

The background of the top half of the page is a photograph of the Kansas State Capitol building. The building is a grand, classical-style structure with a prominent central dome topped by a statue. The facade features a portico with several columns. The sky is a clear, bright blue with some light clouds.

# PRACTICE AND PROCEDURE GUIDE

## **Kansas Department of Labor Division of Workers Compensation**



# PRACTICE AND PROCEDURE GUIDE

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# 1. FILING WORKERS COMPENSATION FORMS AND PLEADINGS USING THE ELECTRONIC OSCAR FILING SYSTEM

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If a party is represented by an attorney, all pleadings, applications, motions and other documents under the Workers Compensation Act must be filed using the Kansas Department of Labor, Division of Workers Compensation's electronic filing system known as the Online System for Claims Administration Research/Regulation (OSCAR) and must be signed by at least one attorney of record. ([www.oscar.dol.ks.gov](http://www.oscar.dol.ks.gov)) (K.A.R. 51-1-26) An electronic signature using the OSCAR system is sufficient. If a party is not represented by an attorney, the documents need to be signed by the party and should include their address, phone number and email address if available. Parties not represented by an attorney may elect to create an OSCAR account. If they create an OSCAR account they may file electronically using the OSCAR system or they may submit (mail, fax or deliver in person) paper documents to the Kansas Department of Labor, Division of Workers Compensation, at 401 SW Topeka Blvd., Topeka, KS 66603, and serve all other parties with copies of the documents by mail or fax at the same time that they are submitted to the Division. Filings using the OSCAR electronic filing system will be served on the parties designated to receive notice electronically. Unrepresented parties shall refer to K-WC 28 for additional information on using OSCAR or filing outside of OSCAR. This directive applies to all chapters of this Practice and Procedure Manual.

## 2. NOTICE OF CLAIM AND TIME LIMITATIONS

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### Notice of Accident or Injury

Per [K.S.A. 44-520](#), for injuries on or after May 15, 2011, and before April 25, 2013, an employee must notify their employer within the earliest of the following dates:

- 1) 30 calendar days from the date of accident or the date of injury by repetitive trauma;
- 2) 20 calendar days from the date such medical treatment is sought if the employee is working for the employer against whom benefits are being sought and such employee seeks medical treatment for any injury by accident or repetitive trauma; or
- 3) 20 calendar days after the employee's last day of actual work for the employer if the employee no longer works for the employer against whom benefits are being sought.

Per [K.S.A. 44-520](#), for injuries on or after April 25, 2013, an employee must notify their employer within the earliest of the following dates:

- 1) 20 calendar days from the date of accident or the date of injury by repetitive trauma;
- 2) 20 calendar days from the date such medical treatment is sought if the employee is working for the employer against whom benefits are being sought and such employee seeks medical treatment for any injury by accident or repetitive trauma; or
- 3) 10 calendar days after the employee's last day of actual work for the employer if the employee no longer works for the employer against whom benefits are being sought.

No proceeding for workers compensation will be maintained if timely notice has not been given to the employer, unless:

- 1) The employer has actual knowledge of the accident.
- 2) The employer was unavailable to receive such notice.
- 3) The employee was physically unable to give such notice.

### Statute of Limitations to File Application for Workers Compensation Benefits (E-1 Application for Hearing)

An injured worker must file an Application for Hearing known as an Application for Workers Compensation Benefits (form K-WC E-1) with the Director within three (3) years of the date of accident or within two (2) years of the date of the last payment of compensation, whichever is later. When the Application for Workers Compensation Benefits is filed with the Director, the claim is assigned a case number and is assigned to an Administrative Law Judge (ALJ).

### Final Hearing

All claims must proceed to a final hearing within three (3) years from the date the Application for Workers Compensation Benefits (form K-WC E-1) was filed with the Division or the claims may be dismissed for lack of prosecution.

[K.S.A. 44-523\(f\)\(1\)](#) provides: "In any claim that has not proceeded to a regular hearing, a settlement hearing, or an agreed award under the workers compensation act within three years from the

date of filing an application for hearing pursuant to [K.S.A. 44-534](#), and amendments thereto (an application for workers compensation benefits), the employer shall be permitted to file with the division an application for dismissal based on lack of prosecution. The matter shall be set for hearing with notice to the claimant's attorney, if the claimant is represented, or to the claimant's last known address. The administrative law judge may grant an extension for good cause shown, which shall be conclusively presumed in the event that the claimant has not reached maximum medical improvement, provided such motion to extend is filed prior to the three year limitation provided for herein. If the claimant cannot establish good cause, the claim shall be dismissed with prejudice by the administrative law judge for lack of prosecution. Such dismissal shall be considered a final disposition at a full hearing on the claim for purposes of employer reimbursement from the fund pursuant to subsection (b) of [K.S.A. 44-534a](#), and amendments thereto." (Emphasis Added)

The requirements set forth in [K.S.A. 44-523\(f\)](#) only apply to accidents occurring on or after May 15, 2011.

### **3. SPECIAL RULES FOR OCCUPATIONAL DISEASE CLAIMS**

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#### **Compensation Date**

The date an employee becomes incapacitated by an occupational disease from performing their work shall be considered the date of the injury. If compensation is due, the employer at the time the worker was last exposed to occupational hazards shall be held liable. Prior employers or insurance carriers will not be required to contribute compensation. The amount of compensation will be based on the average weekly wage at the time of injury. The notice of disability and claim for compensation shall be given to such employer. However, if the employee has silicosis, the employer and insurance carrier where the employee worked for at least 60 days will be held liable. See [K.S.A. 44-5a06](#).

#### **Notice of Disease and Filing of Claim**

Written notice of an occupational disease shall be given to the employer within 90 days after disablement. If death has resulted, notice shall be given to the employer within 90 days. If the employer is aware of the occupational disease, this shall be considered sufficient notice. If no claim for death or disability is filed within one year, the right to compensation shall be considered forfeited. However, the failure to file shall be deemed waived if

- 1) No objection has been made at a hearing before any award or decision thereon
- 2) The employer or insurance carrier makes compensation payments or the employer or insurance carrier by his or its conduct leads the employee or workman or claimant reasonably to believe that notice or claim has been waived.

The time limit shall not apply if the disease or death was caused by latent or delayed pathological conditions, changes or malignancies due to the occupation exposure to X-rays, radium, radioactive substances or machines or ionizing radiation. However, no claim shall be allowed unless a claim has been filed within one year after the date the employee first suffered incapacity from the exposure and the employee knew, or should have known, that the disease was caused by present or prior employment. See [K.S.A. 44-5a17](#).

#### **Review of Award or Denial of Award**

An award or denial of compensation for an occupational disease may be reviewed and compensation increased, reduced or terminated where it was previously awarded or denied. This can be done only if proof of fraud, undue influence or change in condition is alleged and established by credible evidence. For review of previously ordered compensation, the party has one year to file after denial of award, if compensation was awarded or agreed to be paid, or after the award or the date of last payment. If the case involves silicosis, the party will have two years to file for review. See [K.S.A. 44-5a19](#).

## 4. LOCATION OF PROCEEDINGS

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Generally, hearings are held in the locations where the assigned ALJ routinely hears dockets on set dates of the month. Pursuant to [K.S.A. 44-549](#), upon special request, hearings shall be held by the Administrative Law Judge (ALJ) in the county in Kansas where the accident took place unless another venue is mutually agreed upon by the employee and employer. See the schedules of docket dates in Chapter 6. The availability of these dates should be confirmed through OSCAR, or for non-OSCAR users (un-represented parties), by contacting the legal assistant for the assigned ALJ when scheduling a hearing. The Division's website has a listing of the [counties served](#) by each ALJ and a [districting map](#) showing the areas of coverage by each judge.

## 5. ADMINISTRATIVE LAW JUDGE SCHEDULES

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The following information details the Administrative Law Judges' days and times they conduct different proceedings. However **all times and dates are subject to change** depending on courtroom availability as well as a judge's schedule and involved parties should contact the appropriate regional offices to verify specifics. Confirm availability in OSCAR.

