

Your Right to be Heard

A Guide to the Appeal Process

Workers' Compensation, Crime Victims, Employer Premiums

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Introduction

What is the BIIA?

The Board of Industrial Insurance Appeals (BIIA) is a state agency that is **independent** from the Department of Labor and Industries (L&I). The BIIA hears appeals from decisions made by L&I in several areas. The three principal types of appeals are:

- Workers' compensation and employer premium assessment
- Safety citations under WISHA, the Washington Industrial Safety and Health Act (see *Your Right to be Heard*—WISHA)
- Crime victim compensation

The BIIA is administered by three full-time Board Members appointed by the Governor.

Where do I find rules about appeals?

Most of the rules can be found in the BIIA's *Rules of Practice and Procedure*. You can find this publication online at www.biiia.wa.gov. Statutes and rules can also be found at www.leg.wa.gov/lawsandagencyrules.

Granting or Denying Appeals

What happens when the BIIA receives an appeal? It will:

- Assign a docket number to the appeal.
- Mail a Notice of Receipt of Appeal to the parties.
- Send a copy of the appeal to L&I.

In workers' benefits appeals, L&I must either:

- Send its record to the BIIA, which permits the appeal to proceed; or
- Change or reverse the order under appeal; or
- Advise the BIIA that they will reconsider their decision.

The BIIA has 60 days to decide whether the appeal will be granted. L&I must respond to the appeal within this time frame.

What if L&I reconsiders its decision?

The BIIA will return the appeal to L&I for further action.

What if L&I does not reconsider its decision?

The BIIA will decide whether it has jurisdiction (the right to hear the appeal).

- If the BIIA does **not** have jurisdiction, the appeal will be denied and an Order Denying Appeal will be sent to the parties.
- If the BIIA has jurisdiction, the appeal will be granted and an Order Granting Appeal will be sent to the parties. An Order Granting Appeal does not mean that anyone has won or lost the appeal. It only means that the BIIA agrees to hear the appeal.

An Order Granting Appeal does not mean that anyone has won or lost the appeal

Payment of Benefits in an Employer Appeal

The law provides for continued benefits during an **employer** appeal. The law also allows the employer to request those benefits be stayed (stopped) by filing a motion within 15 days after the appeal is granted. The employer's motion should **specifically request that benefits be stayed** during the appeal process.

This law does not affect appeals filed by injured workers.

The BIIA will decide to grant or deny the motion based on **only** the information in the L&I file as it existed on the date of the order on appeal. New medical or vocational information in the file or offered by the parties in connection with the motion cannot be considered.

If You Did Not File the Appeal

If you did not file the appeal, you may choose whether to participate in the conferences and/or hearings. If you choose not to participate, it is possible that your interests could be substantially affected by the outcome of the appeal. In some instances, the outcome of the appeal might not have any effect on you.

If you have an opinion concerning the outcome of an appeal, you should participate in order to voice your opinion.

Attorneys

Parties can represent themselves in an appeal before the BIIA, or they may be represented by an attorney or lay representative (non-attorney). Lay representatives for injured workers or crime victims may not charge a fee or otherwise be compensated. WAC 263-12-020(3)(a)(iii).

L&I will be represented by a paralegal or an attorney from the Office of the Attorney General.

The Mediation Conference

What happens when an appeal is granted?

After an appeal is granted, a mediation conference will be held in most cases. A mediation conference is an informal meeting of the parties with a mediation judge.

A notice of conference will be sent to all parties

All parties will receive a notice indicating the date, time, and location of the conference. The conference may be held in person or by telephone.

Mediation is not a hearing—witnesses will not be called to testify. An attorney is not required, although the assistance of an attorney may be helpful.

The mediation judge may schedule further conferences, if needed.

What are the advantages of mediation?

In mediation, parties are able to discuss the appeal in a relaxed, confidential, and informal setting. If a settlement can be reached in mediation, the parties avoid the uncertainty, expense, and delay of a formal hearing.

What is the mediator's role?

- The mediator will discuss options for settling the appeal. The mediator will not decide the outcome of the appeal.
- The mediator can speak to parties privately. This process allows the mediator to meet separately with each party to explore settlement options.

- The mediator may look at the information supporting a party's position and may suggest what additional information may be necessary.
- The mediator cannot give legal advice but will answer questions about the process.

What should I bring to the mediation conference?

Look at the L&I decision that was appealed. Consider what it would take to settle the appeal. Gather all documents that support your position and bring them to the mediation conference. Don't bring originals. Instead, bring copies.

Bring the Jurisdictional History. This is a summary of the history of the case. Be ready to discuss whether this history is correct.

What happens if the appeal is resolved?

An appeal can be resolved in two ways:

- The party that filed the appeal can voluntarily dismiss the appeal.
- The parties can agree on a settlement.

The BIIA will then issue either an Order Dismissing Appeal or an Order on Agreement of Parties.

