

## Inter-Office Communication

**TO:** All Interested Parties

**FROM:** Thomas Connor, Director of Hearing Services  
Laura Schank, Hearing Officer Trainer

**DATE:** September 24, 2018

**SUBJECT:** Industrial Commission Jurisdiction Issues

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This memo serves as a replacement for the memo dated 9/26/1995, which addressed the same topic. The memo clarifies issues related to Industrial Commission (IC) and Bureau of Workers' Compensation (BWC) jurisdiction under R.C. 4123.511. The memo is meant as a quick reference and is not all inclusive on these issues.

- A. It is the position of the IC that when the issue of "allowance of claim" is properly and timely noticed to all affected parties, this issue should be widely construed to include matters such as, but not limited to:
1. The initial claim allowance. The order shall include express language that the claim is granted or denied, and if granted, that the diagnoses requested shall be either allowed or disallowed. Requests for a symptom shall be dismissed, not disallowed. Cite to medical evidence to support the decision. See Adjudications Before the Ohio Industrial Commission (ABOIC) Memo J3.
  2. The hearing officer may consider alternate diagnoses, raised or identified in the medical evidence, but only if they are for the same physical body part alleged on the application and the parties have had sufficient opportunity to be prepared to address the alternate diagnoses and causation.
  3. The hearing officer may consider any theory of causation requested by the parties and supported by medical evidence: direct and proximate, flow-through, and substantial aggravation (after 08/25/2006), or aggravation (prior to 08/25/2006). See ABOIC Memo B2 and Memo S11.
  4. The hearing officer should determine if the claim should be classified as an injury or occupational disease.
  5. The hearing officer may address the issue of correct employer, provided all potential employers are given due process notification of the hearing. The hearing officer shall not address risk issues or numbers at the hearing or in his/her order. See ABOIC Memo K3, Memo L2, and IC Resolution R97-1-01.

6. Settings of full weekly wage and/or average weekly wage.
  7. Payment of temporary total compensation (TTD), provided there is adequate medical certification on file (off-work slip, Medco-14 with appropriate signatures, ABOIC Memo D8), the parties are aware or have knowledge that TTD is at issue, and it is requested by the Injured Worker (C-84).
  8. If a treatment issue is ripe for adjudication and properly noticed, it may be addressed. If it is not ripe for adjudication and properly noticed, the order shall not address the issue.
  9. Wage loss determinations are excluded from consideration when addressing the initial claim allowance.
  10. Allowance orders should not include resolution language: "resolved," "abated," or "returned to baseline," unless it is specifically noticed for the hearing.
- B. When BWC fails to address all issues contained in the initial application or subsequent motion (C-86), the Industrial Commission's policy regarding jurisdiction under R.C. 4123.511 is as follows:
1. Overall, it is the policy of the IC that any issue or issues under review at any level of the hearing process shall be addressed and considered independently on its merits. IC hearing officers do have jurisdiction to hear any matter listed within the four corners of the C-86, C9, or initial application, even if the underlying order is totally silent on some of these specifically listed issues. See ABOIC Memo K2.
- C. R.C. 4123.651- Defense Medical Exams, Medical Releases and Provider Lists, Depositions or Interrogatories: When contested, Staff Hearing Officers have original jurisdiction on these matters, provided they have been addressed by the Hearing Administrator and have been noticed for hearing. If parties raise these issues at hearing, the District/Staff Hearing Officer has no jurisdiction on the matter. The hearing officer may consider and decide a request for continuance of the matter, applying the extraordinary and unforeseen circumstances criteria, i.e. has due diligence on the part of the Employer been met, was there insufficient opportunity to address this matter with the Hearing Administrator prior to the hearing, etc.

The Employer can raise an Injured Worker's non-compliance with the above section, and request suspension, at any stage of the IC proceedings. The request must be in writing, filed or uploaded to the Industrial Commission. If the request is up-loaded to BWC, delays may occur.

The Hearing Administrator may grant or deny the request for suspension. Any party may object to the suspension notice, at which time it is set on an expedited docket for a Staff Hearing Officer.

If the matter causing the suspension is a failure to appear for a 4121-3-09(A)(6) exam, the claim may be reinstated by the following means: 1) a written notice from the physician stating that the Injured Worker has appeared for the defense exam; 2) receipt of the report from the Employer's physician; or 3) a written statement from both parties agreeing that the claimant will attend the exam. The written statements should be addressed or directed to the Regional Hearing Administrator. If the request is uploaded to BWC, delays may occur.

If the matter causing the suspension is the Injured Worker's refusal to release or execute a valid medical release form, or refusal of a written request of the Employer for a list of medical providers who have examined or treated the Injured Worker for medical, psychological, or psychiatric conditions that are related causally or historically to the injuries relevant to the Injured Worker's claim, delivery of a valid signed medical release and list of providers to the Industrial Commission and to the opposing party shall cause the claim to be reinstated. See Ohio Adm.Code 4121-3-09(A)(4).

- D. BWC is a party to the claim, R.C. 4123.511(G)(3) and ABOIC Memo R3. The evidence filed by the BWC is afforded the same weight and credibility analysis as any other party's. If there is a statutory or regulatory requirement for an exam or review from BWC, i.e. a C-92 review or exam, only then should the matter be referred back to BWC for a medical addendum and/or new exam or review, if the exam or review is insufficient. (i.e. wrong diagnoses considered.)
- E. Evidentiary matters regarding appeals and reconsideration hearings.
1. All appeals within the IC are of a *De Novo* nature. That is, all issues that were before the prior hearing officer, and which have been properly noticed for the current hearing, may be addressed by the hearing officer. It does not matter that the underlying order did not address all of the issues that had been properly noticed. ABOIC Memo K2.
  2. In the case of reconsiderations from an application for an **increase** in permanent partial award, (even based on newly allowed conditions), the nature of the hearing is a true reconsideration. No new evidence may be considered. Only that evidence which was considered by the DHO at the permanent partial hearing may be considered for purposes of an **increase** in permanent partial reconsideration. Ohio Adm.Code 4121-3-15(E)(3); *State ex rel. Grimm v. Indus. Comm., 10<sup>th</sup> Dist. Franklin No. 07AP-761, 2088-Ohio-1800*; Ohio Admin.Code 4121-3-15(E)(3).