

**TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION
CHAPTER 10. PRACTICE AND PROCEDURE**

810:10-1-3. Definitions

In addition to the terms defined in 85A O.S. § 2, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Acceptable Electronic Signature Technology" means technology that is capable of creating a signature that is unique to the person using it, is capable of verification, is under the sole control of the person using it, and is linked to the data in such a manner that if the data is changed, the electronic signature is invalidated.

"Administrative Law Judge" means an Administrative Law Judge of the Commission to whom the Commission has delegated by order or otherwise, the authority to conduct a hearing.

"Attorney" means an attorney licensed to practice law in Oklahoma and a member in good standing of the Oklahoma Bar Association, or an out-of-state attorney.

"AWCA" means the Administrative Workers' Compensation Act, 85A O.S. §§1, et seq.

"Business day" means a day that is not a Saturday, Sunday, or legal holiday.

"Certified workplace medical plan" means an organization that is certified by the Oklahoma State Department of Health to provide management of quality treatment to injured employees for injuries and diseases compensable pursuant to the workers' compensation laws of the State of Oklahoma.

"Claim administrator" means the trading partner sending electronic transactions to the Commission, which can be an insurer filing directly with the Commission on its own behalf, or a servicing company/third party administrator filing on behalf of the insurer.

"Claim for compensation" means a Commission prescribed form filed by or on behalf of an injured worker or the worker's dependents to initiate a claim for benefits pursuant to the AWCA for an alleged work injury, occupational disease or illness, or death.

"Claim Information" means data submitted via First Report of Injury (FROI) or Subsequent Report of Injury (SROI).

"Claimant" means a person who claims benefits for an alleged work injury, occupational disease or illness, or death, pursuant to the provisions of the AWCA.

"Commission" means the Oklahoma Workers' Compensation Commission, a designee, or an Administrative Law Judge to whom the Commission has delegated responsibility as authorized by 85A O.S. § 21(D).

"Commission Chair" means the Chair of the Oklahoma Workers' Compensation Commission.

"Continuance" means postponing a hearing from the time or date set, and rescheduling it on a later time or date.

"Controverted claim" means there has been a contested hearing before the Commission over whether there has been a compensable injury or whether the employee is entitled to temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, or death compensation.

"Discovery" means the process by which a party may, before the hearing, obtain evidence relating to the disputed issue or issues from the other parties and witnesses.

"Document" means any written matter filed in a cause, including any attached appendices.

"Electronic Data Interchange" means the transmission of claim information through electronic means, in a format established by the Commission.

"EDI" means electronic data interchange.

"Electronic Signature" means an electronic symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Executive Director" means the Executive Director of the Commission.

"FROI" means first report of injury.

"Good cause" means, in the context of a request for continuance or failure of a party to comply with the Rules of this Chapter, circumstances beyond the party's control or that the party could not reasonably foresee. In the context of a claim, defense, or order, it means a reasonable legal basis.

"Insurance carrier" means any stock company, mutual company, or reciprocal or interinsurance exchange authorized to write or carry on the business of workers' compensation insurance in this state, and includes an individual own risk employer or group self-insurance association duly authorized by the Commission to self fund its workers' compensation obligations.

"Insurer" means the entity responsible for making electronic filings as prescribed by law and these rules. This term includes self-insurers.

"Joint Petition Settlement" means a settlement between the employer/insurance carrier and the employee, of all or some issues and matters in a claim for compensation.

"Legal holiday" means only those days declared legal holidays pursuant to 25 O.S. § 82.1 or by proclamation of the Governor of Oklahoma.

"Mediation" means the process of resolving disputes with the assistance of a mediator, outside of a formal administrative hearing.

"Out-of-state attorney" means a person who is not admitted to practice law in the State of Oklahoma, but who is admitted in another state or territory of the United States, the District of Columbia, or a foreign country.

"Pro se" means without an attorney.

"Proceeding" means any action, case, hearing, or other matter pending before the Commission.

"Representative" means a person designated in writing by an injured employee, person claiming a death benefit, employer, insurance carrier or health or rehabilitation provider, to assist or represent them before the Commission in a matter arising under the AWCA.

"Sanction" means a penalty or other punitive action or remedy imposed by the Commission on an insurance carrier, representative, employee, employer, or health care provider for an act or omission in violation of the AWCA or a rule, judgment, order, or decision of the Commission.

"Self-insurer" means any duly qualified individual employer or group self-insurance association authorized by the Commission to self fund its workers' compensation obligations.

"SROI" means subsequent report of injury.

"Subpoena" means a Commission issued writ commanding a person to attend as a witness to testify or to produce documents, including books, papers and tangible things, at a deposition or at a hearing.

"Trading Partner" means an entity that has registered with the Commission to exchange data through Electronic Data Interchange.

"Workers' compensation fee schedule" means a state mandated schedule of maximum allowable reimbursement levels for health care providers, including hospitals, ambulatory surgical centers, and inpatient rehabilitation facilities, rendering reasonable and necessary health care services and supplies to an injured employee for a compensable injury pursuant to the Oklahoma workers' compensation laws.

"Written" means that which is expressed in writing, and includes electronic records.

810:10-1-4. Reporting injuries or deaths

(a) **Employer's first report of injury (formerly CC-Form 2).**

(1) Within ten (10) days after the date of receipt of notice or of knowledge of death or injury that ~~which~~ results in ~~more than three days' absence from work for the injured employee, the employer~~ the loss of time beyond the shift or which requires medical attention away from the work site the claim administrator shall send a report thereof to the Commission as provided in 85A O.S. § 63, on a form prescribed by the Commission that includes, in addition to other required

information, the worker's full name and date of birth, and the last four digits of the worker's Social Security number. The report shall be known as the Employer's First Notice of Injury. The employer also shall send the report to the employer's insurance carrier, if any, within the ten day period file a FROI with the Commission via EDI.

