Life of a Worker’s Compensation Claim From Injury to Resolution

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1) **An Overview of Worker’s Compensation Law in Wisconsin**
   a) There are five elements that must be proven in Wisconsin to be eligible for worker’s
      compensation benefits, each of which will be elaborated on below:
      i) There must be an employer-employee relationship,
      ii) There must be an injury,
      iii) The injury must occur in the course and scope of employment,
      iv) The injury must arise out of employment, which is a medical question and
      v) The injury cannot be self-inflicted.
   b) Worker’s compensation is the exclusive remedy for injured workers in Wisconsin;
      however, employees and the worker’s compensation carrier, if they have paid medical or
      indemnity benefits to the injured worker, maintain the right to sue third parties whose
      negligence causes an injury. Wis. Stat. § 102.29.
   c) Wisconsin is a no fault system

2) **There are three primary defenses to a Workers’ Compensation**
   a) Medical. A medical defense is provided by a physician or independent medical examiner
      who opines that the injured employee’s condition is not work related.
   b) Factual. A claim may be denied on a factual basis when there is evidence that the injury
      did not occur as alleged.
   c) Legal. There are a number of legal defenses, which will be elaborated upon below.

3) **Employers in Wisconsin Workers’ Compensation**
   a) Generally, an employer is anyone who employs three or more employees for services
      performed in Wisconsin, or employs even one employee who is paid at least $500.00 in
      a calendar quarter for services provided in Wisconsin. If the latter is the case, the entity
      becomes an employer on the tenth day of the month following the quarter.

4) **Employees in Wisconsin Worker’s Compensation**
   a) Generally, employees include any person whose employment is in the course of a trade,
      business, profession, or occupation of the employer, “however casual, unusual, desultory
      or isolated the employer’s trade business or occupation may be.” See Wis. Stat. § 102.07.
      Although it should be noted that Wisconsin has a rebuttable presumption that a person
      performing services for another is an employee of that person.
5) Jurisdiction

a) Wisconsin does not apply automatic “site jurisdiction” for injuries occurring within its border. Liability will only exist when both the employer and employee are subject to the Act.

i) Injuries occurring outside of Wisconsin

(1) If an employee, while working out of the state of Wisconsin, suffers an injury that if it had happened within Wisconsin, will be entitled to benefits if any of the following apply:

(a) The employee’s employment is principally localized in Wisconsin.
(b) The employee is working under a contract of hire in Wisconsin and their employment is not principally localized in any state.
(c) The employee is working under a contract made in Wisconsin and the employment is principally localized in another state whose worker’s compensation law is not applicable to the employer.
(d) The employee is working under a contract of hire made in Wisconsin for employment outside of the United States.
(e) The employee is a Wisconsin Law enforcement officer engaged in an action under an agreement authorized under Wis. Stat. § 175.46. Wisconsin Stat. § 175.46 allows Wisconsin law enforcement officers to provide aid Minnesota, Iowa, Illinois or Michigan.

ii) Multiple States Worker’s Compensation Laws apply

(1) Wisconsin follows the “McCartin rule”: If payment is made in another jurisdiction and Wisconsin jurisdiction is also claimed, the Wisconsin worker’s compensation insurer will receive credit for all previously paid compensation.

6) Injuries in Wisconsin Worker’s Compensation

a) Wisconsin Workers’ Compensation covers both mental and physical injuries.

b) There are two types injuries: traumatic or accidental injuries and occupational injuries

i) Traumatic/accidental injuries are caused by a “fortuitous event unexpected and unforeseen by the injured person, either if the cause was of an accidental nature, or if the effect was an unexpected result of routine performance of the claimant’s duties.”
ii) Occupational injuries are injuries caused by a process, not a specific event. The worker must have an appreciable exposure and that exposure must be a material contributory causative factor in the onset or progression of the disease.

