

**TEXAS DEPARTMENT OF INSURANCE
DIVISION OF WORKERS' COMPENSATION**

**PRACTICES AND PROCEDURES
RELATING TO
BENEFIT REVIEW CONFERENCES**

The following practices and procedures are effective for all benefit review conferences (BRCs). The purpose is to facilitate the orderly conduct of BRCs statewide through uniform practices and procedures. Some BRCs may be conducted by telephone or videoconference. A separate section is included to set out the different procedures for those BRCs.

**I.
PRE-BRC MATTERS**

CANCELING OR RESCHEDULING BRCs

Under Rule 141.2, the Division may cancel or reschedule a BRC

- (1) on its own motion;
- (2) at the request of the party who requested the conference; or
- (3) at the mutual request of the parties.

Cancellation requests made within 10 days of a party's receipt of the BRC set notice are unrestricted. Thereafter, the Division shall grant a cancellation only if it determines that there is good cause. For such reason, requests for cancellation or rescheduling after that 10-day period, *including those which are agreed to or unopposed*, shall be granted only for "good cause" to cancel or reschedule the BRC.

TRIAL OR SOCIAL SECURITY HEARING CONFLICTS

When a cancellation is requested due to counsel for one of the parties having been set for trial, a request should provide the following information, to the extent known:

- Style, Cause Number and Court
- Coordinator's (or Clerk's) name and telephone number
- Date of trial setting (or date range of docket)
- Case position on the docket

With this information, the Benefit Review Officer or docket clerk can verify the conflict if they choose to do so. If there is insufficient information provided to verify the court setting or assignment, the Benefit Review Officer may deny the cancellation and request such additional information as necessary.

Requests for cancellation or rescheduling must be granted for docket conflicts in federal courts, state courts, county courts, city courts, and Social Security administrative hearings.

EARLY REQUESTS FOR CANCELLATION OR RESCHEDULING ENCOURAGED

A request for cancellation or rescheduling prior to a BRC should be submitted to the Division as early as possible. The Division has a limited capacity to conduct BRCs. If a cancellation or rescheduling request is granted 20 days or more before the scheduled BRC date, there is a reasonable chance for another BRC to be scheduled in its place. When a BRC is cancelled or rescheduled and another BRC cannot be scheduled in its place, the Division's capacity to conduct BRCs is diminished, compromising its ability to meet the requirement to schedule a BRC within 40 days after the date the BRC was requested.

FIRMS WITH MULTIPLE ATTORNEYS

Firms with multiple attorneys are not required to provide a substitute attorney if the request confirms that no other attorney is reasonably available to handle the BRC.

PRE-BRC PREPARATION AND DISCOVERY REQUESTS

With the current limitation of two BRCs, it is critical that parties thoroughly evaluate their cases so their information regarding the issues in dispute is fully developed before the BRC. In addition to exchanging pertinent information as required by rule 141.4, before requesting a BRC, it would be prudent for all parties to:

- Request the appointment of a designated doctor when desired (A designated doctor is required for all maximum medical improvement and impairment rating disputes.)
- Request any needed clarification from the designated doctor
- Subpoena evidence not otherwise available to support their position

Subpoena requests should be submitted with a proper order and subpoena form, if applicable, attached. Subpoenas should be submitted in completed form ready for signing by the Hearing Officer. Copies of approved or suggested forms for such documents are attached for the convenience of BRC participants, although use of any legally sufficient form is appropriate and nothing herein should be construed as requiring the exclusive use of the attached forms.

II. BENEFIT REVIEW CONFERENCES IN THE FIELD OFFICE WITH PARTIES PRESENT

TIME ALLOCATED FOR BRCs

The time allocated for BRCs is 45 minutes or 1 hour; however, where deemed reasonable and necessary, additional time for the BRC will be allowed by the Benefit Review Officer.

EXCHANGE OF PERTINENT INFORMATION

Parties should exchange pertinent information in accordance with Rule 141.4. To the extent practical, duplicates should be removed. Parties' exchanges will not be retained by the Division as a part of the claim file.

FOREIGN LANGUAGE EXCHANGES

Exchanges in a language other than English should be accompanied by an English translation.

EXCHANGE SUMMARIES

Where they will enhance the understanding of the facts, summaries are encouraged. Summaries in accounting formats are particularly helpful regarding financial matters such as wages and establishing regular support for dependents.

ELECTRONIC EXCHANGES

Exchanges in electronic form must be in a format that is compatible with electronic players available to the Benefit Review Officer. At this time Benefit Review Officers have video tape players, DVD players, and compact disc players.

The party offering electronic exchange should identify relevant portions by, for example, time and/or counter number display so that such portions may be easily accessed and identified.

WITNESS STATEMENTS

Electronically recorded witness statements should be transcribed. Witnesses may appear in person or telephonically at the discretion of the Benefit Review Officer.

CONDUCT BY PARTIES IN A BRC

Parties and participants shall conduct themselves with dignity, shall show courtesy and respect for one another and for the Benefit Review Officer, and shall follow the decorum prescribed by the Benefit Review Officer.