(2) The report shall contain the information required by 85A O.S. § 63 and any additional information prescribed by the Commission.

(3) Failure or refusal of an insurer to comply with the reporting requirements of this Section may subject the insurer to sanctions prescribed in 85A O.S. § 63.

(b) Employer's First or Subsequent Report of Injury (formerly, CC-Form 2A and CC-Form 2A Extension).

(1) Each insurer is required by 85A O.S. § 86 to file a report of controversion, if intending to controvert, within fifteen (15) days of notice or knowledge of injury. Insurer, if intending to controvert, shall do so by the claim administrator making the appropriate FROI and/or SROI filings as provided in the Oklahoma Workers' Compensation Commission EDI Implementation Guide.

(2) A FROI UI (Under Investigation) or SROI UI (Under Investigation) is submitted to request an extension to investigate compensability of the claim. The request must be submitted within the fifteen (15) days after notice of the injury, or by such later date as fixed by the Commission, in its discretion. Unless the Commission exercises its right to decline the extension, the extension shall be deemed granted upon request, and extends the filing deadline for a standard time period of thirty (30) days from the original due date of the FROI or SROI. The Commission reserves the right to alter the extension period.

(3) Within fifteen (15) days of notice or knowledge of injury the claim administrator, if not controverting, shall report first payment of benefits on either a FROI or SROI in accordance with the Oklahoma Workers' Compensation Commission EDI Implementation Guide.

(c) Employer's Subsequent Report of Injury, Report of Compensation Paid (formerly CC-Form-4).

(1) Within fifteen (15) days of the initial payment of a benefit, change in benefit amount, change in benefit type, reinstatement of a benefit or suspension of a benefit, the employer shall file a SROI reporting such initial payment, change, suspension or reinstatement and the reason therefore.

(2) Within thirty (30) days of making the final payment of compensation, including payments made for medical treatment, the employer shall file a SROI FN (Final) reporting such final payment.

(3) The claim administrator shall file a sub-annual report (SROI SA) every 6 months for every indemnity or medical only claim where indemnity and/or medical benefits were paid during the reporting year. For ongoing claims, reports are due six months from the date of injury and every six months following. If the claim is closed prior to the initial six months from when the SROI SA (Sub-Annual) is due, a SROI FN (Final) shall be filed.

~~(b)~~(d) **Additional reporting requirements.** Reports or additional reports with respect to the death, injury and of the condition of the employee shall be sent by the employer to the Commission at such time and in such manner as the Commission may prescribe.

~~(c)~~(e) **Evidentiary effect of reports.** Any report provided pursuant to this Section shall not be evidence of any fact stated in the report in any proceeding with respect to the injury or death for which the report is made.

~~(d)~~ **Sanctions.** Failure or refusal of an employer to comply with the reporting requirements of this Section may subject the employer to sanctions prescribed in 85A O.S. § 63.

810:10-1-5. Commencing temporary total disability compensation and medical benefits

(a) Upon receipt of notice or of knowledge that an employee has been injured, the employer has an obligation under the AWCA to provide that employee with reasonable and necessary medical treatment for the injury, and to pay temporary total disability compensation if the employee is unable to perform the employee's job, or any alternative work offered by the employer, for more than three (3) calendar days. No order from the Commission directing the employer to provide these benefits is required.

(b) The first installment of temporary total disability compensation is due on the fifteenth day after the employer has notice of the injury. By that date, all temporary total disability compensation then accrued shall be paid to the employee, and weekly installment payments shall be made thereafter, unless the employer controverts the employee's right to compensation as provided in 85A O.S. § 86 by timely filing a Commission or requests an extension to determine compensability as prescribed CC Form 2A Employer's Intent to Controvert Claim form with the Commission. ~~To be timely, the employer must file the CC Form 2A within fifteen (15) days after notice of the injury, or by such later date as fixed by the Commission, in its discretion, upon the employer's filing of a CC Form 2A Extension Employer's Application and Authorization for Extension of Time to File CC Form 2A form with the Commission. The request must be postmarked within the fifteen day period after the employer has notice of the injury. The employer shall send a copy of the CC Form 2A to the employee and so certify on the form when filed.~~ in 85A O.S. § 86 and 810:10-1-4(b). The employee may request a hearing before an Administrative Law Judge of the Commission no sooner than ten (10) days after filing a claim for compensation with the Commission as provided in 810:10-5-2.

810:10-1-7. Forms and other documents generally

(a) All forms, pleadings, proposed orders, correspondence or other documents submitted to the Commission shall:

- (1) be typewritten or printed legibly on 8 ½" by 11" paper, unless electronically filed;
- (2) refer to the Commission file number if assigned;
- (3) bear the typed or printed name, mailing address, telephone number, and signature, of the person who prepared the document, including the firm name if applicable; and
- (4) include the attorney's Oklahoma Bar Association number, if the document is submitted by an attorney licensed to practice law in Oklahoma.

