

Change at the Commission: Pro Se Settlements, Redline Cases, and Motions to Withdraw - What You Need

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The Workers' Compensation Commission has adapted quickly to challenges faced by limitations on in-person appearances over the past two and a half years. At this point, they have settled into some generally accepted practices that appear to be permanent. There are several areas where it is helpful to note how these changes can assist in claims handling and case resolution.

PRO SE SETTLEMENTS

Settlement agreements with pro se employees take place the same way they did before the arrival of the pandemic. However, the process for moving from settlement agreement to settlement contract approval has changed substantially. Many changes benefit both employers, their insurers, and the unrepresented employee.

Contract Signatures

During the pandemic, the Commission migrated to the CompFile system to generate all settlement contracts. The important thing to note is that parties can now e-sign the settlement contract. While respondent's attorneys are familiar with e-signing settlement contracts in CompFile, the same is not necessarily true for unrepresented employees. If the employee can e-sign the settlement contract and return it in CompFile, there is no problem, but if the petitioner has a problem with e-sign, the alternative is to get a written signature on the contract. An easy way to expedite the process, even when a written signature has to be obtained, is for counsel and the employer to work together in providing the settlement contract to the employee by e-mail. The employee can stop by the premises, sign and date the contract, and the employer can simply e-mail the signed contract back. Absent that, a hard copy of the settlement contract has to be mailed to the employee for signature, with the hard copy to be returned by mail, adding delay to the process. It is helpful to have the employer involved in having the settlement contract signed on-premises, and it benefits the employee because it expedites approval.

Employee Affidavit

The pro se employee affidavit is new to CompFile and the Commission's latest rules. As with the settlement contract, the pro se petitioner has to sign an affidavit responding to the questions outlined by the Commission. Basically, the Commission wants to know: how the accident happened, the nature of treatment received, that the petitioner has reached maximum medical improvement, a description of benefits received, and the proposed pro se settlement. Like the settlement contract, the unrepresented employee must sign the affidavit. While the employee can receive the affidavit, sign it, scan it, and return it, it might be easier to transmit the testimony through the employer to expedite the process of getting the documents signed that need to be filed with the Commission.

Filing and Arbitrator Assignment

After the settlement contract and affidavit have been signed, they are filed with the Commission with pertinent medical records. The Commission then assigns the pro se case to one of the regional arbitrators. The arbitrator reviews the contract, affidavit, and medical records. If everything is in order and the arbitrator finds the settlement proposal reasonable, the arbitrator reaches out to set up a hearing. If the arbitrator has questions, they let the respondent's attorney know that concern via CompFile, a significant advantage over finding out at a docket. By asking questions before the hearing, it allows the respondent to address the arbitrator's questions to their satisfaction so that there will be no further delays in getting the settlement contract approved.

Remote Hearing for Contract Approval

The Commission does all hearings on pro se settlement contract approvals remotely on the WebEx platform. This practice substantially benefits employees in terms of not having to miss work to travel to a docket hearing. Likewise, it is beneficial to employers because it is not necessary to wait a month for the next docket cycle to have the hearing. Arbitrators are generally very flexible in their availability to have a hearing on a pro se settlement contract approval.

Accessing the WebEx platform is relatively straightforward. The Commission requires the pro se employee to have a camera and microphone activated during the hearing. This requirement has proven problematic for some employees who are not comfortable using technology. We have again found that partnering with the employer for the hearing on settlement contract approval is helpful because office personnel is generally willing and able to help the employee access the WebEx platform. Suppose it is absolutely impossible for an employee to use WebEx. In that case, the alternative is for the employee to appear in person at a docket call/hearing assigned to the case arbitrator; however, this can lead to frustrating delays and, if possible, should be avoided.

On balance, we have found that the changes in the pro se settlement contract approval process have benefited all interested parties, with increased efficiency in getting approval by the Commission.

REDLINE CASES

Historically, cases were considered "above the redline" after they had been on file for more than three years with the Commission. With CompFile, the Commission now uses the actual third-anniversary filing date to determine redline status. The first time the case appears on a docket after the third anniversary of filing, CompFile places the case above the redline. After that, if the petitioner's attorney believes there is good cause to continue the case, the attorney files the appropriate form with the Commission.

Once an arbitration continuance form has been filed with the Commission, it is incumbent on the respondent to object if there is not good cause shown for a continuance. This objection to continuance must then be filed with the Commission, which automatically generates a pretrial conference setting with the arbitrator. We recommend that the employer, insurer, and counsel discuss cases in advance of a docket call if an objection to a continuance request is going to be filed. If an objection is not filed, an arbitrator will automatically continue the matter when it appears on the docket. This process discourages the petitioner's attorneys from letting old cases linger on the docket with no meaningful activity. We have found that arbitrators are willing to discuss old cases in an effort to get them closed.

MOTIONS TO WITHDRAW BY PETITIONER'S COUNSEL

Petitioner's attorneys will occasionally move to withdraw as counsel. We frequently see these motions in cases where a disagreement has arisen, the petitioner has abandoned the claim, or the petitioner is no longer cooperating with their attorney. Because docket appearances take place on the WebEx platform, the petitioner's attorneys' withdrawal method has become complicated. In general, if a case is above the redline, the respondent would prefer to have the motion to withdraw allowed so that the case is eventually dismissed for want of prosecution and the matter concluded. Currently, the petitioner's attorneys have to notice the motion to withdraw for the applicable docket, serve the notice on the petitioner, obtain an in-person hearing date for the trial cycle for that docket, and give the petitioner notice again. This multi-step process can make it very difficult for the petitioner's attorneys to withdraw from a case. Petitioner's attorneys generally do not like cases to be dismissed for want of prosecution while they are still counsel of record, and arbitrators are generally reluctant to dismiss a case for want of prosecution if a motion to withdraw is pending. Due to the above-outlined complexity, there is a possibility that the method for the petitioner's attorneys to withdraw will be streamlined.

CONCLUSION

The Commission has done a commendable job adapting to frequent and, at times, near-insurmountable obstacles during the past two and a half years. They have done their best to make rules that provide

for the safety of everyone practicing before them while at the same time efficiently moving forward with claim resolution. As changes continue to promulgate, we look forward to partnering with you to get claims resolved as economically and efficiently as possible.