FINAL DRAFT BULLETIN

This Bulletin modifies the process outlined in the Division's June 12, 2009 Bulletin regarding prehearings. The Division is publishing this statement of policy so that all parties will have a clear understanding of their rights and obligations pertaining to prehearings. This bulletin does not constitute a rule or regulation with the force and effect of law. The Division intends to promulgate regulations for this purpose as soon as practicable.

Effective July 13, 2009, prehearing conferences will be divided between informal and formal prehearing conferences. Informal prehearing conferences will be conducted by Workers' Compensation Officers (WCO). Formal prehearing conferences will be conducted by Hearing Officers (HO) as board designees under 8 AAC 45.065. The purpose for this modification is to:

1. Further refine the division changes necessitated by the Alaska Supreme Court's decision in *Bohlmann v. Alaska Const. & Engineering, Inc.,* 205 P.3d 316 (Alaska 2009);

2. Insure that all decision making on claims is performed by Hearing Officers;

3. Minimize the burden placed on Hearing Officers as a result of *Bohlmann* by creating informal conferences chaired by Workers' Compensation Officers for certain non-decision making functions;

4. Streamline the litigation process by reducing the number of prehearings held in a case prior to the scheduling of a hearing.

A. Informal prehearing conferences. Workers' Compensation Officers (WCO's) will conduct an initial informal prehearing conference in those claims in which:

1. All parties are represented by an attorney licensed to practice law in this or another state; and

2. No hearing date has been scheduled.

These procedures will include those claims which meet the above criteria and are currently scheduled for a prehearing conference. Those pending cases which meet the above criteria but have no prehearing currently scheduled, an informal prehearing conference will be scheduled upon request by a party. Newly filed claims which meet the above criteria will automatically be scheduled for an informal prehearing conference by division personnel. The purpose of an informal prehearing conference is to:

1. Identify the issues and defenses;

2. Record stipulations;

3. Schedule the matter for hearing, establish evidence, discovery and other pre-hearing deadlines; and

4. If a procedural dispute exists and the parties are unable to resolve the dispute, the WCO will complete a Procedural Hearing Scheduling Order scheduling the issue for briefing and oral argument before the Hearing Officer assigned to the claim.

The WCO will issue an Informal Prehearing Conference Summary within 10 days after the conference and shall instruct the parties to request a formal prehearing conference should the need for a conference arise in the future. Except for the SIME process outlined below, informal prehearing conferences will not be held after the initial informal prehearing conference unless both parties are represented by

an attorney and a conference is necessary to simply complete a scheduling order.

B. Formal prehearing conferences. All other prehearing conferences will be conducted by hearing officers acting as board designees in accordance with 8 AAC 45.065 and will include:

1. All claims where at least one party is not represented by an attorney licensed to practice law in this or another state (unrepresented party);

2. Those claims involving discovery, evidentiary, SIME or other procedural disputes;

3. Disputed requests by a party for amendment or modification of an Informal Prehearing Conference Summary; and

4. Requests for prehearing conferences by parties.

The purpose of a formal prehearing conference will be to:

1. Identify the issues and defenses;

2. Schedule the matter for hearing, establish evidence, discovery and other pre-hearing deadlines;

3. If discovery, evidentiary, SIME or other procedural disputes exist which cannot be resolved at the formal prehearing conference, the hearing officer will issue a Procedural Hearing Scheduling Order; or

4. Amend or modify a prehearing summary.

Formal Prehearing Conference Summaries will be issued within 10 days of the formal prehearing conference in accordance with 8 AAC 45.065. All formal prehearing conferences will be recorded as soon as recording software becomes fully implemented by the Division.

C. SIME Requests. Procedures for Second Independent Medical Evaluations (SIME) jointly requested by the parties through a joint petition completed after an informal or formal prehearing conference will be handled by WCO's through an informal telephonic conference with the parties, their representatives or their offices to schedule the necessary dates for the transmittal of medical records and the submission of SIME questions. An SIME Order will be issued by a hearing officer to memorialize the SIME deadlines.

D. Requests for Conference. Except for the initial conference scheduled by the division following the filing of an answer to a claim, the division will not automatically schedule or "roll over" pre-hearings. To schedule a prehearing conference, parties must complete and file a Request for Formal Prehearing Conference identifying the reason(s) why a conference is necessary. Informal prehearing conferences will not be held after the initial informal prehearing conference unless both parties are represented by an attorney and a conference is necessary to simply complete a scheduling order.

Questions concerning prehearings can be addressed to the following individuals:

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