(b) The signature of an attorney or party constitutes the following:

- (1) a certification that the claim, request for benefits, request for additional benefits, controversion of benefits, request for a hearing, pleading, form, motion, or other paper has been read;
- (2) that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and
- (3) that it is not brought for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(c) If a claim, request for benefits, request for additional benefits, request for hearing, pleading, motion, or other paper:

- (1) is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant; or
- (2) is signed in violation of the AWCA, the Commission, including Administrative Law Judges, on motion or on their own initiative, shall impose an appropriate sanction as prescribed in 85A O.S. § 83.

(d) An electronic signature using acceptable electronic signature technology may be used to sign a document or a form and shall have the same force and effect as a hand written signature.

(e) All documents filed with the Commission shall be served on all parties and shall have a certificate of service setting forth the manner of such service. A copy of all correspondence addressed to the Commission with respect to a pending matter shall be sent to all parties at the time it is sent to the Commission and shall list the parties to whom copies were sent.

(f) All forms filed with the Commission, except forms submitted via EDI, shall be file-stamped by the Clerk of the Commission on the date of receipt.

(g) All FROI and SROI filings properly submitted through EDI according to the standards specified in 810:1-1-8 shall be deemed to comply with the requirements of this section.

810:10-1-8. Display and use of an individual's Social Security number

Unless otherwise ordered or as otherwise provided by law, every filer may limit the employee's or the employee's dependent's Social Security number to only the last ~~four~~ five (5) digits of that number in all pleadings, papers, exhibits or other documents, or Commission forms prescribed by the Commission. The responsibility for following this provision rests solely with counsel, the parties, or any other filer. The Clerk of the Commission or other Commission personnel shall not have any duty to review documents for compliance with this provision. If a filer includes the Social Security number in any document filed with the Commission, the document becomes a public record as filed. Nothing in this Section shall impact the confidentiality of any records the Legislature has determined are confidential.

810:10-1-9. Who may appear before Commission

(a) Attorneys licensed to practice law in Oklahoma and members in good standing of the Oklahoma Bar Association may appear on behalf of parties to litigation before the Commission and in Joint Petition Settlement proceedings before the Commission. Legal interns licensed by the Oklahoma Supreme Court may appear on behalf of a party only on matters properly within the scope of their license. Out-of-state attorneys who have complied with the requirements of Chapter 1, Appendix 1, Article II, Section 5 of Title 5 of the Oklahoma Statutes₁ may appear on behalf of a party with leave of the Commission. The attorney shall file an entry of appearance with the Commission as provided in 810:10-1-10.

(b) Persons other than licensed attorneys, including adjusters, may file standard, administrative reporting forms such as the ~~Employer's First Notice of Injury~~ FROI per 810:10-1-4(a) and notice of compliance with payment and reporting obligations related to Multiple Injury Trust Fund assessments (85A O.S., § 31) and Self-insurance Guaranty Fund assessments (85A O.S., § 98), which are required by law and/or Commission rules, are not considered legal pleadings, and the submission of which in no way is intended as an act of legal representation. Persons other than licensed attorneys may not assume an advocate's role or introduce evidence or examine witnesses in proceedings before the Commission or an Administrative Law Judge.

(c) An individual may appear pro se or by an attorney. A corporation, limited liability company, insurance carrier, individual own risk employer, and group self-insurance association, may appear only by its attorney.

810:10-1-10. Contact information for service of notice; entry of appearance; leave to withdraw

(a) **Contact information for service of notice.**

(1) Each party, upon instituting or responding to any proceedings before the Commission, shall file with the Commission the party's address, or the name and address of any agent upon whom notices shall be served to such party or agent at the last address so filed with the Commission. A party, including a claimant acting pro se, shall promptly communicate any change of address to the Commission's Docket Office.

(2) An attorney of record, as defined in Subsection (d) of this Section, shall give notice of a change of address by providing the Commission's Docket Office with a copy of the letterhead

containing the new address and a list containing the Oklahoma Bar Association number of each attorney member of the firm who regularly appears before the Commission.

(3) Notice and service of documents may be made as prescribed in 12 O.S. § 2005(B). It is the responsibility of parties to an action before the Commission to provide a current mailing address, and email address if available, to Commission staff. Notices and documents sent to the last known address or email address on file with the Commission, are presumed delivered in a timely manner, and presumed received.

(b) **Entry of appearance.**

(1) An entry of appearance shall be filed by any attorney or law firm representing any party in any proceeding before the Commission. No attorney or law firm will be recognized in any case before the Commission unless the attorney or law firm duly entered their written appearance. When an entry of appearance has been duly filed by a law firm, any attorney member of that firm may appear and be recognized by the Commission. All entries of appearance when filed shall be accompanied by a written authorization signed by the client and attorney identifying the attorney or law firm as the client's representative, as defined in 810:10-1-3, to provide services in the workers' compensation matter, including the presentation of evidence as provided in 85A O.S. § 71(C)(1)(a).

(2) An appearance on behalf of the employer/insurance carrier shall be filed no later than ten (10) days after the employer/insurance carrier's receipt of a file-stamped copy of a claimant's claim for compensation filed pursuant to 810:10-5-2. The entry of appearance for the employer/insurance carrier shall identify whether or not the employer is an active member of a certified workplace medical plan in which the claimant is potentially enrolled, and if so, the name of the plan.

(c) **Leave to withdraw.**

(1) Once an entry of appearance has been filed, Leave to Withdraw can only be had upon written order of the Commission following appropriate notice to the client and the opposing side. Substitution of Counsel may be had by filing with the Commission and serving on the opposing party a notification of the substitution, signed by the attorney of record, the substituted attorney and the client. Notification of the substitution when filed shall be accompanied by a written authorization signed by the client and substituted attorney identifying the attorney as the client's representative to provide services in the workers' compensation matter, including the presentation of evidence as provided in 85A O.S. § 71(C)(1)(a).

