

## 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 4.01 Application of rules. (1)** AUTHORITY. This chapter is promulgated under the authority of ss. 15.03, 102.15, 102.17 (1) (d) 3., and 227.11 (2) (b), Stats.

**(2)** SCOPE AND APPLICATION. This chapter applies to the procedure of the division with respect to worker's compensation hearings under ch. 102, Stats., and to hearings under ss. 40.65 (2), 59.88 (3), 62.624 (2), 106.25, 303.07 (7), and 303.21, Stats., and s. 66.191, 1981 Stats.

**History:** CR 18-059; cr. Register July 2019 No. 763, eff. 8-1-19.

**HA 4.02 Definitions.** In this chapter:

**(1)** "Administrative law judge" means a hearing examiner employed by the office of worker's compensation hearings to conduct hearings under s. 102.18 (2) (b) and (c), Stats.

**(2)** "Applicant" means a party filing an application for relief.

**(3)** "Department" means the department of workforce development.

**(4)** "Division" means the division of hearings and appeals.

**(5)** "Office of worker's compensation hearings" is one of several subunits authorized by the division administrator and is the subunit that administers adjudicatory functions related to worker's compensation claims.

**(6)** "Respondent" means a party adverse to an application for relief.

**History:** CR 18-059; cr. Register July 2019 No. 763, eff. 8-1-19; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register July 2019 No. 763.

**HA 4.03 Application of department rules. (1)** Section DWD 80.025 applies to the procedure for inspection and copying of worker's compensation records in the custody of the division.

**(2)** (a) Except as provided in par. (b), the provisions of s. DWD 80.03 apply with respect to the division when the division acts on a compromise under s. 102.16 (1) (c), Stats., to the same extent those provisions apply to the department when acting on a compromise under s. 102.16 (1) (b), Stats.

(b) All written compromise agreements submitted to the division shall contain the following statement:

The employee has the right to petition the department of administration, division of hearings and appeals to set aside or modify this compromise agreement within one year of its approval by the division. The division may set aside or modify the compromise agreement. The right to request the division to set aside or modify the compromise agreement does not guarantee that the compromise will in fact be reopened.

**(3)** Substantive rules of the department that implement, interpret, or make specific legislation enforced or administered by the department within the meaning of s. 227.01 (13), Stats., have the force and effect of law in proceedings before the division under this chapter.

**Note:** Substantive rules of the department dealing with worker's compensation have the force and effect of law in worker's compensation and related proceedings before the division. These include, without limitation, the factors listed in s. DWD 80.34 in determining loss of earning capacity, the factors listed in s. DWD 80.39 in determining whether to order full or partial payment of unaccrued compensation to an employee or his or her dependents under s. 102.32 (6m), Stats., the provisions of s. DWD 80.43 in determining the amount of attorney fees and costs under s. 102.26 (3), Stats., and the factors set out in s. DWD 80.49 (9) (b) in determining whether an offer of employment is suitable under s. DWD 80.49 (8) (c) and (9) (b).

**History:** CR 18-059; cr. Register July 2019 No. 763, eff. 8-1-19.

**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, 59.88 (3), 62.624 (2), 106.25, 303.07 (7), or 303.21, Stats., and s. 66.191, 1981 Stats., any party to the dispute may apply to the department for relief.

**(2)** In all such cases under sub. (1), the applicant shall file his or her application with the department, along with sufficient copies of the application for service on the respondents. The department shall thereupon serve the respondents with a copy of the application and the respondents shall file an answer to the application with the division within 20 days after the service and likewise serve a copy of the answer on the applicant. If no answer is mailed by the respondent within 20 days of service of the application by the department, the division 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.

**(3)** After an application for hearing is served, the division shall manage its caseload by appropriate action including any of the following:

(a) Determining whether any answer received is complete, identifies the correct date of injury, and identifies the correct parties for that date of injury.

(b) Filing documents or other material received or issued in connection with the claim.

(c) Controlling its calendar and scheduling matters for hearing.

(d) Notifying the parties of the time and place of hearing, at least 10 days prior to the hearing.

(e) Conducting hearings and making findings, orders, and awards that are lawful and just under the circumstances.

**(4)** After an application for hearing is served, the division, when appropriate, may take other action to manage its caseload, including any of the following:

(a) In cases of vision loss and hearing loss, obtaining a computation of permanent disability indemnity.

(b) Impleading other employers or insurance carriers.

(c) Securing the participation of the uninsured employers fund or the work injury supplemental benefit fund.

- (d) Dismissing parties improperly served with the application.
- (e) Dismissing the application if defective or upon request of a party.
- (f) Scheduling and conducting prehearing conferences.
- (g) Adjourning or postponing prehearing conferences and hearings scheduled under par. (f) and sub. (3) (c).

(h) Within 21 days of issuance, setting aside, reversing, or modifying findings, orders or awards as provided in s. 102.18 (3), Stats.

