

**Division of Workers' Compensation
Court Administrator's Labor Code § 5502 Report
Timeliness of Hearings Held**

First Quarter 2012 Report

I. INTRODUCTION

Labor Code §5502 prescribes specific timelines for certain types of hearings. The hearings covered are expedited hearings, status conferences, priority conferences, mandatory settlement conferences, and trials that follow a mandatory settlement conference. The timelines are measured from the filing of a declaration of readiness to proceed (DOR) to the hearing. The timeframes for each of these hearings are prescribed as follows:

- A. Expedited Hearing and Decision. Labor Code § 5502(b) directs the Court Administrator to establish a priority calendar for issues requiring an expedited hearing and decision. These cases must be heard and decided within 30 days following the filing of a DOR to proceed.
- B. Priority Conferences. Labor Code § 5502(c) directs the Court Administrator to establish a priority conference calendar for cases when the employee is represented by an attorney and the issues in dispute are employment or injury arising out of employment (AOE) or in the course of employment (COE). The conference shall be conducted within 30 days after the filing of a DOR to proceed.
- C. Mandatory Settlement Conference (MSC) and Ratings MSC. Labor Code § 5502(e) establishes time frames to schedule MSCs and trials in cases involving injuries and illnesses occurring on and after January 1, 1990. MSCs are to be conducted not less than 10 days and not more than 30 days after filing the DOR.
- D. Trials. Labor Code § 5502(e) mandates that if the dispute is not resolved at the MSC, a trial is to be held within 75 days after filing the DOR.

This report is submitted pursuant to Labor Code § 5502(d), which requires the administrative director to "report quarterly to the Governor and to the Legislature concerning the frequency and types of issues which are not heard and decided within the period prescribed in this section and the reasons therefor." This report covers hearings scheduled during the first quarter of 2012 (January 1-March 31). In the following, the frequency of the specific hearing types are described, and the reasons for hearings falling outside the prescribed timelines are discussed.

II. FREQUENCY OF HEARINGS

The table below describes, for each enumerated type of hearing, the total number of hearings held, the number and percentage outside the statutory timeline, and the average number of days outside the timeline.

Totals for First Quarter 2012

| Labor Code Section | Statutory Timeline | Total Number First Hearings | Number Outside of Timeline | Percent Outside of Timeline | Avg. Days Outside of Timeline |
|--------------------------------------|-----------------------|-----------------------------|----------------------------|-----------------------------|-------------------------------|
| 5502(b) Expedited Hearings | Within 30 days of DOR | 2,480 | 1,433 | 57.8 | 17 |
| 5502(c) Priority Conferences AOE/COE | Within 30 days of DOR | 1,615 | 1,238 | 76.7 | 34 |
| 5502(e) MSCs | Within 30 days of DOR | 19,713 | 15,652 | 79.4 | 31 |
| 5502(e) Trials | Within 75 days of DOR | 5,848 | 5,361 | 91.7 | 82 |

(Source: DWC)

III. DISCUSSION

Numbers and Timeliness of Hearings

The total number of first hearings for all types of 5502 hearings increased between the last quarter of 2011 (October 1-December 31) and the first quarter of 2012 (January 1-March 31). In three of four categories of hearings, the percentage falling outside of the mandated timelines either fell (priority conferences and MSCs) or remained constant (trials), even as the average days outside the timelines increased (priority conferences and MSCs). Only in the case of expedited hearings did both waiting time and the number of hearings falling outside of timelines increase.

| Labor Code Section | Statutory Timeline | Total Number First Hearings | | Number Outside of Timeline | | Percent Outside of Timeline | | Avg. Days Outside of Timeline | |
|--------------------------------------|-----------------------|-----------------------------|--------------|----------------------------|--------------|-----------------------------|--------------|-------------------------------|--------------|
| | | Oct-Dec 2011 | Jan-Mar 2012 | Oct-Dec 2011 | Jan-Mar 2012 | Oct-Dec 2011 | Jan-Mar 2012 | Oct-Dec 2011 | Jan-Mar 2012 |
| 5502(b) Expedited Hearings | Within 30 days of DOR | 2,439 | 2,480 | 1,155 | 1,433 | 47.4 | 57.8 | 11 | 17 |
| 5502(c) Priority Conferences AOE/COE | Within 30 days of DOR | 1,316 | 1,615 | 1,127 | 1,238 | 85.6 | 76.7 | 27 | 34 |
| 5502(e) MSCs | Within 30 days of DOR | 17,853 | 19,713 | 14,712 | 15,652 | 82.4 | 79.4 | 29 | 31 |
| 5502(e) Trials | Within 75 days of DOR | 5,024 | 5,848 | 4,601 | 5,361 | 91.6 | 91.7 | 89 | 82 |

Beginning in the last quarter of 2011 and continuing to the present, DWC has been granted exemptions from the hiring freeze in order to fill critical staff positions that had remained vacant as a result of the 2008 hiring freeze. To date, the division has hired 30 judges and 16 support staff. It is expected that the additional staff, once they are fully trained and have assumed a full workload, will ultimately improve compliance with the statutory timelines.

In addition to staffing issues (discussed more fully in the 2011 annual report), it is likely that the increasing volume of liens that has encumbered most of the district offices in the southern region has also impeded statutory compliance in those offices. Informal surveys conducted by the Division indicate that in some of the larger offices, lien conferences take up 25-35% of a typical conference calendar, thereby limiting the number of MSCs that can be set. This calendaring limitation increases the average statewide timelines from DOR to MSC, and from DOR to trial. The appeals board is in the process of promulgating regulations that address several of the problems created by these liens. Furthermore, the Division is scheduling intensive judge training on handling lien issues for the affected district offices. It is hoped that these measures will help ameliorate the growing lien problem, and ultimately increase compliance with the Labor Code §5502 timeframes.

Respectfully submitted,

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Acting Chief Judge

Division of Workers' Compensation