### **Will Belden**

Veronica Cooper  
Legal Assistant  
(913) 642-7650  
option 0, ext. 2641

### **Lenexa**

Preliminary Hearings .....Wed. 1:00 p.m.  
PHSC .....Tues. 1:00 p.m. and Wed. 10:00 a.m.  
Regular Hearings .....Tues. 10:00 a.m.

### **Pamela Fuller**

Legal Assistant  
Mary Richardson  
(620) 275-0414

Hearings are scheduled in three locations (shown below) during **one week each month**. Judge Fuller provides a calendar prior to January 1 each year with the monthly hearing schedule. Judge Fuller's availability is provided in OSCAR.

All hearings are scheduled on a docket at 9:00 a.m. Everyone should be present and ready to proceed at 9:00 a.m.

### **Garden City**

Preliminary and Regular Hearings....Monday  
PHSC .....Tuesday

### **Cimarron**

Preliminary and Regular Hearings....Wednesday  
PHSC.....Thursday

### **Liberal**

Preliminary, PHSC and Regular  
Hearings .....Friday

### **Ken Hursh**

Jane Hogan  
Legal Assistant  
(913) 642-7650  
option 0, ext. 2640

### **Lenexa**

Preliminary Hearings .....Wed. 10:00 a.m. and Mon. 1:00 p.m. as  
needed  
PHSC.....Wed. 1:00 p.m.  
Regular Hearings .....Thurs. 10:00 a.m.

### **Gary Jones**

Sandi Peck  
Legal Assistant  
(316) 267-9510  
option 0, ext. 2814

### **Wichita**

Preliminary Hearings .....Tues., Thurs. 9:00 a.m.  
PHSC.....Mon., Wed. 9:00 a.m.  
Regular Hearings .....Mon., Tues., Wed., Thurs. 1:30 p.m.

### **Thomas Klein**

Terri Davis

### **Wichita**

Preliminary Hearings .....Tues., Thurs. 1:00 p.m.  
PHSC.....Mon., Wed. 1:45 p.m.

Legal Assistant  
(316) 267-9510  
option 0, ext. 2813

Regular Hearings ..... Mon., Wed. 10:00 a.m.–11:00 a.m.  
and 1:00 p.m.  
Tues., Thurs. 10:00 a.m.–11:00 a.m.

**Hutchinson**

Preliminary & Regular Hearings ..... Every other week  
Tues., Wed. 10:00 a.m.  
PHSC..... Tues., Wed. 9:00 a.m.

**Troy Larson**

Mindy Bradbury  
Legal Assistant  
(913) 642-7650  
option 0, ext. 2642

**Lenexa**

Preliminary Hearings ..... Tues. 1:00 p.m.  
PHSC ..... Mon. 1:00 p.m.  
Regular Hearings ..... Tues. 1:00 p.m.

**Ali Marchant**

Kathy Caire  
Legal Assistant  
(316) 267-9510  
option 0, ext. 2812

**Wichita**

Preliminary Hearings ..... Tues., Thurs. 9:00 a.m.  
PHSC..... Mon., Wed. 9:00 a.m.  
Regular Hearings ..... Mon., Tues., Wed., Thurs. 1:30 p.m.

**Bruce Moore**

Kala Kloster  
Legal Assistant  
(785) 827-0724  
option 0, ext. 2100

**Salina**

Any type..... First and second Tues. and first and  
second Wed. 9:00 a.m.  
Preliminary & Regular Hearings ..... Third Tues. 9:00 a.m.  
PHSC..... Third Tues. 1:30 p.m.  
Any type..... First, second, and third Thurs. a.m. and p.m.  
Any special settings ..... As needed when time available  
**Great Bend** ..... First Fri. 9:00 a.m.  
**Ellsworth** ..... Second Fri. 9:00 a.m.  
**Russell** ..... Third Fri. 9:00 a.m. (effective 1/1/15)

**Steven Roth**

Marissa Wagenaar  
Legal Assistant  
(785) 296-4000  
option 0, ext. 2188

**Topeka**

Preliminary Hearings ..... Mon., Tues., Thurs.  
PHSC..... Wed.\*  
Regular Hearings ..... Mon., Tues., Thurs., Fri.  
**Lawrence**..... Third Tues.  
**Pittsburg**..... First Mon. and fourth Fri.  
**Independence** ..... First and second Wed.

\* Contested hearings may be scheduled on PHSC docket, depending on the circumstances of the request and with the approval of the judge.

**Rebecca Sanders**

Sheryl Hesser  
Legal Assistant  
(785) 296-4000  
option 0, ext. 2190

**Topeka**

Preliminary Hearings ..... Tues. 1:00 p.m. and every other Tues.  
9:00 a.m.; Wed. 9:00 a.m. or 1:00 p.m.  
PHSC ..... Every other Tues. 9:00 a.m.  
Regular Hearings ..... Second and fourth Thurs.  
**Emporia** ..... First and Third Thurs.

## 6. HEARING ROOM LOCATIONS FOR THE DIVISION OF WORKERS COMPENSATION

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Following is a list of the routine locations used for Kansas workers compensation hearings and their addresses:

**Administrative Law Judge Will Belden**

**Lenexa** – 11900 West 87th Street Pkwy, Suite 200

**Administrative Law Judge Pamela Fuller**

**Garden City** – 407 Campus Drive

**Cimarron** – Gray County Courthouse – 300 S Main Street

**Liberal** – Seward County Courthouse – 415 N Washington

**Administrative Law Judge Ken Hursh**

**Lenexa** – 11900 West 87th Street Pkwy, Suite 200

**Administrative Law Judge Gary Jones**

**Wichita** – 266 N. Main Street, Suite 100

**Administrative Law Judge Thomas Klein**

**Wichita** – 266 N. Main Street, Suite 100

**Hutchinson** – Reno County Courthouse – 206 W 1<sup>st</sup> Street

**Administrative Law Judge Troy Larson**

**Lenexa** – 11900 West 87th Street Pkwy, Suite 200

**Administrative Law Judge Ali Marchant**

**Wichita** – 266 N. Main Street, Suite 100

**Administrative Law Judge Bruce Moore**

**Salina** – 901 Westchester Drive, Suite B

**Great Bend** – Barton County Courthouse – 1400 Main Street

**Ellsworth** – Ellsworth County Courthouse – 210 N Kansas, 3<sup>rd</sup> Floor

**Russell** – Russell County Courthouse – 401 N Main Street

**Administrative Law Judge Steven Roth**

**Topeka** – 401 SW Topeka Boulevard

**Lawrence** – County Commission Room – 1100 Massachusetts or

Judicial Law Enforcement Center, Rm. 144b, 111 E 11<sup>th</sup> Street

**Independence** – Judicial Center – 300 E Main, Suite 201

**Pittsburg** – Crawford County Judicial Center – 602 N Locust

**Administrative Law Judge Rebecca Sanders**

**Topeka** – 401 SW Topeka Boulevard

**Emporia** – Municipal Court Building – 518 Mechanic

## **7. COURT LOCATION FOR OUT-OF-STATE ACCIDENT**

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If an accident occurs outside the State of Kansas but is still under the jurisdiction of the Kansas Workers Compensation Act, the Director per [K.A.R. 51-3-6](#) shall designate a county where the hearing is to be held. Any party may submit a location request for the hearing to be considered by the Director. A Motion to Change Venue is filed using the OSCAR system.

## **8. REMOVAL OF ADMINISTRATIVE LAW JUDGE FROM A CASE**

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A party may file a motion for change of Administrative Law Judge (ALJ) pursuant to [K.S.A. 44-523\(e\)](#) if that party believes a fair hearing could not be afforded from the assigned ALJ. The ALJ will hear the motion promptly and informally upon reasonable notice to all parties who have appeared in the case. The ALJ will decide whether to recuse him/herself. If this occurs, the Director will assign another ALJ. If the ALJ refuses to withdraw, the party may appeal and file an affidavit within 10 days of the ALJ's decision with the Workers Compensation Appeals Board. Appeals are filed in OSCAR.

