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# Workers' Compensation Frequently Asked Questions

This information is provided as a courtesy; it does not represent legal advice. If you are unsure about how to apply this information, you should use your own judgment or that of your attorney.

## General Questions.

**I got hurt at my job and I want to file for worker's compensation. With whom can I talk about this?** You may contact Customer Service at the Division of Workers' Compensation (303) 318-8700 to talk to someone about your case or for general assistance in understanding your case. Staff and judges at OAC may answer procedural questions, like: "How do I apply for a hearing?" However, we may not answer questions about the facts of your case or give you legal advice. If you feel you need legal advice, please contact an [attorney who practices workers' compensation law](#).

**What is a Notice of Contest?** Your employer or its insurer may file a written notice that they do not admit that the employee suffered a compensable workers' compensation injury. The Notice of Contest lets the employee and the Division of Workers' Compensation know that the employer or the insurer do not agree to pay benefits to the employee.

**What is compensability?** "Compensability" is a shorthand term for whether an employee suffered an injury arising out of and in the course of employment which either disabled the employee or required medical treatment.

## Getting a Hearing.

**How do I file an Application for Hearing?** You may request a formal hearing from OAC by filing either an [Application for Hearing/Notice to Set](#) or, where allowed by statute, an [Application for Expedited Hearing](#). Where the only issue the judge must decide is an award of disfigurement benefits for scarring or other disfigurement, you may file an [Application for Hearing - Disfigurement Only](#). For help obtaining forms for applying for hearing, you can call OAC at (303) 866-2000, or you can also call Customer Service at the Division of Workers' Compensation at (303) 318-8700. You should carefully follow the [Instructions for Completing an Application for Hearing and Notice to Set, or a Response to Application for Hearing](#), for a Workers' Compensation Hearing. You must either mail or hand-deliver the completed application to the appropriate [OAC office](#). For hearings in Denver, Greeley, or Loveland, file the application at the Denver office. For hearings in Colorado Springs, Pueblo, or Alamosa, file the application

at the Colorado Springs office. For hearings in Grand Junction, Durango, or Glenwood Springs, file the application at the Grand Junction office.

**Besides an Application for Hearing, what forms will I need?** You need to file a [Case Information Sheet](#) between 5 and 20 days before the date of the hearing. If you need to call other witnesses to appear for your hearing, you may need [subpoenas](#).

**Where will my hearing be held?** OAC has [hearing locations](#) in Denver, Colorado Springs, Grand Junction, Greeley, Loveland, Pueblo, Alamosa, Durango, and Glenwood Springs. If the Application for Hearing is not for an expedited hearing, [OACRP Rule 8\(B\)](#) requires that the hearing be set in the place closest to the claimant's residence, unless the parties agree upon a different location and a judge approves it.

**When setting a hearing, are the 100 days calculated from the setting date or the certificate of mailing date?** The 100 calendar days are calculated from the setting date listed on the Application for Hearing.

**When do the available hearing dates get updated?** The [available hearing dates](#) are updated every Tuesday, Wednesday, and Thursday morning.

**Why don't parties get to choose a date for an expedited hearing?** An expedited hearing must be set at least 10 calendar days from the date of the application in order to timely mail a notice of hearing. The expedited hearing must commence within 40 calendar days of the date of the [Application for Expedited Hearing](#). This leaves very few dates for the hearing to take place. Therefore, [OACRP Rule 9\(E\)](#) provides that the OAC will set an expedited hearing in the location and on the date of its choosing. If the parties have agreed on a date when the Application is filed, please note that on the Application and the Clerk will set it at the requested time if available.

**Why do Prehearing ALJs say a hearing date is available, but then OAC tells us that date is not available?** The OAC manages its own docket schedule. A DOWC Prehearing Judge does not have access to the OAC's up-to-the-minute calendar. Dates that appear to be available may, in fact, already be filled with other cases.

**What is the trailing docket?** There are more cases set at that particular time than there are judges available. OAC attempts to maximize the number of cases that can go to hearing on a particular docket. Most hearings are canceled because the parties are able to resolve the issues without going to hearing. This means that most of the time all of the remaining cases can be heard. When there are more

cases than judges available, OAC will make every effort to get the hearing started within 2 hours of the scheduled time. If that is not possible, the hearing will be rescheduled, usually for a date within 20 days of the original date.

