

New BRC Request Form and Rules...

Kevin M. Baucom and Mary Lou Summerville recently attended a presentation given by DWC staff. The presentation was to discuss “new” rules related to requests for BRC. Please email Kevin Baucom or Mary Lou Summerville for the new BRC request form which must be used as of October 1, 2010. The rules require more active efforts to resolve issues prior to requesting a BRC. Below are the key points from the meeting:

Benefits & Goals of the new interpretation of the rules.

- Promotes early communication among parties to facilitate dispute resolution.
- Provides timeframes to assure exchange of information in the possession of parties.
- Discourages cancellations and resets, thus making more efficient use docket resources.
- Discourages trivial, disingenuous or incomplete requests for proceedings or requests for proceedings before parties are fully prepared.
- Streamlines and improves processes.

Key provisions of the rule

- Repeals option that unrepresented injured employee may dispute by any manner or means.
- Establishes “completeness” standard for what constitutes a dispute.
- Requires submission of details and documentation of attempts to resolve prior.
- Changes records retention requirements for BRC exchange documents.

Rule Language

- SS 141.1 (a) Prior Notification
 - Before requesting a BRC, a disputing party must “notify the other party or parties of the nature of the dispute and attempt to resolve the dispute.”

What is a request?

Related Practices

Corporate Transactions
Oil & Gas
Environmental & Toxic Tort
Insurance Defense & Coverage
Maritime & Admiralty
Mass Tort & Class Action
Products Liability
Professional Liability
Employment Law
Retail & Restaurant
Subrogation
Title Litigation
Trucking & Transportation

Related Industries

Maritime & Admiralty
Maritime & Admiralty
Insurance
Maritime & Admiralty
Insurance
Maritime & Admiralty
Insurance
Amusements, Sports, and
Recreation
Construction
Insurance
Maritime & Admiralty
Oil & Gas / Energy
Retail & Restaurant
Trucking & Transportation

- SS 141.1 (d)
- “A request for a benefit review conference shall be made in the form and manner required by the division.”

- SS141.1 (d) says a request must:
- Identify and describe the disputed issue or issues.
- “Provide details and supporting documentation of efforts made by the requesting party to resolve...”
- Attest that reasonable efforts have been made to resolve prior and that “pertinent information” has been exchanged.

Documentation of Attempts to resolve includes, but is not limited to:

- Notification provided under section (a).
 - Correspondence.
 - E-mails.
 - Facsimiles.
 - Records of telephone contracts.
 - Summaries of meetings or conversations.

Documentation does not include:

Pertinent information exchanged with the opposing parties as required by

ss141.4.

When is a request “complete”?

- SS 141.1(e)
- Defines a “complete request” as one that meets all of the requirements of SS141.1(d).

What if request is “incomplete”?

- SS141.1(f) says:
- An incomplete request will be denied.
- A denied request does not constitute a dispute proceeding.
- Parties will be notified in writing of reasons for denial and may send new request that meets requirements.

What if party disagrees with denial?

- SS141.1(g) says:
- If a party disagrees with a denial or has “good cause” for failing to meet the completeness standards, the party may appeal the denial through a CCH (either regular setting or expedited.)

Cancelling & Rescheduling

- SS 141.2
- Provides unrestricted period of ten days following notification (deemed received five days after set notice.)
- After unrestricted period, requires written request and showing of “good cause.”

“Good Cause” for Cancellation or Reschedule includes but is not limited

- Parties resolved dispute by settlement or agreement.
- BRC was scheduled with wrong carrier.
- Party requesting BRC no longer wants to pursue.
- Death of injured employee.
- No additional benefits appear due.
- Illness of a party.

Exchange of “Pertinent Information”

- SS141.4 defines “pertinent information” as all information relevant to the disputed issue or issues, including but not limited to:
- Wage records
- Medical records
- Reports

Rules Governing Exchange

- SS141.4(c-g)
- Requesting party must send “pertinent information” to opposing party or parties before making BRC request to Division
- Opposing party must send its documents to other parties within 10 working days after receiving copy of BRC request from party that requested BRC.
- Not later than 14 days before the BRC parties must send any supplementary pertinent information to other parties (unless previously exchanged) and send full exchange to the Division. This time frame is five days for an expedited BRC.
- If additional information becomes available after that time, parties must bring sufficient copies to the BRC.
- Do not attach “Pertinent Information” to DWC045 form (see DWC045 Instructions)

Retention of Exchange SS141.4 (h)

- Basic Principles:
- The Division is not the repository of all paper involving a claim.
- The BRC is an informal process and no record of evidence is taken.
- The usefulness of the information for the Division’s business purposes is exhausted when:
- Parties reach an agreement.
- Unresolved issues are next leveled to a CCH
- Parties fail to reschedule a second BRC within 90 days.

Recap of Documentation

- Documentation of efforts to resolve prior must be attached to the request 9DWC Form 045) and will be retained as part of that request.
- “Pertinent information” (exchange) does not have to be filed with division until 14 days before BRC.
- Division will not keep exchange after 90 days.

Decision making authority to grant or deny BRC will transfer from Claim Service Officers to Benefit Review Officers. Effective October 1, 2010 new DWC Form-045 must be used for all requests.

Benefit Review Officers will review DWC Form-045 and make determinations to grant or deny requests. Traveling Benefit Review Officers will access information through TXCOMP to enable them to make timely decisions for offices without a full-time Benefit Review Officer.

Requests received before October 1, 2010, will be governed by existing documentation requirements and existing rules regarding manner and means.

Requests received after that date will have to be filed on a DWC Form-045 and meet the new documentation and exchange standards.

Changes to the DWC Form 045 include:

- Section II has all the information needed to create a claim (should that be required.)
- Section III enumerating disputed issues(s).
- Section IV regarding documentation of efforts to resolve prior.
- FAQ covers such things as use of the form, special accommodations and expedited proceedings.

A word about MMI/IR disputes

- Filing of the request for a BRC (DWC Form 045) alone will not constitute a dispute or “stop the clock” for purposes of Labor Code SS408.123(e) unless the TDI-DWC determines the request was complete.*
- After October 1, 2010, injured employees will have to use the DWC Form 045 to request a BRC. Disputes by any manner and means will no longer be allowed.

Additional information for Health care Providers

- Labor Code SS 413.042 – A Health Care Provider (HCP) cannot bill an injured employee unless, “the injury is finally adjudicated not compensable” In order to obtain final adjudication of the claim the HCP must become a subclaimant to the claim; then request a Benefit Review Conference. There are certain steps to be followed

All Parties Need to

- Keep good records and documentation as they attempt to resolve a dispute. Should it become necessary to ask for a BRC these will be needed.
- Make sure to maintain up to date contact information
- Set up files and records to assure ready access to originals
- Pay careful attention to the calendar. The rule has filing deadline for such things as exchange. In addition, timelines in statute or rule
- Remember use only the new DWC Form 045 on or after 10/1/10.