**(5)** For injuries for which an employer is required to give notice under s. DWD 80.02 (1) (a), a self-insured employer or insurance company shall, when submitting a stipulation or compromise to the division, and at the time of hearing, submit a current form WKC-13 indicating all worker's compensation payments to date and the periods of time for which these payments were made. This subsection does not apply if the information has been submitted via electronic, magnetic or other reporting media under s. DWD 80.02 (3m).

**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; **CR 18-059; am. (1), (2), cr. (3), (4), (5) Register July 2019 No. 763, eff. 8-1-19, correction in (1) made under s. 35.17., Stats., Register July 2019 No. 763.**

**HA 4.05 Appearance by attorney or agent.** Any party may appear before the division in person or by an attorney or agent.

**History:** CR 18-059; cr. Register July 2019 No. 763, eff. 8-1-19.

**HA 4.06 Service and filing. (1) SERVICE.** Service of materials, unless otherwise directed by the division or by law, may be made by mail and proof of mailing shall be prima facie proof of service. The time within which service shall be made shall be the same as in courts of record unless otherwise specified by rule or order of the division.

**(2) FILING DATE.** Regardless of how served, materials submitted to the division are considered filed on the date they are received by the division.

**History:** CR 18-059; cr. Register July 2019 No. 763, eff. 8-1-19.

**HA 4.07 Amendments.** Amendment may be made to the application or answer by letter mailed to the division 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; **CR 18-059; am. Register July 2019 No. 763, eff. 8-1-19.**

**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 or continuances shall be considered by the division only if such requests are received within a reasonable time before the date of the hearing.

**(3)** The division 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.

**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; **CR 18-059; am. (2), (3), (4) Register July 2019 No. 763, eff. 8-1-19.**

**HA 4.09 Stipulations.** Parties to a controversy may stipulate the facts in writing, and the division may make its order or award upon the written stipulation. Stipulations must set forth in detail the manner of computing the compensation due and must be accompanied by a report from a physician stating the extent of the disability.

**History:** CR 18-059; cr. Register July 2019 No. 763, eff. 8-1-19.

**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 shall be such as to secure the facts in as direct and simple a manner as possible.

**(b)** The administrative law judge may limit testimony to only those matters which are disputed.

**(c)** The administrative law judge may not allow into the record, either on direct or cross-examination, redundant, irrelevant or repetitive testimony. Hearsay testimony with probative value may be admitted at the discretion of the administrative law judge.

**(2)** The division 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. From this list, a hearing site shall be selected at the discretion of the division. The division, in determining the site of the hearing, shall consider all of the following:

**(a)** The applicant's location choice.

**(b)** The location of the office of the treating practitioner or practitioner appointed under s. 102.13 (3) or 102.17, Stats.

**(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; **CR 18-059; am. (1) (a), (b), (c), (2) (intro.), (a), (b) Register July 2019 No. 763, eff. 8-1-19.**

**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 shall be furnished to the applicant or respondent or their attorneys in accordance with all of the following provisions:

**(1)** After the commencement of an action to review an order of the labor and industry review 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 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 may 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; **CR 18-059: am. (intro.), (1), (3) Register July 2019 No. 763, eff. 8-1-19.**

**HA 4.14 Reports by practitioners and expert witnesses.** (1) Upon the request of the division, any party to a claim pending before the division under ch. 102, Stats., shall furnish to the division and to all parties copies of all reports by practitioners and expert witnesses in their possession or procurable by them.

(2) In cases involving nonscheduled injuries under s. 102.44 (2) or (3), Stats., any party to a claim pending before the division under ch. 102, Stats., shall, upon the request of the division, furnish to the division and to all parties any reports in the party's possession or reasonably available to that party relating to the loss of earning capacity as set forth in s. DWD 80.34.

(3) Any party who does not comply with the request of the division under sub. (1) or (2) shall be barred from presenting the reports or the testimony contained in the reports at the hearing.

(4) No testimony or reports from expert witnesses on the issue of loss of earning capacity may be received unless the party offering the evidence has notified the division and the other parties of interest of the party's intent to provide the testimony or reports and the names of expert witnesses involved as required under s. 102.17 (7), Stats.

**History:** CR 18-059: cr. Register July 2019 No. 763, eff. 8-1-19.

**HA 4.15 Use of reports as evidence.** (1) In this section, "report" means a report by a practitioner or a report by an expert witness on the issue of loss of earning capacity, as described in s. HA 4.14.

(2) Matters stated in a report that would not be competent or material evidence if given as oral testimony are not 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.

(3) Use of reports shall be permitted in any case in which claim for compensation is made, provided the reporting practitioner or other expert is available for cross examination.

(4) Reports shall be submitted to the division on a prescribed form and shall be certified. An applicant shall be informed of the provisions of s. 102.17 (1) (d), Stats., and ss. DWD 80.21 and HA 4.14, and also that a form for reporting will be supplied to the applicant upon request.

(5) The division 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, be excluded as evidence.

(6) Reports shall be filed with the application or as soon thereafter as possible. Reports not filed with the division 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.