**How do I get a case set on a nontrailing docket?** A nontrailing docket is one in which only one case is set for either a half-day or full-day docket. For a nontrailing hearing in Colorado Springs, Denver, Grand Junction, or Pueblo, you must file a motion and obtain an order from a judge or a prehearing judge. Nontrailing settings in any other hearing locations may only be granted with the approval of the Director of OAC. As a practical matter, OAC has limited ability to obtain additional hearing rooms or additional hearing dates in locations outside the offices in Denver, Colorado Springs, and Grand Junction. Nontrailing hearings are rarely set for remote locations unless they are necessary to finish a hearing that has already been started.

**I live out of state and cannot be there. Can I have my hearing by telephone?** Yes, [OACRP Rule 22](#) states that you may appear by telephone for the hearing. You are responsible for making arrangements and paying for all of the cost for your telephone call. You should contact the appropriate [OAC office](#) as soon as possible to see what telephone arrangements must be made.

**Is there a way to settle the issues without a hearing?** Cases often settle without going to hearing. The parties may discuss settlement and settle a case at any time. You can contact the lawyer for the other side to see if you can work something out. You may request a settlement conference at the Division of Workers' Compensation by calling (303) 318-8736. You may also request a mediation by calling the OAC at (303) 866-5694. Settlement discussions or mediations do not put your case on hold. All deadlines in the case remain the same unless the judge changes them.

### **Getting Ready for a Hearing.**

**Do I need an attorney?** It is up to you to decide whether to hire an attorney to represent you. An attorney can help you decide whether you need one. You may choose to represent yourself, but an attorney likely is more qualified to help you present your case to the judge. Remember, the judge is neutral and may not give legal advice to you or the other side. If you choose to represent yourself at the hearing, you must be familiar with the [workers' compensation law governing your entitlement to benefits](#). You must also be familiar with rules governing hearing procedures ([OAC Rules](#) & [DOWC Adjudication Rules](#)) and with the [rules of evidence](#).

**Can you give me the name of an attorney who can take my case?** OAC staff is not permitted to give you the name of one attorney. You may wish to consult the [list of attorneys provided by the Colorado Bar Association](#). These attorneys usually will consult with you for no charge. Some attorneys will charge a fee only if you recover money in your case. It is up to you to understand the fee agreement with your attorney.

**My attorney doesn't answer my telephone calls. May I get a new attorney?** Yes, you may get a new attorney to represent you in your workers' compensation claim. It is up to you to contact another attorney. You may wish to consult the [list of attorneys provided by the Colorado Bar Association](#). If you hire another attorney, that new attorney will need to appear for the scheduled hearing or be responsible for rescheduling the hearing. If you hire another attorney, you may be responsible for costs and attorney fees to your previous attorney.

**What should I know about the law and procedural rules?** You should obtain a copy of the [Workers' Compensation Act](#) (Articles 40 to 47 of Title 8, Colorado Revised Statutes), the [Division of Workers' Compensation Rules of Procedure](#) (7 CCR 1101-3), and the [Office of Administrative Courts Rules of Procedure](#). You also must be familiar with the [Colorado Rules of Evidence](#).

**What kind of evidence will I need for the hearing?** You need to think about how you will prove what you are required to prove. You may testify at the hearing and you may also bring witnesses to the hearing who know about the facts and issues involved in the case. You should list yourself and any other witnesses on the [Application for Hearing](#) or [Response](#), as well as on the [Case Information Sheet](#). If there are documents, such as letters, contracts, business records, or medical records that help prove your case, bring the original and at least two copies to the hearing. You may also bring photographs or other items that relate to your case if you want the judge to consider them. Documents, photographs, records, and reports can be considered by the judge if permitted by the [Workers' Compensation Act](#) or by the [Colorado Rules of Evidence](#). You must provide reports, such as medical and hospital reports, records of your employer, vocational reports and doctors' reports to the other side in the case (or to their attorney if they have one) at least 20 days before the hearing. If you do not exchange the records, the judge may not consider those records or reports. Be sure to read the [Procedural Rules for Workers' Compensation](#) cases and follow all prehearing orders issued by a judge.

**How do I get records?** First, try to get the documents just by asking the other side for them. You also have the right to [subpoena](#) from individuals, businesses, and government agencies relevant records to be produced at the hearing. Contact OAC well before the hearing for the subpoena forms. You must arrange

to pay required fees, including mileage, and have someone else serve the subpoena at least 48 hours before the hearing, not counting weekends and holidays. You can also obtain records through formal discovery.

