

# **TDI** **InsurED**

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## Resolving Disputes in the Texas Workers' Compensation System

August 17, 2023

# TDI | Benefit disputes

**The Texas Administrative Code defines benefit disputes as:**

“A disputed issue arising under the Texas Workers' Compensation Act (the Act) in a workers' compensation claim regarding compensability or eligibility for, or the amount of, income or death benefits.” [28 Texas Administrative Code \(TAC\) 140.1\(1\)](#)

- Compensability.
- Disability.
- Extent of injury.
- Maximum medical improvement.
- Impairment rating.
- Entitlement to supplemental income benefits.
- Travel expenses.
- Change of doctor.
- Appeal of medical fee reimbursement denial.

# TDI | Initiating a dispute

## Plain language notices (PLN)

- [PLN-1: Notice of Denial of Compensability/Liability and Refusal to Pay Benefits.](#)

See [28 TAC 124.2](#) – This notice must be used by an insurance carrier to notify the injured employee/beneficiary and TDI-DWC of the insurance carrier's denial of compensability or liability for an injury.

- [PLN-11: Notice of Disputed Issue\(s\) and Refusal to Pay Benefits.](#)

This notice must be used to notify and injured employee/beneficiary and TDI-DWC of the insurance carrier's dispute of an issue such as disability, extent of injury, or death benefits.

# TDI | Plain language notice for fatalities

- [PLN-12: Notice of Potential Entitlement to Workers' Compensation Death Benefits.](#)
  - See [28 TAC 132.17\(d\)](#) and (f). An insurance carrier shall send a plain language notice within seven days of date they became aware of the identity of a beneficiary and a means of contacting them.
  - Send notice of the time, date, and place of any hearings on a claim to the necessary parties. In Appeals Panel Decision 130472, the decision of administrative law judge was reversed and remanded to ensure that the next friend and minor beneficiary in a death benefit case received notice of the time, date, and place of any hearings in the claim.

# Benefit review conferences

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# TDI | Attempt to resolve dispute

## Texas Labor Code 410.023(b) and 28 TAC 141.1(d)

- DWC Form-045: Request to Schedule, Reschedule or Cancel a Benefit Review Conference.
- "I certify that prior to this request I have made reasonable efforts to resolve the disputed issue(s)..."
- The parties are required to talk to each other and attempt to reach a resolution before requesting dispute resolution assistance from DWC. It means the relevant parties should be involved in a discussion of the details and options specific to the individual claim. This means exchanging information or documents and looking for common ground.

# TDI | First step

- [DWC Form-045: Request to Schedule, Reschedule, or Cancel a Benefit Review Conference.](#)
- [DWC Form-045M: Request to Schedule, Reschedule, or Cancel a Benefit Review Conference to Appeal a Medical Fee Dispute Decision.](#)
- Keep in mind the specific timeframes for filing the DWC Form-045 in the following cases:
  - 90 days for maximum medical improvement and impairment rating. [28 TAC 130.12](#)
  - 10 days for supplemental income benefits. [28 TAC 130.108](#)
  - 10 days for change of treating doctor. [28 TAC 126.9](#)
  - 20 days for DWC Form-045M medical dispute resolution appeal. [28 TAC 133.307\(g\)](#)

# TDI | Benefit review conference exchange

## Sending and exchanging pertinent information

- “Pertinent information” means all information relevant to the resolution of the disputed issue or issues...” [28 TAC 141.4](#)
- All "pertinent information must be sent to the opposing party or parties before the time the request for a benefit review conference is sent to the division."
- The opposing party must send all pertinent information to the requesting party and other parties within 10 working days after receiving a copy of the request for a benefit review conference.
- Exchanged with opposing party or parties, and filed with DWC, at least 14 days before the benefit review conference or five days if expedited.

## The purpose of the benefit review conference is to:

- Explain the rights of the parties and the procedures necessary to protect those rights.
- Discuss the facts of the claim, review available information in order to evaluate the claim, and delineate disputed issues.
- Mediate and resolve disputed issues. [Labor Code 410.021](#)

**A party or its representative commits an administrative violation if that person:**

“Attends a dispute resolution proceeding within the division without complete authority or fails to exercise authority to effectuate agreement or settlement.” [Labor Code 415.001\(2\)](#) and [415.002\(a\)\(9\)](#).

# TDI | Scheduling order

- Approval of a continuance by an administrative law judge for good cause.
- See [Labor Code 410.155](#) on continuances:
  - (a) A written request by a party for a continuance of a contested case hearing to another date must be directed to the division.
  - (b) The division may grant a continuance only if the division determines that there is good cause for the continuance.
- An administrative law judge may consider the parties' efforts to complete their scheduling order commitments.

