

Fact Sheet G

Rights And Obligations In Asserting A Claim Before The Workers' Compensation Appeals Board

This document is a guide to workers' compensation claim rights and procedures.

What if my claim is denied, or what if I do not receive all the benefits to which I believe I am entitled?

An Information and Assistance (I&A) Officers are available to help answer your questions and to provide informal impartial assistance to you. An I&A Officer will inform you of your rights and share the procedure to file an application with a local office of the Workers' Compensation Appeals Board. Call a local district office for more information.

What is the Workers' Compensation Appeals Board (WCAB)?

The Workers' Compensation Appeals Board is a special court that hears and decides disputed workers' compensation claims. Conferences held in the local offices are similar to those held in any court but the procedures are less formal. Evidence is normally presented in the form of medical reports and testimony taken under oath. The workers' compensation judge's decision is legally binding on all parties. Workers' compensation judges decide all disputes arising out of a work-related injury claim covered by state law. They do not hear civil or criminal matters, nor cases involving injuries to federal employees or persons covered under federal laws.

How do I file a case with the WCAB?

Any person who may have a claim related to an on-the-job injury may file a case with a local office of the Workers' Compensation Appeals Board by filing an Application for Adjudication of Claim form, [WCAB 1](#).

There is no fee for filing an application. If you need assistance, please contact the I&A Office by calling 1-800-736-7401.

May I be represented by an attorney?

You have the right to be represented by an attorney or representative of your choice. Many attorneys handle workers' compensation cases, and some are certified as a specialist in this field by the State Bar of California. No attorney or representative may charge you a fee for representing you unless and until that fee is approved by a workers' compensation judge. If your case is approved, the attorney's fee, which is normally 9 to 15 percent of the benefit amount awarded, is deducted from the awarded amount. The fee is paid directly to the attorney, or representative, by the employer or its insurance carrier.

Is there a time limit for filing a claim?

The workers' compensation laws contain certain time limits for filing a claim with the Workers' Compensation Appeals Board. In general, the application must be filed within one year from the date of injury or from the last date on which benefits were provided. There are other special time limits that apply in certain situations.

If the claim is not filed within the legal time limit, you may lose your right to pursue your claim. If you have any questions, contact an I&A Office or an attorney of your choice.

What will it cost me to prove my claim?

In most cases, if you have obtained medical reports or examinations to help prove your claim, costs are reimbursed by the employer or the insurance carrier whether or not you receive a benefit award. This also applies to reasonable costs spent by you, or your attorney, for such things as medical records and witnesses. If you have an attorney, they will schedule required medical evaluations, as needed.

Who has access to my WCAB file?

Cases filed at the WCAB are public records and may be inspected. Since the parties are required by law to file all medical reports dealing with your claim at certain stages of the proceedings, your file will include medical reports that may be read by the public. In some cases, medical information may be sealed from public view. A workers' compensation judge will determine this and is not usually done unless it is requested and special circumstances make it necessary. Your case file may also contain documents relating to your employment history, earnings, other injuries, and unpaid medical bills, if disputes exist over such issues. All the above information are part of the public record.

What must I do to cooperate?

You must attend all conferences, hearings, and depositions set in your case, unless you are excused. You will receive notice by mail of all such proceedings. It is your responsibility to ensure your attorney, the insurance carrier and the WCAB have your current address at all time while your claim is being litigated. Your failure to attend may delay a decision on your claim or even result in its dismissal.

The employer or carrier has the right to send you to physicians for examination at reasonable intervals. If you refuse to attend without a good reason, your right to benefits may be suspended. You must attend all medical examinations scheduled by your own representative, the WCAB, or by other Division of Workers' Compensation official. If you fail to attend examinations without good reasons, and the doctor is not notified in advance, a claim may be made to recover the cost of the missed appointment. Also, your failure to attend hearings or medical appointments may delay bringing your case to a decision.

How does my case come to hearing?

Your case file remains inactive until any party requests a hearing by filing a Declaration of Readiness to Proceed ([DWC-CA form 10250.1](#)) with the WCAB. The case may then be set on the calendar for a hearing before a workers' compensation judge. The hearing may be either a pre-trial conference or a trial. The purpose of a conference is to bring the parties together to see whether agreements can be reached, and if not, to see what matters must be decided by the workers' compensation judge and to plan further proceedings. Testimony is not normally taken at a conference.

A trial may include taking of testimony and presentation of written documents in evidence, followed by submission of your case to the judge for decision. All trials are recorded by a court reporter. Your case is heard only by the workers' compensation judge and there is no jury. The decision is normally issued by mail within several weeks after the case is heard. Trials are generally much shorter than those in civil courts. They last from one hour, in simple cases, to a full day, or more, in complicated cases, requiring several witnesses. The time from filing of the declaration of readiness to the date of hearing may vary depending upon the schedule at the WCAB office. The entire length of your case varies and depends on the type of injury, speed of your recovery, and complexity of your case.

What if I am not satisfied with the judges' decision?

You have right to petition the WCAB for reconsideration. This is done by filing a petition within 20 days of the date of the decision (plus an additional five days if the decision was mailed). The request for reconsideration is reviewed by a panel of three of the seven WCAB commissioners.

The WCAB commissioner(s) may affirm the decision or grant reconsideration. Any party unhappy with the Board's decision may go to the Court of Appeal and finally to the California Supreme Court. Certain time limits may apply to seeking review by these courts. If reconsideration is not requested or if the WCAB and Appellate Courts do not change it, the decision of the workers' compensation judge is final and is legally binding to you, the employer, and the insurance company.

Can my case be settled "out of court"?

It is the practice of the Division of Workers' Compensation and the WCAB to encourage the voluntary settlement of cases and to reserve trial time for cases which cannot be voluntarily settled. A case may be settled at any stage in the litigation process. One common type of settlement is a "Compromise and Release". This means the parties settle their disputes by agreeing to payment of a lump sum of money in return for closing the case. Any benefit may be settled, except the right to Supplemental Job Displacement Benefit (SJDB). This may only be settled in special situations. It is the responsibility of the parties to attempt to negotiate in good faith to resolve cases without trial.

Once a compromise and release is approved, the WCAB loses power to make any further determinations on any of the issues settled. If you do not want your case closed and wish the protection of an official award, such as medical care, it may be possible to agree upon a Stipulation with Request for Award of Benefits, [DWC-WCAB form 10214 \(a\)](#). No settlement or stipulation is valid unless reviewed and approved by a workers' compensation judge or the WCAB.

For more information, call 1-800-736-7401 or visit the DWC Web site at www.dwc.ca.gov to find a local [I&A office](#). You may also download [I&A guides](#) and get information on workshops for injured workers.

The information contained in this is general in nature and is not intended as a substitute for legal advice. Changes in the law or the specific facts of your case may result in legal interpretations different than those presented here.



DWC's mission: Minimizing the impact of work-related injuries and illnesses. Helping solve disputes over workers' compensation benefits. Monitoring the administration of claims.

Call 1-800-736-7401 or visit the website www.dwc.ca.gov to find the Information & Assistance Unit near you.