(1) The date of injury for occupational diseases

(a) The date of injury occurs when the employee first suffers a wage loss as a result of the condition. That wage loss must be due to the symptoms of the disease. See *Virginia Sur. Co., Inc. v. Wisconsin Labor and Industry Review Com’n*, 258 Wis. 2d 665 (Ct. App. 2002).

(2) Apportionment

(a) Generally, there is no apportionment for occupational injuries. The carrier on the risk during the worker’s first wage loss is responsible for 100% of the disability.

(b) There is an exception when there are separate, distinct occupational exposure periods. In these rare cases the focus is on whether there was a recovery and permanent disability assessment in between the exposures.

c) Mental injuries: A mental injury not resulting from physical trauma is compensable in Wisconsin, so long as the employee establishes that he or she was exposed to stress of a greater dimension than the day-to-day emotional strain and tension that all employees experience without serious mental injury. This so-called "extraordinary stress test" means the employee must prove that the conditions of his or her employment were more stressful than other employees in a similar occupational category.

7) Course of employment

a) In theory an applicant is not considered to be within the course of employment while going to and coming from work. Nonetheless, this general rule has been eroded by statutory enactments and case law. Under the Wisconsin Worker’s Compensation Act, an employee’s injury must “arise out of” his/her employment. The statute, Wis. Stat. § 102.03(1), requires that an injury must happen while the employee is “performing service growing out of and incidental to his/her employment.” This is looking at the time, place and circumstances of the accident. It is also worth noting that, since the early years of workers’ compensation in Wisconsin, courts have liberally construed what it
means to be “in the course of employment.” In Wisconsin there is also the “continuing employment presumption.” This presumption applies “when it is established the employees have entered upon the performance of their duties and are found at a place where they might properly be in the discharge of those duties, nothing appearing to the contrary, the presumption of continuity remains.” Tewes v. Industrial Commission, 194 Wis. 489 (1927). The presumption of continuing employment is defeated when the employer presents any evidence to the contrary, at which point the burden shifts to the employee to prove the injury was in the course of employment.

b) The employer’s premises
i) Where an employee is injured on the employer’s premises, workers’ compensation benefits are awarded. There is, however, a gray area with regard to how far the employer’s premises extend. The Wisconsin Supreme Court has said that the employment premises exist when the employee reaches an area under the control, though not necessarily ownership, of the employer. See Halama v. Department of Industry, Labor and Human Relations, 48 Wis. 2d 328 (1970).

c) Special hazards or “spilled over danger”
   i) The spilled over danger rule applies where an employee, “while in the immediate vicinity of the employer’s premises, has an injury that results from an occurrence on the premises.” See Frisbie v. Department of I.L.H.R. (Industrial Commission), 45 Wis. 2d 80, (1969). This rule provides coverage for injuries occurring off premises while an employee is going to or coming from work where a hazard from employment injures an employee in the immediate vicinity of the employer’s premises.

d) Parking lots
   i) An employer’s designated parking lot has been deemed part of the employer’s premises by Wisconsin courts for more than 50 years.

e) Lunch and breaks
   i) An injury which occurs on the employer’s premises while on lunch or a break is compensable, whether or not the employee is “on the clock.” American Motors Corp. v. Industrial Commission, 1 Wis.2d 261 (1957).
ii) Injuries occurring while off of the employer’s premises, but while still on the clock are also compensable.

iii) Injuries occurring off premises while off of the clock are not covered.

f) Work at home

i) Working from home presents several course of employment issues; however, the court has three criteria for whether work performed at home is in the course of employment:

(1) The quantity and regularity of the work performed at home,
(2) The continuing presence of work equipment at home, and
(3) The special circumstances of the particular employment that make it necessary and not merely convenient to work at home.

g) Recreational activities

i) Injuries sustained while engaged in recreational activities on the employer’s premises, during paid breaks and encouraged by the employer are compensable. Conversely, any program event or activity designed to improve the physical well-being of the employee, if voluntary and not compensated, is not compensable.