ACCOMMODATIONS BY TELEPHONE AT BRCs

Telephone attendance at a BRC may be provided as an accommodation to a party. The Benefit Review Officer has the discretion to determine when telephone attendance will be allowed at a BRC.

The Benefit Review Officer's determination will depend on several factors including: the facts of the case, the parties involved the exchange and availability of pertinent information, and any other extenuating circumstances (scheduling conflicts, illness, emergency situations, etc.).

Parties may request to have a witness attend by speaker telephone. Whenever possible, parties should request approval for telephone attendance for a specified witness or witnesses before the BRC with notice to the other parties.

STATEMENT OF POSITION

The Benefit Review Officer will elicit each party's statement of position regarding each disputed issue. Where there is a question of law, it is appropriate for the parties to address it in the statement of position and give references to applicable portions of the Act, Rules, Appeals Panel Decision Manual, appeals court decisions and Appeals Panel Decisions.

The Benefit Review Officer shall determine, within his or her discretion, the order in which statements of positions will be offered.

INTERLOCUTORY ORDERS

An interlocutory order is a temporary order; effective only until it expires by its terms, is revoked by the Division or is superseded by agreement of the parties or decision and order of a hearing officer. A party may request an interlocutory order during the Benefit Review Conference verbally or by completing form DWC-058 when the issues in dispute are proceeding to Contested Case Hearing. The opposing party will be given an opportunity to respond to the request. The decision of whether to issue an order is left to the discretion of the benefit review officer. The officer has three (3) days to make a determination and will do so based on their knowledge of workers' compensation law, rules, AP decisions, policy and review of information presented at the Benefit Review Conference.

PROPOSED STIPULATIONS

Parties ready and willing to stipulate to facts not in dispute that are required to be established to support any CCH issue may use proposed stipulations to document those facts at the BRC.

BENEFIT REVIEW CONFERENCE REPORT

The Benefit Review Conference Report identifies issues resolved at the BRC and disputed issues that are proceeding to CCH. The Benefit Review Officer will identify each disputed issue using Standard Issue Statements whenever possible. Issues raised by the parties that are not identifiable as a specific standard issue may, at the discretion of the Benefit Review officer, be identified as separate issue or, if subsumed in the standard issue statement, be included in the parties' position. Parties may respond to the Benefit Review Conference report in accordance with Rule 142.7 to request the Hearing Officer include issue(s) not identified as unresolved.

III.

TELEPHONIC AND VIDEOCONFERENCE BENEFIT REVIEW CONFERENCES

Benefit Review Conferences in which the parties appear by telephone or videoconference equipment shall be conducted pursuant to the practices and procedures set out above, except as provided below:

TELEPHONIC BRCs

Texas Labor Code, §410.005 allows the Division to conduct BRCs telephonically with the injured employee's agreement. Requests for Telephonic Benefit Review Conferences made pursuant to §410.005 shall be made in the form and manner prescribed by the Division. If the injured employee is requesting or is agreeable to a telephonic BRC, the conference may be conducted with all parties attending by telephone. In accordance with §410.005, the Division has the discretion to determine when a telephonic BRC will be held.

TELEPHONIC BRC SET NOTICES

Set notices for telephonic BRCs will indicate that the parties need not attend in person. Telephonic BRC instructions will be provided to the parties prior to the BRC or with the BRC set notice.

PROVIDING INFORMATION FOR THE TELEPHONIC BRC

Parties shall ensure that their respective exchanges are received by the benefit review officer and all other parties at least two working days prior to the date of the BRC as exchanges cannot reasonably be made at the BRC.

TELEPHONE CALL FOR THE BRC

The benefit review officer will set up the conference call between the parties. Parties may participate by cellular telephone but must have a landline available should the cellular transmission be unsatisfactory.

CONFIDENTIALITY

The right of the Claimant to confidentiality of claim file information is not waived by a telephonic conference, and only persons entitled to attend the BRC may be present for the teleconference. Each party shall announce the names of all persons in his or her respective office.

PROCEDURES DURING THE BRC

Each party shall participate in the same manner as it would if the proceeding were conducted with the Benefit Review Officer and parties in the same room. If any situation arises that cannot be resolved by electronic means at the time of the BRC, the Benefit Review Officer may reset the conference to another date, by either teleconference or BRC in the field office with the parties in attendance

VIDEOCONFERENCE BRC

BRCs may be conducted by videoconference. However, equipment, space and support personnel are limited making this a rare option. The foregoing provisions pertaining to telephonic BRCs shall also apply to a videoconference BRC.

SCHEDULING TELEPHONIC CCHs

Telephone CCHs may be scheduled at the conclusion of a BRC if the parties agree to a telephone CCH at the benefit review conference. This procedure will be offered by the Benefit Review Officer only under the following circumstances:

- a) the claimant is represented by an attorney;

- b) no interpreter is needed;
- c) no witness other than the claimant is expected to offer testimony;
- d) the evidence is not voluminous; and
- e) contentious litigation is not anticipated.

The Benefit Review Officer may schedule a telephone CCH upon agreement of the parties in the event no Hearing Officer is assigned to the field office where venue is proper or because no hearing date is available within the 60-day statutory timeframe in the field office where venue is proper.