

Rulemaking Hearing Rules  
of  
The Tennessee Department of Labor and Workforce Development  
Division of Workers' Compensation

Chapter 0800-2-5  
Benefit Review Process Rules

Repeal

Rules 0800-2-5-.01 through 0800-2-5-.08 are hereby repealed in their entirety. The new rulemaking hearing rules set forth below are promulgated in their place.

Authority: Tenn. Code Ann. §§ 50-6-101 through 50-6-103, 50-6-203, 50-6-206, 50-6-225, 50-6-233, 50-6-236 through 50-6-242 and 4-5-202.

New Rules

Table of Contents

0800-2-5-.01	Definitions
0800-2-5-.02	Request for Assistance or Mediation
0800-2-5-.03	Requirements for Request for Assistance
0800-2-5-.04	Requirements for Requests for Benefit Review Conference
0800-2-5-.05	Documents to be Provided upon Request of Workers' Compensation Specialist
0800-2-5-.06	Discovery
0800-2-5-.07	Benefit Review Conferences
0800-2-5-.08	Approval of Settlement by the Commissioner or the Commissioner's Designee
0800-2-5-.09	Exhaustion of the Benefit Review Conference Process
0800-2-5-.10	Penalties

0800-2-5-.01 Definitions: The following definitions are for the purposes of this chapter only:

- (1) "Act" means the Tennessee Workers' Compensation Act, 50-6-101 et seq., as amended.
- (2) "Administrator" means the Chief administrative officer of the of the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development.
- (3) "Benefit Review Conference" means a non-adversarial, informal dispute resolution proceeding to resolve workers' compensation disputes as provided in the Act.
- (4) "Benefit Review Section" means the section of the Tennessee Department of Labor and Workforce Development, Workers' Compensation Division, which provides assistance regarding Workers' Compensation issues.
- (5) "Commissioner" means the Commissioner of the Tennessee Department of Labor and Workforce Development or the Commissioner's designee.

- (6) “Court” means any court which has jurisdiction to hear a workers’ compensation case under Title 50, Chapter 6 of Tennessee Code Annotated.
- (7) “Designated Discovery Attorney” means a Workers’ Compensation Specialist employed by the Tennessee Department of Labor and Workforce Development who is an attorney currently licensed to practice law in Tennessee, is currently in good standing with the highest court of the state, and who is designated by the Commissioner to act pursuant to Tenn. Code Ann. § 50-6-236(i).
- (8) “Designee” means any person whom the Commissioner indicates, selects, appoints, nominates, or sets apart for a purpose or duty.
- (9) “Employee” shall have the same meaning as set forth in Tenn. Code Ann. § 50-6-102.
- (10) “Employer” shall have the same meaning as set forth in Tenn. Code Ann. § 50-6-102.
- (11) “Exhaustion of the Benefit Review Process” means the completion of the statutorily-mandated Benefit Review Process, as provided in Rule 0800-2-5-.10.
- (12) “Party” means any person or entity which either could be liable for payment of workers’ compensation benefits or a person who has a potential right to receive workers’ compensation benefits. “Party” shall include a legal representative of a party.
- (13) “Request for Assistance” means a request for a Workers’ Compensation Specialist to gather information, analyze issues, facilitate resolution of disputed issues, and/or make a determination regarding temporary disability, medical benefits, causation, compensability and/or penalties.
- (14) “Request for Benefit Review Conference” means a request for mediation of all issues related to the final resolution of a claim.
- (15) “Responding party” means the party responding to a Request for Assistance or a Request for Benefit Review Conference filed with the Workers’ Compensation Benefit Review Section.
- (16) “Wage Statement” means the form prescribed by the Division of Workers’ Compensation which will include all gross wages paid to an employee for a period up to fifty-two (52) weeks preceding the date of injury.
- (17) “Workers’ Compensation Specialist” or “Specialist” means a department employee who has the following authority, including but not limited to: a) providing information regarding workers’ compensation for employees, employers and medical providers; b) investigating and analyzing issues related to workers’ compensation claims; c) issuing Orders Granting or Denying Benefits; d) conducting Benefit Review Conferences to resolve disputed issues; e) reviewing settlements for approval; e) and performing other duties to achieve the purposes of the Act.

Authority: Tenn. Code Ann. §§ 50-6-101 through 50-6-103, 50-6-203, 50-6-206, 50-6-225, 50-6-233, 50-6-236 through 50-6-242 and 4-5-202.