What happens if the appeal is not resolved?

When a settlement cannot be reached, the case will be given to a hearings judge, who will schedule a formal hearing. To ensure confidentiality, the mediator is not allowed to discuss the case with the hearings judge.

Hearings

What are the rules for BIIA hearings?

BIIA hearings are like trials. The Rules of Evidence and Superior Court Civil Rules apply. Parties must be familiar with these rules in order to ensure that all their testimony and evidence will be admitted at the hearings.

Find the
Rules of Evidence and
Superior Court Civil Rules at
www.courts.wa.gov

Do I need an attorney?

At this point, the appealing party should consider finding an attorney. An experienced attorney will represent L&I or the self-insured employer. An attorney can negotiate with the opposing parties, help obtain necessary witnesses, and make objections.

What is the hearing judge's role?

The judge assigned to the case can help question witnesses, but will not act as an attorney for the parties. The hearings judge must remain neutral and cannot discuss the case without all parties present.

Where will the hearing take place?

All parties will receive a notice indicating the date, time, and location of the hearing. The first hearing in a workers' compensation case is usually held either in the county where the injury occurred or the county where the worker lives.

What will happen at the hearing?

All evidence must be presented at the hearing. The evidence presented at the hearing will be the only basis for the decision at the BIIA or at a higher court.

At the hearing, the parties will present their witnesses, who will testify under oath. All testimony will be recorded by a court reporter. In most cases, a doctor will be required to appear in person to testify. Doctor's notes and letters may not be received into evidence if a party objects to it. Each party is responsible for arranging for their doctors and other witnesses to testify, and for paying witness fees.

A doctor's testimony is required if a party is requesting or challenging the following benefits:

- Allowance of the claim, or acceptance of medical conditions
- Reopening of the claim for aggravation of an industrially related condition
- Further proper and necessary medical and surgical services
- Payment of unpaid medical bills
- Time-loss compensation
- Loss of earning power
- Permanent partial disability
- Permanent total disability

In workers' compensation, crime victims, and employer premium cases, the appealing party must present evidence first to show that L&I's decision is incorrect.

In a willful misrepresentation case, L&I or self-insured employer must present evidence first.

Proposed Decision and Order

When all hearings are completed and all evidence has been received, the hearing judge will issue a Proposed Decision and Order, which is the hearing judge's decision on the appeal.

Petition for Review

What if I disagree with the judge's decision?

You may ask the three Board Members to review the judge's decision. Make your request **in writing** and title it "Petition for Review."

How much time do I have to file a Petition for Review?

File your Petition for Review with the BIIA's Olympia office within 20 days from the date you receive the PD&O.

File a Petition
for Review
within 20 days

How do I file a Petition for Review?

RCW 51.52.104 and WAC 263-12-145 set forth the requirements for a Petition for Review. Your Petition for Review **must**:

- Note "PETITION FOR REVIEW" on the first page.
- Contain the following information:
 1. The Case Name, BIIA Docket Number, and Department Claim Number (or Firm Number or Citation and Notice Number).
 2. The reasons you believe the PD&O is incorrect. State the evidence in the record that supports your petition.
 3. Any rulings made by the judge that you think are incorrect.
 4. A "Declaration of Receipt" stating the date the PD&O was received.

Do not include other pleadings with your Petition for Review. File your Petition for Review with the Executive Secretary in the BIIA's Olympia office within 20 days. You may file in person, by mail, by facsimile, or online:

Board of Industrial Insurance Appeals
2430 Chandler Ct. SW
P.O. Box 42401
Olympia, WA 98504-2401
FAX: 360-586-5611 (Olympia area) or 855-586-5611
Online: www.bii.wa.gov

- If filed by mail, your petition is considered filed when it is deposited in the United States Postal Service, properly stamped and addressed.
- If you mail your petition on the date of your deadline, complete a "Certificate of Mailing" as proof of the mailing date.
- If you file online or by fax, we must receive it by 5 p.m. on the date of your deadline. Petitions received after 5 p.m. will be deemed filed the next business day.
- Mail copies of your petition to all other parties. Their names and addresses appear on the mailing cover page included with the PD&O.

Can I get transcripts of the hearings?

Yes, we will provide you with copies of the transcripts, depositions, and exhibits in your case free of charge. Send your request for these documents to transcripts@biiia.wa.gov.

Can I request an extension of time to file a Petition for Review?

Yes. Your request **must**:

1. Be in writing and should state the reasons why the extension is needed.
2. Be filed with the BIIA's **Olympia** office within 20 days from the date of receipt of the PD&O.
3. Include a "Declaration of Receipt" stating the date you received the PD&O.

The Board determines if an extension is granted and for how long. You must file your Petition for Review within the 20-day time period unless the Board grants you an extension.

Where do I find rules about Petitions for Review?