ii) Activities for mere improvement of employee morale are not enough to make an injury compensable when incurred at, or going to or from a meeting, party or picnic called by the employer. See Schwab v. Department of ILHR, 40 Wis. 2d 686 (1968).

h) Wellness programs

i) Injuries sustained in an employee “wellness” or health fitness program, event or activity “designed to improve the physical well-being of the employee” is not considered to be in the course of employment unless the program, event or activity is mandatory or compensated. Wis. Stat. § 102.03(1)

i) Personal Comfort

i) The personal comfort doctrine covers situations where the employee is injured while taking a brief pause from labor to “minister to the necessities of life.” The doctrine has been applied in a variety of situations including bathroom breaks, lunch, smoking, leaving the work station for a drink of water, warming oneself, etc.
j) Violating employer directive
   i) If an employee is injured engaging in an activity in disobedience of an order of the employer solely for the employee’s own benefit, his/her injury is not compensable. If the disobedient actions were in furtherance of the employer’s interests, rather than the employee’s, compensation will be granted.

k) A private errand
   (1) If an injury occurs while an employee is on a private errand, it will not be compensable regardless of whether the employee is on the employer’s premises, with the employer’s permission and arguably performing an activity beneficial to the employer. The only exception is if the “dual purpose doctrine” applies. The “dual purpose doctrine” applies when an employee is performing both personal and business errands. It is established when it can be inferred that the trip would still have been made, if the private errand were cancelled.

   (2) If an employee is injured on a private errand while on the employer’s premises during work hours and the errand was at the employer’s (or the employee’s supervisor) request, the injury will be compensable.

1. Deviation
   a. An employee injured while deviating from the course of employment is not covered under the Act. An employee can deviate from the course of employment by willfully abandoning his/her job duties to perform an act in furtherance of his/her own purposes. Importantly, poor judgment or negligence is not synonymous with a deviation. Employees who engage in “impulsive, momentary and insubstantial” deviations are not outside the course of employment.

   b. Horseplay may be considered a deviation, depending upon the following criteria.

      i. The extent and seriousness of the deviation. This should not be judged on the seriousness of the consequences of the horseplay, but by the extent of the work-departure itself.
ii. The completeness of the deviation (whether the employee abandoned his/her duties). Specifically, the extent to which the practice of horseplay had become an accepted part of employment, and the extent to which the nature of the employment may be expected to include some horseplay.

c. Fights: An employee who initiates a fight with a co-employee is outside the course of employment, and injuries incurred by the initial aggressor in the fight are not compensable. The Commission recognizes the “non-aggressor rule,” which allows the innocent victim’s injuries to be compensable.

d. Travel: There is a presumption that a traveling employee is performing services incidental to employment at all times while on a trip, the burden of proving the employee deviated is on the carrier.

2. Arising out of employment

a. Generally, “arising out of employment” requires that the injury be incidental to any of the activities of employment, including an injury resulting from a hazard of employment. This is a distinct requirement from “course of employment.” “Arising out of employment” is usually a medical question involving injury causation, predisposition, and extent of disability. As such, the inured employee needs a medical opinion, stating “to a reasonable degree of medical certainty,” confirming that his/her injury “arose out of employment.”

b. The positional risk doctrine: An accident can be said to “arise out of employment” “when by reason of employment the employee is present at a place where he/she is injured through the agency of a third person, an outside force, or the conditions of special danger.”

c. Idiopathic falls: These are injuries, usually falls, which are “due to disease, physical disability or a condition personal to the injured worker” and are not compensable.

d. The “as is” rule: An employer takes an employee “as is” and so the worker’s susceptibility or predisposition to injury does not relieve the present employer
from liability. Also worth noting, an employee’s failure to disclose a preexisting condition when hired is not a defense to a post-hire injury that aggravates the preexisting condition.

