**90-351 WORKERS' COMPENSATION BOARD**

#### Chapter 12: FORMAL HEARINGS

**§ 1. Filings**

1. Petitions and other notifications of disputes shall be filed with the Board’s Central Office in Augusta, Maine.

 2. Except as specifically provided in the *Maine Workers’ Compensation Act of 1992* or in these rules, any party opposing a motion or wishing to respond to another party’s submission must file a response not later than 21 days after the filing of the motion.

**§ 2. Medical Bills**

 Itemized bills, liens, co-pays, and out of pocket expenses must be filed with petitions for payment of medical and related expenses. This rule does not prohibit a party from seeking a prospective order for payment of medical treatment if payment for that treatment or treatments, or related expenses, has been denied by the opposing party.

 Petitions for payment of medical and related expenses can be amended up to the date of the last scheduled hearing.

 Payment of medical and related expenses must be made within 10 days after a decree is issued or the date the information required in Chapter 5 is received, whichever is later.

**§ 3. Dismissals**

 1. Parties shall be prepared and ready for hearing. If the petitioning party is unprepared or fails to appear, the Administrative Law Judge shall dismiss the matter unless good cause is shown within 30 days.

 2. The Board, by its own motion, after notice to the parties and in the absence of a showing of good cause to the contrary, may dismiss an action for want of prosecution at any time more than two years after the last docket entry showing any action taken by the petitioning party. That dismissal operates as an adjudication upon the merits.

 3. Unless otherwise indicated, the dismissal of any petition is without prejudice.

**§ 4. Interpreters**

 An Administrative Law Judge may appoint an interpreter, including an interpreter for the deaf. Interpreters must be appropriately sworn.

**§ 5. Continuances**

 1. A request for a continuance must:

A. Be in writing and can be submitted by mail, fax, or other form of electronic transfer;

 B. Be filed no later than 7 days before the hearing or conference;

 C. Indicate the reason(s) for the request;

 D. Indicate whether there is any objection to the request;

 E. Indicate whether the employee is working;

 F. Indicate whether weekly benefits are being paid; and,

 G. Indicate whether medical treatment is being denied.

2. Parties should not assume that a continuance has been granted. A continuance requires the Administrative Law Judge’s approval. An Administrative Law Judge shall deny a request for continuance that does not comply with the requirements in subsection 1, absent a showing of good cause.

 3. If a party who has already requested one continuance requests an additional continuance for the same proceeding, that party must affirm that the party’s client approves the request.

**§ 6. Conferences**

 1. When one or more parties is unrepresented, the Board shall schedule a conference before a hearing is set. The parties are not required to fill out the Joint Scheduling Memo as provided in §9 before the conference. The Joint Scheduling Memo may be filled out at the conference with the Administrative Law Judge.

 2. Except as provided in this section, when all parties are represented, the Board will not schedule a conference. The parties shall complete a Joint Scheduling Memo as provided in §9.

 3. The Administrative Law Judge may set a case for conference if one or more parties requests a conference or at the Administrative Law Judge’s initiative. If the petitioning party objects to the request, the Administrative Law Judge shall consider the impact of further delay on the petitioning party.

**§ 7.** *[Reserved]*

**§ 8. Exchange of Information; Discovery**

 1. The parties shall complete the exchange of information form found in Appendix II, and provide it to the opposing party or parties no later than 30 days after mediation or the filing of a petition, whichever is later, and then on a continuing basis. The information must be sworn to by the party. If a party is represented by counsel, the signature of counsel constitutes that party’s representation that after due inquiry, that party believes the information to be accurate and complete. If a party, in good faith, needs relevant information not covered in the questions contained in the exchange of information form, that party may ask up to three additional, non-complex questions of reasonable length, subject to objection by the opposing party or parties and review by the Administrative Law Judge. Subject to the limitations set forth in this rule, other information may be exchanged by agreement.

The employee shall provide to the employer any report generated by a physician, surgeon, or chiropractor who attended an examination under 39-A M.R.S.A. §207.