(2) Except when an attorney's representation has been terminated at the client's initiative, no attorney shall be allowed to withdraw as an attorney for a party when that attorney has signed the pleadings necessary to perfect an appeal to the Commission en banc. This prohibition shall apply until the appeal has been fully submitted to the Commission en banc for consideration. This prohibition shall not apply if another attorney has entered an appearance for the appealing party before the filing of the application to withdraw.

(d) **Attorney of record.**

(1) The attorney of record for the claimant in a case shall be the attorney signing the first claim for compensation filed in the case for the claimant as provided in 810:10-5-2. Any other attorney who files an entry of appearance on behalf of any party in the case or who is identified as a substitute attorney pursuant to a notice of substitution of attorney shall also be considered an attorney of record. The Commission shall send notices to all attorneys of record until a substitution of attorney has been filed or an Application for Leave to Withdraw has been filed and granted by the Commission. Various attorneys may appear before the Commission in a matter, but notice shall be sent only to those attorneys who are an "attorney of record" as defined in this Subsection.

(2) Attorneys of record who change law firms shall notify the Commission of the status of the representation of their clients, and shall immediately seek Leave to Withdraw, when appropriate.

(e) **Attorney leave requests.** Attorneys must make leave requests at least seven (7) weeks in advance. Requests for leave that exceed a total of two (2) consecutive weeks must be approved by the Chief Administrative Law Judge and Presiding Court of Existing Claims Judge. Leave requests may be submitted via the online request form on the Commission's website at www.ok.gov/wcc or submitted directly to the Commission's docket office.

810:10-3-3. Counselor program

(a) The Commission shall maintain a workers' compensation counselor program to assist injured employees, employers and persons claiming death benefits under the AWCA. The program shall be administered by the Counselor Division of the Commission.

(b) A Division counselor shall:

- (1) meet with or otherwise provide information to injured employees;
- (2) investigate complaints;
- (3) communicate with employers, insurance carriers, individual own risk employers, group self-insurance associations, and health care providers on behalf of injured employees;
- (4) provide informational seminars and workshops on workers' compensation for medical providers, insurance adjusters, and employee and employer groups; and
- (5) develop informational materials for employees, employers and medical providers.

(c) Notice of the availability of the services of the counselor program and of the availability of mediation and other forms of alternative dispute resolution to assist injured workers shall be mailed to the injured worker within ten (10) days of the filing of the ~~Employer's First Notice of Injury~~ **FROI** as provided in 810:10-1-4(a). Information about the counselor program and the availability of alternative dispute resolution also shall be made part of the Commission's training materials for self-insurers and claims representatives handling Oklahoma workers' compensation claims.

810:10-3-5. Preliminary conferences

(a) At the Commission's discretion the first prehearing conference shall be directed to the preliminary conference docket of a Benefit Review Officer of the Commission. Pursuant to 85A O.S. § 70, the Benefit Review Officer shall:

- (1) assist unrepresented claimants to enable those persons to protect their rights in the workers' compensation system;
- (2) narrow and define the disputed issues;
- (3) facilitate informal dispute resolution and provide an opportunity for a binding settlement of some or all of the issues;
- (4) prepare at the conclusion of the preliminary conference stipulations of all contested and uncontested issues which shall be signed by representatives of the parties and the Benefit Review Officer; and
- (5) draft a written summary report of the conference within five (5) days after the preliminary conference is closed to be filed in the case.

(b) All unresolved contested issues shall be set by the Commission on the assigned Administrative Law Judge's docket upon the filing of a CC-Form-9 or CC-Form-13.

(c) Benefit Review Officers are authorized to advise unrepresented claimants and to approve Joint Petition Settlements which may result from a preliminary conference; provided, the same Benefit Review Officer who conferred with the claimant may not also approve the Joint Petition Settlement.

(d) A Mediation Conference as provided in this Section may be conducted by agreement of the parties

to a workers' compensation dispute or pursuant to a referral order by the assigned Administrative Law Judge following the filing of a request for hearing and assent of the parties to mediate as provided in 85A O.S. § 110. All workers' compensation issues may be mediated except for disputes related to medical care under a certified workplace medical plan or claims against the Multiple Injury Trust Fund.

(e) A Mediation Conference set and conducted as provided in this Section shall be voluntary, informal, nonbinding and strictly confidential. The mediator is authorized to compel attendance at the conference, but is not authorized to compel settlement. Attendance by the parties, and/or a representative of each party having full authority to settle all issues, is required. Failure to attend a Mediation Conference pursuant to this Section without good cause is subject to sanctions for contempt as provided in 85A O.S. § 73(B).

(f) The Mediation Conference may be held in the county where the accident occurred, if the accident occurred in Oklahoma, unless otherwise agreed to by the parties, or as otherwise directed by the Commission. Mediation Conferences involving a nonresident claimant or an accident occurring outside Oklahoma shall be held at the main offices of the Commission in Oklahoma City, Oklahoma, unless otherwise agreed to by the parties, or as otherwise directed by the Commission.

(g) A Mediation Conference may be concluded by any party at any time, by the mediator if in the mediator's discretion it is necessary or an impasse exists, or upon an agreement or settlement being reached by the parties. Whether or not an agreement or settlement is reached, upon conclusion of the conference, the mediator shall complete the Commission prescribed Report of Mediation Conference form and send a copy to the Commission Counselor Division and to each party. ~~The original Report of Mediation shall be filed in the Commission case file, and if there is none, then shall be retained by the Counselor Division.~~

(h) Except as otherwise provided in Subsections (d) through (g) of this Section, a Mediation Conference conducted by a Commission Benefit Review Officer shall be conducted according to the policies and procedures applicable to mediation conferences of workers' compensation matters by private mediators as provided in 810:10-3-4, 810:10-3-7 through 810:10-3-11.