You can find statutes and rules in the Revised Code of Washington (RCW Chapter 51.52) and Washington Administrative Code (WAC 263-12). These are legal publications available in law libraries or online at www.biiia.wa.gov and www.leg.wa.gov/lawsandagencyrules.

What if no one files a Petition for Review within the time allowed?

The PD&O becomes the final order of the Board. You cannot appeal to superior court.

What if a Petition for Review is filed?

The Board will determine whether to grant or deny the petition following a review of the record based on the grounds detailed in the Petition for Review and the evidence cited in the record in support thereof.

- If a Petition for Review is denied, the Board will issue an "Order Denying Petition for Review." The PD&O becomes the final order of the Board.
- If a Petition for Review is granted, the Board will issue a Decision and Order. The Board must issue the Decision and Order within 180 days of the date the Petition for Review was filed.

Appeals to Superior Court

What if I disagree with the decision reached in the Decision and Order?

Any party who disagrees with any portion of the decision may appeal to superior court.

How much time do I have to appeal to superior court?

- In a **workers' compensation** case, your appeal to superior court must be filed within 30 days from the date you receive the BIIA's final order.
- In a **crime victim** or **employer premium** case, your appeal must be filed within 30 days from the date the order was mailed to you.

In what county do I file a superior court appeal?

- In a **workers' compensation** case, file the appeal either (1) in the county where the injured worker or beneficiary lives, or (2) in the county where the injury took place. If the worker's residence and the place of injury are outside Washington State, file the appeal in Thurston County Superior Court.
- In a **crime victim** or **employer premium** case, file the appeal either (1) in Thurston County, or (2) in the county where you live or where your principal place of business is located, or (3) in any county where the property owned by the petitioner and affected by the contested decision is located.

Do I need to send copies of the appeal to anyone?

Copies of the appeal **MUST** be mailed or hand-delivered to the BIIA, L&I, and (if applicable) to the self-insured employer:

Board of Industrial Insurance Appeals
2430 Chandler Court SW
P.O. Box 42401
Olympia, WA 98504-2401

Department of Labor and Industries
Office of the Director
P.O. Box 44001
Olympia, WA 98504-4001

Is there a form for filing an appeal in superior court?

No. Each superior court has its own filing requirements. There is a directory available on the Washington Courts website to help you locate the appropriate superior court:

www.courts.wa.gov/court_dir.

What evidence will the superior court consider?

The case will be tried based on the record made before the BIIA. The record consists of transcripts, depositions, and exhibits offered during BIIA hearings.

Where do I find the rules about superior court appeals?

Statutes and rules can be found in the Revised Code of Washington (RCW) and Washington Administrative Code (WAC). These are legal publications available in law

libraries. They are also available on the Washington State Legislature website: www.leg.wa.gov/lawsandagencyrules.

Most of these rules can be found in the BIIA's *Rules of Practice and Procedure*, a publication found at www.biia.wa.gov.

- Workers' Compensation: See RCW 51.52.110 and WAC 263-12-170.
- Employer Premiums: See RCW 51.48.131, RCW 51.52.112, and RCW 34.05.510-598.
- Crime Victims: See RCW 7.68.110 and RCW 34.05.510-598.

Superior court local rules can be found on the Washington Courts website: www.courts.wa.gov/court_rules.

Interest

Workers may receive interest on delayed benefits. There are two instances in which interest may be paid:

- When the worker files an appeal with the BIIA and is successful in obtaining additional time-loss benefits.
- When an employer files an appeal and the worker wins.

Attorney Fees

Workers/Beneficiaries/Crime Victims

A worker/beneficiary/crime victim represented by an attorney who succeeds in their appeal may ask the Board to set the attorney fee. The request must be in writing and must be filed within one year of receipt of the Board's final order. The Board has authority to set the fee even though a fee agreement was made with the attorney. The responsibility for paying the fee, however, remains with the worker/beneficiary/crime victim.

Attorney fees are usually charged on a contingent fee basis. This means that no attorney fee is charged unless additional benefits are received (or benefits retained in the case of an employer's appeal). The fee set by the Board is based upon the benefits obtained as a result of the appeal, the complexity of the case, the time involved, and other factors.

After the Board has issued an order fixing the attorney fee, it is unlawful for the attorney to charge any additional fee, unless the order is overturned by superior court. If no written request is made to the Board, the fee will be determined by private agreement.

Firefighters

The Board can order the opposing party to pay attorney fees if the final decision allows the claim for occupational disease benefits. [RCW 51.32.185\(7\)\(a\)](http://www.leg.wa.gov/lawsandagencyrules).

Do you have more questions?

For more information:

Visit the Web

www.biia.wa.gov

General Information

360-753-6823 or 800-441-0447

Headquarters

Board of Industrial Insurance Appeals

2430 Chandler Court SW

P.O. Box 42401

Olympia, WA 98504-2401