**What is "Discovery?"** Discovery is a formal way of finding out information about the other side's case before the hearing. Discovery includes depositions and interrogatories. Depositions are sworn statements of witnesses taken before the hearing before a court reporter, without the judge being present. Interrogatories are written questions the other side must answer in writing under oath.

If you cannot find out the information you need by talking to the other side, you may send written interrogatories to the other side. You must send them only to the lawyer for the other side if a lawyer is representing them in the case. If they fail to answer within 20 days, you may file a motion with the judge requiring the other side to answer the questions or you may request a deposition of a witness to find out the information. If you want to take the deposition of a witness you will be responsible for any witness fees, court reporter fees, and other expenses of the deposition. All discovery must be finished at least 20 days before the hearing date.

Upon request from the insurance company or employer, you must complete and return any requests for release of medical, financial or other information as required by law. Unless a judge orders, you may, but are not required to, answer any written questions from the insurance company or employer. If a judge orders you to answer written questions or submit to a deposition, you must do so. Failure to do so after an order from a judge may result in the cancellation of the hearing or even dismissal of the claim. Be sure to read the documents you receive to verify the time that you have to respond to any discovery requests.

**How do I get a witness to come to the hearing?** A witness can come voluntarily to the hearing; however, a subpoena protects your right to have that person testify if their testimony is relevant to your case. Contact OAC well before the hearing to get a [subpoena](#) to require the witness to appear. You must arrange to pay required fees, including mileage to the hearing, and have someone else serve the subpoena at least 48 hours before the hearing, not counting weekends and holidays. If you subpoena doctors or other experts, you may have to pay for their time to testify at the hearing, as well as their time to travel to the hearing.

**If I file a motion, when will it be granted?** If the motion is labeled as "Stipulated" or "Unopposed", you can expect to receive an order granting or denying the motion within one week. If the motion is not stipulated, you can expect to receive an order granting or denying the motion within one week after

the response is filed. A party has ten calendar days from the date of the motion to file a response, including by mail. OAC usually calendars the motions for about 14 days to allow the ten days for the response by mail. If no response is filed, you can expect to receive an order granting or denying the motion within one week after the response is due. You will likely receive the order sooner if you put your fax number on the motion and proposed order.

**What can I do if I am not receiving orders faxed to me?** Telephone [the appropriate OAC office](#), give the Clerk your correct fax number, and ask that the order be faxed again.

**May I just talk privately to the judge about my case?** No. The judge is not permitted to talk to one party unless the other party also has a chance to participate in the discussion. If you need to make a request of the judge, you should file a motion and provide a copy of any of your filings to the attorney for the other party.

**What is a CIS?** A [Case Information Sheet](#) is filed either jointly or separately by each party between 5 and 20 days before the date of the hearing. The CIS states whether the parties have tried to resolve the dispute, the status of discovery, the stipulations to be offered, the issues remaining for hearing, the names of the lay and expert witnesses, whether each witness will testify in person or by phone, whether the witness will travel more than 100 miles for the hearing, and the area of expertise of any expert witness. If a party fails to file a CIS, the judge may vacate the hearing, continue the hearing, dismiss issues or defenses, or go ahead and proceed with the hearing.

### **The Hearing.**

**What will happen at the hearing?** Your hearing will be very similar to a trial in court, with witnesses and exhibits presented by all parties. You should arrive at the place where your hearing will be held before your scheduled hearing so that you and any witnesses may be seated in the hearing room. More than one case may be set for the same time. If so, the judge will call all of the parties into the room and determine which case will go first.

When your hearing begins, the judge may ask each side what the issues are and what each side intends to prove. Each side then can introduce relevant evidence to prove its case. Evidence can include testimony taken under oath or documents such as medical reports or employer records. In some cases, depositions may be taken of doctors or other witnesses. A deposition is a sworn statement taken before a court reporter outside of court, with all parties having received notice of the deposition and having an opportunity to be present. The



depositions are filed with the judge who reads them instead of having the witnesses testify at the hearing.

Each side is then allowed to call witnesses, who will take an oath to tell the truth. You may call witnesses and you may testify yourself. If you call witnesses, you may ask them questions about the facts of your case (direct examination). After you are finished asking questions, the lawyer for the other side will ask questions (cross-examination). You may then ask more questions about matters brought up by the other side (redirect).