SUBCHAPTER 5. HEARINGS CONDUCTED BY ADMINISTRATIVE LAW JUDGES AND COMMISSIONERS

PART 1. COMMENCEMENT OF CLAIMS AND REVIEW OF QUALIFIED EMPLOYER BENEFIT DETERMINATIONS

810:10-5-5. Review of adverse benefit determination by qualified employers [REVOKED]

- (a) ~~Except as otherwise provided by law, a claimant aggrieved by all or part of an adverse benefit determination upheld by a qualified employer's appeals committee pursuant to 85A O.S. § 211, may appeal the determination to the Commission en banc by filing an original and four (4) copies of a Commission prescribed CC Form 211 Request for Review of Adverse Benefit Determination with the Commission within one (1) year after the claimant's receipt of notice that the determination, or part thereof, was upheld. The CC Form 211 shall:~~
- ~~(1) include a copy of the adverse benefit determination being appealed to the Commission en banc; and~~
 - ~~(2) clearly and concisely address each issue in the adverse benefit determination that the claimant wants reviewed, and state the relief sought. General allegations of error do not suffice. Allegations of error concerning matters not included in a timely filed CC Form 211 shall be deemed waived.~~
- (b) ~~The Commission shall assign a file number to the CC Form 211 upon receipt, and, within ten (10) days thereafter, shall mail or send an electronic copy thereof to the qualified employer.~~

- ~~(c) Proceedings related to oral argument before the Commission en banc and submission by the parties of written arguments as an aid to the Commission en banc shall be governed by 810:10-5-66(c).~~
- ~~(f) The qualified employer's written argument shall be accompanied by an appendix that includes a copy of the employer's benefit plan and the entire administrative record established by the internal process of the qualified employer's plan.~~
- ~~(d) Discovery related to a claim for review under this section shall be governed by Rule 810:10-5-31(c)-(d).~~

810:10-5-31. Discovery

- (a) **Generally.** Discovery in administrative proceedings before the Commission is governed by this Section.
- (b) **Authority of the Administrative Law Judge.** Any party may commence with discovery methods such as depositions, issuance of subpoenas and requests for production, prior to or after invoking the jurisdiction of the Administrative Law Judge. Discovery disputes may be resolved by filing a CC-Form-13 requesting a prehearing conference. The Administrative Law Judge, upon the judge's own motion or on the motion of either party, may permit or perform such discovery or other appropriate action as the judge decides is appropriate in the circumstances, taking into account the needs of the parties to the proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective. If discovery is permitted or performed, the Administrative Law Judge may order a party to the proceeding to comply with the judge's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, including a deposition, and take action against a noncomplying party as appropriate and consistent with 85A O.S. § 73(B) and 85A O.S. § 83(B).
- (c) **Protective orders.** The Commission may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state, including any orders with respect to subpoenas and attendance of a witness as may be appropriate for the protection of persons, including an order quashing a subpoena, excusing attendance of witnesses, or limiting documents to be produced.
- (d) **Subpoenas; costs; fees; service.**
- (1) When a witness is required to appear or to produce documentary evidence, a subpoena shall be issued by an attorney authorized to practice law in Oklahoma or under the seal of the Clerk of the Commission. The party requesting the subpoena under the seal of the Commission shall fill it in before issuance. The subpoena may be served by certified mail with return receipt requested or it may be hand delivered. The party requesting the subpoena shall bear the cost of serving it. Except as otherwise provided by law or this Title for physician testimony, fees of a nonparty witness who is subpoenaed to appear before the Commission shall be the same as those allowed to witnesses appearing before the district courts of this state. Party witnesses are not entitled to witness fees.
- (2) The party who takes the deposition of a witness or of a party shall bear all expenses thereof, including the cost of transcription, except as otherwise provided in 85A O.S., § 112(J) and 810:10-5-49.
- (e) **Completion of discovery by the employer or insurance carrier in contested claims.** Pursuant to 85A O.S. § 111, if the compensability of a claim is contested, the employer or insurance carrier shall complete and secure a medical evaluation of the claimant within sixty (60) days of the filing of a claim for compensation pursuant to 810:10-5-2.
- (f) **Filing Discovery.** No depositions, interrogatories, interrogatory answers, requests for production of documents and things, requests for admissions, or responses thereto, shall be filed with the

Commission, except as ordered by the assigned Administrative Law Judge.

