

# Injured Worker FAQs

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## Filing a Claim

### 1. What do I do if I have a problem getting benefits?

First, talk with your employer's insurance carrier or your self-insured employer to find out why your claim is denied. Often disputes can be resolved by sharing information or obtaining medical records. If you cannot resolve the dispute, you must file a Claim for Benefits.

Most workers' compensation claims are resolved to the satisfaction of the injured employee, employer, and insurance carrier. Usually, the appropriate payments are made and services provided. However, there are times when the employee disagrees with an employer's/carrier's decision and wants to formally challenge that decision.

### 2. Where do I file a claim?

If your claim is denied or if the employer/carrier refuses to make payments, you should send a written request for a hearing to the Workers' Compensation Commission, 333 E. Franklin St., Richmond, Virginia 23219.

### 3. Is there a time limit on filing a claim?

Yes. The Workers' Compensation Act provides a fixed, time period in which you may file a claim for benefits. If you do not file a claim within that time, you may be risking your right to future benefits. These time limits, called "statutes of limitations," are discussed in more detail in our "Guide for Employees."

A worker must file a claim for workers' compensation benefits within two years of the date of accident. For most occupational diseases, you must file a claim within two years of the date you were told the disease was caused by your work and within five years of the date you were last exposed at work. If after returning to work, you are

again disabled, you must file a claim within two years of the date for which you were last paid compensation under an Award.

You still must file a claim with the Commission if the employer/carrier has voluntarily paid you lost wages or medical benefits and no Award Order was entered by the Commission.

4. Can I be fired for filing a workers' compensation claim?

You cannot be fired because you filed a workers' compensation claim nor can a witness be fired. You should consult an attorney if you think you were fired for one of these reasons. These actions are brought in the Circuit Court.

5. Where can I obtain additional information about workers' compensation?

Contact the Commission's Customer Contact Center by phone at (877) 664-2566 or by email at [Questions@workcomp.virginia.gov](mailto:Questions@workcomp.virginia.gov).

6. If my employer has accepted my claim, reported my accident to the Commission, and paid me for my lost time and my medical bills, do I still need to file something with the Commission?

Yes. The injured employee must notify the Commission in writing as soon as possible every time he or she misses work even if the employer has accepted the claim. The only exception is where the employee has signed an Agreement form and received an award for each period of lost time.

## **Commission Hearings And the Appeal Process**

1. I have to appear at a hearing before a deputy commissioner. What will happen at that hearing?

Hearings before deputy commissioners are evidentiary proceedings. This means that parties and their witnesses may testify under oath. Everyone testifying will be subject to questioning by all parties. For more information about the Commission's hearing procedures, please refer to our "Guide for Employees."

## 2. Is a hearing always necessary?

No. Hearings only are necessary if you and the employer/carrier cannot resolve the dispute. If the dispute cannot be resolved, the Commission decides whether the employer/carrier must pay for benefits or provide services.

## 3. Where are hearings held?

Hearings usually are held in the city or county where the accident occurred or in an adjoining city or county. For details about hearing locations, visit the Hearing Locations & Directions page on this website.

## 4. Do I need a lawyer?

You are not required to have a lawyer and can represent yourself. The employer/carrier must be represented by a lawyer. It is your decision whether to hire an attorney. However, you will be at a disadvantage without legal representation.

An attorney is the only person allowed to charge a fee to represent you. Attorneys' fees are set by the Commission, and are deducted from the award if you win.

## 5. What are the different judicial levels?

There are four judicial determination levels:

Level 1 - Evidentiary or On-The-Record hearing

Level 2 - Full Commission Review

Level 3 - Court of Appeals of Virginia

Level 4 - Supreme Court of Virginia

If the parties agree with the decision at any one of the hearing levels, the decision is final. If not, either you or the employer/carrier can appeal the decision to the next level.

- LEVEL 1 - Evidentiary or on-the-record hearings before a deputy commissioner

If your claim can not be resolved, it will be referred for either an evidentiary or an on-the-record hearing.

Evidentiary Hearing - is a formal hearing similar to a court hearing. Testimony is taken under oath and evidence is presented.

