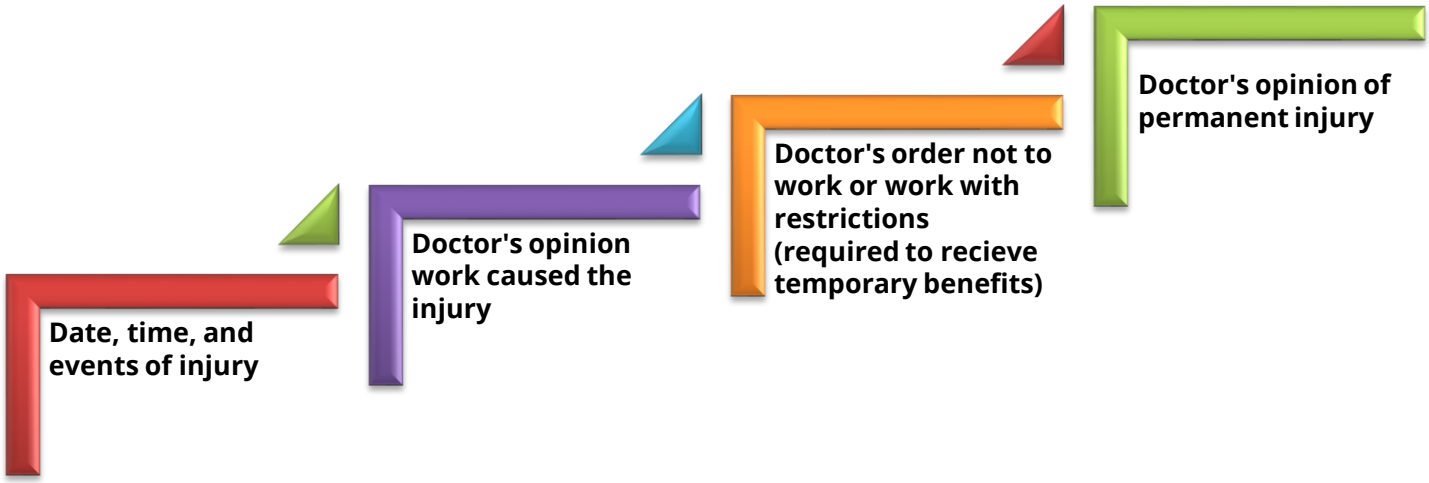
Motions for Summary Judgment are one of the most difficult motions to prepare and respond to in the legal field because the legislature and the Supreme Court have established very specific guidelines for what must be contained in the response. Before getting into that, you should know a Motion for Summary Judgment is an allegation by the employer that you lack the proof to prove your claim.

A Motion for Summary Judgment has three basic parts: the Motion, the Statement of Undisputed Material Facts, and the Memorandum of Law. While all parts are important, you must respond to the Statement of Undisputed Material Facts or you will lose the Motion.

A Statement of Undisputed Material Facts is simply 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 written response to each numbered paragraph telling the Court why the fact is still disputed. For instance, if one of the paragraphs said: "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 specifically and state that you have an opinion from another doctor who believes your injury is work-related. You must also identify the doctor in your response. Do not tell the Court you have an opinion from another doctor unless you really have one. For that reason, you must find a doctor to provide that opinion before responding to the Statement of Undisputed Material Facts.

PROVING YOUR CLAIM

Elements of a Claim: In a workers' compensation claim, you have the responsibility of proving all elements of your claim. Some of the most important elements you must prove are:



- The date, time, and events that resulted in your injury;
- Medical causation, which essentially means a doctor's opinion that the accident at work caused the injury to your body;
- That you need medical treatment for your injury;
- That the treatment you received is reasonable and necessary;
- In a claim for temporary disability benefits, that a doctor has placed you on restrictions due to your work-related injury or has taken you off work completely;
- That you have not fully recovered from your injury, which means that you have not reached maximum medical improvement; and,
- In a claim for permanent disability benefits, the fact that your injury is permanent and will make it harder for you to find work.

Your testimony is important to proving each of these. You should, therefore, be prepared to testify about each of them. You can also present testimony from other

witnesses to prove your claim. However, as described above, several key elements cannot be proven without a doctor's opinion.

Medical Evidence: At any hearing on a claim, you should be prepared to present your medical records to the Judge. You can obtain "authenticated" copies of your medical records directly from your doctor. "Authenticated" means the doctor or someone in the doctor's office or at the hospital has verified that the medical records are an accurate copy. You can authenticate medical records by having the doctor sign the records or by having the person at the doctor's office who keeps the records sign a statement declaring that the records are a correct copy. The doctor might charge a fee for copies of these records. A form for use in authenticating medical records, also called a "Medical Record Certification," can be downloaded from the Court's website at:

https://www.tn.gov/content/dam/tn/workforce/documents/injuries/bureau-services-forms/Medical_Record_Certification_7.9.14.pdf.

The Tennessee Workers' Compensation Law requires the injured worker prove that the 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 most cases, you will need a doctor's opinion to prove this.

The authorized treating physician usually provides this opinion. In fact, the authorized treating physician's opinion is presumed to be correct. However, if you disagree with the authorized treating physician's opinion, you can always ask another doctor for a different opinion and present that to the Judge.