 2. Discovery motions must be filed in the appropriate regional office. Objections to discovery motions must be filed within 21 days of their receipt. The Administrative Law Judge may decide the motion without a hearing or conference, but may schedule a hearing or conference, at the judge’s discretion or upon request of one or more parties.

 3. Witnesses may only be deposed by agreement of the parties or by order of the Administrative Law Judge pursuant to subsection 2. Unrepresented employees may not be deposed.

 4. Except as provided in section 10, depositions of experts must be scheduled before the testimonial hearing and completed no later than 45 days after the hearing. Additional time may be allowed upon motion to the Administrative Law Judge. At the hearing, the parties shall provide the Administrative Law Judge with the dates of depositions that have been scheduled but are not yet completed.

**§ 9. Joint Scheduling Memorandum**

 1. The parties or their representatives shall confer and complete fully and accurately a Joint Scheduling Memorandum. The petitioning party shall file the Joint Scheduling Memo with the appropriate regional office no later than 45 days after mediation or the filing of a petition, whichever is later. If the Joint Scheduling Memo is not received in a timely fashion, the Administrative Law Judge may dismiss the pending petitions if the Joint Scheduling Memo is not filed within 21 days after notice from the Board that the petitions will be dismissed. An objection to the Joint Scheduling Memo must be filed no later than 21 days after its submission.

 2. A hearing will not be scheduled on a petition until the parties file a Joint Scheduling Memo as provided in this section.

 3. The Administrative Law Judge may deem waived legal issues not raised in the Joint Scheduling Memo.

 4. A Joint Scheduling Memo template is included in Appendix I.

**§ 10. Independent Medical Examination**

 1. **Requests**

 A. (1) If a §312 examination has been requested prior to the filing of the Joint Scheduling Memo, the parties shall state on the memo the date of the request, whether the request has been approved by the Board’s Office of Medical and Rehabilitation Services, and, if approved, the name of the examiner and the date of the examination.

 (2) If a §207 examination has been requested prior to the filing of the Joint Scheduling Memo, the parties shall state on the memo the date of the request, the name of the examiner, and the date of the examination.

 B. (1) If a §312 examination has not been requested prior to the filing of the Joint Scheduling Memo, a request must be made no later than 30 days from the date of filing.

 (2) If a §207 examination has not been requested prior to the filing of the Joint Scheduling Memo, a request must be made no later than 30 days from the date of filing.

 C. A request for an extension of the 30-day period must be made in writing to the Administrative Law Judge no later than 30 days after a party receives significant medical evidence. The 30-day period may be extended by order of the Administrative Law Judge if the moving party demonstrates good cause. Good cause includes, but is not limited to, generation of significant medical evidence since the filing of the Joint Scheduling Memo. Good cause does not include failure to have exchanged relevant medical information in a timely manner pursuant to Board Rule Chapter 4, section 3.

 2. **Depositions**

 An independent medical examiner may be deposed only by agreement of the parties or order of the Administrative Law Judge. If the Administrative Law Judge orders a deposition, it must be scheduled within 45 days after entry of the order permitting the deposition.

**§ 11. Work Search, Labor Market, and Surveillance Evidence**

The following rules apply to cases involving work search, labor market or surveillance evidence.

 1. No later than 30 days after mediation or the filing of a petition, whichever is later, the employee shall provide the employer with the work search or labor market evidence that the employee intends to introduce into evidence. It is recommended the employee use a standardized Workers’ Compensation Board work search log and shall include, at a minimum, names of prospective employers, dates of application, responses to the application, if any, and whether the application was submitted in person, by mail, electronically, or by some other means.

 2. No later than 21 days after receipt of information provided pursuant to subsection 1, the employer shall provide the employee with the labor market evidence that the employer intends to introduce into evidence.

 3. Work search and labor market evidence developed or obtained after the deadlines set forth in subsections 1 and 2 of this section shall be exchanged no later than 7 days before the hearing.

