

Petition For Immediate Hearing
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One of the most common problems in the area of workers' compensation law deals with the termination of temporary total disability benefits to an injured employee. Many times, insurance companies send the injured employee to a doctor of their choice for an "independent exam." Many of these doctors are used hundreds of times by insurance companies and their sole purpose is to determine the fitness of the injured employee to return to work. Needless to say, many times this "independent examiner" finds the employee fit to return to work and the insurance company terminates the temporary total (TT) benefits.

The injured employee is then left with the alternative of either returning to work in their present condition, or seeking to have the benefits reinstated by going through a process at the Illinois Workers' Compensation Commission. Because of the multitude of cases filed before the Workers' Compensation Commission, this process used to be time consuming and often years passed before benefits were reinstated. The problem became one of the injured employee who had been cut off benefits trying to survive while his case wound through the Illinois Workers' Compensation Commission process.

Effective June 30, 1984, the Illinois State Legislature an injured employee whose benefits were terminated by the insurance company could petition for an immediate hearing. Several requirements were set forth in order to qualify for this immediate hearing, and once the injured party qualified for it, the wheels of the Workers' Compensation Commission were set in motion to give the injured employee the most rapid hearing possible.

In order to be entitled to this immediate hearing (called a Section 19-(b-1)), an employee had to prove that he was unable to work at the time of the filing of the Petitioner for an immediate hearing, that he was not receiving temporary total disability benefits (TT), and/or he was not receiving medical, surgical, or hospital benefits to which he was entitled.

A Petition had to list the following information:

1. The date and approximate time of the accident;
2. The approximate location of the accident;
3. A description of the accident;
4. The nature of the injury incurred by the employer;
5. The identity of the person to whom the accident was reported and the date on which it was reported;
6. The name and title of the person representing the employer with whom the employee conferred in an effort to obtain the benefits;
7. An allegation as to what exactly the employer or their insurance company has refused to pay;
8. The name and address of each witness to the accident;
9. All medical doctors who treated the injured employee with a signed authorization meriting the employer to examine all medical records of all these people;
10. A signed report by a medical doctor indicating that the injured employee was unable to return to work because of the injuries incurred in the accident at work;
11. Copies of all medical records, reports, documents, and affidavits which the employee will rely on to support the allegation;
12. Any reports, records, or documents or affidavits which the employee will rely on by subpoena in the hearing.

All of the above documents must be sent to the employer. Fifteen days after the employer has received said documents, the Petition and all of the documents are filed with the Workers' Compensation Commission.

This date of filing becomes very important in that this begins the jurisdiction of the Workers' Compensation Commission upon this petition. Notice of the filing of the Petition before the Workers' Compensation Commission must be served upon the

employer. The employer may then file a motion addressed to whether or not the Petition and its contents are sufficient. If such an objection is filed, the Arbitrator of the Workers' Compensation rules on the objection within two working days.

Otherwise, if no objection to the sufficiency of the evidence of the Petition is filed by the employer, the employer may file within fifteen days after receipt of the notice that the Petition is filed a written response to each claim set forth in the Petition including copies of evidence they intend to submit into evidence to prove each and every allegation of their version of why they are not paying the necessary benefits. It is very important that an employer files a written response with their evidence to dispute any claim of the employee without good cause.

This part becomes very important as this writer has already had one case where the employer forgot to list the doctor they wanted to testify and the Workers' Compensation Commission barred the doctor from testifying at the hearing.

However, in Cook County, the arbitrator from the Workers' Compensation Commission must hold a pre-trial conference within twenty-one days after the Petition is filed. If the case is outside of Cook County, the pre-trial is held twenty to thirty days after the filing date. At the pre-trial hearing, if the arbitrator finds that the Petition is sufficient, the Arbitrator will set the case to be tried within fifteen days of the pre-trial. If the Petition is challenged, the arbitrator shall set the case to be tried within twenty-five days. It also is ordered that proofs on the hearing shall be closed within forty-five days after the Petition is filed. The arbitrator's decision must be filed with the Workers' Compensation Commission within thirty days after proofs are closed. The court reporter who makes a

record of the hearing must begin immediately to type the transcript, in case the hearing is reviewed or appealed.

The decision of the arbitrator may be reviewed or appealed. No hearing on review will be held and immediately after the Petition for Review is filed, it will be assigned to a commissioner who will set the case for oral argument between thirty and forty-five days after the filing of the Petition for Review. The Workers' Compensation Commission must then file its decision no more than twenty-one days after the oral argument and not later than one hundred eighty days from the date of filing the Petition.

The only award that can be made in this type of hearing is one as to medical benefits to be paid or temporary total disability benefits which are due. Permanent partial disability or permanent total disability cannot be decided.

As you can see, this is a very complicated process and many of these Petitions are not adequately filed. It has been this writer's experience that two out of every three of these Petitions that are filed are either withdrawn at the pre-trial or a recommendation is made at the pre-trial to pay the necessary benefits without going through the hearing.

If used correctly, this procedure can force an insurance company to reconsider the termination of temporary total disability benefits. However, with the various requirements needed to file this Petition and enforce it, it behooves the injured petitioner to seriously consider hiring legal counsel in this matter rather than representing oneself.

As a daily practitioner of workers' compensation law before the Illinois Workers' Compensation Commission on behalf of injured employees, I can say that this procedure has been very effective in bringing matters to a head. The arbitrators at the Illinois

Workers' Compensation Commission that I have appeared before so far have been very effective in narrowing the issues when all of this evidence is before them at the pre-trial.