To present the opinion to the Judge, it must be in the proper form. The Bureau developed form C-32 specifically for this purpose. Present this form to your physician and ask him or her to complete it. This way, you can present the opinion to the Judge at your hearing. If you do not use form C-32, the Judge might not be able to accept your doctor's opinion. You can find form C-32 on the Internet at the following address:

https://www.tn.gov/content/dam/tn/workforce/documents/injuries/bureau-services-forms/Form%20C-32--final%20fillable%2012%202016.pdf.

Print out a copy of the form and ask your doctor to complete it.

When asking a doctor for an opinion, make sure you give this doctor all the information you have about your injury, such as your medical records, and be absolutely honest when telling the doctor about how you got hurt. If you do not, the Judge will probably not believe your doctor's opinion is reliable.

For example, if you tell the Judge you hurt your back picking up a box and cannot work due to back pain, but do not present medical evidence (such as an opinion from a doctor that lifting the box was the primary cause of your back pain), you will lose the case, even if the Judge believes you.

All of the directions and suggestions above are to provide you with a brief summary of how your case will proceed and where to find procedural rules that will assist you in preparing your case for a hearing. They by no means cover all the many events that can happen in a workers' compensation claim.

DICTIONARY OF WORKERS' COMPENSATION TERMS

Alternative Dispute Resolution (ADR) – the proceeding where both parties confer with a mediator in an attempt to resolve a dispute over workers' compensation benefits. Alternative Dispute Resolution may occur in person or may be conducted via telephone, teleconference, email or video conferencing.

Average Weekly Wage (AWW) – the average amount of money an employee earned for the fifty-two (52) weeks before the employee got hurt at work.

Compensation Hearing – a final hearing of an injured worker's claim for workers' compensation benefits. All Compensation Hearings occur in the courtroom with a workers' compensation Judge.

Compensation Rate – the amount of money an employee can be paid under the Tennessee Workers' Compensation Law. The compensation rate is two-thirds (2/3) of the employee's average weekly wage from a minimum up to a maximum established by the legislature.

Death Benefits – money paid to the surviving spouse and dependents of a worker killed by a work injury.

Dispute Certification Notice (DCN) – the document completed by a mediator following any mediation where the parties cannot resolve their disputes. Only issues that are contained within the DCN can be decided by a workers' compensation Judge.

Expedited Hearing – a formal proceeding where a workers' compensation Judge considers whether to award an injured employee temporary disability payments and/or medical benefits prior to the case coming before the Judge for a full trial.

Exhibits – documents, recordings, transcripts, medical records or any other tangible item that a party presents to a Judge in support of a claim for workers' compensation benefits.

Impairment Rating – the percentage of permanent medical impairment an injured worker has as a result of a workplace injury. All impairment ratings are expressed as a percentage, such as six percent (6%) of the body as a whole, and must be provided by a licensed doctor.

Maximum Medical Improvement (MMI) – the date upon which an injured worker has recovered as far as possible from a physical or mental injury.

Medical Impairment Rating Registry (MIR Registry) – a forum where the parties can select a neutral physician to provide an impairment rating in any case where the parties disagree on the injured worker's permanent medical impairment.

Motion – a written request to a workers' compensation Judge to do something. All motions must be filed with the Court Clerk before the Judge will look at them.

Ombudsman – an employee of the Bureau of Workers' Compensation who provides information and guidance on the Tennessee Workers' Compensation Law to self-represented litigants.

Permanent Partial Disability – an injury to a worker that prevents the worker from performing some type of work activity.

Permanent Total Disability – an injury to a worker that prevents the worker from performing any work that makes money.

Pre-Compensation Hearing Statement – a list of facts, disputed issues and other information that the parties file with the Court Clerk before a Final Compensation Hearing.

Scheduling Hearing – a proceeding where the parties consult with a Judge to develop a plan for resolving the injured employee's workers' compensation claim by setting deadlines for taking depositions, exchanging discovery and disclosing medical experts. The Judge will set a date for the final compensation hearing at the Initial Hearing.

Temporary Total Disability (TTD) – payments made to an injured worker during the period that the injured worker is recovering from a workers' compensation injury. Temporary Total Disability payments are made every two (2) weeks, and the injured employee is paid two-thirds (2/3) of the workers' average weekly wage.

Temporary Partial Disability (TPD) – payments made to an injured worker during the period when the injured worker, who can still work, is recovering from a workers' compensation injury and being paid at a lower rate due to the worker's

inability to perform normally. Temporary Partial Disability payments are made every two weeks, and the injured employee is paid two-thirds (2/3) of the difference between the amount the injured worker earns at the time of the payment and the amount the worker earned before the worker was injured.

Witness – any person who knows information about a workers' compensation claim who testifies at any workers' compensation hearing.

WORKERS' COMPENSATION ABBREVIATIONS

ADR – Alternative Dispute Resolution

AWW – Average Weekly Wage

BAW – Body as a Whole

DCN – Dispute Certification Notice

EH – Expedited Hearing

MMI – Maximum Medical Improvement

PBD – Petition for Benefit Determination

TTD – Temporary Total Disability

TPD – Temporary Partial Disability

PPD – Permanent Partial Disability

PTD – Permanent Total Disability

MIR – Medical Impairment Rating

MIRR – Medical Impairment Rating Registry

REH – Request for Expedited Hearing

RTW – Return to Work

MRI – Medical Resonance Imaging

WPI – Whole Person Impairment

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 #337547; 500 copies; October 2015; This public document was promulgated at a cost of $3.02 per copy.