 4. Except as provided in subsection 5 of this section, regardless of whether the employer intends to offer the surveillance information into evidence, the employer shall provide the surveillance information to the employee as follows:

 A. The employer shall provide all surveillance information to the employee developed since the date of injury, or since the last decree, whichever period is shorter, in connection with the claim and provide an affirmation that all surveillance information has been provided. The employer shall provide the surveillance to the employee within 14 days after the employer receives the information from the employee under subsection 8(1) of this chapter or Appendix II, and in no event later than 7 days before the hearing.

 B. For surveillance information obtained by the employer before the submission of the Joint Scheduling Memo, the employer shall provide that information to the employee within 14 days after the employer receives information from the employee under subsection 8(1) of this chapter or Appendix II.

 C. For surveillance information obtained by the employer after the submission of the Joint Scheduling Memo, the employer shall provide surveillance information to the employee no later than 14 days after the employer receives that information, and, in no event, later than 7 days before the hearing.

 5. The employer may file a motion to stay production of surveillance information with the Executive Director prior to the production deadlines established in subsection 3 of this section. The motion must include all surveillance information. The employer shall file a cover letter with the motion, a copy of which the employer shall timely provide to the employee and the Administrative Law Judge. The employer is not required to provide a copy of the motion or the surveillance information to the employee or the Administrative Law Judge. The Executive Director, or the Executive Director’s designee, may, if there are significant inconsistencies with information provided by the employee pursuant to these Rules, allow the employer to defer providing the surveillance information to the employee until immediately after the employee’s sworn testimony. The Executive Director, or the Executive Director’s designee, shall act upon motions filed under this subsection no later than 14 days after their receipt.

**§ 12. Exhibits**

 1. The parties may mark exhibits submitted into the evidentiary record by number and submission date. Absent agreement of the parties to the contrary, the Administrative Law Judge may exclude an exhibit offered at hearing that was not exchanged by the parties at least 7 days before the final hearing in the matter.

 2. The parties may jointly submit relevant medical records and reports as a single, indexed, and tabbed exhibit. The reports and records must be in chronological order and grouped together by health care provider, unless otherwise specified. Exhibits to which there is an objection must be marked separately. The Administrative Law Judge may exclude an exhibit that does not comply with this subsection.

**§ 13. Formal Hearings**

 1. The Board shall schedule a case for a formal hearing as soon as practicable for the duration identified in the Joint Scheduling Memo or otherwise requested. If the parties do not indicate a duration, the case will be set for 60 minutes for receipt of all testimony and evidence. The Administrative Law Judge, at the judge’s discretion, may adjust the length of a hearing or strictly enforce the time allotted.

 2. An Administrative Law Judge may allow an additional hearing if necessary. When determining whether to schedule an additional hearing, the Administrative Law Judge shall consider whether weekly benefits are being paid. If weekly benefits are not being paid, the Administrative Law Judge may order payment of benefits without prejudice if an additional hearing is ordered.

**§ 14. Position Papers**

The Administrative Law Judge shall establish a due date for position papers. A request for additional time to file position papers must be made in writing and must indicate whether the opposing party objects to the request. In lieu of position papers, the parties may request oral argument at the close of the final hearing.

**§ 15. Proposed Findings of Fact**

Proposed findings of fact and conclusions of law shall be filed no later than 15 days after the filing of a motion for additional findings filed pursuant to 39-A M.R.S.A. §318. If the moving party fails to timely file proposed findings and conclusions, the Administrative Law Judge may dismiss the motion.

**§ 16. Alternative Procedures or Timeframes**

Upon notice to the parties and for good cause, an Administrative Law Judge may alter the requirements and timeframes in this chapter. In determining whether there is good cause to order alternative procedures or time frames, the Administrative Law Judge may consider the relative efficiency of alternative procedures, fairness to the parties, and the needs of unrepresented parties.