The Appeals Board shall promptly determine the legal sufficiency of the affidavit. If the affidavit is found to be legally sufficient, the Appeals Board will order the Director to assign another ALJ.

There are five situations that generally constitute grounds that may disqualify an Administrative Law Judge from hearing a certain matter:

- 1) The ALJ has been engaged as counsel in the case prior to the appointment as ALJ.
- 2) The ALJ is otherwise interested in the case.
- 3) The ALJ is related to either party in the case.
- 4) The ALJ is a material witness in the case.
- 5) A party has cause to believe the party cannot obtain a fair and impartial hearing on account of personal bias, prejudice or interest of the ALJ.

The affidavit shall state the facts and reasons for belief in any of these five areas.

## 9. MANDATORY NOTICE OF INTENT AND CERTIFICATION REQUIRED TO REQUEST A PRELIMINARY HEARING REGARDING MEDICAL TREATMENT AND/OR TEMPORARY TOTAL DISABILITY BENEFITS

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### Notice of Intent

If there is a disagreement about whether the employee is entitled to medical treatment or temporary total disability benefits, the applicant is required to provide a seven-day notice of intent to the adverse party, in writing, of the party's intent to file an Application for Preliminary Hearing to obtain the requested benefits. This notification must include a specific statement of the benefit being sought that is to be the subject of the requested preliminary hearing. If temporary total/temporary partial disability benefits are being requested, the notice of intent should state the dates for which these benefits are being requested. If medical treatment is being requested, the notice of intent should specify what type of treatment is requested and for what medical condition. If a party is requesting either a change of physician or the termination of medical treatment, it should be specified in the notice of intent why the treatment that is being provided is unsatisfactory or should be discontinued. If an agreement to grant or discontinue the requested benefits is not reached after the expiration of the seven days, an Application for Preliminary Hearing may be filed. The Application must include a copy of both the notice of intent and the medical evidence supporting the requested treatment or discontinuation of treatment attached. See [K.S.A. 44-534a\(a\)\(1\)](#).

### Certification

Also required to be filed with the application for a preliminary hearing is the applicant's **certification that the seven day notice of intent was served on the adverse party or that party's attorney**, and that the request for benefits or benefit change has either been denied or was not answered within seven days after service of the notice of intent.

## 10. APPLICATION FOR PRELIMINARY HEARING

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If the seven day notice of intent served on the adverse party fails to settle the request for benefits or change in benefits within seven days of the service of the notice on the other party, an Application for Preliminary Hearing may be filed. The application shall include a copy of the notice of intent served on the adverse party, and a copy of the party's certification that the served and requested benefits or change in benefits was denied or not answered. The applicant shall include copies of medical reports or other evidence intended to be used as supporting exhibits at the Preliminary Hearing. An Application for Preliminary Hearing shall not be entered when a seven-day notice of intent has not been served on the adverse party. A notice of hearing stating the date of the preliminary hearing must be filed and served on the adverse parties at least seven days prior to the date of the hearing. See the next chapter for the procedure to obtain a date and time for a preliminary hearing before the Administrative Law Judge. If a K-WC E-1 – Application for Workers Compensation Benefits has not previously been filed pursuant to [K.S.A. 44-534](#), the employee or party seeking the hearing should submit a K-WC E-1 – Application for Workers Compensation Benefits at the same time the K-WC E-3 – Application for Preliminary Hearing is filed with the Director's Office in order for the claim to be docketed. See [Chapter 2: Notice of Claim and Time Limitations](#), under heading Statute of Limitations to File Application for Hearing. Hearings may not be scheduled to occur sooner than seven days after the hearing is set by the Court.

Also see [K.A.R. 51-3-5a](#) and [K.S.A. 44-534a](#).

## 11. SETTING A PRELIMINARY HEARING

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After an Application for Preliminary Hearing has been filed with the Workers Compensation Division, a preliminary hearing can be scheduled by the party requesting the hearing. Hearings are scheduled in OSCAR.

Medical reports or other evidence which the party intends to produce and exhibits supporting the change of benefits that will be offered into evidence must be attached to the Application for Preliminary Hearing when such application is filed with the Division. See [K.S.A. 44-534a\(a\)\(1\)](#).

See also [K.A.R. 51-3-5a](#).

## 12. PRELIMINARY HEARING AWARD OR ORDER

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If at the hearing it is found that the employee's injury is compensable and in accordance with the facts presented at the preliminary hearing, the ALJ may make a preliminary award for medical compensation and temporary total disability compensation as per [K.S.A. 44-534a\(a\)\(2\)](#). This award will be in effect pending further adjudication or the conclusion of a full hearing on the claim. No preliminary award will be entered without giving the employer the opportunity to present evidence, including testimony, on the disputed issues.

Medical reports and other records may be considered by the ALJ at the preliminary hearing. However, the medical reports shall not be considered as evidence when the ALJ makes a final award in the case, unless all parties stipulate to the reports, records or statements, or unless the report, record or statement is later supported by the testimony of the physician, surgeon or other persons making the report, record or statement. If medical reports are not available or have not been produced, either party is entitled to an ex parte production order upon motion to the ALJ.

Findings shall be considered jurisdictional and subject to review by the Workers Compensation Appeals Board on issues concerning whether the employee's injury was accidental, if the injury arose out of the course of the employee's employment, if the accident was the prevailing factor, whether notice was timely given or whether certain defenses apply. The Board's review of these preliminary hearing rulings is not subject to further interlocutory judicial review. If a preliminary order is appealed to the Board, payment of medical compensation and/or temporary total disability compensation shall not be stayed. All preliminary hearing rulings are subject to review at the regular hearing.

If temporary total disability compensation is awarded, it may be ordered paid from the filing date of the application. If the ALJ finds that, prior to filing, there were one or more periods of temporary total disability, compensation may be ordered for all periods.

The decision in preliminary hearings shall be made within five days of the conclusion of the hearing. The ALJ may decide to leave the record open for a reasonable amount of time following the actual hearing to allow for evidence and depositions to be completed. If an ALJ does not render a decision within five days of the conclusion of the evidence to be presented, the applicant's attorney may notify the Director. The Director shall make demand upon the ALJ for this decision.

See also K.S.A. 44-534a(a)(1).

## 13. PRE-HEARING SETTLEMENT CONFERENCE

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A pre-hearing settlement conference (PHSC) is required by statute prior to a regular hearing. A PHSC stipulation questionnaire must be completed and exchanged by the parties prior to the PHSC. PHSC stipulations must be submitted in OSCAR.

Additionally, prior to setting a PHSC, the party requesting said conference must certify the following **in writing to the Court:**

- 1) That claimant's medical condition has stabilized and has reached maximum medical improvement;
- 2) That claimant has received a permanent impairment of function rating;
- 3) That claimant is neither receiving nor requesting temporary total disability benefits, unless prior arrangements are made with and approved by the Administrative Law Judge (ALJ);
- 4) Medical and lay testimony is scheduled or will be scheduled;
- 5) That claimant is neither receiving nor requesting vocational rehabilitation; and,
- 6) That claimant will be ready to submit, by submission letter received in the ALJ's office, within 30 days of the date of the regular hearing.

To set a PHSC, the requesting party must initiate the hearing request in OSCAR. The PHSC is held for "the purpose of obtaining stipulations from the parties, determining the issues and exploring the possibility that the parties may resolve those issues and reach a settlement prior to the first full hearing" as directed by [K.S.A. 44-523\(d\)](#). Also, an ALJ shall conduct a pretrial conference before any testimony is taken as per [K.A.R. 51-3-8\(b\)](#). If a settlement is not reached, the stipulations and issues will be made a part of the record.

