

374 Prehearing Conference

~~(a) At any time before a hearing, upon motion of a party or upon its own motion, the Appeals Board may notice and order a prehearing conference for the purpose of simplifying issues, expediting a hearing and affording the parties an opportunity to participate in the disposition of the appeal. The prehearing conference may be conducted by means of telephonic conference call.~~

~~(b) Each party to a prehearing conference shall be prepared to discuss the issues, stipulate to any factual or legal issue about which there is no dispute, stipulate to the identification and admissibility of documentary evidence, comply with any request for discovery, report on discovery status where the ALJ has compelled discovery prior to the prehearing, and to do such other things as may aid in the disposition of the proceeding.~~

~~(c) The failure of a party or its representative to prepare for and participate in the prehearing conference shall be grounds for the imposition of such sanctions, inferences or other orders, then or during the hearing, as the Appeals Board may deem appropriate. These sanctions may include striking or excluding evidence offered by the non-complying party on that dispute, or precluding that party from contesting the position or information on that issue provided by the complying party.~~

(a) With the exception of cases scheduled under Section 373, Expedited Proceedings, no sooner than 120 days and no later than 180 days after an appeal is docketed, a prehearing conference shall be held in each case.

(b) The parties are required to fully participate in the conference. The parties shall come to the prehearing conference prepared to identify all documents or other non-testimonial evidence each party may rely on to resolve the issues that remain in dispute, be prepared to discuss the issues that remain in dispute, and be prepared to disclose and discuss the witnesses that may testify at hearing. The parties must be prepared to disclose and discuss the witnesses that may testify with sufficient specificity to enable the Administrative Law Judge to determine which witnesses' testimony will be relevant to the issues and the required length of the hearing. The Administrative Law Judge shall record the relevant information for a Minutes of Hearing document pursuant to subsection (3)(A).

(c) Prior to attending the prehearing conference, the parties shall meet and confer regarding the items to be discussed at the prehearing. The date of this meeting, which may be telephonic, will be included in the statement. If the parties resolve some but not all issues prior to the prehearing conference, resolutions shall be submitted as stipulations and designated as such.

(1) For appeals with no citations classified as serious, the prehearing conference shall be set as a telephonic event. For telephonic hearings only, the parties shall submit a written statement identifying all documents or other non-testimonial evidence each party may rely upon to resolve the issues that remain in dispute, as well as a list of witnesses who

may testify at hearing and an identification of the issues that are in dispute 10 days prior to the scheduled prehearing conference. The Division need only cite generally to its file rather than list all individual contents where it has been provided to the employer pursuant to Section 359.1. Documents not in the Division's file that will be relied upon must be cited.

(A) During the prehearing conference, the Administrative Law Judge shall determine the contested issues based on the written statements and discussion with the parties.

(B) For appeals that do not resolve entirely, Minutes of Hearing shall be issued by the Administrative Law Judge.

(i) The minutes shall identify the issues to be determined at a hearing, the evidence of every kind to be submitted for each issue;

(ii) The minutes shall identify three proposed hearing dates for which mutual agreement exists among the parties. These dates shall be within 45 days of the date of the prehearing conference;

(iii) The minutes may incorporate by reference and attachment portions of the parties' written Statements of Issues, Witnesses and Non-Testimonial Evidence; and

(iv) The minutes will be served on the parties with the Notice of Hearing.

(2) For appeals with at least one contested citation classified as serious, repeat, willful, or failure to abate, the prehearing conference shall be held in person. Any evidence a party intends to rely upon at the hearing that has not been previously disclosed to the other parties through discovery requests or other means shall be disclosed and provided to the other parties at the prehearing conference.

(A) If the matter does not resolve at the prehearing conference, a Minutes of Hearing shall be issued. The Minutes of Hearing shall:

(i) Be signed by the Administrative Law Judge and the parties or their representatives;

(ii) Identify each issue remaining to be resolved, and the witnesses and non-testimonial evidence to be presented to resolve each remaining issue; and

(iii) Identify three dates mutually agreeable to all parties within 45 days of the prehearing conference on which the hearing may be set.

(d) Each party has a continuing duty to disclose to all other parties any evidence discovered or obtained after the date of the prehearing conference that is or may lead to evidence relevant to any remaining issues. If such evidence is not disclosed to all other parties within 10 days of its discovery, sanctions shall be imposed at the discretion of the assigned Administrative Law Judge. Additional sanctions under Section 381 may also be imposed.

(e) Rebuttal evidence, which is required to counter surprise testimony at the hearing, need not be disclosed at the prehearing conference. A party wishing to offer previously undisclosed evidence in rebuttal must demonstrate it is reasonably surprised by the evidence which it attempts to rebut with the proffered rebuttal evidence.

(f) Either party may request that a telephonic pre-hearing conference be converted to an in-person prehearing conference as set forth in subsection (3). Parties who are scheduled for an in-person prehearing conference may request that the event be converted to a telephonic pre-hearing conference as set forth in subsection (c)(1). This request must be in writing and filed with the Appeals Board within 30 days of the date the Notice of Prehearing Conference was issued. The decision to convert a conference will be made by the Presiding Administrative Law Judge. All parties must be served with this request in accordance with Section 355.3.

(g) Any party to any appeal for which a prehearing conference has been scheduled may request a telephonic status conference with the prehearing Administrative Law Judge to obtain assistance with resolving some or all of the issues in an appeal. Such requests must be made in writing, filed with Appeals Board and served on all parties in accordance with Sections 355.3 and 355.4. The request must be made no later than 30 days prior to the scheduled prehearing conference and must contain three mutually agreed upon proposed times for the requested status conference. Status conferences are not required to settle a case.

(h) A case that does not resolve in full will be set for hearing within 45 days of the prehearing conference, unless good cause is shown for holding the hearing at a later time.

(i) Parties participating in the prehearing conference or hearing shall have immediately available an individual with settlement authority. "Immediately available" means either present at the prehearing conference or hearing, or readily available via telephone.

(j) The Administrative Law Judge who conducted the prehearing conference shall not be the Administrative Law Judge who conducts the evidentiary hearing unless all parties waive the requirements of this subsection in writing and agree to both proceedings being conducted by the same Administrative Law Judge. The prehearing Administrative Law Judge is the assigned Administrative Law Judge until the Notice of Hearing is issued designating the hearing Administrative Law Judge.

(k) The 180-day deadline contained in this rule may be extended based on the same grounds delineated in Section 371 subsection (1) concerning hearing dates.

Note: Authority cited: Section 148.7, Labor Code. Reference: Sections 148.7 and 149.5, Labor Code.