0800-2-5-.02 Request for Assistance or Mediation

- (1) Any party may contact the Workers' Compensation Division during regular business hours to obtain information about their rights and obligations under the Workers' Compensation Law.
- (2) Any party may file a Request for Assistance for investigation of issues involving temporary disability and/or medical treatment. This shall include resolution of issues of causation and/or compensability. An injured employee or his or her representative may also file a Request for Assistance requesting assessment of penalties for untimely payment of temporary disability benefits.
- (3) Any party may file a Request for Benefit Review Conference in order to negotiate final settlement of all workers' compensation issues.
- (4) A Workers' Compensation Specialist shall provide all necessary forms and instructions and may offer assistance in completing and submitting such forms.

Authority: Tenn. Code Ann. §§ 50-6-101 through 50-6-103, 50-6-233, 50-6-236 through 50-6-242 and 4-5-202.

0800-2-5-.03 Requirements for Request for Assistance

- (1) A Request for Assistance shall be filed on a form prescribed by the Commissioner.
- (2) A Request for Assistance shall be deemed to be filed on the date it is received in any office of the Benefit Review Program.
- (3) All Requests for Assistance filed by an employee or employee's legal representative shall be accompanied by a medical release signed by the employee.
- (4) A party filing a Request for Assistance shall provide a copy thereof to other parties in interest.

Authority: Tenn. Code Ann. §§ 50-6-101 through 50-6-103, 50-6-203, 50-6-204, 50-6-233, 50-6-236 through 50-6-242 and 4-5-202.

0800-2-5-.04 Requirements for Requests for Benefit Review Conference

- (1) A Request for Benefit Review Conference shall be signed by the requesting party.
- (2) A Request for Benefit Review Conference shall be deemed filed for purposes of the Act on the date of receipt in any office of the Workers' Compensation Benefit Review Program.
- (3) A party filing a Request for Benefit Review Conference shall provide a copy thereof to any other party in interest.

Authority: Tenn. Code Ann. §§ 50-6-101 through 50-6-103, 50-6-110, 50-6-127, 50-6-203, 50-6-204, 50-6-233, 50-6-236 through 50-6-242 and 4-5-202.

0800-2-5-.05 Documents to be Provided upon Request of Workers' Compensation Specialist

- (1) Upon request by the Workers' Compensation Specialist, a party to a Request for Assistance or a Request for a Benefit Review Conference shall provide all documentation relevant to resolution of the dispute both to the Specialist and to all parties, including but not limited to the following:
  - (a) Medical Records, including impairment ratings given;
  - (b) Medical Bills;
  - (c) Employer's First Report of Injury;
  - (d) Wage Statement;
  - (e) Employment Application and/or Personnel records, including work status;
  - (f) Statutory basis for denial and documentation supporting such;
  - (g) Job Description/Analysis of employee's job prior to injury;
  - (h) Education level of the employee;
  - (i) Employment history of the employee;
  - (j) Issues in dispute;
  - (k) Prior medical records of employee, including psychiatric records if relevant to the merits of the claim;
  - (l) List of all the employee's prior workers' compensation claims;
  - (m) List of any prior litigation the employee has been involved in;
  - (n) List of any prior criminal convictions which would be admissible pursuant to the Tennessee Rules of Evidence;
- (2) Any party has an ongoing obligation to supplement and/or correct any documentation or information otherwise required by the Specialist to be produced.
- (3) Any unexcused failure to produce these documents as determined by the Administrator or Workers' Compensation Specialist will be subject to the penalty provisions contained in the workers' compensation law and/or these rules.

Authority: Tenn. Code Ann. §§ 50-6-101 through 50-6-103, 50-6-233, 50-6-237 through 50-6-242 and 4-5-202.

(1) Purpose and Scope

The Division's Benefit Review process is designed to provide an informal, expeditious resolution to disputes between injured workers and employers. Parties involved in a workers' compensation case are strongly encouraged, where practicable, to attempt to achieve any necessary discovery informally, in order to avoid undue expense and delay in the resolution of the matter. When such attempts have failed, or where the complexity of the case is such that informal discovery is not practicable, a Workers' Compensation Specialist may request the assistance of the Designated Discovery Attorney.

(2) Methods of Discovery

(a) For the purpose of conducting discovery as part of a Request for Assistance, the parties shall provide any documentation requested by a Workers' Compensation Specialist. The Workers' Compensation Specialist shall share all information provided with any party without privilege or confidentiality.