Respondent shall be prepared to admit any and all facts respondents cannot justifiably deny. Also, respondent shall have payroll information available to be able to address matters concerning the average weekly wage.

Evidence shall be confined to matters pertinent to the dispute. The ALJ will not be bound by rules of civil procedure or evidence.

If the weekly wage is not an issue in the case, all parties shall be prepared at the first hearing to agree on the claimant's average weekly wage. Both parties shall exchange medical information and confer on what issues can be stipulated to and what is in dispute before the first hearing.

All parties to the PHSC shall submit proposed stipulations prior to the PHSC and shall be prepared to make stipulations of fact and exchange offers of settlement. Counsel should obtain settlement authority prior to the PHSC or shall make arrangements to have immediate access during the conference to the person with settlement authority.

Stipulation questions are available in OSCAR.

Permission to withdraw admissions or stipulations shall be decided by the ALJ on a case-by-case basis.

## 14. HEARING PROCEDURES

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### A. Procedures Applicable to all Proceedings

1. All exhibits to be offered at hearing must be submitted prior to the hearing in OSCAR unless the exhibits are unavailable or used for impeachment.
2. Attorneys should complete and exchange pretrial stipulations before appearing at a pre-hearing settlement conference.
3. For hearings before an Administrative Law Judge (ALJ) or the Workers Compensation Board, an interpreter for each person whose primary language is not English is required. If such services are required, it is the responsibility of the respondent to arrange for such services. When requesting a hearing in OSCAR, counsel should note that such services are necessary. Accommodation will be provided for anyone who is deaf, hard-of-hearing or speech-impaired, as well. A reasonable fee for the interpreter's service shall be determined and fixed by the ALJ. Under normal circumstances, the costs shall be paid by the respondent as a hearing expense and not assessed against the person in need of accommodation.
4. Exhibits are marked A-1, A-2, A-3, etc. for Claimants and B-1, B-2, B-3, etc. for Respondents.

### B. Unique Administrative Law Judge Procedures

#### 1. Judge Belden

**Local Rule #1:** The claimant's signature (along with the attorney's) must be on any voluntary stipulation of dismissal with prejudice made under the New (2011) Act.

#### 2. Judge Fuller

**Local Rule #1:** When requesting a preliminary hearing for medical treatment, have the medical report in hand prior to requesting the hearing. That prevents having to continue the hearing and leaves space open on the docket for those who are prepared. When requesting a Pre-Hearing Settlement Conference (PHSC), be prepared to state who your doctor is and his rating; whether you believe there is a work disability and, if so, who your expert is; and, what your written offer of settlement was and when it was made.

**Local Rule #2:** Be on time for the hearings and be prepared; talk to your clients prior to hearing day. If you are going to be late, please notify the Court or opposing counsel prior to the time for the hearings to start.

**Local Rule #3:** Terminal Dates: That is exactly what they are. Have all your evidence in to the Court by your terminal date or request an extension prior to your terminal date (see Chapter 18).

**Local Rule #4:** Respondents are to send a paragraph to opposing counsel and the Court at least one week prior to a preliminary hearing. The paragraph only needs to state what your understanding is as to what the claimant is requesting and why you are not willing to accommodate them. Do not attach exhibits. Those must be properly entered into evidence at the hearing (they are submitted prior to the hearing via OSCAR). This is to insure that all parties, including the Court, are aware of the issues as well as informing all if the accommodations have been or will be made.

**Local Rule #5:** Counsel is required to appear at all hearings. Claimants are required to appear in person at all hearings of record unless agreed to by all parties in advance. This Court does not hold any hearings by phone. At PHSCs, the claimant and respondent attorneys need to be present; their clients need to be available by phone if not present in person.

### **3. Judge Jones**

**Posted August 13, 2015**

#### **Local Rule #1: Hearing Exhibits**

Medical records from different health care providers should be marked as separate exhibits. Personal identification numbers such as Social Security numbers and birth dates should be redacted from exhibits before they are offered into evidence.

#### **Local Rule #2A: Withdrawal of Attorney When Client Will Be Left Without Counsel**

When withdrawal of an attorney will leave the client without counsel, the attorney may withdraw only when:

- (1) the attorney has filed a motion for withdrawal and served the motion on the client and on all counsel of record and unrepresented parties;
- (2) the attorney schedules the motion for a hearing and provides notice of the hearing to the client and all counsel of record and unrepresented parties; and
- (3) the Court issues an order approving the withdrawal.

(Note: Most of the time the withdrawing attorney and the other parties do not appear at the hearing. If no one appears at the hearing, the Court will normally grant the motion for withdrawal. If someone does appear and objects to the withdrawal, the Court may grant the withdrawal anyway or may deny the withdrawal and notify the parties that the hearing may be reset so that everyone can appear).

#### **Local Rule #2B: Withdrawal of Attorney When Client Continues to Be Represented by Other Counsel of Record**

When the client will continue to be represented by other counsel of record who have previously entered an appearance, an attorney may withdraw without a Court order by filing a notice of withdrawal signed by the withdrawing attorney. The notice must identify the attorney(s) of record who will continue to represent the client and must be served on the client and all counsel of record and unrepresented parties.

#### **Local Rule #2C: Withdrawal of Attorney When Client Will Be Represented by Substituted Counsel**

An attorney may withdraw without Court order upon simultaneous substitution of counsel admitted to practice law in Kansas by filing a notice of withdrawal of counsel and entry of appearance of substituted counsel signed by both the attorney withdrawing and the attorney to be substituted as counsel and serving the notice on the client and all counsel of record and unrepresented parties.

#### 4. Judge Moore

##### To All Counsel and Self-Represented (formerly, “*pro se*”) Litigants

##### Local Rule # 1 (Posted April 10, 1996; revised July 21, 2011; revised March 3, 2015):

##### Preliminary Hearings

- a) Prior to filing for a preliminary hearing, a party requesting benefits, or a change in existing benefits, must still give written notice of the requested benefits or change in benefits (“Notice of Intent”) at least seven days before filing an Application for Preliminary Hearing (K-WC E-3). The application must be accompanied by a certification that the request has been denied, or that no response has been received within seven days after service of the request, along with all “medical reports or other evidence” which the party intends to offer as evidence at the preliminary hearing.
- b) For Judge Moore’s benefit as the ALJ hearing the case, and to enable the judge to be prepared to address the issues to be litigated at preliminary hearing, the judge requests each party to direct a pre-hearing brief to the judge’s attention by 6:00 p.m. on the day prior to a scheduled preliminary hearing, with copies to opposing counsel, stating his/her position on the requested benefits or change in benefits. Copies of the medical exhibits to be offered at the preliminary hearing should be submitted via OSCAR to the Court’s attention by 6:00 p.m. on the day prior to the scheduled hearing.
- c) Evidence presented at the preliminary hearing will be limited to those requests **specifically** described in the “Notice of Intent,” unless otherwise agreed by the parties.
- d) The Court welcomes telephone conference calls prior to hearing, if this will help the parties resolve their issues.

##### Local Rule # 2A (Posted January 12, 1999; revised June 15, 2004; revised July 21, 2011):

##### Pre- Hearing Settlement Conference Procedures

In an effort to expedite the PHSC and make the conference more effective, the following procedures will be implemented. Through these procedures, counsel can be better prepared to identify and discuss material issues affecting a resolution of the claim. These procedures will also help make better use of the parties’ time while awaiting your turn before the Court. Failure to comply with these procedures will cause your case to be relegated to the tail of the docket. Thank you for your cooperation!

The completed stipulation form in OSCAR will be reviewed in the bench/judge’s chambers for the balance of the PHSC. No PHSC will be **deemed “held” unless the parties actually appear before the judge for discussion of remaining issues and settlement prospects**. Completion of the form in OSCAR by counsel, without more, will **not** satisfy the statutory requirement for a PHSC!

