

Chapter HA 4

PROCEDURE AND PRACTICE FOR WORKER'S COMPENSATION AND RELATED CASES

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Note: Chapter HA 4 (title) was created and ss. HA 4.04, 4.07, 4.08, 4.10, 4.11, 4.12, 4.13, 4.15, 4.16, and 4.17 were renumbered from ss. DWD 80.05, 80.08, 80.09, 80.11, 80.12, 80.13, 80.14, 80.22, 80.31, and 80.44 by the legislative reference bureau under s. 13.92 (4) (b) 1. and 2. and pursuant to 2015 Wisconsin Act 55, section 9151 (2) (g) in Register May 2018 No. 749.

HA 4.04 Procedure on claim. (1) In cases of disputes in matters coming under the jurisdiction of ch. 102, Stats., or s. 40.65, 106.25, 303.07 (7), or 303.21, Stats., any party to a dispute may apply to the department of workforce development for relief and the division of hearings and appeals shall make such order or award as shall be lawful and just under the circumstances.

(2) In all such cases under sub. (1), the party complaining shall file his or her application with the department of workforce development, along with sufficient copies of the application for service on the adverse parties. The department of workforce development shall thereupon serve the adverse parties with a copy of the application and the adverse parties shall file an answer to the application with the division of hearings and appeals within 20 days after the service and likewise serve a copy of the answer on the party making application. The division of hearings and appeals shall thereupon notify the parties of the time and place of hearing, at least 10 days prior to the hearing. If no answer is mailed by the respondent within 20 days of mailing by the department of workforce development, the division of hearings and appeals may issue an order by default, without hearing, in accordance with the application, as provided by s. 102.18 (1) (a), Stats.

Note: See s. 102.17, Stats.

History: 1–2–56; am. Register, April, 1975, No. 232, eff. 5–1–75; am. Register, September, 1982, No. 321, eff. 10–1–82; am. (1), Register, September, 1986, No. 369, eff. 10–1–86; CR 02–094; am. (1) Register November 2002 No. 563, eff. 12–1–02; renumbered from DWD 80.05 under s. 13.92 (4) (b) 1., correction under s. 13.92 (4) (b) 6., Stats., Register May 2018 No. 749.

HA 4.07 Amendments. Amendment may be made to the application or answer by letter mailed to the division of hearings and appeals prior to the date the notice of hearing is mailed. Copies of the letter shall be sent directly to the other parties. The letter shall state reasons for the amendment.

History: 1–2–56; am. Register, April, 1975, No. 232, eff. 5–1–75; r. and recr. Register, September, 1982, No. 321, eff. 10–1–82; renumbered from DWD 80.08 (1) under s. 13.92 (4) (b) 1., correction under s. 13.92 (4) (b) 6., Stats., Register May 2018 No. 749.

HA 4.08 Witness attendance; extension of time and postponement. (1) Upon receipt of the notice of hearing, it is the responsibility of each party to contact any witnesses necessary for that party's case and to make arrangements to have them attend the hearing.

(2) Requests for postponements and continuances shall be considered by the division of hearings and appeals only if such requests are received within a reasonable time before the date of the hearing.

(3) The division of hearings and appeals shall grant postponements and continuances only because of extraordinary circumstances. Neither the scheduling problems nor the convenience of the parties shall be considered extraordinary circumstances.

(4) A postponement, continuance or extension of time may not be granted upon the mutual agreement of the parties without the consent of the division of hearings and appeals.

History: 1–2–56; am. Register, April, 1975, No. 232, eff. 5–1–75; r. and recr. Register, September, 1982, No. 321, eff. 10–1–82; renumbered from DWD 80.09 under s. 13.92 (4) (b) 1., correction in (2), (3), (4) under s. 13.92 (4) (b) 6., Stats., Register May 2018 No. 749.

HA 4.10 Depositions. Depositions may be taken and used in any hearing only in accordance with s. 102.17 (1) (f), Stats. These depositions shall be taken in the same manner as in courts of record. Depositions for the purpose of discovery before the hearing are specifically prohibited.

History: 1–2–56; am. Register, April, 1975, No. 232, eff. 5–1–75; am. Register, September, 1982, No. 321, eff. 10–1–82; renumbered from DWD 80.11 under s. 13.92 (4) (b) 1., Register May 2018 No. 749.

HA 4.11 Rules of practice; selection of hearing site.

(1) (a) The rules of practice before the division of hearings and appeals shall be such as to secure the facts in as direct and simple a manner as possible.

(b) The examiner may limit testimony to only those matters which are disputed.

(c) The examiner may not allow into the record, either on direct or cross-examination, redundant, irrelevant or repetitive testimony. Hearsay testimony may be admitted at the discretion of the examiner provided such testimony has probative value.

(2) The division of hearings and appeals may select places for a hearing after considering the geographical location and volume of claims in an area. A list of sites will be furnished upon request to interested parties by the division of hearings and appeals. From this list, a hearing site shall be selected at the discretion of the division of hearings and appeals. The division of hearings and appeals, in determining the site of the hearing, shall consider the following:

(a) The location choice of the applicant;

(b) The location of the office of the treating practitioner or practitioner appointed by the department of workforce development or division of hearings and appeals under the provisions of s. 102.13 (3) or 102.17, Stats.; and

(c) The location where the injury occurred.

History: Cr. Register, August, 1976, No. 248, eff. 9–1–76; r. and recr. Register, September, 1982, No. 321, eff. 10–1–82; renumbered from DWD 80.12 under s. 13.92 (4) (b) 1., correction in (1) (intro.), (2) (intro.), (b) under s. 13.92 (4) (b) 6., Stats., correction in (2) (b) under s. 35.17, Stats., Register May 2018 No. 749.