3. Exclusivity of Third Party Claims
   a. Where the conditions of liability are met, the employee’s right to recover workers’ compensation benefits is the exclusive remedy against the employer, the workers’ compensation insurance carrier or any co-employees.
   b. There are exceptions to the exclusive remedy provisions of the Workers’ Compensation Act:
      i. The “dual persona” doctrine: An employee can avoid the exclusive remedy provision by showing that his/her injury stemmed from an employer’s action in a persona separate and distinct from its status as an employer. The employer’s second role must be so unrelated to its role as an employer that it constitutes a separate legal person.
      ii. The Workers’ Compensation Act does not prevent a worker from pursuing a discrimination complaint under the Wisconsin Fair Employment Act or the Wisconsin Family and Medical Leave act.
      iii. The Workers’ Compensation Act does not bar an employee from making an invasion of privacy claim against his/her employer.
      iv. The exclusivity provisions do not prevent an employee from seeking arbitration under a CBA to determine whether his/her termination following a work injury violated the union contract. An injured worker may also bring a claim against subcontractors working on the same project who are not his employer.
      v. An employee may bring a claim against a co-employee whose negligent operation of an automobile, in an automobile not owned or operated by the employer, results in an injury. Wis. Stat. § 102.03(2).
   c. Claims against third parties
      i. The first parties are the worker and the employer, all co-employees and the insurance carrier are the second parties and anyone else is
a third party. Thus, if the work injury results from the negligence of a “third party,” the injured worker can bring suit against that “third party.”

1. If a third party action is brought, the employee and insurance carrier must give each other notice of the claim and an opportunity to join in any third party action. Wis. Stat. § 102.29. Although, participation in the action is not a prerequisite to share in the proceeds. Notably, the carrier’s ability to share in the judgment or settlement is limited to actions “in tort.”

ii. The proceeds from third party claims are divided as follows (Wis. Stat. § 102.29):

1. The third party attorney deducts his costs and fees.
2. One-third of the remainder shall be paid to the injured employee, or the employee's personal representative or other person entitled to bring the action.
3. Of the remaining balance, the employer or insurance carrier shall be reimbursed for all payments made by it, or which it may be obligated to make in the future.
4. Any balance remaining will be paid to the employee, the employee’s personal representative or other person entitled to bring the action, subject to the compensation carrier’s right to set this off against further liability (this is also called the “cushion”).

4. Calculation of benefits

a. In calculating all of these benefits, the starting point is the employee’s average weekly wage (AWW) on the date of injury, subject to a statutory cap. There are two methods to calculate AWW, the higher of the two calculations will determine the employee’s AWW.
i. The first method uses the employee’s hourly wage multiplied by the hours he/she is regularly scheduled to work at the time of injury (ex. 40 hrs. x $10.00/hr. = $400.00).

1. A “regular” schedule is one that the employer has scheduled employees, who do they type of work the injured employee was doing, for at least a 90-day period prior to the date of injury. Wis. Code Admin. § DWD 80.51.

ii. The second method uses the employee’s gross earnings over the 52-week period prior to the injury, divided by the actual number of weeks worked during that period. Notably, this option can only be used if the employee has worked in 6 calendar weeks, for the time-of-injury employer, during the 52 weeks preceding the injury. Wis. Stat. § 102.11.

1. This calculation must include all taxable earnings. This includes incentive pay, tips, profit sharing, and bonuses.

b. Part-time work

i. The Department defines “part-time” scheduled work or actual work less than 35 hours per week. The general rule is that an injured worker’s wages are expanded to full-time (40 hours per week) when calculating the AWW.