Either side may object to documents, and the documents will not be considered unless they comply with the [Workers' Compensation Act](#), or the [Colorado Rules of Evidence](#). The judge will decide whether to allow documents into evidence.

If you testify, the judge may ask some questions. You also can make a statement. Then the other side will ask you questions (cross-examination). You then will have a chance to make another statement to respond to the questions asked by the other party.

After each side has presented its case, rebuttal witnesses may be called. Rebuttal witnesses may only testify to issues already brought up by the other side. Few hearings actually involve rebuttal witnesses.

After all testimony has been heard and the documents received, the judge may allow each side to make a closing argument. Closing arguments can only address facts brought out in testimony of the witnesses or in exhibits received into evidence. Closing argument is not a chance to testify and you may not mention things that were not received in evidence. Sometimes the judge may allow the parties to make a closing argument in writing after the hearing.

**Which side goes first in presenting the evidence?** In workers' compensation cases the issues vary from case to case. In most cases, the employee must introduce evidence to show that he or she is entitled to workers' compensation benefits. Generally, you must show that you were hurt as a result of performing the duties of your employment, and that, under the law, you are entitled to workers' compensation benefits from the insurance company or your employer. You must present your evidence first at the hearing, and the insurance company and the employer will then present their evidence.

If the insurance company or the employer is already paying benefits to you and they wish to stop or reduce the benefits, the employer or the insurance company will set the case for hearing. If that happens, the employer or the insurance company must show proper grounds for stopping or reducing your benefits and

they must present their evidence first. You will then have the opportunity to present evidence to show that your benefits should not be reduced.

**Do I need to dress up for the hearing?** You may appear in casual clothing, but remember that you are trying to make an impression on people and you should appear as you would when meeting with other professionals.

**Who will be at the hearing?** Usually both parties are represented by attorneys. The attorneys, representatives of the employer and the insurer, and witnesses will be at the hearing. Hearings are open to the public, although the judge may close the hearing, upon request, to protect the claimant's confidential medical information. The judge will audio record the hearing. On rare occasions, one of the parties may hire a court reporter who will take down everything that is said at the hearing. The audio recording, or the record taken by the court reporter, may be necessary if anyone wants to appeal the judge's decision.

**Is it OK to bring letters instead of witnesses?** A written statement by a witness who is not present at the hearing is usually not allowed. Medical reports and employer records provided to the other side at least 20 days before the hearing may be considered by the judge if they are presented to the judge at the hearing. This hearing is your chance to tell the judge why you should receive workers' compensation benefits. It is important to have your witnesses present at the hearing to testify and to provide the judge with the medical records and employer records that support your claim.

**If I forget something, can I send it to the judge later?** Your chance to present evidence is at the hearing. Only in rare cases will the judge allow you to send evidence later.

**What if I need an interpreter?** If you or a witness needs a language interpreter, you should arrange to bring your own certified interpreter. Normally, it is not okay to bring a friend or relative to interpret for you. You may contact the lawyer for the other side to see if you can arrange for an interpreter or share an interpreter. OAC requires all language interpreters to read and agree to abide by an [Interpreter's Code of Conduct](#).

If you need a sign-language interpreter, contact the appropriate [OAC Clerk's Office](#) as soon as possible.

**Will the hearing location be accessible to people with disabilities?** Hearing locations are accessible to persons with disabilities; however, check in advance with the appropriate [OAC office](#) to ensure accessibility. In addition, if you know that persons who plan to attend have special needs that require reasonable

accommodation, contact the appropriate [OAC Clerk's Office](#) as soon as possible so that arrangements can be made.

**What if I can't be there on the day set for the hearing?** If you cannot attend the hearing on the date and time shown, you must contact the other side and OAC as soon as you know of the problem. Contact the other side to see if they will agree to change the hearing date. If they agree, you can call OAC and request a new hearing date. If the other side does not agree, immediately file a motion with the appropriate [OAC office](#) to request an extension of time to commence the hearing. Except for a one-time agreement between the parties, you must show good cause to change a hearing date. The sooner you make your request, the more likely it will be granted.

**What happens if I don't go to the hearing?** If you request a hearing in a workers' compensation case and do not attend the hearing, an order will be issued requiring you to explain why you were not present. If you do not show good cause for your absence, your case may be dismissed. If the other side requested the hearing and you do not appear, the hearing will probably proceed without you or your evidence and the judge will issue a decision on the case.

