

§371.1. Motions Concerning Hearing Dates and Calendaring.

(a) Continuances are disfavored, **and shall be granted for good cause only.**

(b) A motion for a continuance shall be made in writing and shall be made promptly once the reason necessitating a continuance is ascertained. The motion shall be directed to the Appeals Board. Service shall be in a manner as prescribed in Section 355(~~ed~~) and proof of such service meeting the requirements of Section 355(~~ef~~) shall be filed with the Appeals Board. **When the time for the hearing does not permit service as set forth above, service shall be made by an email or fax. The motion** ~~It~~ shall contain:

(1) The date(s) presently assigned for hearing and the date(s) to which continuance is sought;

(2) Facts in support of the motion **by declaration under penalty of perjury**; and

(3) An indication of whether the other parties to the appeal were contacted, **and if not, the circumstances excusing such attempt**, and if so, their position on the motion.

(c) Any opposition to a motion for continuance shall be filed with the Appeals Board ~~at any time prior to a ruling on~~ **within 5 calendar days of receipt of** the motion. Service shall be in a manner as prescribed in Section 355(~~ed~~) and proof of such service meeting the requirements of Section 355(~~ef~~) shall be filed with the Appeals Board. **When the time for the hearing does not permit service as set forth above, service shall be made by an email or fax. Depending on the proximity to the hearing date, the opposing party may be allowed to respond orally, a telephonic discussion held, and a telephonic ruling may be issued by the Board.**

(d) **The motion shall be ruled on promptly but in no event later than 10 days after the motion is filed. Failure of the Board to rule on the motion within 10 days or 24 hours before the hearing date, whichever is sooner, shall result in the motion being deemed granted. Where the continuance is stipulated to or joined by all the parties, the motion shall be ruled on within 5 calendar days of the filing of the motion or within 24 hours of the hearing date, whichever is sooner.**

(e) (1) **Each request for a continuance shall be considered on its own merits.** The motion shall be granted, **on an affirmative showing of good cause,** in the following circumstances:

**(A) The unavailability of an essential witness, party, counsel or representative because of**

**(1) An emergency arises, including, but not limited to, death, or illness, or other emergency or excusable circumstance** of a party, witness, or representative; or

**(B) The addition of a new party who, because of excusable circumstances, including but not limited to lack of notice of the case, has not had a reasonable opportunity to prepare for the hearing.**

(2) ~~Any other reason constituting good cause, if the motion is made no later than 15 days after service of the hearing notice.~~ **In ruling on a motion for a continuance, the Appeals Board shall consider all the facts and circumstances that are relevant. Circumstances that shall be considered when determining whether good cause exists to grant a continuance include,**

**but are not limited to:**

**(A) Whether there was any previous continuance, extension of time, or delay of hearing due to any party;**

**(B) The length of the continuance requested;**

**(C) The availability of alternative means to address the problem that gave rise to the motion or application for a continuance;**

**(D) The prejudice that parties or witnesses will suffer as a result of the continuance being granted or denied;**

**(E) Whether a party's counsel is engaged in another hearing, including administrative, civil or criminal;**

**(F) Whether all parties have stipulated to a continuance;**

**(G) Whether the interests of justice are best served by a continuance, by the hearing of the matter, or by imposing conditions on the continuance;**

**(H) Whether the employer has abated the alleged unsafe condition or conditions; and**

**(I) Any other fact or circumstance relevant to the fair determination of the motion.**

**(3) Notwithstanding other provisions of this section, the Appeals Board shall grant a continuance when the circumstances set forth in Section 376(c) are met.**

**(f)** The following circumstances shall not constitute good cause:

(1) Failure to obtain representation, unless a substitution is required through no fault of the party.

(2) Failure of another party to comply with a request for discovery, unless the Appeals Board orders a continuance of the hearing after a motion to compel discovery has been filed pursuant to Section 372.6. A continuance of the hearing may be ordered only if:

(A) a motion to compel discovery was filed at a time which would not have foreseeably delayed the hearing, or good cause for such later filing is shown, and

(B) the matters sought to be discovered are of sufficient importance to warrant a continuance of the hearing.

Note: At-hearing sanctions for discovery abuses are specified in Section 372.7 of these regulations.

**(g) (f)** Once a motion for continuance has been ruled on by the Appeals Board, a motion for continuance based on the same grounds shall not be entertained at the hearing **without changed circumstances.**

**(h) Where the parties represent that substantial resolution of the citations at issue in the matter has been reached by the parties, but not all material terms have been finalized, the Administrative Law Judge shall ordinarily within his/her discretion remove the matter from calendar for what the parties represent is likely a sufficient period to resolve all outstanding issues. Material terms shall include but not be limited to: means or time of abatement and/or resolution of Special Order terms.**