If a party believes that there has been either an underpayment of TTD benefits, an overpayment of TTD benefits or an underpayment or overpayment of medical benefits, the overpayments or underpayments are to be itemized at the time of the PHSC. If a party asserts a claim for underpayment/overpayment of TTD benefits, or unpaid/overpaid medical benefits, but cannot fully document or itemize the overpayment or underpayment as of the date of the PHSC, the party may supplement the PHSC by providing to the Court and opposing counsel an itemized and documented claim for such overpayment or underpayment at least 10 days prior to a regular hearing. If a party fails

to assert a claim for an underpayment/overpayment of TTD benefits or unpaid/overpaid medical benefits at the PHSC, and if the party fails to itemize and document a claim for overpayment/underpayment of TTD benefits at least 10 days prior to the regular hearing, no evidence or testimony on that issue will be permitted at the regular hearing. Alternatively, the Court may, in its discretion, allow assertion of that element of the claim, but grant the opposing party additional time to respond.

### **Local Rule # 2B (Posted August 1, 2014): Protocol For Telephonic Pre-Hearing Settlement Conference**

This Court welcomes the opportunity to hold PHSCs by telephone conference call or through video conferencing provided by GoToMeeting. PHSCs by telephone or video conferencing are set in 15-minute increments throughout the month, at 8:45 a.m. and 1:15 p.m., or at such other times as are mutually convenient to the Court and counsel. Times for such calls should be coordinated through OSCAR.

Prior to the scheduled PHSC, the parties will complete proposed stipulations in OSCAR.

A PHSC will NOT be deemed HELD and the matter cleared for a regular hearing until:

- a completed stipulations form via OSCAR has been received by the Court
- a telephone conference has been held to review the stipulations and discuss settlement prospects.

### **Local Rule #3 (Posted July 1, 2011): Witnesses**

Because there are multiple hearings scheduled on each docket, and to enable all parties to have a timely hearing, each party will be limited to no more than two witnesses per hearing. Additional testimony should be taken by deposition. Alternatively, and with prior Court approval, the parties may obtain a special setting, where the number of witnesses will not be limited, unless the testimony is irrelevant or cumulative. Unless the parties agree otherwise, witnesses will be sequestered until their testimony is complete. A company or corporate party may have one representative sit at counsel's table. That representative will not be required to be sequestered before testifying.

### **Local Rule #4 (Posted September 11, 2014): Exhibits**

Exhibits are submitted prior to the hearing in OSCAR. To ensure a coherent record, all exhibits offered at hearing shall conform to the following:

- a) Medical records will be separated by provider.
- b) Each provider's medical records will be a separate exhibit in OSCAR. Include the provider's name.
- c) Medical records should be limited to those pages that are directly relevant to the issues before the Court. Unless directly relevant, records of routine monitoring of vital signs, electrocardiogram tracings, lab tests, etc., should not be offered as exhibits. Similarly, records pertaining to unrelated injuries, illnesses, conditions or treatments unrelated to the issues before the Court should not be offered as exhibits. A party who offers irrelevant or extraneous records may be assessed the costs with respect to such exhibits.
- d) All multi-page exhibits will be paginated when uploading into OSCAR to enable the Court, counsel and reviewing bodies to find relevant references in the exhibit.
- e) Counsel should endeavor to redact the claimant's Social Security number from any exhibits offered in evidence, unless the identity of the claimant is in issue. In that circumstance, the first five (5) digits of the Social Security number should be redacted.

**Local Rule #5 (Posted September 11, 2014): Deposition transcripts**

For the benefit of the parties, the Court and any reviewing bodies, all deposition transcripts should include a word index. It is the responsibility of the party scheduling the deposition to request the reporter to provide a word index for each transcript. The court reporter will upload the transcript into the case record via OSCAR.

## 5. Judge Sanders

### **Local Rule #1: Scheduling of Preliminary Hearings Following Adoption of Senate Bill 649 on March 29, 1996**

- a) A party requesting benefits, or a change in existing benefits, must still give written notice of the requested benefits or change in benefits at least seven days before filing an Application for Preliminary Hearing. The Application (E-3) must be accompanied by a Certification that the request has been denied, or that no response has been received within seven days after service of the request, along with all “medical reports or other evidence” which the party intends to offer as evidence at the Preliminary Hearing.
- b) For my benefit as the Administrative Law Judge hearing the case, and to enable me to be prepared to address the issues to be litigated at preliminary hearing, upon scheduling a preliminary hearing with my office or after receiving notice of a scheduled preliminary hearing, each party is requested to direct a pre-hearing brief to my attention, with copies to opposing counsel, stating his/her position on the requested benefits or change in benefits and enclosing/attaching copies of the medical exhibits to be offered at the preliminary hearing. This should be filed in OSCAR before the scheduled hearing.

It is my hope that implementation of this procedure will expedite resolution of preliminary hearing issues. If counsel should have additional suggestions, I would be happy to entertain them.

### **Local Rule #2: Withdrawal of Counsel; Reference Rule 117 of Rules Relating to District Courts**

- a) Motion of Withdrawal by counsel shall be served on the client and opposing counsel.
- b) File a copy of the motion and the certificate of service via OSCAR setting the motion to withdraw for hearing notifying the client and opposing counsel.
- c) On or about the date of the motion hearing, prepare an Order of Withdrawal of Counsel with a certificate of service on the client and opposing counsel. If the Order is granted, the Order will be signed and sent to all interested parties via OSCAR.
- d) Counsel’s attendance at the hearing is not required. If the client appears, an explanation will be given as to what is occurring. We will obtain current contact information from them and give them a copy of the Order.
- e) This procedure is not required if there is a simultaneous withdrawal of counsel and entry of appearance of new counsel with required services. An Order of Withdrawal of Counsel is enough with a simultaneous entry of appearance.

## **15. SETTING A REGULAR HEARING**

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If the parties are unable to reach a compromise at the pre-hearing settlement conference and would like to schedule a regular hearing, such a hearing can be scheduled by the party requesting the hearing. Hearings are scheduled in OSCAR. A regular hearing shall not be set sooner than ten days after a pre-hearing settlement conference.

## 16. REGULAR HEARING

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A pre-hearing settlement conference (PHSC) must be held prior to the regular hearing. The Administrative Law Judge (ALJ) may require more than one PHSC. The ALJ may require a PHSC for post-award hearings.

If the parties are unable to reach a compromise at the PHSC, a regular hearing may be held to present the evidence before an ALJ.

The ALJ shall not be bound by adherence to technical rules of procedure during any proceeding. The ALJ will be afforded the latitude to conduct hearings in a manner deemed to give the parties “reasonable opportunity to be heard and to present evidence, insure the employee and the employer an expeditious hearing and act reasonably without partiality,” as is stated in [K.S.A. 44-523\(a\)](#).

After all parties have submitted evidence, the ALJ shall issue an award within 30 days of the final terminal date. A party’s terminal date is that party’s deadline to take deposition testimony or offer any other form of evidence. The award shall not be stayed due to lack of a submission letter.

Also, if the award has not been entered within 30 days, any party may notify the Director who shall assign a Special Administrative Law Judge to enter a decision based on the record. The Director may remove the ALJ who failed to enter the award within 30 days and reassign a different ALJ to make an immediate decision.

## 17. TERMINAL DATES

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A party's terminal date is the deadline within which the party must take deposition testimony or offer any other form of evidence to be considered in the case. When a regular hearing is conducted generally the Administrative Law Judge (ALJ) will set a terminal date for the claimant to submit additional evidence no later than 30 days after the first full hearing. The terminal date for the respondent will generally be set, requiring the submission of all evidence in support of the respondent's position, 30 days thereafter. An extension of a party's terminal date may be given for the following reasons:

- 1) If the employee is being paid temporary or permanent total disability compensation.
- 2) If medical examination of the claimant could not be secured prior to the submission of the case and the examination appointment was set and its notice sent prior to submission by the claimant.
- 3) If application is made and good cause shown.
- 4) By agreement of the parties.