1. There are several exceptions to expanding wages to full time:

a. The injured employee is part of a regularly scheduled class of part-time employees. If so, the weekly hours for AWW calculations is raised to a minimum of 24 hours or the actual hours if higher than 24. To establish a regularly scheduled class of part-time employees, all of the following must be met:

i. All of the class members must perform “the same type of work at the same location”;
ii. At least 10% of the total workforce must be members of the class or do the same type of work as members of the class;

iii. The members of the class must have a regular work schedule, which varies no more than five hours from week to week or from employees performing the same type of work in the 13 weeks before the injury; and

iv. The class must be made up of more than one employee.

b. Self-restriction to part-time employment

i. An employee may voluntarily restrict his/her hours to part-time. If an employee does this and is not working for another employer, his/her AWW is based upon his/her actual earnings. Self-restriction can be shown through a signed statement or transcription of a recorded statement.

c. The presumption of maximum earnings: Employees who are injured under the age of 27 receive a presumption of maximum weekly earnings for purposes of determining permanent disability or death benefits. This presumption can be rebutted by showing that the applicant at 27, uninjured, would not be a maximum wage earner.

5. Temporary Disability Benefits

a. Injured employees are eligible for temporary disability benefits when they have an actual wage loss during the “healing period” after a work injury. Wis. Stat. § 102.43. There are two types of temporary disability benefits, temporary total disability (TTD), when the injured employee is completely off of work, and temporary partial disability (TPD), when the injured employee is working, but earning less than his/her full wages.
i. An injured employee is in a healing period until his/her condition becomes stationary and “will get no better or worse because of the injury.” Once a healing plateau is reached, an injured employee can be assessed permanent partial disability.

ii. The Three day, seven-day waiting period: The waiting period applies to temporary disability claims only. If disability is less than one calendar week, the employee is not entitled to compensation for the first three calendar days of disability. If the disability exceeds seven days, the waiting period is waived and the employee's compensation starts on the first day of disability.

b. Temporary Total Disability (TTD)
   i. When an injured employee has a complete wage loss during a “healing period,” he/she is eligible for TTD. TTD benefits will be paid at 2/3s of the injured worker’s weekly wage, up to the statutory maximum.

c. Temporary Partial Disability (TPD)
   i. If an injured employee has not reached a healing plateau, established by a practitioner, but experiences a partial wage loss when he/she returns to work, he/she is eligible for TPD benefits. TPD is due in two circumstances: (1) a reduction in the number of hours of work that the employee would otherwise be scheduled to work; or (2) a reduction in hourly wages due to being placed under physical restrictions.

6. Permanent Disability Benefits
   a. An injured employee can receive permanent disability benefits for both functional and vocational disability. Functional disability is usually determined by a treating practitioner, while vocational disability is assessed by vocational experts. Assessment of permanent disability in Wisconsin is different than many other states, functional disability is left up to the treating practitioner, with exception of the mandatory statutory minimums, per Wis. Admin. § DWD 80.32. Whenever an injured employee has more than three weeks of temporary disability, the carrier must obtain and file a final medial
report from the treating practitioner indicating whether the injury caused any PPD and, if so, the extent of the PPD.

b. Permanent Partial Disability (PPD)

i. PPD is payable at a weekly rate equal to 2/3s an injured employee’s AWW; however, except for low wage earners, most injured employees will be subject to the statutory cap ($322.00 in 2016).

ii. There are two types of injuries in Wisconsin, scheduled and unscheduled. Scheduled injuries are listed at Wis. Stat. §§ 102.52 to 102.555. Unscheduled injuries are injuries to the spine, torso, head, mind (psychological) and body as a whole. Permanent disability from unscheduled injuries is evaluated by comparing it to permanent total disability, which is based on 1,000 weeks.

c. Permanent Total Disability (PTD)

i. PTD benefits are payable at the same rate as TTD. PTD benefits will be elaborated on below.

d. Loss of Earning Capacity (LOEC)

i. Employees who suffer an unscheduled injury and are assigned permanent restrictions have standing to bring a loss of earning capacity claim if they cannot return to their time of injury employer at 85% of their former wages. These claims are established through vocational experts and calculated using a percentage of 1,000 weeks. They are payable based upon 2/3s of the employee’s AWW, up to the PPD cap. Notably, the percentage of PPD assigned to an injured employee is not added to the vocational expert’s LOEC assessment. The injured employee is entitled to the greater of the two percentages.

