

SELECT WORKERS COMPENSATION ADMINISTRATIVE AND EVIDENTIARY ISSUES

UNIVERSITY OF WYOMING COLLEGE OF LAW
WORKERS COMPENSATION SYMPOSIA

FAIR AND IMPARTIAL HEARINGS

- Due Process requirements- notice, opportunity to be heard and impartial hearing
- Who hears the dispute?
- How to ensure the process is fair
- The “Rule of Necessity” and the role of voir dire- Board of Trustees v. Spiegel, 549 P.2d 1161 (Wyo. 1976)

WYOMING WORKERS COMPENSATION CONTESTED CASES

- Historical reliance on judicial system
- Transfer to administrative hearings –Office of Independent Hearing Officers created as part of 1986 recodification. 27-14-602(a).
- Office of Administrative Hearings created in 1992 as a separate operating agency to hear not only workers compensations issues but also drivers licenses and hearings arising from other state agencies upon request
- Wyoming Workers Compensation Medical Commission created in 1993 to hear medically contested issues and to conduct rulemaking on medical issues including compensability of medical procedures for injuries

OFFICE OF ADMINSTRATIVE HEARINGS

- Conducts hearings in multiple areas including relating to coverage and compensability of workers compensation claims
- 6 full-time hearing officers; 3 part-time contractors

WYOMING WORKERS COMPENSATION MEDICAL COMMISSION

- Not an independent agency, part of the Wyoming Workers Safety and Compensation Division
- Membership includes medical doctors, psychologists, and a chiropractor
- Hears medically contested cases eg. whether treatment medically necessary or related to injury. Also hears all contested cases for permanent total disability claims.
- Generally 4-5 hearings a month, up 18 months from referral to hearing.
- Possibility for voir dire of panel members

DISCOVERY

- 16-3-107(g) mandates that in all contested cases the parties have the right to conduct discovery as provided under the Wyoming Rules of Civil Procedure
- Discovery on the agency which is a party to the contested case must be initially sought by written application.
- No member of “presiding agency” can be compelled to testify or give a deposition.
- Orders to compel discovery initially through presiding officer, if officer refuses or fails to order discovery district court has authority to take action

CHALLENGES TO RULES, STATUTES AND JURISDICTION

- Authority of Administrative Agencies limited to that granted by the Legislature.
- Agency rules have the force and effect of law; binding on the agency and in the administrative hearings
- No authority to hear or determine whether rules are in accordance with statute or Constitutional issues which arise as part of contested cases
- Must bring separate action in Court to obtain relief if aggrieved

POTENTIAL TRAPS FOR THE UNWARY

- Must exhaust administrative remedies. This requires that the issue be raised before the administrative agency and hearing body.
- Requirement of standing. Must have a real world stake in the decision, mere hypothetical harm or theoretical interest insufficient
- Attempt to combine action for review for results of contested case with declaratory judgment action
- .State ex rel. Wyoming Department of Workforce Services v. Clements – challenge to agency rule as contrary to statute.

MISCELLEANEOUS ISSUES

- Shifting of the burden of proof in odd-lot cases
- How to obtain and use medical evidence
- Getting paid and financing the case