On-the-Record Hearing - Disputed claims which the Commission determines do not need a full evidentiary hearing are decided by reviewing submitted documents and written statements. Although this procedure can not be used for all disputes, it provides swifter resolution.

- LEVEL 2 - Review by the Full Commission

If either party is dissatisfied with the deputy commissioner's opinion, it may file a request for an appeal, called a review. Every review request must be filed and received within 30 days from the date of the deputy commissioner's opinion. The request for review must be sent by certified mail in order to deem the post mark date as the date of filing. If a document is sent by regular US mail, the date received is the filing date.

After the review request is filed, any party may request a transcript of the hearing if one was held. The parties will receive a schedule for filing written statements. No additional testimony or evidence may be presented for review. When all written statements are received, the Commission determines whether oral argument will be scheduled. If so, the parties are sent notice of the date and time for oral argument. If not, the Commission decides the case and issues its opinion.

- LEVEL 3 - The Court of Appeals of Virginia

If either party disagrees with the Commission's opinion, it may appeal to the Court of Appeals of Virginia by filing a Written Notice of Appeal and a \$500.00 appeal bond with the Clerk of the Commission and a Notice to the Clerk of the Court of Appeals with a \$50.00 filing fee. The appeal must be filed within 30 days of the date of the Commission's opinion. The appeal must be sent by certified mail in order to deem the post

mark date as the date of filing. If the appeal is sent by regular US mail, the date received is the filing date.

- LEVEL 4 - The Supreme Court of Virginia

Either party may appeal the Court of Appeal's decision to the Supreme Court of Virginia. The appeal will be heard only at the Court's discretion.

6. My case has been referred for a hearing. What should I do?

Prepare for the Hearing: It is extremely important that you are prepared to present all your evidence at the hearing since there will be no opportunity to do so later if the case is appealed.

- Arrange to have all documents, medical reports, and witnesses at the hearing.
- Know the exact dates you lost from work because of your injury.
- Arrange for subpoenas of witnesses through the Commission. Remember fees for subpoenas are paid for by the person requesting the subpoena.
- Be on time.

Claimant's Evidence

If the hearing is on your application, you will be required to present all relevant evidence to prove your claim. At the hearing you will be required to testify under oath about all aspects of your claim such as how you were injured, when and to whom you gave notice, the names of medical providers, and your earnings at the time of injury.

If you were released to light work, you must submit evidence that you actively sought work. This includes seeking employment with your employer, registering with the Virginia Employment Commission, and listing the dates and places where you applied for work.

Witnesses who were present at the time of your accident or who have information about your accident can testify for you.

If you are claiming wage loss benefits, you must submit medical reports which prove your industrial accident or disease caused your disability. It usually is not necessary to have doctors testify because the medical reports are received into evidence.

Your testimony, and the testimony of your witnesses, will be subject to cross-examination by the attorney representing the employer/carrier.

After you have presented your evidence, the employer and carrier will present their evidence.

### The Employer's Evidence

Your employer/carrier will always be represented by an attorney at the hearing. After you present your evidence, the employer will present its witnesses to testify as to their knowledge about your claim. You can cross-examine any witness for the employer.

After the hearing, the deputy commissioner will issue a written decision, usually within about three weeks after the record closes. You and your attorney will receive a copy of the decision in the mail.

#### 7. I am to appear at a hearing. How do I find the hearing location?

If you are a party, you will receive a notice of hearing telling you where the hearing will be held. If you were subpoenaed, the subpoena will give you the address of the location. For more information on hearing locations, including directions, visit the [Hearing Locations & Directions](#) page on this website.

#### 8. Does the Commission provide interpreters at evidentiary hearing?

Yes.

#### 9. How do I file an appeal from a review opinion issued by the Commission?

Appeals from review decisions issued by the Commission are filed with the Virginia Court of Appeals.

## **Practice and Procedure Generally**

### **1. Does the Commission offer mediation services?**

Yes. The Virginia Workers' Compensation Commission offers the parties the opportunity to mediate disputed issues. This service is provided to speed the resolution of claims through the intervention of a neutral third party. Mediation services are provided, without charge, by the Commission at the request of any party to a workers' compensation dispute (employee, employer, insurance carrier/representative, or healthcare provider.) Does the Commission have an informational package about settling a case by petition and order (P & O)?