ii. The loss of earning capacity factors, are listed in Wis. Admin. Code § DWD 80.34, and include age, education, training and previous earnings.
7. Vocational Rehabilitation

   a. An injured worker will be able to pursue vocational rehabilitation when they have been assigned permanent restrictions precluding them from returning to their time of injury employer.

   b. What benefits are included in “vocational rehabilitation”

      i. If the DVR finds an injured worker eligible for retraining benefits and establishes an academic retraining plan, the carrier is responsible for maintenance benefits (TTD benefits) during each week the injured employee is “receiving instruction” under a DVR-sponsored retraining program. Wis. Stat. Sec. § 102.43. The carrier is also responsible for travel, meals, tuition, fees and books. Wis. Stat. Sec. § 102.61.

   c. The “Mass Bonding” presumption

      i. The Wisconsin Supreme Court, in *Massachusetts Bonding & Ins. Co. v. Industrial Com’n*, ruled that the Worker’s Compensation Division is powerless to reverse (or second guess) the eligibility determination made by a DVR counselor unless “highly material facts were misrepresented to or withheld from DVR or that DVR has applied an interpretation of the rehabilitation laws which is entirely outside the reasonable scope of interpretation and, hence, a clear abuse of administrative power.” *Massachusetts Bonding & Ins. Co. v. Industrial Commission*, 275 Wis. 505 (1957). The “Mass Bonding” presumption only applies to the first 80 weeks of a retraining program. Worth noting, the “Mass Bonding” presumption does not apply to private counselor-rehabilitation programs.

   d. Some defenses to vocational rehabilitation claims:

      i. If an injured employee refuses an offer of “suitable employment,” he/she is not eligible for vocational rehabilitation.

      ii. Respondent’s expert disagrees with the DVR counselor’s program: Given the “Mass Bonding” presumption, the respondent vocational expert’s opinion is mostly irrelevant. The Commission “may not
credit respondent’s vocational expert over that of the DVR counselor, again unless there is a misrepresentation or an abuse of discretion.” See Tweedt v. Pygmalion Trucking, WC Claim No. 1997-051628 (LIRC June 29, 2000).

iii. The injured employee voluntarily quits.

iv. The DVR rehabilitation enhances, not restores the injured worker’s pre-injury earning capacity: This is a difficult defense because the Commission has stated that a retraining program is not limited to simply restoring the injured employee’s pre-injury wages, it is about restoring the injured employee’s earning capacity and potential.

8. Disfigurement

a. A disfiguring permanent injury, visible in the ordinary course of employment, can result in additional compensation up to one year's wage. The employee must show that he or she is likely to sustain a future wage loss due to the appearance of the disfigurement. These claims are usually made in cases where employees come in direct contact with the public, such as retail, sales or modeling professions.

9. Permanent Total Disability

a. If an injured employee is found to be permanently and totally disabled (PTD), Wisconsin law provides weekly indemnity benefits at 2/3s of their AWW (subject to the statutory cap), along with reasonable and necessary medical expenses for the employee’s lifetime. Wis. Stat. § 102.44. Injured employees deemed PTD also receive a death benefit, regardless of the cause of their death. The only limitation is if the employee’s lifetime benefits exceed 1,000 weeks of benefits. An injured worker can be deemed PTD through two routes: (1) complete physical incapacity—defined medically or statutorily; or (2) vocational permanent and total disability.

b. Calculating PTD benefits

i. PTD benefits are payable at the same rate as TTD benefits and subject to the maximum wage cap. It is important to note that injured
employees under the age of 27 are entitled to the maximum wage earner presumption. Wis. Stat. § 102.11.

ii. Also worth noting, PPD and PTD are not paid for the same weeks. If PPD and claimed PTD stem from the same healing period and permanent restrictions, the insurer will be entitled to a credit for the PPD previously paid during the same alleged period of PTD.