The ALJ will place the case in line for decision when the last terminal date expires. If the parties believe that the transcripts of evidence taken by deposition will not be made available to the ALJ on or before the last terminal date, the parties should request an extension of the terminal date to assure that all evidence is considered by the ALJ. As with all motions and other filings, motions to extend the terminal date must be filed in OSCAR.

## 18. SUBMISSION LETTERS

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After the regular hearing, if a dispute still exists between the employer and the worker regarding compensation due, each party shall submit to the Administrative Law Judge (ALJ) a letter (submission letter) submitting the case for decision as is set forth in [K.A.R. 51-3-5](#). The letter shall contain a list of evidence to be considered that includes the following information:

- 1) The dates and name of the ALJ for each hearing held and a list of exhibits submitted at each hearing.
- 2) The date and name of witnesses in each deposition taken and a list of exhibits submitted at each deposition.
- 3) A description of any stipulations entered into by the parties outside of a hearing or deposition.
- 4) A list of any other exhibits that should be contained in the record.
- 5) An itemization of all medical expenses that are in issue.
- 6) An itemization of all medical expenses not in issue but that a party wishes itemized in the award.
- 7) A list of the issues to be decided by the ALJ, together with a list of those items to which the parties have stipulated.

The submission letter is not required to be in a specific form but should include all the above information. The submission letter is not evidence and is merely an argument of the case by a particular party. A decision will not be stayed due to the failure to submit a letter to the ALJ. Submission letters shall be filed in OSCAR.

## **19. ADMINISTERING DEPOSITIONS**

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An Administrative Law Judge conducting a hearing or other proceeding, or any party affected by the hearing or other proceeding, may cause the depositions of witnesses residing within or without the state to be taken in the same manner prescribed by the law for like depositions in Kansas District Court civil actions. Transcripts of evidentiary depositions are uploaded into the case record via OSCAR by the court reporter.

## **20. RULINGS WITHOUT A CERTIFIED TRANSCRIPT**

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**K.S.A. 44-552(c)** allows the Administrative Law Judge to make findings, awards, decisions, rulings or modifications without awaiting for the transcription of testimony if it is deemed expedient and advisable to do so.

## 21. JOINT PETITION AND STIPULATION

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If the claimant lives out of the state and travelling to the state for a hearing would be a hardship, the parties may agree to settle the claim by an award on joint petition and stipulation according to [K.A.R. 51-3-16](#). Joint petition and stipulation may also be used in death cases where liability and entitlement to compensation is clearly defined.

When filed via OSCAR, the joint petition and stipulation must be signed and accompanied by an original award or order prepared by the parties for the Director's signature. The proposed award is uploaded in OSCAR. It must include the claimant's name, address and a notarized signature. Also, it must include the employer's name and address. The joint petition must either include within its text, or by supporting documents, the following information:

- 1) An explanation of the terms of the settlement, including average weekly wage, temporary total rate and weeks paid, if any, percent of, or approximate percent of, permanent disability. If the compensation offered, or paid, does not correspond to the compensation payable according to medical reports and/or figures given, such as average weekly wage, please explain the discrepancy. If the settlement is between respondent/carrier and Workers Compensation Fund, percentage of reimbursement and lump sum amount shall be given.
- 2) Copies of medical reports, birth certificates, death certificates, marriage certificates and any other supporting documents the case may require.
- 3) An itemization or a total of medical expenses.
- 4) An agreement that all medical bills incurred up to the date of the Joint Petition's signing have been or will be paid by respondent, or if a medical bill is not being paid by respondent, an explanation of how claimant will pay it.
- 5) If a medical bill will be paid from the settlement proceeds, there must be a statement that the bill will be paid before settlement proceeds are delivered to claimant.

Examples of a joint petition and stipulation and award on joint petition and stipulation are available on the Division's website.

## 22. SETTLEMENT HEARINGS

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Pursuant to [K.S.A. 44-531\(a\)](#), a hearing may be held for the purpose of settling a claim and liability can be released for the portion of the employer's liability at issue if it is in the best interest of the claimant, or if it will avoid undue expense, litigation or hardship to any party. See [Grajeda v. Aramark Uniform Services, Docket No. 1,013,096](#).

[K.A.R. 51-3-9](#) states that a settlement award will not be issued unless the claimant personally testifies, medical testimony is introduced as evidence by a qualified physician and all necessary testimony required to determine the extent of the disability and the amount of compensation due is provided.

The parties may file an E-1 to docket the case prior to a settlement hearing.

Consideration should be made to determine if a [Medicare Set-Aside Arrangement](#) should be included as a condition of the settlement to limit potential liability in the future.

To schedule a settlement hearing, the requesting party must:

- obtain a date and time from a Special Administrative Law Judge;
- clear the date and time with opposing counsel; and
- initiate and complete the settlement hearing request in OSCAR.

Settlement worksheets are completed and filed in OSCAR.

[List of Current Special Administrative Law Judges](#)

## 23. COURT REPORTERS AND FEES

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The Administrative Law Judge (ALJ) is authorized per [K.S.A. 44-555](#) to assess all or part of the certified shorthand reporter's fees for hearings and depositions, including all copies provided, and shall note the amounts on the findings, award or order. Pursuant to [K.A.R. 51-2-4\(d\)](#), these fees shall be assessed in the final award. If fees have already been paid by respondent and the ALJ assesses them against another party, the designated party shall make the necessary reimbursement. A determination of reasonableness of a reporter fee shall be made by the ALJ if the fee is challenged.

Also, [K.A.R. 51-2-4](#) directs the court reporter transcribing a proceeding or deposition to furnish the original transcript to the ALJ, one copy to the employer, insurance carrier or its attorney, and one copy to claimant or claimant's attorney. If the case involves the Workers Compensation Fund, a copy of the transcript should be furnished to its attorney. Copies are provided via OSCAR.

If the case is settled, the original transcript of the settlement hearing shall be filed with the Division in OSCAR within two weeks. This transcript shall constitute a final award.

[List of Current Court Reporters](#)

## 24. SUBPOENAS

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Pursuant to [K.A.R. 51-3-8\(f\)](#), if a party to an action covered by the Kansas Workers Compensation Act requires a subpoena to obtain records or testimony, the party must first request the subpoena from the office of the Director. The request shall be made by using the electronic filing system. Pro se parties may contact the Director's office to request a subpoena. The party subpoenaing witnesses shall be responsible for the completion, service and costs in connection with the subpoenas. Subpoenas should be handled to the same extent as is conferred on district courts of this state under the code of civil procedure. See [K.S.A. 60-303](#) et. seq.

There are four types of subpoena forms that may be obtained from the Director:

- 1) Regular Subpoena – This type of subpoena is used when the party only wishes to compel the attendance of a person at a specified location to testify at a hearing.
- 2) Subpoena Duces Tecum – This type of subpoena is used when a party wants a person to bring identified records, papers, writings or other evidence to a hearing.
- 3) Deposition Subpoena/Deposition Subpoena Duces Tecum – This type of subpoena is used when a party wants a person to appear to testify at a deposition and/or bring identified records, papers, writings or other evidence to the deposition.
- 4) Subpoena Duces Tecum – This type of subpoena is used when a party wants a named person to make identified records, papers, writings or other evidence available for inspection. The inspection takes place at the person's residence or place of business. Other locations can be arranged by agreement.

## 25. WITNESS FEES

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Pursuant to [K.S.A. 28-125](#), witnesses compelled to appear through subpoena shall receive the same fee and mileage as is provided for witnesses attending district court cases. These witness fees are set out in K.S.A. 28-125. The Administrative Law Judge shall apportion such fees and make orders securing their payment according to [K.S.A. 44-553](#).

## 26. POST-AWARD MEDICAL

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After an award for compensation is made, the claimant may make an application for a post-award medical hearing at any time pursuant to [K.S.A. 44-510k](#) and amendments thereto. The filing is made in OSCAR. (K-WC E-4 – Application for Post-Award Medical, Termination or Modification of Medical Benefits).