**How long will my hearing take?** Hearing length varies depending on the issues and number of witnesses. Short hearings may take about 30 minutes while the longest hearings may take several days. Most hearings take about one and one-half to two hours.

**How long will the judge take to make a decision after my hearing?** The judge may issue a ruling from the bench or the judge may choose to take more time to review the evidence before issuing a ruling. If the judge does not issue a ruling from the bench, the judge is required to issue a decision within 15 working days. Sometimes the parties have to file written position statements or additional evidence after the hearing. In those cases, the 15 working day period does not start running until the additional documents are received by the judge.

## **Appealing.**

**What if I don't agree with the decision of the judge?** If you want to appeal the judge's order, you must file a [Petition to Review](#) with the judge within 20 days after the date the judge's written order was served or mailed. This time limit is very important: if you do not file a Petition to Review on time, you may lose the right to appeal. The judge's order usually will contain instructions on how to appeal the decision and will specify the office in which you should file your petition.

If you need all or part of the transcript of the hearing as part of your appeal you must file the [Petition to Review and Transcript Request](#). You will have to pay for the transcript unless the Director of Workers' Compensation determines that you are indigent. If you appeal the order, you will not have another hearing. Instead, you will be required to submit your argument in a written brief. You will be notified in writing of the schedule for writing your brief. After the period for filing the briefs is up, OAC staff will send the file to the [Industrial Claim Appeals Office](#).

**How do I get a copy of the transcript of the hearing?** If you are requesting the transcript as part of an appeal, you must file a [Petition to Review and Transcript Request](#) in the office designated in the judge's order. If you are not wanting the transcript in connection with an appeal of the judge's order, you may request either a transcript or a copy of the audio recording.

If you are requesting a CD of a hearing and this request is in conjunction with an appeal, there will be no fee for the CD if the CD is sent directly to an Appellate Body or a Transcription Service. If you request a CD of a hearing and that CD is to be sent directly to you, a \$1 charge will be assessed as follows: (a) If you want to pick the CD up from the Office of Administrative Courts, the fee will be payable upon pick-up; or (b) If you want to have the CD mailed to you, then you must include with your request a self addressed stamped envelope as well as the \$1 fee.

**Do I have to pay for a copy of a transcript?** Unless you are indigent, you will have to pay for the transcript that you request. If a party has already obtained a transcript and if you are a party or authorized by a party to inspect the OAC file, you may review the transcript in the hearing file. Section [8-43-213\(4\)](#).

**How much will a transcript cost?** When you request a transcript, you are responsible for designating the person who will prepare the transcript. You are responsible for arranging and paying the costs to the person doing the transcribing. Usually, the transcriptionist will contact you about arrangements for payment before providing you the transcript. OAC does not regulate the charges by persons transcribing the audio recordings. Section [8-43-213\(2\)](#) only regulates the charges by hearing reporters. OAC no longer has hearing reporters, although the parties are always free to hire their own court reporters and be responsible for paying the charges as agreed upon with those court reporters.

**How long will it take to get a transcript?** Transcripts must be prepared within 25 working days after the request (approximately five calendar weeks). The

transcriptionist or a party may request that an extension of time be granted by a judge.

**I have received my transcript, but I did not receive a Notice and Briefing Schedule. Why not?** Once a transcript has been prepared, the court reporter or transcriptionist files the original transcript with the Office of Administrative Courts to be lodged in the hearing file. If the request was part of a Petition to Review, OAC staff will draft and issue a Notice and Briefing Schedule within three working days of receipt of the transcript. Please allow time for processing and mailing before inquiring about your Notice and Briefing Schedule. If more than seven days have passed since you received the transcript, and you have not received a Notice and Briefing Schedule, please [contact the office nearest to where the hearing occurred](#).

**I have received my transcript, but it contains "inaudibles" or other errors that affect the meaning of the testimony. What can I do?** You may file a motion seeking to correct the transcript. This procedure is found in [Rule 10, \(c\) \(d\), or \(e\), Colorado Appellate Rules](#).

**How do I cancel a transcript request?** Transcript request cancellations should be sent in writing to the [appropriate OAC office](#). A motion is not required to cancel the request. You should also contact the transcriptionist.

**Are the hearings and records in my case confidential?** Workers' compensation hearings are open to the public, but workers' compensation files are not open to the public. If a hearing or record that normally would be open to the public contains sensitive or personal information (such as medical records) a party can ask the judge to close the hearing to the public.