10. Medical Treatment

a. Wisconsin does not require an injured employee to obtain treatment from a panel of physicians, they have their choice of physician; however, the injured employee can only choose two physicians. Thus, an employee dissatisfied with a physician can choose a second physician. Notably, physicians practicing together and referrals do not count as choices.

b. What treatment must be covered

i. Workers’ compensation carriers are liable for all treatment that is reasonably required and directed to cure and relieve the effects of the injury. Wis. Stat. § 102.42. Whether a surgery is successful or not, does not affect liability. In fact, even complications from reasonable and necessary treatment are compensable.

11. Timeframes and Penalties

a. Denial of a claim: A carrier must deny or explain that they are still investigating the claim within 14 days after the claimed injury or, if the carrier received notice—from any source—more than 7 days after the DOI, then the carrier has 14 days from the date the carrier received notice of the injury. The notice must include a specific reason for the denial or, if the carrier is still investigating, specify that additional medical or other records are required to complete the investigation. Wis. Admin. Code § DWD 80.02(2m).

b. First Payment: The first indemnity payment must be mailed to the injured employee within 14 days after disability began or the last day worked after the injury, before the first day of compensable lost time. Wis. Admin. Code § DWD 80.02(3)(a).
c. Penalties
   i. Inexcusable delay of payment
      1. If a carrier delays in making the first payment due to an injured employee for more than 30 days after the day the employee leaves work, as a result of the work injury, and the payment is for $500.00 or more, the delayed payments will be increased by 10%. Wis. Stat. § 102.22(1).

   ii. Safety violation
      1. Employer’s violation: Employer pays 15% penalty up to $15,000. Wis. Stat. § 102.57.
      2. Employee’s violation: Compensation reduced by 15% up to $15,000. Wis. Stat. § 102.58.

   iii. Bad faith
      1. If the carrier fails to pay a claim where there is no credible evidence that the employee’s injury is fairly debatable, the department may assess a penalty, up to the lesser of either 200% of the compensation (or medical expense) or $30,000.

   iv. Unreasonable refusal to hire or unreasonable termination
      1. Employer may have to pay the employee one year of the employee’s wages (52wks x AWW). Wis. Stat. § 102.35(3).

12. The litigation process
   a. A carrier’s denial will begin the litigation process. After an injured employee’s claim is denied, he/she or his/her attorney will file an application for hearing. After the applicant files his/her application for hearing the respondents will receive a notice of application. The respondents then have 20 days to file an answer with the Office of Workers’ Compensation Hearings (OWCH). If the applicant is unrepresented, a prehearing conference will be scheduled. At the prehearing conference, the ALJ will walk the applicant through his/her claim, how to proceed forward and, usually, recommend that he/she seek counsel. The prehearing allows the respondent to clarify the
issues going forward, get any authorizations signed (if not done previously), and possibly attempt to settle the claim. The next step is the filing of the Certificate of Readiness (COR), by the applicant or his/her counsel. OWCH will not schedule a hearing until it receives a Certificate of Readiness (COR). If the applicant or his/her counsel is not proceeding forward with the claim, we can ask for a dismissal. Although, OWCH usually dismisses the application without prejudice, which allows the application to be refilled at any time within the statute of limitations. After the COR is filed, the Department usually sends a notice of hearing within three months. Once a hearing date is set, both parties must submit all medical records, medical reports, vocational reports and WKC-3s at least 15 days prior to the date of hearing. If the case fails to settle, the parties will go to hearing in front of an ALJ. Following the hearing, if a concluding hearing is not required, the ALJ has 90 days to issue a written decision. After the ALJ’s order is issued, either party has 21 days to file an appeal with the Labor and Industry Review Commission (LIRC). LIRC will review the evidence, briefs and the record of the case. Notably, LIRC is not bound by the ALJ’s findings of fact or conclusions of law. LIRC issues its own decision based on its own review of the record. The next step in the appeal process is to seek judicial review of LIRC’s decision. The first appeal is to the appropriate circuit court, then the Court of Appeals, and possibly the Supreme Court of Wisconsin.