(b) For the purpose of conducting discovery as part of a Benefit Review Conference, the parties shall complete a standard discovery form prescribed by the Commissioner. Completed copies shall be provided to each party and to the Workers' Compensation Specialist assigned to the case. In keeping with the principles of mediation, information and/or documentation presented and discussed during a Benefit Review Conference need not be shared with all parties.

(3) Referral to Designated Discovery Attorney

(a) Workers' Compensation Specialists may, at the request of either party, or in the Specialist's own discretion, refer a matter to the Designated Discovery Attorney within the Department.

(b) If any of the items listed in these rules are not furnished as requested, the Workers' Compensation Specialist may request a subpoena for those items from the Designated Discovery Attorney. The Designated Discovery Attorney shall have the authority to issue a subpoena for such items.

(c) The Designated Discovery Attorney may, in his/her discretion, authorize the use of any method of discovery provided for in the Act.

(d) The Designated Discovery Attorney shall decide any motion relating to discovery. The Designated Discovery Attorney shall decide any request relating to all discovery under these Rules. Decisions on such discovery requests shall be final and not subject to appeal for purposes of the Benefit Review process.

(4) Any party has an ongoing obligation to supplement and/or correct any documentation or information otherwise required to be produced.

- (5) Sanctions for Failure to Comply with Orders and Subpoenas. Failure to comply with any lawful order or subpoena of the Designated Discovery Attorney may be deemed failure to comply with a Specialist's Order and thereby shall be cause for issuance of any or all civil penalties pursuant to Tenn. Code Ann. § 50-6-238. Additionally, the Designated Discovery Attorney may apply to the appropriate Circuit or Chancery court for an order to compel in the same manner as set forth in Tenn. Code Ann. § 4-5-311, which may result in contempt sanctions.

Authority: Tenn. Code Ann. §§ 50-6-203, 50-6-236, 50-6-238, 4-5-311 and 4-5-202.

0800-2-5-.07 Benefit Review Conferences

- (1) A Request for Benefit Review Conference must be filed within the statute of limitations provided by Tenn. Code Ann. § 50-6-203.
- (2) The Request for Benefit Review Conference shall be assigned to the Benefit Review office designated for the county where the employee lives unless otherwise designated by the Administrator for good cause shown.
- (3) Scheduling of Benefit Review Conference:
  - (a) A Benefit Review Conference shall not be scheduled until Maximum Medical Improvement is reached, except upon request by a party and determination by a Workers' Compensation Specialist that extraordinary circumstances require otherwise.
  - (b) Scheduling of a Benefit Review Conference shall be within the time limitations provided by statute.
  - (c) All parties are required to cooperate in the scheduling of a Benefit Review Conference pursuant to Tenn. Code Ann. § 50-6-239.
- (4) Notice and Response of Benefit Review Conference:
  - (a) Upon scheduling of a Benefit Review Conference, notice of date, time, and location shall be sent to all parties.
  - (b) Accompanying the notice of the Benefit Review Conference, the parties shall receive a standard discovery form showing all required information and documentation which shall be exchanged between the parties and the requirements for submitting such documentation.
  - (c) In cases involving a claim against the Second Injury Fund, the Fund shall receive notice of any Benefit Review Conference, and shall participate.
- (5) Continuances
  - (a) Prior to Benefit Review Conference: A request for a continuance prior to a Benefit Review Conference may be granted upon a finding, in the sole discretion of the Specialist, that extraordinary circumstances require such continuance.

- (b) After convening a Benefit Review Conference, a Workers' Compensation Specialist has the sole discretion to continue the conference.

(6) Conduct of the Benefit Review Conference

- (a) The conduct of the Benefit Review Conference shall be in the control of the Workers' Compensation Specialist.
- (b) Either party may be represented by an attorney, but legal representation is not required at a Benefit Review Conference.
- (c) Only in a situation where a collective bargaining relationship or a memorandum of understanding exists between an employer and a collective bargaining agent may a representative of that collective bargaining agent appear with and assist an employee at the Benefit Review Conference. No provision of this chapter shall authorize a representative of a collective bargaining agent to engage in the "practice of law" or "law business", prohibited by Tenn. Code Ann. § 23-3-103, or Rules of the Tennessee Supreme Court, Rule 7, § 1.01, as a part of the informal mediation procedure set forth in this chapter unless the representative is an attorney licensed to practice law in the State of Tennessee.