As an alternative procedure, the Court of Appeals in *Siler v. U.S.D. 512*, 45 Kan. App. 2d 546, 251 P.3d 92 (2011) held that a claimant may file an application for preliminary hearing (K-WC E-3 – Application for Preliminary Hearing) for post-award medical benefits.

If the issues include both medical treatment and temporary total disability compensation, both K-WC E-3 – Application for Preliminary Hearing and K-WC E-4 – Application for Post-Award Medical, Termination or Modification of Medical Benefits should be filed with the Director. Temporary total disability compensation under an Award requires a seven-day demand letter and Notice of Intent prior to the filing of an E-3 or E-4.

The respondent/carrier may file an application to terminate or modify post award medical (K-WC E-4 – Application for Post-Award Medical, Termination or Modification of Medical Benefits). A respondent may file a K-WC E-3 – Application for Preliminary Hearing in order to make any changes in medical treatment after an award or settlement. All necessary attachments relating to the change in medical treatment should be filed with the E-3, including the Notice of Intent and the Certification.

An Administrative Law Judge (ALJ) shall conduct the hearing in accordance to [K.S.A. 44-523](#) and amendments thereto. If the ALJ finds that further care is necessary to cure or relieve the effects of the accidental injury that was the subject of the underlying award, the ALJ may make an award for additional medical care.

Any application for a post-award medical benefit shall receive priority by the ALJ only to be superseded by preliminary hearings pursuant to [K.S.A. 44-534a](#) and amendments thereto. A pre-hearing settlement conference is not necessary but the parties shall meet and confer prior to the hearing. The procedure for setting a hearing is the same as for other hearings in OSCAR. If no agreement can be reached prior to the hearing, the ALJ will hear the evidence and set terminal dates for evidence to be submitted.

Attorney fees and costs will be awarded consistent with subsection (g) of [K.S.A. 44-536](#).

## 27. REVIEW AND MODIFICATION

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Any award, except previously approved lump-sum settlements, may be reviewed upon application by any interested party, pursuant to [K.S.A. 44-528\(a\)](#). Applications for review and modification must articulate at least one specific reason for the requested relief. The process for obtaining a hearing on an application for review and modification is the same as the procedure for obtaining other hearings in OSCAR.

The ALJ may increase or decrease the level of compensation based on the findings in one or more of these areas subject to the limitations provided in the Workers Compensation Act.

The review and subsequent modification of an award shall be effective on the date that the increase or decrease in function occurred as is stated by [K.S.A. 44-528\(d\)](#). However, the effective date shall not be more than six months before the date the application was made for review.

Except in highly unusual situations, applications for review and modification should not be made more than once in any six-month timeframe.

## 28. OTHER POST-AWARD FILINGS

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**Post-Award Request for Temporary Total Disability (TTD) only:** If TTD is the only issue, a K-WC E-3 – Application for Preliminary Hearing must be filed. All necessary attachments relating to TTD should be filed with the E-3, including the Notice of Intent and the Certification.

**Post-Award Request for Change in Disability:** Any issue regarding a change in permanent disability, including the modification of an award to reflect post award TTD payments, requires filing a K-WC E-5 – Application for Review and Modification.

**Post-Award Motion to Terminate or Modify TTD:** All requests by any party to terminate or modify temporary total compensation must file a K-WC E-3 – Application for Preliminary Hearing. All necessary attachments relating to TTD should be filed with the E-3, including the Notice of Intent and the Certification.

## 29. TERMINATION OF COMPENSABLE CASES

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[K.A.R. 51-3-1](#) establishes that compensable cases may be terminated by the following five procedures:

- 1) By filing a final receipt and release of liability pursuant to [K.S.A. 44-527](#) and amendments thereto.
- 2) By hearing and written award.
- 3) By joint petition and stipulation subject to [K.A.R. 51-3-16](#).
- 4) By settlement hearing before an Administrative Law Judge.
- 5) By voluntary dismissal by the parties.

See also [K.S.A. 44-523\(f\)](#) for the procedure to dismiss docketed claims for lack of prosecution.

### **Application For Dismissal For Lack Of Prosecution**

All claims must proceed to a final hearing within three (3) years from the date of the application for hearing (form K-WC E-1), or one (1) year from the date of a preliminary hearing denying compensability of the claim, or they may be dismissed. The requirements set forth below apply only to accidents occurring on or after May 15, 2011.

K.S.A. 2011 Supp. 44-523(f)(1): “In any claim that has not proceeded to a regular hearing, a settlement hearing, or an agreed award under the workers compensation act within three years from the date of filing an application for hearing pursuant to K.S.A. 44-534, and amendments thereto, the employer shall be permitted to file with the division an application for dismissal based on lack of prosecution. The matter shall be set for hearing with notice to the claimant’s attorney, if the claimant is represented, or to the claimant’s last known address. The administrative law judge may grant an extension for good cause shown, which shall be conclusively presumed in the event that the claimant has not reached maximum medical improvement, provided such motion to extend is filed prior to the three year limitation provided for herein. If the claimant cannot establish good cause, the claim shall be dismissed with prejudice by the administrative law judge for lack of prosecution. Such dismissal shall be considered a final disposition at a full hearing on the claim for purposes of employer reimbursement from the fund pursuant to subsection (b) of K.S.A. 44-534a, and amendments thereto.

(2) In any claim which has not proceeded to regular hearing within one year from the date of a preliminary award denying compensability of the claim, the employer shall be permitted to file with the division an application for dismissal based on lack of prosecution. The matter shall be set for hearing with notice to the claimant’s attorney, if the claimant is represented, or to the claimant’s last known address. Unless the claimant can prove a good faith reason for delay, the claim shall be dismissed with prejudice by the administrative law judge. Such dismissal shall be considered a final disposition at a full hearing on the claim for purposes of employer reimbursement from the fund pursuant to subsection (b) of K.S.A. 44-534a, and amendments thereto.

(3) This section shall not affect any future benefits which have been left open upon proper application by an award or settlement.”

The K-WC E-6 Application for Dismissal form is used to request dismissal pursuant to the above statute.

For accidents occurring after July 1, 2006, but prior to May 15, 2011, the following dismissal provisions apply:

K.S.A 2006 Supp. 44-523(f): “Any claim that has not proceeded to final hearing, a settlement hearing or an agreed award under the workers compensation act within five years from the date of filing an application for hearing pursuant to K.S.A. 44-534, and amendment thereto, shall be dismissed by the administrative law judge for lack of prosecution. The administrative law judge may grant an extension for good cause shown, which shall be conclusively presumed in the event that the claimant has not reached maximum medical improvement, provided such motion to extend is filed prior to the five year limitation provided for herein. This section shall not affect any future benefits which have been left open upon proper application by award or settlement.”

It is recommended that for accidents occurring between July 1, 2006, and May 15, 2011, the moving party file a motion to dismiss with notice to the parties to obtain an order of dismissal, and that the motion be set for hearing before the ALJ.

## 30. APPEALS

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### **Appeal Of A Preliminary Hearing Order To The Workers Compensation Appeals Board**

Preliminary hearing orders with findings with regard to a disputed issue of whether the employee:

- suffered an accident, repetitive trauma or resulting injury
- whether the injury arose out of and in the course of the employee's employment
- whether notice is given or
- whether certain defenses apply

shall be considered jurisdictional and subject to review by the Workers Compensation Appeals Board (the "Board").

In addition, an appeal from a preliminary order may be conducted if it is alleged the administrative law judge (ALJ) exceeded the ALJ's jurisdiction in granting or denying the relief requested. Such issues may be reviewed by the Board upon written request made within ten days. The effective date of the ALJ's decision shall be the day following the date noted thereon by the ALJ. Intermediate Saturdays, Sundays and legal holidays shall be excluded in the time computation. For specific requirements, see [K.S.A. 44-551\(1\)\(1\)](#), [K.A.R. 51-18-2](#), and [K.A.R. 51-18-3](#). Applications for review should specify the issues to be considered and the jurisdictional basis for the appeal from a preliminary hearing. Such review of preliminary hearing orders by the Board shall not be subject to judicial review. See [K.S.A. 44-534a\(2\)](#) and [K.S.A. 44-551\(1\)\(2\)\(A\)](#).