810:10-5-46. Evaluation of permanent impairment

- (a) **Generally.** Except for amputation or permanent total loss of use of scheduled member injuries as specifically set forth in 85A O.S. § 46(A) enumerated in 85A O.S. § 46, evaluations of permanent impairment for injuries occurring on or after February 1, 2014, shall be evaluated as a percentage of whole body impairment, not to exceed 350 weeks, ~~85A O.S. § 46(C)~~, and must be based solely on criteria established by the current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment. Deviations from the Guides are permitted only when specifically provided for in the Guides, or pursuant to an alternative method of evaluation approved pursuant to 85A O.S. § 60 that deviates from or is used in place of or in combination with the Guides. Such deviations must be medically reasonable and necessary, as shown by clear and convincing evidence.
- (b) **Change of condition.** Evaluations of permanent impairment which are prepared in support of a Motion of Change of Condition occurring on or after February 1, 2014 shall be performed using the appropriate edition of the AMA Guides, including any approved alternative method of evaluation developed as provided in 85A O.S. § 60 that deviates from or is used in place of or in combination with the Guides, in effect on the date of injury.
- (c) **Hearing impairment.** The current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment, or any alternative method approved pursuant to 85A O.S. § 60 that deviates from or is used in place of or in combination with the Guides, in effect on the date of injury, shall be used to evaluate permanent impairment caused by hearing loss where the last exposure occurred on or after February 1, 2014. Objective findings necessary to prove permanent disability in occupational hearing loss cases may be established by medically recognized and accepted clinical diagnostic methodologies, including, but not limited to audiological tests that measure air and bone conduction thresholds and speech discrimination ability. Differences in baseline hearing levels shall be confirmed by subsequent testing given within four (4) weeks of the initial baseline hearing level test.
- (d) **Eye impairment.**
- (1) The criteria for measuring and calculating the percentage of eye impairment for an injury occurring on or after February 1, 2014 shall be pursuant to this Subsection. A physician may deviate from the method of evaluation provided for in this Subsection or may use some other recognized method of evaluation, if the deviation or the method of evaluation is fully explained.
 - (2) Physicians should consult the American Medical Association's Guides to the Evaluation of Permanent Impairment regarding the equipment necessary to test eye function and for methods of evaluating vision loss. Evaluation of visual impairment may be based upon visual acuity for distance and near, visual fields and ocular motility with absence of diplopia.
 - (3) Use of corrective lenses may be considered in evaluating the extent of vision loss, 85A O.S. § 46(E).

810:10-5-49. Rules of evidence

- (a) **Generally.** The Commission and Administrative Law Judges and are not bound by technical or statutory rules of evidence or procedure, 85A O.S. § 72(A).
- (b) **Presentation of evidence.** At the hearing, an opportunity shall be afforded all parties to present evidence and argument with respect to matters and issues involved, although the argument may be restricted to a presentation in written form, to cross-examine witnesses who testify, and to submit rebuttal evidence. During a hearing, irrelevant, immaterial, or unduly repetitious evidence shall be excluded.
- (c) **Taking official notice.** The Administrative Law Judge may take official notice of the law of

Oklahoma and other jurisdictions, facts that are judicially cognizable, and generally recognized facts within the Commission's specialized knowledge; provided all parties shall be notified either before or during the hearing of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

(d) **Documents.**

(1) A photographic copy of a document which is on file as part of the official records of the Commission will be received without further authentication.

(2) A photographic copy of a public record certified by the official custodian thereof will be received without further authentication. A written statement by such custodian of records that no record or entry of described character is found in his records shall be received as proof of absence of such record.

(3) A photographic copy of a document may be substituted for the original at the time the original is offered in evidence.

(4) A document may not be incorporated in the record by reference except by permission of the Commission or Administrative Law Judge. Any document so received must be precisely identified.

(5) The Commission or Administrative Law Judge may require that additional copies of exhibits be furnished for use by other parties of record.

(6) When evidence is offered which is contained in a book or document containing material not offered, the person offering the same shall extract or clearly identify the portion offered.

(7) The Commission or Administrative Law Judge may permit a party of record to offer a document as part of the record within a designated time after conclusion of the hearing.

(e) **Witnesses.** All witnesses who appear to testify during a hearing shall first be subject to oath or affirmation and any testimony submitted by deposition shall show on the face thereof that the witness was so qualified.

(f) **Prepared testimony.** Except as otherwise provided in Subsection (g) and (h) of this Section, written testimony of a witness in the form of a notarized affidavit may be received in lieu of direct examination.

(g) **Expert medical testimony.**

(1) Expert medical testimony may be offered by:

(A) a written medical report of the physician;

(B) deposition; or

(C) oral examination before the Commission or Administrative Law Judge.

(2) Medical opinions addressing compensability and permanent disability must be stated within a reasonable degree of medical certainty. Medical opinions concerning the existence or extent of permanent disability must be supported by competent medical testimony of a physician described in 85A O.S. § 45(C)(1) and shall be supported by objective findings as described in 85A O.S. § 2(31). The medical testimony must include the employee's percentage of permanent partial disability and whether or not the disability is job-related and caused by the accidental injury or occupational disease or illness.

(3) The fact that the medical report constitutes hearsay shall not be grounds for its exclusion; ~~provided, objection.~~

(4) Objection to and request for cross-examination of a Commission appointed independent medical examiner is governed by 85A O.S. § 112(J). The claimant is responsible for scheduling the deposition regardless of which party asserted the objection. The respondent shall choose the court reporter.

(5) Objection to and request for cross-examination of a physician, other than a Commission appointed independent medical examiner, must be made in writing to all parties within ten (10)

days after receipt of the physician's report. The party requesting the deposition testimony is responsible for the physician's reasonable charges for such testimony, preparation time and deposition expenses. Arrangements for the deposition shall be made by the offering party.

(h) **Vocational rehabilitation and case management evidence.**

(1) Testimony of a vocational rehabilitation expert or medical case manager may be offered by:

(A) a written report of the vocational rehabilitation expert or medical case manager, as appropriate;

(B) deposition; or

(C) oral examination before the Commission or Administrative Law Judge.

(2) The fact that the report constitutes hearsay shall not be grounds for its exclusion.