**§ 17. Sanctions**

An Administrative Law Judge may impose sanctions on a party who violates these rules, following reasonable opportunity to be heard. The Administrative Law Judge may dismiss pending petitions; grant relief requested in the petitions; exclude evidence; award payment of attorney’s fees; or order other temporary relief, including payment or discontinuance of weekly benefits without prejudice until the violating party complies or a final decision is issued.

**§ 18. Lump Sum Settlements; Record of Proceedings**

 1. The Board shall record hearings on proposed settlements pursuant to 39-A M.R.S.A. §352 and include those recordings in the official record of the case.

 2. A. An Administrative Law Judge may conduct hearings and issue decisions on lump sum settlements pursuant to 39-A M.R.S.A. §352.

 B. When making findings pursuant to 39-A M.R.S.A. §352 (3)(A) relating to the release of an employer’s liability for future medical expenses, an Administrative Law Judge shall determine expected future medical costs related to the injury.

**§ 19. Disposition of Evidence**

 1. If a decision of an Administrative Law Judge, the Appellate Division, or the Board has not been timely appealed, all evidence submitted by the parties and transcripts of proceedings in the matter may be destroyed by the Board after 60 days from the expiration of the time for appeal set forth in 39-A M.R.S.A. §321-B or §322. Prior to that time, parties may file a written request for return of evidence or transcripts and either enclose a postage pre-paid envelope or schedule a time to pick up the file materials. Evidence and transcripts in cases that are appealed to the Law Court may be destroyed no earlier than 60 days after the Law Court denies appellate review or issues an opinion. This rule must be executed in accordance with 5 M.R.S.A. §95(9).

 2. The Board shall clearly note the anticipated time of file destruction on all decrees, findings of fact and conclusions of law, and Appellate Division decisions issued after the effective date of this rule.

 3. The Board shall preserve audio tapes and electronic recordings of hearings for 6 years from the date on which the testimony was presented, except that the Board shall preserve audio tapes and electronic recordings of lump sum settlement conferences for 10 years from the date the lump sum settlement was approved.

**§ 20. Title of “Administrative Law Judge”**

Pursuant to PL 2015 c. 297, the title of “Hearing Officer” was changed to “Administrative Law Judge.” The Board’s amendments to its rules concerning these titles are intended to adopt this change.

Appendix I: Joint Scheduling Memorandum

Appendix II: Exchange of Information Form

**Chapter 12**

**Appendix I**

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 Administrative Law Judge

**STATE OF MAINE**

**WORKERS’ COMPENSATION BOARD**

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**JOINT SCHEDULING MEMORANDUM**

1. Name of each witness to be called to testify and the amount of time required for each witness’ testimony:

 Employee: Employer:

2. Total amount of time required for hearing: \_\_\_\_\_\_\_\_\_\_\_\_\_.

3. Relief requested, including nature and period of incapacity:

4. Issues, including affirmative defenses:

5. Section 312 examination requested?: Yes No When:

 With whom:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

6. Section 207 examination requested?: Yes No When:

 With whom:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I represent that I have conferred with opposing parties or their representatives in preparation of this Joint Scheduling Memo and they agree with the contents except as follows:

I affirm that the parties have exchanged information as provided in this chapter.

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Petitioner or Petitioner’s Representative

**Chapter 12**

**APPENDIX II**

**EXCHANGE OF INFORMATION FORM**

Information the Employee Must Supply to the Employer

(Please respond to all questions that are relevant to the pending proceeding.)

Write on separate sheets of paper the following information in your own words. Make your answers as complete as you can and send them to the employer/insurance carrier.

1. Your full name, age, and level of education/training.

2. Describe the injury: the nature of the injury, how and when it happened, when you realized that the injury resulted from your work, who at work you told about the injury, and when you told that person.

3. Have you worked since the injury? If so, when, where, and how much did you earn? Have you received unemployment benefits since the injury? If so, state the period of time you received benefits, state whether the benefits are ongoing, and state how much is or was the weekly amount received.