### **Appeal Of A Regular Hearing Award To The Workers Compensation Appeals Board**

All final orders, awards and modifications of awards made by an ALJ shall be subject to review by the Board upon written request by any interested party within ten (10) days. Intermediate Saturdays, Sundays and legal holidays shall be excluded in the time computation. Review by the Board shall be a prerequisite to judicial review as provided for in [K.S.A. 44-556](#) and amendments thereto. For specific requirements, see [K.S.A. 44-551\(1\)\(1\)](#) and [K.A.R. 51-18-2](#).

### **How to File**

A petition for review by the Workers Compensation Appeals Board may be filed in OSCAR.

### **Judicial Review: Appeal To The Kansas Court Of Appeals**

Any action of the Workers Compensation Appeals Board pursuant to the Workers Compensation Act, other than the disposition of appeals of preliminary orders or awards under [K.S.A. 44-534a](#) and amendments thereto, shall be subject to review in accordance with the Kansas Judicial Review Act by appeal directly to the Court of Appeals. Any party may appeal from a final order of the Board by filing an appeal with the Court of Appeals within thirty (30) days of the date of the final order. When an appeal has been filed

pursuant to this section, an appellee may file a cross appeal within twenty (20) days after the date upon which the appellee was served with notice of the appeal. See [K.S.A. 44-556](#) and [Kansas Supreme Court Rule 9.04](#).

### **Guidelines For Briefs To The Board**

- 1) File a brief.
- 2) Timely Filed: Appellant's brief is due 30 days after the application for review is filed. Appellee's brief shall be submitted within 20 days thereafter. Appellant may submit a reply brief within 10 days thereafter, but only if appellee raises a new issue. See [K.A.R. 51-18-4](#). A party may file for an extension of time to file a brief. See [K.A.R. 51-18-5](#).
- 3) Format: The Board prefers a brief format, rather than a letter format. The brief should be in the following order:
  - a. The name, Supreme Court number, address, telephone number, facsimile number and email address of the attorney.
  - b. The case caption and docket number(s) should be placed on the first page of the brief.
  - c. Identify the record. List the transcripts, documents, stipulations, etc. that are to be considered on appeal.
  - d. Set forth the issues on appeal. If new issues are raised in your brief that were not listed in the application for review, please state why. Only issues raised before the ALJ may be raised on review.
  - e. Findings of fact: Set forth the facts in a clear and concise manner. Facts that have no bearing on the issues appealed should not need to be included in the brief. Do not alter, exaggerate facts or omit facts adverse to your position. Be sure to cite to the evidentiary record.
  - f. Arguments and authorities: Make your arguments clear and concise. The Board reads all cases and orders you cite. Make sure the cases in your brief have the correct citations.
  - g. Use a readable font. We prefer you double space your lines.
  - h. Paginate your brief.
- 4) Standard Of Review: The Board has *de novo* review. Therefore, it is unnecessary to set forth the standard of review.
- 5) Jurisdiction: An Appellant should indicate in its brief why the Board has jurisdiction. If appellee asserts the Board has no jurisdiction, then appellee should list jurisdiction as an issue and provide arguments and authorities.
- 6) Proofread: Please carefully proofread your brief and pay attention to the following:
  - Did you spell names correctly?
  - Was the correct attorney listed in the Certificate of Service?
  - Did you address all issues raised in the application for review?
  - Did you paginate and double space the brief?
  - Did you use the correct gender when identifying witnesses?
  - Did you check citations and quotes for accuracy?
  - Did you use spell check?
  - Did you delete unnecessary facts?

## 31. EMPLOYER MUST REPORT INJURY TO WORKERS COMPENSATION DIRECTOR

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The Workers Compensation Act states that it is the duty of the employer to notify the Director of an injury within 28 days from the date the injured worker notifies the employer, if sustained injuries wholly or partially incapacitate the employee for more than the remainder of the day or shift [see [K.S.A. 44-557\(a\)](#)]. By regulation, however, **as of January 1, 2014, the electronic reporting (EDI) of employer's Notice of Injuries and Occupational Diseases is now required.** See [K.A.R. 51-9-17](#).

If the employee that was the subject of a previously filed injury has died, a supplemental report must be filed with the Director within 28 days of being notified of the death. This report should detail the facts in connection with the death and information the Director may require concerning the dependents. This report shall not be considered as evidence in any court proceeding. See [K.S.A. 44-557\(b\)](#).

The repeated failure of an employer to file injury reports as required may result in a penalty of up to \$250 for each violation pursuant to [K.S.A. 44-557](#).

## **32. EMPLOYER MUST PROVIDE INFORMATION TO THE EMPLOYEE AFTER AN INJURY**

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After receiving notice of injury or death, the employer is required by the Kansas Workers Compensation Act to mail or deliver to the employee or legal beneficiary a clear and concise description of:

- 1) The benefits available under the Workers Compensation Act;
- 2) The process to be followed in making a claim for benefits;
- 3) The identification of the person, firm or organization directly responsible for responding to and processing a claim for workers compensation benefits;
- 4) The responsibilities of the self-insured employer, insurance company or groupfunded self-insurance plan;
- 5) The assistance available from the office of the Director of Workers Compensation; and
- 6) The address and toll-free number that will facilitate access to the assistance available from the Director's office.

See [K.S.A 44-5,102](#)

The requirement stated above can be met by providing the publication [K-WC 27-A](#), for accidents on or after April 25, 2013, to the injured worker. This publication is also available in Spanish ([K-WC 270-A](#)). More information can be found on the Division's [website](#) or requested via the telephone at (800) 332- 0353, option 3. Inquiries can also be made through postal mail to the [Division's main office](#).

The process to be followed in making a claim for benefits can be found in publication [K-WC 25](#) or the Spanish version [K-WC 250](#).

Assistance is available from the Ombudsman/Claims Advisory Section of the Workers Compensation Division. Information regarding the Ombudsman/Claims Advisory Section can be found [online](#).

## 33. OFFICE LOCATIONS

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### Main Office

Kansas Division of Workers Compensation  
401 SW Topeka Blvd, Suite 2 [\(see map\)](#)  
Topeka, KS 66603-3105  
(785) 296-4000  
(800) 332-0353  
(785) 296-0025 FAX

### Regional Offices

#### Administrative Law Judge – Garden City

Pamela Fuller  
Kansas Division of Workers Compensation  
407 Campus Drive [\(see map\)](#)  
Garden City, KS 67846-6124  
(620) 275-0414  
(620) 272-0128 FAX

#### Administrative Law Judges – Lenexa

Will Belden  
Ken Hursh  
Troy Larson  
Kansas Division of Workers Compensation  
11900 West 87th Street Pkwy, Suite 200 [\(see map\)](#)  
Lenexa, KS 66215  
(913) 642-7650, option 3  
(913) 642-3364 FAX

#### Administrative Law Judge – Salina

Bruce Moore  
Kansas Division of Workers Compensation  
901 Westchester Drive, Suite B [\(see map\)](#)  
Salina, KS 67401-7418 (785)  
827-0724, option 1  
(785) 827-0942 FAX

#### Administrative Law Judges – Topeka

Steven Roth  
Rebecca Sanders  
Kansas Division of Workers Compensation  
401 SW Topeka Blvd [\(see map\)](#)  
Topeka, KS 66603-3105  
(785) 296-4000, option 6  
(800) 332-0353  
(785) 296-0025 FAX

#### Administrative Law Judges – Wichita

Gary Jones  
Tom Klein  
Ali Marchant  
Kansas Division of Workers Compensation  
266 N. Main St., Suite 100 [\(see map\)](#)  
Wichita, KS 67202-1513  
(316) 267-9510, option 3  
(316) 267-1930 FAX