

876—4.19(86) Prehearing procedure.

4.19(1) Prehearing procedure in contested cases shall be administered in accordance with these rules and the orders issued by the workers' compensation commissioner or a deputy workers' compensation commissioner.

4.19(2) The parties have a duty to exercise reasonable diligence to bring the contested case to hearing at the earliest reasonable opportunity.

4.19(3) The following time limits govern prehearing procedure, completion of discovery and case management in contested cases, except proceedings under rules 876—4.46(17A,85,86) and 876—4.48(17A,85,86) and except when otherwise ordered by the workers' compensation commissioner or a deputy workers' compensation commissioner.

a. Within 120 days following filing of a petition, the counsel of record for all parties and all self-represented parties shall request a hearing by using WCES. In a case for which a request for waiver of the mandatory use of WCES has been granted, counsel of record for all parties and all self-represented parties shall jointly contact the hearing administrator by telephone at (515)725-3891 between the hours of 8:30 a.m. and 11 a.m. central time, Monday through Friday, excluding holidays, or by email at dwc.hearing@iwd.state.ia.us to schedule a hearing date, place and time. Claimant has primary responsibility for initiating the contact. The parties shall identify the case by file number and the names of the parties and request that the hearing be set at a specific date, place and time that is shown to be available on the hearing scheduler published on the division's website. Primary and backup times must be requested for hearings in venues other than Des Moines. When the contact is made by email, a copy of the request shall be sent to each opposing party, and the hearing administrator will reply indicating whether or not the case is assigned at the time requested. If a request is denied, the parties shall continue to contact the hearing administrator by telephone or email until the case is scheduled or a prehearing conference is ordered. A joint scheduling contact may be initiated by any party at any other time agreeable to the parties. If more than 120 days have elapsed since the petition was filed, any party may move to schedule the hearing at a particular date, time and place that is available and the hearing administrator may assign the case for hearing at any date, time and place. The hearing date shall be within 12 months following the date the petition was filed or as soon thereafter as reasonably practicable as determined by the hearing administrator. If the parties fail to schedule the hearing with the hearing administrator within nine months of the filing of the original notice and petition, the case will be scheduled at the discretion of the hearing administrator without prior notice to the parties.

b. A party who intends to introduce evidence from an expert witness, including a rebuttal expert witness, shall certify to all other parties the expert's name, subject matter of expertise, qualifications, and a summary of the expert's opinions within the following time period: (1) claimant—120 days before hearing; (2) employer/second injury fund of Iowa—90 days before hearing; (3) rebuttal—60 days before hearing. Certification is not required to introduce evidence from an examining physician pursuant to Iowa Code section 85.39, a treating physician, or a vocational consultant if the expert witness is known by all parties to have personally provided services to the claimant and the witness's reports are served on opposing parties prior to the date when certification is required. The parties may alter these times by written agreement.

c. Discovery responses must be supplemented as required in Iowa Rules of Civil Procedure 1.503(4) and 1.508(3). Discovery responses shall be supplemented within 20 days after a party requests supplementation. All discovery responses, depositions, and reports from independent medical examinations shall be completed and served on opposing counsel and self-represented parties at least 30 days before hearing. The parties may alter these times by written agreement.

d. At least 30 days before hearing, counsel of record and self-represented parties shall serve a witness and an exhibit list on all opposing counsel and self-represented parties and exchange all intended exhibits that were not previously required to be served. The witness list shall name all persons, except the claimant, who will be called to testify at the hearing or who will be deposed prior to the hearing in lieu of testifying at the hearing. The witness and exhibit lists are not filed in WCES. If the exhibit list does not contain actual exhibits, the exhibit list must specifically identify each exhibit in a way that permits the opposing party to recognize the exhibit. The description for a document should include

the document's date, number of pages and author or source. Blanket references such as "all medical records," "personnel file" or "records produced during discovery" do not specifically identify an exhibit. A party may serve a copy of the actual intended exhibits in lieu of an exhibit list. At least 14 days before hearing, counsel of record and self-represented parties shall file all proposed exhibits in WCES, or if a party has been granted a waiver of the mandatory use of WCES, the party shall file the proposed exhibits with the division of workers' compensation. At least seven days before the hearing, counsel of record and self-represented parties shall file all written objections and motions to exclude evidence with the division of workers' compensation and serve a copy on all other parties. Objections to exhibits are waived if they are not filed at least seven days before the hearing. Evidentiary depositions pursuant to Iowa Code section 86.18(2) may be taken at any time before the hearing in lieu of the witness testifying at the hearing.

e. If evidence is offered at hearing that was not disclosed in the time and manner required by these rules, or as altered by order of the workers' compensation commissioner or a deputy workers' compensation commissioner or by a written agreement by the parties, the evidence will be excluded if the objecting party shows that receipt of the evidence would be unfairly prejudicial. Sanctions may be imposed pursuant to rule 876—4.36(86) in addition to or in lieu of exclusion if exclusion is not an effective remedy for the prejudice. If a party offers an exhibit or document in paper form which is accepted by the workers' compensation commissioner or a deputy workers' compensation commissioner, the party shall have five working days to submit an electronic copy of the document by using WCES.

f. At least 14 days before the hearing, counsel of record and self-represented parties shall prepare and file a joint hearing report that defines the claims, defenses, and issues that are to be submitted to the deputy workers' compensation commissioner who presides at the hearing. The hearing report shall be filed in portable document format (pdf) or as an image-on-text document (searchable pdf) as a proposed hearing report. The hearing report shall be signed by all counsel of record and self-represented parties. The approved hearing report order shall be signed by the deputy workers' compensation commissioner and filed in WCES.

g. If a party is unable to meet a nonjurisdictional filing deadline because of a technical failure in WCES, the party must file the document using the earliest available electronic or nonelectronic means. The filing will be accepted by the division of workers' compensation as timely unless the workers' compensation commissioner or a deputy workers' compensation commissioner determines otherwise.

h. Jurisdictional deadlines, including but not limited to any applicable statute of limitations, cannot be extended. It is each party's responsibility to ensure that a document is filed timely to comply with jurisdictional deadlines. A technical failure, including a failure of WCES, will not excuse a failure to comply with a jurisdictional deadline.

i. A party is not excused from missing a jurisdictional or nonjurisdictional filing deadline because of problems attributable to the party.

This rule is intended to implement Iowa Code chapter 86.

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