HA 4.12 Audio recording of formal hearings. (1) (a) A party to a claim may audio record the proceedings of a formal hearing in a non-disruptive and non-obstructive manner.

(b) Witnesses, participants, and other attendees, who are not parties to the case, are not permitted to audio record the proceedings of a formal hearing.

(2) A party shall provide verbal notice of audio recording to the presiding administrative law judge and all other parties in attendance at the proceedings of a formal hearing before audio recording of the hearing begins.

(3) The presiding administrative law judge shall determine if a party's audio recording disrupts or obstructs the hearing.

(4) The presiding administrative law judge may set conditions for audio recording of a formal hearing to avoid disruption or obstruction of the hearing.

(5) A party's recording of the proceedings does not constitute the official record of the proceedings.

History: CR 15-031; cr. Register October 2015 No. 718, eff. 11-1-15; **renumbered from DWD 80.13 under s. 13.92 (4) (b) 1., Register May 2018 No. 749.**

HA 4.13 Transcripts. Transcripts of testimony taken or proceedings had before the division of hearings and appeals will be furnished to the applicant or respondent or their attorneys in accordance with the following provisions:

(1) After the commencement of an action to review an order of the commission in circuit court, a copy of the hearing record will be furnished to the plaintiff or other parties upon payment to the division of hearings and appeals of the reporter's fees set forth in s. 757.57 (5), Stats., and not as set forth in s. 757.57 (2), Stats.

(2) Transcripts of the hearing may not be provided until after commencement of an action in circuit court.

(3) Upon proper showing of financial inability to pay for copies of such testimony or proceedings, the division of hearings and appeals in its discretion will furnish copies of the same on such terms as may be agreed upon.

History: 1-2-56; am. (1) (a), (b), Register, October, 1965, No. 118, eff. 11-1-65; am. Register, November, 1970, No. 179, eff. 12-1-70; am. (1) (a), Register, April, 1971, No. 184, eff. 5-1-71; r. and recr. (1) (a) and (b), Register, September, 1982, No. 321, eff. 10-1-82; (title), (intro.), (1) to (3) **renumbered from DWD 80.14 (title), (1) (intro.), (a) to (c) under s. 13.92 (4) (b) 1., correction in (intro.), (1), (3) under s. 13.92 (4) (b) 6., Stats., Register May 2018 No. 749.**

HA 4.15 Use of physicians' reports as evidence.

(1) Matters stated in such report which would not be competent or material evidence if given as oral testimony shall not be competent or material as prima facie evidence if objection is made, except as corroborated by competent and material oral testimony.

Note: See s. 102.17 (1) (d), Stats.

(2) Use of reports shall be permitted in any case in which claim for compensation is made, provided the reporting doctor is available for cross examination.

(3) An applicant shall be informed of the provisions of s. 102.17 (1) (d), Stats., and the department of workforce development's and division of hearings and appeals' rules and also that a form for reporting will be supplied to the applicant upon request.

(4) Report shall be submitted to the division of hearings and appeals upon a form prescribed by the department of workforce

development or division of hearings and appeals and shall be verified or certified. The division of hearings and appeals may require additional or supplementary reports. Upon failure of the applicant to submit such reports within the time specified prior to hearing, all reports previously filed may, in the discretion of the division of hearings and appeals, be excluded as evidence.

(5) Reports shall be filed with the application for adjustment of claim or as soon thereafter as possible. Reports not filed with the division of hearings and appeals 15 days prior to the date of hearing shall not be acceptable as evidence except upon good cause for failure so to file, established to the satisfaction of the division of hearings and appeals.

(6) Simultaneously with the filing of a WKC-16B form or a verified report of a vocational expert with the division of hearings and appeals, a party shall serve copies upon all other parties in interest. Service upon the designated representative of a party shall be deemed service upon the party. Service upon the insurance carrier for an employer shall be deemed service upon the employer. However, if a party does not have a representative, the division of hearings and appeals may elect to make service upon other parties.

History: 1-2-56; am. (intro.), (4), (7) Register, October, 1965, No. 118, eff. 11-1-65; am. Register, April, 1975, No. 232, eff. 5-1-75; am. (3) and r. and recr. (6), Register, September, 1982, No. 321, eff. 10-1-82; am. (intro.), Register, September, 1986, No. 369, eff. 10-1-86; reprinted to restore dropped copy in (1), Register September 2005 No. 597; **renumbered from DWD 80.22 under s. 13.92 (4) (b) 1., correction in (3) to (6) under s. 13.92 (4) (b) 6., Stats., Register May 2018 No. 749.**

HA 4.16 Procedure and claims under ch. 40, Stats.

The division of hearings and appeals shall observe the same rules and procedures and may use the same forms in processing and determining claims made under s. 40.65, Stats., as are used under ch. 102, Stats.

History: Cr. Register, October, 1965, No. 118, eff. 11-1-65; am. Register, April, 1975, No. 232, eff. 5-1-75; am. Register, September, 1986, No. 369, eff. 10-1-86; **renumbered from DWD 80.31 under s. 13.92 (4) (b) 1., correction under s. 13.92 (4) (b) 6., Stats., Register May 2018 No. 749.**

HA 4.17 Witness fees and travel reimbursement.

The fees and travel reimbursement of witnesses and interpreters for attending a hearing before an examiner of the division of hearings and appeals, shall be the statewide rate currently paid under s. 814.67 (1) (b), Stats., notwithstanding any local county variations.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82; correction made under s. 13.93 (2m) (b) 7., Stats., Register November 2002 No. 563; **renumbered from DWD 80.44 under s. 13.92 (4) (b) 1., correction under s. 13.92 (4) (b) 6., Stats., Register May 2018 No. 749.**