# TDI | Benefit review conference report

- The benefit review conference report establishes the issues to be resolved at the contested case hearing. [Labor Code 410.031](#) and [410.151\(b\)](#)
- An issue that was not raised at a benefit review conference or that was not identified in the benefit review conference report may not be considered by an administrative law judge at the contested case hearing unless:
  - The parties unanimously agree to add the issue(s). [Labor Code 410.151\(b\)\(1\)](#) and [28 TAC 142.7\(b\)\(3\) and \(d\)](#).
  - The administrative law judge determines that there is good cause to add the issue(s). [Labor Code 410.151\(b\)\(2\)](#) and [28 TAC 142.7\(e\)](#).
  - The issue(s) were actually litigated by the parties. Appeals Panel Decision 041286.

# Contested case hearings

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# TDI | Purpose

- Fully develop the case and inform the administrative law judge so they may make the best possible decision based upon all the facts to resolve a benefit dispute.
- The statutes regarding a contested case hearing start with [Texas Labor Code 410.151](#).
- A contested case hearing is presided over by an administrative law judge (an attorney that is licensed to practice law in Texas).
- A contested case hearing is a formal, adversarial proceeding that is like a non-jury or bench trial, in that the parties present evidence and make arguments on the disputed issues.
- The administrative law judges makes Findings of Fact and Conclusions of Law in a Decision.

- [28 TAC 142.13](#)
  - Parties' exchange of documentary evidence.
  - Interrogatories, as explained at [28 TAC 142.19](#).
  - Witness depositions:
    - Health Care Providers – only deposition on written questions.
    - Other witnesses – if ALJ determines good cause for this.
- [Labor Code 410.158 – 410.162](#)

# TDI | Non-expedited exchange deadline

- No later than 15 days after the benefit review conference, parties shall exchange the following information:
  - All medical reports and reports of expert witnesses who will testify at the hearing.
  - All medical records.
  - Any witness statements.

# TDI | Non-expedited exchange deadline

- The identity and location of any witness known to have knowledge of relevant facts.
- All photographs or other documents which a party intends to offer into evidence at the hearing. [28 TAC 142.13\(c\)\(1\)](#)

# TDI | Exchange after deadline?

- An administrative law judge will base determination on admissibility on whether good cause existed for the failure to timely exchange the information.
- [Labor Code 410.165](#) discusses “evidence” and what the administrative law judge accepts as evidence.
- The administrative law judge can allow the evidence to come in, despite the exchange being after the deadline or can deny evidence to come in.
- The administrative law judge could allow record to stay open or allow a continuance to afford opposing side to review the late exchange of information.

# TDI | Contested case hearings: continuances

- “A request for continuance may be made before or during a hearing.” [28 TAC 142.10\(c\)](#)
- [Labor Code 410.155\(b\)](#) and [28 TAC 142.10\(b\)\(2\)](#) both delineate a good cause standard for granting continuances.

What happens next?

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# TDI | Appeal administrative law judge decision

- The administrative law judge's decision is effective and binding on the date signed by the administrative law judge. [28 TAC 142.16\(e\)](#)
- To appeal the decision of an administrative law judge:
  - File in writing with the division appeals panel.
  - Not later than the 15th day after the date on which the decision of the administrative law judge is received from division. [Labor Code 410.202\(a\)](#)

# TDI | Response to appeal

## To respond to appeal:

- File in writing with the appeals panel.
- Not later than the 15th day after the date on which the appeal is served. [Labor Code 410.202\(b\)](#)

# **TDI** | Counting days for appeal purposes

**15-day appeal and response periods for filing with appeals panel:**

Does not include Saturdays, Sundays, and holidays listed in [Government Code 662.003](#).  
[Labor Code 410.202\(d\)](#)

# **TDI** | Appeal of the panel's decision

## Judicial review

File suit not later than the 45th day after the date on which the division mailed the party the appeals panel's decision. [Labor Code 410.252\(a\)](#)

# **TDI** | Appeal on medical necessity

To appeal decision of independent review organization on the necessity of proposed health care:

File [DWC Form-049, Request to Schedule a Medical Contested Case Hearing \(MCCH\)](#) within 20 days after the date the decision is sent to the appealing party. [28 TAC 133.308\(s\)\(1\)\(A\)](#)

# **TDI** | Medical fee dispute

**Dispute over medical fee decision of Division Medical Fee Dispute Resolution:**

File [DWC Form-045M: Request to Schedule, Reschedule, or Cancel a Benefit Review Conference to Appeal a Medical Fee Dispute Decision](#)

**No resolution after the benefit review conference?**

File [DWC Form-044: Election to Engage in Arbitration](#) or [DWC Form-049: Request to Schedule a MCCH](#)

**Jennifer Hopens, Deputy Commissioner**

DWC Appeals Panel

**Gerri Thomas, Director**

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**Ana Thornton, Director**

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