4. What medical treatment have you received as a result of your work injury? Include the names and addresses of doctors, hospitals, and other health care providers you have seen because of this injury.

5. Have you ever injured the same body part before?

 Do you have any pre-existing medical conditions related to that body part? If so, describe any medical treatment you have received for those injuries or conditions and include the names of doctors, hospitals, and other health care providers that treated you for those injuries or conditions.

6. Please indicate with a yes or no whether your employer pays for all or part of any fringe benefits such as health, life, disability, dental insurance, or contributions to a 401(k) or pension plan.

7. Please state whether you are asking to be reinstated to the job you were working in when you were injured or to another job for the same employer.

8. List all the jobs you have had over the past 10 years, when you had each job, and what your duties were in each job.

9. List all of your witnesses, other than yourself and your medical providers, and give a short summary of their testimony.

10. Have you suffered any other injuries since you were injured at work? If you have, describe when and how each injury happened and provide the names and addresses of doctors, hospitals, and any other health care providers that you saw because of those injuries.

11. Please provide a description of your current daily activities.

12. Please tell whether you have engaged in any sports, recreational, or home maintenance activities after your date of injury.

13. Are there activities you can no longer do as a result of your injury? If so, describe those activities.

14. Please state whether you have received Old Age Social Security benefits since the date of your injury.

**EXCHANGE OF INFORMATION FORM**

**Information Employer/Insurance Carrier**

**Must Supply to the Employee**

(Please respond to all questions that are

relevant to the pending proceeding.)

1. If the employee has requested reinstatement, please list all positions available from the date of that request through the present that are within the employee’s limitations and within a reasonable distance from the employee’s residence. State whether you have offered the employee his or her old position back or whether you have offered reinstatement to another position. If so, describe the position.

2. Supply all relevant wage information including a wage statement and complete fringe benefits information. State what the employee’s average weekly wage was at the time of the injury and supply wage statements for comparable employees if the petitioning employee was employed by you for less than six months.

3. Except as provided in section 11, subsections 3 and 4 of this chapter, state whether the employer has any evidence that the employee’s reports of limitations or other history given to any person in this case are inaccurate and state the basis for that contention. Provide relevant documentary and written information.

4. Supply a copy of the employee’s personnel file consistent with *Harding v. Walmart Stores, Inc*., 2001 ME 13, 765 A.2d 73.

5. State the legal name of your business, the number of employees it employs, and the nature of your operation.

6. List your witnesses and give a summary of their testimony.

7. Give the name(s) and the position(s) of the person(s) supplying this information.

STATUTORY AUTHORITY: 39-A M.R.S. §§ 101 *et seq.*

EFFECTIVE DATE:

 January 15, 1993 (EMERGENCY)

EFFECTIVE DATE OF PERMANENT RULE:

 April 7, 1993

AMENDED:

 November 27, 1994

EFFECTIVE DATE (ELECTRONIC CONVERSION):

 April 28, 1996

NON-SUBSTANTIVE CORRECTIONS:

 September 12 and October 9, 1996 - header added, “Sec.” changed to §, spelling corrections, minor formatting.

AMENDED:

 October 6, 1997 - Section 19.

 May 23, 1999 - changes to Sections 4, 11, 14, Joint Scheduling Memorandum.

NON-SUBSTANTIVE CORRECTIONS:

 October 26, 1999 - minor punctuation and formatting.

AMENDED:

 November 20, 1999 - Sections 8 and 9(2).

 September 29, 2002 - Section 1, filing 2002-359

NON-SUBSTANTIVE CORRECTIONS:

 January 9, 2003 - character spacing, capitalization only.

AMENDED:

 December 26, 2007 – Sec. 6(2)(B) added, filing 2007-531

 October 11, 2009 – Section 1, filing 2009-536

REPEALED AND REPLACED:

 August 18, 2014 – filing 2014-178

AMENDED:

 October 1, 2015 – Section 18 and Appendix III - filing 2015-174

 September 1, 2018 – filing 2018-131