

INFORMATION FOR SELF-REPRESENTED LITIGANTS

K-WC 28 (Rev. 11-20)

If you are representing yourself in a workers compensation hearing, please take a few minutes to review this document prior to your hearing. It was prepared to help you understand the proceedings and the manner in which they will be handled.

There are, generally, three types of hearings in which you are likely to be involved: a preliminary hearing, a pre-hearing settlement conference and a regular hearing, also known as a first full hearing. As its name implies, a preliminary hearing is just that - preliminary. No final decision is made at a preliminary hearing and any decision that is made at a preliminary hearing is subject to being reversed or modified at a subsequent preliminary hearing or at the formal trial of the claim, known as the regular hearing or first full hearing. After the preliminary hearing and before the regular hearing, a pre-hearing settlement conference is held to determine what the parties can agree on, and what they disagree on, so that if the case goes to trial, everyone knows what the issues are that the judge will be asked to decide. Often, the parties reach a settlement at the pre-hearing settlement conference.

Hearings are conducted by an administrative law judge. The judge graduated from law school and has many years experience in litigation in general, and in the specific area of workers compensation litigation. Except in a pre-hearing settlement conference, hearings are conducted in the presence of a certified court reporter, who will make a record of everything that is said during the hearing.

A preliminary hearing is held early in the claim. The issues at most preliminary hearings are 1) whether the claimant suffered an injury at work, 2) whether the claimed injury was properly reported to the employer, 3) whether medical treatment should be provided and 4) whether the employee, because of work-related injuries, is temporarily disabled or incapable of working or "engaging in substantial gainful employment." There may be other issues, such as whether there was an employer-employee relationship at the time of the claimed accident. A regular hearing is the formal trial of the claim which will result in a final decision or "award."

While a preliminary hearing is intended to be relatively informal, the Kansas Workers Compensation Act does not allow a judge to enter orders for medical treatment or temporary total disability compensation at a preliminary hearing without giving the employer an opportunity to present evidence on disputed issues. At the preliminary hearing, you will have to present some evidence of an accidental injury at work, a need for medical treatment and whether you are currently able to work and earn wages. You should bring 1) copies of medical records to establish your injury, need for treatment and inability to work, 2) copies of your paycheck stubs to help determine your pre-injury wages and 3) any other documents that you have that you think would help the court understand and resolve the issues in your claim.

Whatever the nature of the hearing, please come to court dressed appropriately for a legal proceeding, clean and neatly-dressed (a suit and tie or dress are not absolutely necessary, but a dirty T-shirt, shorts and flip-flops are unacceptable). Please be on time and prepared to begin your hearing.

Information for Self-Represented Litigants

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On the day of your hearing, whether it's a preliminary hearing or regular hearing, before your case is called, the judge will invite you and the opposing counsel into the judge's office. The judge will use this informal conference to introduce you to the opposing counsel and to explain how the hearing will be held. Among the issues the judge will discuss are:

1. You have the absolute right to represent yourself in workers compensation litigation. That does not mean it is in your best interests to attempt to represent yourself. The court does not have the authority to appoint an attorney to help or represent you. You may retain an attorney at any stage of the proceedings.
2. If you choose to represent yourself, you will be held to the same standard as an attorney. That does NOT mean that you will have to know the law and procedure as well as an attorney. It DOES mean that you will have to present the same types of evidence to support your claim that an attorney would present on your behalf. For example, you will be expected to present medical records at a preliminary hearing and you will not be able to only testify what the doctor told you. At the regular hearing, you will have to present the actual testimony of the doctor, not just medical records.
3. While you may choose to represent yourself, it is very likely that the employer and its workers compensation insurance company will be represented by experienced attorneys that are well-versed in workers compensation law and procedure.
4. The judge will discuss how the hearing will be conducted. For example, the judge will explain who goes first in presenting evidence and that all witnesses will also have to answer questions posed by the other party (known as cross-examination).
5. The judge must remain impartial. The judge can ask questions of both parties and any witnesses in an effort to learn the truth, but cannot undertake to represent your interests any more than the judge should help the employer defeat your claim.

At the conclusion of the informal conference, the judge will ask you if you are ready to proceed. If so, all parties will proceed to the courtroom and the hearing will begin with the court reporter administering an oath to you. Once the judge has called the hearing to order, you will be asked to acknowledge the discussion the judge had with you and the opposing counsel in the judge's office, and the court will begin to hear testimony and receive evidence.

If you wish to appeal the judge's decision, you must do so by filing a request for review with the Kansas Workers Compensation Board within 10 days of the effective date of the judge's order, exclusive of weekends and holidays. The request for review may be sent by fax to (785) 296-8499.

Assistance for self-represented litigants is available through the Department of Labor's ombudsmen program. Ombudsmen are trained in the provisions of the Workers Compensation Act, and can provide forms and direction in the prosecution of your claim or appeal. The ombudsmen can be reached at (785) 296-4000 or (800) 332-0353, Option #2.