(7) Preparation and submission of Documentation

- (a) If a mediated settlement occurs, the Workers' Compensation Specialist shall prepare a mediated settlement agreement to be signed by the parties and by the Specialist at the time of the conference. The signed mediated settlement agreement shall be filed by the Specialist with the Commissioner. The Workers' Compensation Specialist is not required to prepare a mediated settlement agreement in cases involving the Second Injury Fund.
- (b) If there is no settlement, the Specialist may declare an impasse. Upon declaring impasse, the Specialist shall prepare a written report pursuant to Tenn. Code Ann. § 50-6-240 to be provided to the parties and filed with the Commissioner.

Authority: Tenn. Code Ann. §§ 50-6-101 through 50-6-103, 50-6-206, 50-6-224, 50-6-233, 50-6-236 through 50-6-242 and 4-5-202.

0800-2-5-.08 Approval of Settlement by the Commissioner or the Commissioner's Designee

- (1) No settlement is effective unless and until it is approved by the Commissioner or the Commissioner's designee, or a court of competent jurisdiction in accordance with Tenn. Code Ann. § 50-6-206.
- (2) Proposed settlements shall be submitted on a form prescribed by the Commissioner. The employee shall be interviewed by a Workers' Compensation Specialist prior to a proposed settlement.

Authority: Tenn. Code Ann. §§ 50-6-110, 50-6-127, 50-6-204, 50-6-206, 0-6-208, 50-6-230, 50-6-233, 50-6-236 through 50-6-243 and 4-5-202.

0800-2-5-.09 Exhaustion of the Benefit Review Conference Process

- (1) The Benefit Review Conference Process shall be deemed exhausted only upon occurrence of any of the following:
  - (a) The issuance of an Order of Denial based on compensability of the claim by a Workers' Compensation Specialist;
  - (b) Reaching of a mediated settlement, as evidence by a signed document executed by the proper parties, including the Workers' Compensation Specialist;
  - (c) Issuance of an impasse report signed and dated by the Workers' Compensation Specialist;
  - (d) Issuance of a waiver signed by the Director of the Benefit Program or the Director's designee;
- (2) Where a Benefit Review Conference concludes in impasse, the date and time noted on the report issued by a Workers' Compensation Specialist shall determine when the Benefit Review process is exhausted.
- (3) If the parties have mutually agreed to a settlement without a Benefit Review Conference, the parties shall not be required to exhaust the Benefit Review Conference Process before submitting the settlement to an appropriate Court or to the Workers' Compensation Specialist for approval. If the settlement is not approved, the parties shall then be required to exhaust the Benefit Review Conference Process.
- (4) The Benefit Review Conference Process shall not be deemed exhausted upon the occurrence of the following:
  - (a) The filing of a Request for Assistance or a determination thereof on grounds other than non-compensability pursuant to Tenn. Code Ann. §§ 50-6-236 or 50-6-238;
  - (b) Any penalty Orders pursuant to Title 50, Chapter 6 of Tennessee Code Annotated;
  - (c) Withdrawal of a Request for Assistance or Request for Benefit Review Conference;
  - (d) Involuntary dismissal pursuant to Tenn. Code Ann. § 50-6-203(f) (2005 Repl.)

Authority: Tenn. Code Ann. §§ 50-6-101 through 50-6-103, 50-6-118, 50-6-203, 50-6-205, 50-6-206, 50-6-225, 50-6-233, 50-6-236 through 50-6-242, and 4-5-202.

0800-2-5-.10 Penalties

- (1) Any party or specialist may bring to the Administrator's attention any violation of the workers' compensation law and/or these Rules for which civil penalties may be assessed.
- (2) In addition to any other penalties provided by Rule and/or law, parties to a Request for a Benefit Review Conference who fail to attend a properly scheduled and noticed benefit review conference may be assessed a penalty of not less than fifty dollars (\$50.00), nor more than five thousand dollars (\$5,000.00) at the discretion of the Administrator or the Administrator's designee.
- (3) Any penalties assessed by the Department pursuant to these rules shall follow the procedures set out in the Penalty Program Rules 0800-2-13-.01 et seq. and the workers' compensation law. Any person or entity assessed a penalty under these Rules or the Act shall be entitled to all rights and obligations pursuant to the Uniform Administrative Procedures Act, 4-5-101 et seq., including but not limited to, notice and a hearing before the Commissioner's Designee if, duly requested.

Authority: Tenn. Code Ann. §§ 50-6-101 through 50-6-103, 50-6-118, 50-6-205, 50-6-233, 50-6-236 through 50-6-242, and 4-5-101 et seq.

The repeal of current rules and the new rulemaking hearing rules set out herein were properly filed in the Department of State on the 9th day of March, 2006, and will become effective on the 23rd day of May, 2006.