(3) Objection to and request for cross-examination of a Commission appointed vocational rehabilitation evaluator or Commission appointed medical case manager shall be made in writing to the Commission and all parties within ten (10) days after receipt of the evaluator's or manager's report. The claimant is responsible for scheduling the deposition regardless of which party asserted the objection. The respondent shall choose the court reporter. All costs associated with the deposition shall be borne by the respondent regardless of which party asserted the objection.

(i) **Exhibits.** All exhibits shall be identified by the case style and Commission assigned file number before being submitted.

(j) **Retention and retrieval of exhibits.** For purposes of this part, an exhibit is a document or other evidence that is introduced at a hearing and is marked, offered, and accepted into the record by a judge as an exhibit. Exhibits do not become a permanent part of the Commission file; however, the judge's lists of exhibits must be retained in the Commission file. Exhibits must be retained by the Commission or the office for 60 days after a final decision is served and filed in the case. During this 60-day period, exhibits may be retrieved by the submitting party upon request to the Commission. If no party has retrieved the exhibits after 60 days, the exhibits will be destroyed.

810:10-5-50. Setting of matters

(a) **General.** All contested hearings to decide the rights of interested persons under the AWCA shall be set before an Administrative Law Judge, except as otherwise provided by law or this Title.

(b) **Exceptions.** The Commission en banc shall hear appeals of decisions from Administrative Law Judges, 85A O.S. § 78, and review adverse benefit determinations made pursuant to 85A O.S. § 211 of the Oklahoma Injured Employee Benefit Act, 85A O.S. § 200.

(c) **Show cause hearings.** When a Commission Division contests a permit or license holder's compliance with state workers' compensation laws or Commission rules, the Division may cause notice to be issued to the permit or license holder to appear before an Administrative Law Judge or an administrative hearing officer designated by the Commission to show why the holder's permit or license should be renewed or should not be cancelled or revoked. The notice shall contain a date certain for the hearing. Failure to appear at the hearing may result in the nonrenewal, cancellation or revocation of the permit or license. Appearances at the hearing are governed by 810:10-1-9. The permit or license holder is to bring all reports and payments for delinquent assessments or other documentation pertinent to the hearing to the show cause hearing. Evidence and witnesses may be presented at the hearing.

PART 13. DISMISSALS

810:10-5-85. Dismissals

(a) **Generally.** Except as otherwise required by law, unless good cause is shown, dismissal of a complaint shall be without prejudice.

(b) **Untimely prosecution or failure to prosecute claim.**

(1) The Commission, on motion and after notice and hearing, may dismiss a claim for compensation with prejudice if no bona fide request for hearing with respect to the claim has been made within six (6) months of the filing of claim. The Commission may set such claims on a disposition docket.

(2) The Commission shall dismiss a claim for additional compensation without prejudice to refiling of the claim within the limitation period specified in 85A O.S. § 69(B), if no bona fide request for hearing with respect to the claim has been filed within six (6) months after the filing of the claim for additional compensation. A claim for additional compensation is described in 85A O.S. § 69(B)(C)(D).

(c) **Request of party filing claim for compensation.** Voluntary dismissal of a claim for compensation pursuant to a request of the worker is authorized in 85A O.S. § 108. This law gives the injured worker, upon order of the Commission and payment of the \$140.00 final award fee provided for in 85A O.S. § 118, the right to dismiss the worker's claim for compensation at any time before final submission of the case to the Commission for decision. The worker's application for dismissal shall be made on a Commission prescribed CC-Form-100 upon payment of the \$140.00 final award fee or execution of a payment plan approved by the Commission's business office. The dismissal shall be without prejudice, unless the Commission's order on the CC-Form-100 clearly identifies the dismissal as with prejudice. Prior to entering an order for dismissal with prejudice, the Commission may require notice and an evidentiary hearing.

PART 15. SETTLEMENTS

810:10-5-95. Joint petition settlements.

(a) Under 85A O.S. § 87 and 85A O.S. § 115, upon and after the filing of a claim for compensation, or, in the absence of a claim for compensation, the filing of the ~~Employer's First Notice of Injury~~ FROI per 810:10-1-4(a) in a claim involving a pro se employee, the parties may engage in a compromise and release of any and all liability which is claimed to exist under the AWCA on account of the injury or occupational disease or illness, subject to approval by the Commission, an Administrative Law Judge, or a Benefit Review Officer.

(b) The parties in interest to a claim for compensation may settle upon and determine any and all issues and matters by agreement, subject to the terms and conditions of this Section.

(c) Any agreement submitted to the Commission, Administrative Law Judge or Benefit Review Officer of the Commission's Counselor Division, for approval shall be set forth in a Commission prescribed CC-Joint Petition Settlement. Nothing in this rule shall preclude the Multiple Injury Trust Fund from compromising a claim as authorized by 85A O.S. § 32(F).

(d) No CC-Joint Petition Settlement agreement shall be binding on the parties in interest unless it is approved by the Commission pursuant to 85A O.S. § 22, Administrative Law Judge of the Commission pursuant to 85A O.S. § 115, or a Commission Benefit Review Officer pursuant to 85A O.S. § 70. The CC-Joint Petition Settlement, including any attached appendix as provided in 85A O.S. § 115(B), identifying the outstanding issues that are subject to the Commission's continuing jurisdiction and possible reopen, shall be approved unless it is determined that:

- (1) The agreement is unfair, unconscionable, or improper as a matter of law; or
- (2) The agreement is the result of an intentional misrepresentation of a material fact; or
- (3) The agreement, if for permanent disability, is not supported by competent medical evidence as required by 85A O.S. § 2(33).