(7) Simultaneously with the filing of a report with the division, a party shall serve copies upon all other parties. 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 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; **CR 18-059: renum. (1) to (6) to (2) to (7) and am., cr. (1); Register July 2019 No. 763, eff. 8-1-19.**

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

The division 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; **CR 18-059: am. Register July 2019 No. 763, eff. 8-1-19.**

#### **HA 4.17 Witness fees and travel reimbursement.**

The fees and travel reimbursement of witnesses and interpreters for attending a hearing before an administrative law judge 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; **CR 18-059: am. Register July 2019 No. 763, eff. 8-1-19.**

**HA 4.18 Mediation conferences.** (1) **DEFINITIONS.** In this section:

(a) "Administrative law judge mediator" means an administrative law judge whose duties include conducting mediation conferences.

(c) "Mediation conference" means a voluntary, informal, off-record conference among an administrative law judge mediator and the parties, their representatives, or both, to explore settlement options in an effort to achieve a negotiated, conciliatory resolution of disputed claims without a formal hearing on the merits of a case.

(d) "Request to schedule a mediation conference form" means a form prescribed by the division that sets out the claims at issue in a requested mediation conference, identifies the conceded and disputed benefits, and describes the parties' respective positions.

(2) **MEDIATION PROCESS.** (a) 1. The purpose of a mediation conference is to resolve all disputed matters or issues in cases in which the issues are sufficiently well-developed.

2. A mediation conference should not be used to address minor disputes or effect piecemeal resolution of disputed claims.

(b) A mediation conference shall be scheduled only after all of the following have occurred:

1. An application for hearing has been served.

2. The applicant has submitted a request to schedule a mediation conference form.

3. The respondent has confirmed in writing that it concurs with the request for a settlement mediation.

4. The respondent has confirmed that the insurance company has, or will have by the date of the scheduled mediation conference, authority to resolve the claim based on a good faith evaluation of the known facts and evidence of record.

(c) A party may request a particular administrative law judge mediator to serve in a particular case. The division shall assign an administrative law judge mediator to conduct mediation conferences based on division needs and resources after considering a party's request.

(d) In conducting a mediation conference, an administrative law judge mediator may do all of the following:

1. Engage in ex parte communication with the parties or their representatives.

2. Adopt his or her own procedures regarding the submission of documents and evidence to be used in preparing for a mediation conference.

(e) A settlement achieved through a mediation conference must be approved by both the administrative law judge mediator and the chief administrative law judge or his or her designee. A settlement agreement achieved through mediation outside the office of worker's compensation hearings' mediation process must be reviewed and approved by an administrative law judge as provided in s. HA 4.03 (2).

**(3) CONFIDENTIALITY.** (a) 1. Subject to subd. 2. and par. (d), all communications or statements, oral or written, that take place within the context of a mediation conference and are not otherwise discoverable, are confidential and not subject to disclosure. Such communications or statements shall not be disclosed by any administrative law judge mediator, party, attorney attendee, or division employee, and may not be used as evidence for any purpose, including impeachment, at hearing or any other legal or administrative proceeding.

2. This paragraph does not apply to an executed compromise agreement derived from a mediation conference or any order approving any such mediated settlement.

(b) Subject to par. (d), neither the administrative law judge mediator nor any third-party observer present at a mediation conference with the permission of the parties may be subpoenaed or otherwise required to testify in any proceeding concerning a mediation or settlement negotiations. Absent waiver of confidentiality by the offended party, the notes, records, and recollections of the administrative law judge mediator, as well as any evidentiary compilation of records or documents utilized by the adminis-

trative law judge mediator in preparing for the mediation conference, shall be kept separate and apart from the division litigation file, are not subject to discovery, and shall not be used as evidence in any proceedings. If so called or subpoenaed, the person or entity called or subpoenaed may refuse to testify or produce the requested documents. Should any party attempt to compel such testimony or production of documents, such party shall be liable for, and shall indemnify the division and the administrative law judge mediator against, any liabilities, costs, or expenses, including reasonable attorney fees, that may be incurred in resisting such compulsion.

(c) Upon request, the presiding administrative law judge mediator may issue a protective order to keep private spoken or written information that might otherwise become part of the official record in a contested case. Such an order does not preclude release or sharing of information already known or discovered outside the mediation process.

(d) This subsection does not apply to any of the following:

1. Threats of violence to the administrative law judge mediator or others.
2. Security personnel or law enforcement officials.
3. Party or attorney misconduct.
4. Legal or disciplinary complaints brought against an administrative law judge mediator or attorney arising out of and during the occurrence of an event that transpires in the course of a mediation.

**History:** CR 18-059: cr. Register July 2019 No. 763, eff. 8-1-19; correction in (1) (b) to (d) made under s. 13.92 (4) (b) 1., Stats., Register July 2019 No. 763; corrections in (2) (b) 4. and (3) (b) made under s. 35.17, Stats., Register July 2019 No. 763.