

# WORK COMP REPORTER

## Attorneys

Dean G. Pappas  
Jane L. Suchma  
Tommy L. Smith  
Jerry Portele  
Mary Markantonis

## Mgr. Adm. Hearings

Stoney N. Burke  
Renee Keeney

818 Town & Country Blvd.  
Suite 400  
Houston, TX 77024  
Tele: (713) 914-6200  
Fax: (713) 914-6201

Austin Office:  
P. O. Box 66655  
Austin, TX 78766  
Tele: (512) 374-0840  
Fax: (512) 374-0848

Web Site: [www.pappas-suchma.com](http://www.pappas-suchma.com)

## Begging for Benefit Review Conferences:

### TDI is making it hard to be heard

By Jerry Portele

Beginning October 1, 2010, be prepared jump through even more hoops to earn the privilege of being in front of the Division. With the advent of the new Rules governing requesting and setting Benefit Review Conferences, system participants will have to show the Division how much they worked to settle the disputes and supply all of their “pertinent information” **prior to requesting** a BRC. Yes, you read that correctly: **prior to requesting**.

Previously, the parties to a dispute were required to exchange “pertinent information” (defined as “all information relevant to the resolution of the disputed issues to be addressed at the BRC...”) 14 days prior to the BRC. The new Rules require that a party submitting a request for a BRC, on a new DWC-045, to attest that 1) they have made reasonable efforts to resolve the disputed issues prior to requesting a BRC and 2) that they have exchanged all pertinent information to the other party.

Continued on page 2



What that translates to is 1) you will have to contact the claimant or his/her representative to try and work out the disputed issues and document all of your efforts in doing so and 2) exchange your relevant information with them prior to putting pen to paper on the BRC request. The party receiving the BRC request (the opposing party) will then have to provide all of their pertinent information within 10 days of receiving the request.

The Division will then award a BRC if the request is deemed to be “complete”. A “complete” request is one that has all of the issues identified, has included all documentation (efforts to resolve and “pertinent information”), signed by the party requesting attesting as described above, and is sent to the opposing party and the Division. If the Division deems a request as “incomplete”, no BRC for you. You will then have to resubmit the request, this time with all of the bells and whistles that the Division is now requiring. Oh, and if you are getting the run around by the Division with repeated denials for a BRC, your only recourse is....yes, you guessed it, a Contested Case Hearing on the issue of the denial of your BRC.

According to the Division, nearly 50% of BRCs are either cancelled or rescheduled. Cancellations and reschedules are the result of any number of reasons, however, the Division is apparently tired of dealing with them.

So, the new Rules address this “problem” by instituting a deadline by which a party can request the cancellation or rescheduling of a BRC which will be granted out of hand. If a party wishes to cancel or reschedule, they must make a written request within 10 days after receiving notice of the BRC. Provided a party’s crystal ball is not working and they fail to see what in the future that could prevent their attendance at the BRC, that party can still get a cancellation or reschedule upon a showing of “good cause”.

It is unclear what the Division is trying to do with these new Rules other than limit hearings even more so. It would appear that they want the parties to informally settle their disputes prior to attending an informal settlement conference. Of course, that is exactly what the BRCs are supposed to be there for: informal settlement conferences. It is no secret that the number of hearings have dropped, and with these Rules, the Division appears willing to write themselves out of employment.

Regardless of their motives, Carriers will need to comply with these Rules in order to achieve quick resolution of their disputes, or risk being stuck in the cycle of bureaucracy that will inevitably lead to additional, needless cost.

Continued on page 3

That said, strategy cannot be sacrificed in the interest of expediency. You should not get into the habit of simply emptying your files to the claimant and the Division in order to guarantee that you get your hearing. Identification of key documents is crucial to this new process and you have to remain vigilant against giving away too much that could cause you to lose a defensive advantage. There are new channels through which to navigate, but you will handle these ever changing tides just like you have in the past. However, should you run into any difficulties or have questions that need answering, Dean, Jane, Tommy or Jerry are here to help you if you find yourself in a jam. Please do not hesitate to ask.



**Questions?**  
**Call us at**  
**713-914-6200**

## **New Weekly Benefit Rates**

Also beginning on October 1, 2010 and running through September 30, 2011, the new state Average Weekly Wage is \$766.34. Thus, the new maximum weekly benefit is \$766 and the new minimum is \$115.

Probably a sign of the times, but both of these amounts are less than they were last year

**“the achievements of an organization are the result of the combined efforts of each individual”**