(e) As used in this Section, "parties in interest" means the respondent (employer and the employer's insurance carrier if insured), and an employee. An employee who is not represented by legal counsel may effect a CC-Joint Petition Settlement upon the employer's filing of the ~~Employer's First Notice of Injury~~ FROI

as provided in 810:10-1-4(a), or the employee's filing of a claim for compensation (CC-Form-3 or CC-Form-3B), regarding the injury or occupational disease or illness which is the subject of the CC-Joint Petition Settlement.

(f) In no instance shall the total attorney's fee amount provided for in a CC-Joint Petition Settlement exceed the maximum attorney fee allowed by law.

(g) No CC-Joint Petition Settlement shall be made upon written interrogatory or deposition except in cases where the claimant is currently engaged in the military service of the United States, is outside of the state, is a nonresident of Oklahoma, or in cases of extreme circumstances.

(h) A stenographic record of the terms and conditions of an approved joint petition settlement and the understanding of the claimant concerning the effect of the settlement must be made by a Commission court reporter and transcribed at the expense of the employer or insurance carrier. The transcript shall be prepared and provided to the parties within ninety (90) days. Medical reports and other exhibits submitted in support of a CC-Joint Petition Settlement shall not be transcribed. The original exhibits or duplicate copies thereof shall be affixed to the original transcript and placed in the Commission file.

(i) A file-stamped copy of an approved CC-Joint Petition Settlement shall be mailed by the Commission to all unrepresented parties and attorneys of record.

(j) A CC-Joint Petition Settlement that fully and finally resolves all issues in a claim for compensation between the employee and the employer, shall not be deemed an adjudication of the rights between the medical or rehabilitation provider and the employer for reasonable and necessary medical and rehabilitation expenses incurred by the employee due to the injury before the file-stamped date of the approved CC-Joint Petition Settlement.

(k) Within seven (7) days of the date a medical provider provides initial treatment for a work-related accident, the medical provider shall provide notice in writing to the Commission, if and only if, a CC-Form-3 or CC-Form-3B has been filed with the Commission, and in all cases shall provide notice in writing to the patient's employer, and if known, the employer's insurance carrier. If the medical provider fails to provide the required notification, the medical provider forfeits any rights to future notification, including those circumstances where a case is fully and finally settled by a CC-Joint Petition Settlement, unless the medical provider is actually known to the employer or insurance carrier or is listed by the employee.

(l) If the issue of medical treatment is fully and finally settled by a CC-Joint Petition Settlement, the employee shall provide to the employer or insurance carrier a list of all medical providers known to the employee. The Commission prescribed Form ~~CC-JPS~~ CC-Joint Petition Settlement shall be used for that purpose. Within ten (10) days from the file-stamped date of the CC-Joint Petition Settlement, the employer or insurance carrier shall send notice of the CC-Joint Petition Settlement to all medical providers listed by the employee and to all medical providers known to the employer or insurance carrier. The employee is liable for payment of any medical services rendered after the CC-Joint Petition Settlement is filed. The employee also is responsible for informing any future medical providers that the case or issue of medical treatment was fully and finally disposed of by a CC-Joint Petition Settlement and that the employee, rather than the employer or insurance carrier, is the party financially responsible for such services.

PART 17. FEES

810:10-5-105. Fees. Fees payable to the Commission include:

(a) A fee of One Thousand Dollars (\$1,000.00), payable by each carrier writing worker's compensation insurance in this state, upon securing a license to transact business in this state [85A O.S. § 29(A)];

(b) A fee of One Thousand Dollars (\$1,000.00), payable by each self-insurer at the time it is approved to self-insure its obligations under the AWCA [85A O.S. § 29(B)];

- (c) An annual fee of One Thousand Dollars (\$1,000.00), payable by third-party administrators [85A O.S. § 29(C)];
- (d) A fee of One Hundred Seventy-five Dollars (\$175.00), payable by a party appealing an order or award of an Administrative Law Judge to the Commission en banc [85A O.S. § 78(B)];
- (e) A fee of One Hundred Dollars (\$100.00), for compiling and transmitting a record for appeal of a Commission order to the Oklahoma Supreme Court, payable by the appealing party [85A O.S. § 78(D)];
- (f) A fee of One Hundred Forty Dollars (\$140.00), payable by the party against whom an award becomes final (i.e. the employer or insurance carrier if there is an award of compensation, or the worker if there is a denial or dismissal of a claim for compensation) [85A O.S. § 118(A)]. Ten Dollars (\$10.00) of the fee is payable by the Commission to the credit of the Attorney General's Workers' Compensation Fraud Unit Revolving Fund;
- (g) A fee of One Hundred Thirty Dollars (\$130.00), payable by the worker if the reopen request is to reopen on a change of condition for the worse, or payable by the employer or insurance carrier if the reopen request is to reopen on a change of condition for the better [85A O.S. § 118(B)];
- (h) A fee of One Dollar (\$1.00) per page, payable as a copy charge [85A O.S. § 119(A)];
- (i) A fee of One Dollar (\$1.00) per search request for prior claims records, not to exceed One Dollar (\$1.00) per claims record of a particular worker [85A O.S. § 120(B)];
- (j) A fee of Forty-five Dollars (\$45.00), plus postage, if any, for a Commission handbook [85A O.S. § 20(B)]; and
- (k) A fee of Fifty Dollars (\$50.00), payable by an applicant requesting a Certificate of Noncoverage or a renewal thereof [85A O.S., § 36(D)(2)]; and
- (l) _____ Such other fees as may be allowed by law or this Title.