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Litigation Process Under The Florida Workers' Compensation Law

An injured worker covered under the Florida workers' compensation law generally cannot sue the employer or its workers' compensation insurance carrier (employer/carrier) for negligence, but instead is limited to workers' compensation benefits. If the claimant (injured worker) believes he is entitled to workers' compensation benefits that the employer/carrier has not provided, he may file with the Florida Division of Administrative Hearings a document called Petition for Benefits asking for the specific benefits that are not being provided. The matter is then set for a mediation. If all issues are not resolved at the mediation, the judge of compensation claims (workers' compensation judge) schedules a trial-type hearing (sometimes called a final hearing) to decide the issues. The following is an overview of the process the claimant must follow to obtain workers' compensation benefits that the employer/carrier has failed to provide.

The Petition for Benefits

The Petition for Benefits asks for the workers' compensation benefits that the claimant believes he is entitled to that are not being provided by the employer/carrier. The Petition is filed with the Florida Division of Administrative Hearings in Tallahassee and then sent to the office of the judge of compensation claims in the county where the accident occurred. The judge's office first schedules a mediation and then, if the matter is not resolved at mediation, schedules a final hearing.

Mediation

A mediation is required to be held within one hundred and thirty (130) days of filing of the Petition for Benefits. A mediation is an informal meeting attended by the claimant, a representative of the employer/carrier, and each party's lawyers. A neutral mediator, usually a lawyer who has been trained in mediation, is present to facilitate discussions between the parties with the hope that the parties may be able to resolve the disputes once they get together and discuss them. The mediator may be a lawyer in private law practice or may be a lawyer employed as a mediator by the Florida

Division of Workers' Compensation. The mediation may be held at the office of the state mediator or at some other place as agreed to by the parties. No evidence is taken, no testimony is taken, and there is no time limit as to how long the mediation lasts. The parties may discuss why each believes its position is correct and the mediator may attempt to have each party better understand the position of the other party. The mediator does not have any power to decide the dispute or force either party to agree to anything.

If the parties are not able to resolve all the disputes about the benefits claimed in the Petition for Benefits at mediation, the mediator sends a report to the judge of compensation claims stating only that the parties attended mediation but were unable to resolve all the issues. The judge is not allowed to have any other information about what went on at mediation. Upon receiving the report stating that all of the issues were not resolved at mediation, the judge schedules the final hearing.

Final Hearing

The final hearing must occur within 210 days of the filing of the Petition for Benefits. The judge of compensation claims sets the time and date after receiving the mediation report showing that all the issues were not resolved at mediation. The final hearing is run like a trial without a jury and is held in the workers' compensation district in which the accident occurred. The judge hears evidence and witnesses from the claimant and then from the employer/carrier. Within thirty (30) days after the final hearing, the judge of compensation claims issues a written decision as to whether the claimant is entitled to the benefits claimed.

For accidents that occurred on or after October 1, 2003, the losing party must pay certain case costs of the winning party. For accidents before October 1, 2003, the employee claimant does not have to pay any costs of the employer/carrier.

Within thirty (30) days after the final hearing order, either party may appeal the judge's decision to a three-judge panel of the Florida First District Court of Appeal in Tallahassee. However, an appeal is not a second chance. The appellate court will change the judge's decision only if the judge either misapplied the law or made factual findings that were not supported by the evidence at the final hearing. Therefore, only a very small percentage of final hearing orders are changed on appeal. If an appeal is taken, the decision from the appellate court usually takes at least six months.