

TAKING THAT FIRST HEARING AT THE INDUSTRIAL COMMISSION

Twenty-four years ago I had, for me, the ultimate white knuckle experience. My boss walked into my office one afternoon in the fall, handed me a pile of files, and told me I was going to be handling my first set of hearings at the Industrial Commission in Cleveland. Now, they were Permanent Partial Disability hearings, the easiest issue we generally fight about, but all he said was go watch a few and I'd catch on. Sadly, for me, by the time I ran across Public Square to the Cleveland Office of the Industrial Commission, the last hearings for the day were done, and I had no idea what to expect. I survived, barely, but I want you to avoid that experience. Whether you are a new admittee, or a seasoned litigator, let me give you the basics.

First, the Industrial Commission of Ohio is our adjudicatory agency for Workers' Compensation Claims. The hearing process is set out in Revised Code 4123.511. It's not like appearing in a court room. We don't have time for the Ohio Rules of Evidence and Civil Procedure. At its twelve offices around Ohio, the Industrial Commission needs to hold hundreds of thousands of hearings in a given year.

Hearings are very informal. They are held before Hearing Officers, attorneys, with training in Workers' Compensation Law and medical knowledge. They are addressed as Mr. or Ms., not Your Honor. And they won't be wearing robes or sitting on a bench. They sit in hearing rooms, usually in a T-Shape configuration of tables, at the head of the T. Where you sit literally can vary hearing room to hearing room. If you're not sure, let the other side get in the room first. It's sometimes dictated by local custom or security concerns.

Hearings are noticed in one hour clusters. Everyone whose hearing could be heard between say 9 & 10 are told to report at 9 AM. I tell my clients to meet me at the Commission lobby usually 15 minutes before that hour, so I can get them ready. You will need to clear security (although you can get a trusted visitor ID to speed up the process) and sign in. They sign in at the front counter typically, you sign in on a sign in sheet outside the hearing room. Don't be fooled by the printed order. While it will tell you where, generally, you are supposed to be on the hour, it's not a hard and fast rule. I tell clients in Toledo that being first, second, third, whichever, on the printed order and \$1.50 will get them a cup of coffee or the local paper on the way out.

Your Notice of Hearing is crucial. It should show the parties, the proper representatives next to it, and give you the most crucial piece of information, how long should the hearing last. Now, the time given (e.g. six minutes for a Permanent Partial Disability) is not how long you have to argue. It is how long all parties have to enter the room, present their arguments and leave. Yes, 3 to 7 ½ minutes is your typical time frame. I have seen shorter, we've had a backup of Permanent Partial Hearings before and did 3 minute hearings, and I've seen ninety minutes, but as I'm typing this, I am about to head off to two of the typical length, fifteen minutes.

The Notice of Hearing is crucial too, as only those issues noticed are before the Industrial Commission that day. We tend to fight out issue by issue, rather than one sweeping showdown. So if you are going to be handling Ohio Workers' Compensation cases, get used to the Commission, I've passed fourteen thousand hearings there. You need to find out in advance what you or your opponent needs to prove at that hearing. There are excellent resources out there on the Ohio Bureau of Workers' Compensation's website, Philip Fulton's Ohio Workers' Compensation Treatise, etc. Don't make the mistake an opponent on the employer's side did once and basically make my case for me. I'm not

kidding when I write my argument was “everything opposing counsel just said, except at the end, and that is why we should have this allowed”.

Each kind is different, but for the sake of brevity and preparing you, let me give you some general info. I like to present my client’s version of the claim as a story. Here’s Jane. Here’s what Jane did for Acme Widget. Here’s how Jane got hurt. Here are what the allowed conditions in the claim are. Here is Jane’s work status and what doctors and treatments she’s received to date. Here’s what money benefits she’s received. If she’s had another claim that overlaps, I bring it out first. Here’s how we got here procedurally today. And now, here’s why we win. I’ve been told this is actually helpful. A typical hearing officer is handling between 4-10 hearings in an hour, typically 3-5 hours of hearings in a day, typically 5 days per week. So, issues, while prepared, tend to run together.

Also, as you present, know that the hearing officer DOES NOT have paper in front of them. The Industrial Commission is paperless. They have a computer screen. Images are scanned and sadly often poorly labeled. So as you present, if you want them to look at something, be sure to reference what date it was imaged into their system, e.g. Dr. Smith’s December 15, 2016 office note is imaged at Document Date 5/5/17. And do put them into their electronic hearing folder on the Industrial Commission’s ICON site before hand if you can.

There is no formal order to hearing. Typically the proponent of the issue, who has the burden of proof goes first, then the other side, then the proponent gets a final say. But the hearing officer will guide you. Don’t panic and good luck. You will survive.