

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) Counsel of record and pro se litigants have a duty to exercise reasonable diligence to bring the contested case to hearing at the earliest reasonable opportunity.

4.19(3) For contested cases that were filed on or after July 1, 2004, 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 pro se litigants shall request a hearing by using WCES when this function is available to the public in WCES. In a case for which permission has been granted to be excused from using WCES, counsel of record for all parties and all pro se litigants 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@jwd.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, 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 pro se litigants 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 pro se litigants shall serve a witness and an exhibit list on all opposing counsel and pro se litigants 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. Exhibits that were specifically identified when served pursuant to rule 876—4.17(17A,85,86) or in a discovery response may be collectively identified by describing the service such as “exhibits described in the notices served pursuant to rule 876—4.17(17A,85,86) on May 7, June 11 and July 9, 2004.” 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 pro se litigants shall file proposed exhibits in WCES or, if the counsel of record and pro se litigants are excused from using WCES, shall file the proposed exhibits with the division of workers’ compensation. Counsel of record and pro se litigants shall file all written objections and motions to exclude evidence at least seven days before the hearing. 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, 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 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 pro se litigants shall prepare and file a joint hearing report that defines the claims, defenses, and issues that are to be submitted to the deputy commissioner who presides at the hearing. The hearing report shall be filed in Microsoft Word format as a proposed hearing report. After the hearing report is finalized at the hearing, the deputy commissioner or a party shall save and file the completed hearing report as a pdf or scanned document in WCES. The hearing report shall be signed by all counsel of record and pro se litigants and submitted to the deputy.

g. If a filer is unable to meet a nonjurisdictional filing deadline because of a technical failure in WCES, the filer must file the document using the earliest available electronic or nonelectronic means. The filing of the document will be accepted by the division of workers’ compensation as timely unless the commissioner or deputy commissioner determines that the untimely filing of the document should not be excused.

h. Jurisdictional deadlines, including but not limited to any applicable statute of limitations, cannot be extended. It is the filer’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 filer is not excused from missing a jurisdictional or nonjurisdictional filing deadline because of problems attributable to the filer (such as telephone line problems, problems with the filer’s Internet service provider, hardware problems, software problems, etc.).

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