

2020 EDITION

Workers' Compensation Practice in Virginia

Editor: Lawrence J. Pascal



Continuing Legal Education
by the Virginia Law Foundation



Workers' Compensation Practice in Virginia

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VIRGINIA LAWYERS PRACTICE HANDBOOK

WORKERS' COMPENSATION
PRACTICE IN VIRGINIA

Tenth Edition

Lawrence J. Pascal, Editor
Ashcraft & Gerel, LLP / *Alexandria*

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Publications

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CHAPTER 6

CLAIMS HANDLING

6.1 THE ELECTRONIC SYSTEM

6.101 In General. In 2010, the Virginia Workers' Compensation Commission (the Commission) completed the Technology Alignment Project (TAP), a multi-year undertaking designed to modernize the Commission's information systems and accommodate transition to an entirely paperless system. The TAP automated a number of processes and procedures that had been paper-driven and labor intensive. Many forms previously used by the Commission have been altered or eliminated entirely. Modifications and improvements continue to be made to the electronic system, some of which may result in additional changes to the Commission's forms. Litigants should consult the Commission's website at www.vwc.state.va.us for the most current versions.

6.102 Electronic Case Files. All cases with an accident date of October 1, 2008 or later exist entirely in electronic, paperless form. Images of inbound documents are scanned into the electronic file and destroyed after image verification. Outbound documents are issued directly through the electronic file.

Cases with an accident date earlier than October 1, 2008, commonly called "legacy files," have all been migrated to the electronic system. Migrated files retain their existing seven-digit file number and a paper component consisting of documents contained in the file before migration. Upon migration, a "legacy migration report" is created and added to the image repository in the electronic file. This report contains data concerning activity in the file before migration, such as previously entered awards and opinions. As migrated legacy files become active and are referred to the docket, documents contained in the file before the migration will be scanned into the electronic file if those documents are not too numerous. Once all documents are scanned into the electronic file, the paper component of the legacy file is destroyed.

6.103 WebFile. WebFile gives parties and attorneys an electronic portal to their case files. Using credentials provided by the Commission, WebFile users may log in and view all documents contained in their case files. Parties and attorneys also may file pleadings and documents of all vari-

ties electronically through the WebFile system. A number of forms are available as web forms and are pre-populated with basic information, such as the style of the case and file number. Using WebFile is highly encouraged as it results in the most prompt and accurate handling of the filing by Commission staff.

Documents and filings may be made through WebFile 24 hours per day, every day of the year. Any document or other filing submitted by WebFile is deemed filed with the Commission as of the date and time it is received by the Commission's computer server and WebFile equipment to which it has been sent. Documents submitted up to 11:59 p.m. are considered filed on the current day; items submitted on or after 12:00 a.m. are considered filed the next day. These policies do not alter any applicable statutory provisions concerning limitation periods or the computation of time, such as those set forth in section 1-210 of the Virginia Code. WebFile users are responsible for ensuring that all documents filed are complete and readable. The user is also responsible for any transmission delay, disruption, or interruption of Internet service. Unless otherwise directed by a member of the Commission staff, a user should not file a duplicate paper copy of any document or other filing made through WebFile.

In addition to viewing the contents of case files and filing documents, attorneys may use WebFile to note representation in a particular case. Upon logging into the WebFile system, an attorney user sees a sortable list of all cases with which he or she is associated as well as sortable list of all scheduled upcoming hearings. Attorney users also receive an email notification from the Commission anytime a document is added to one of the files with which they are associated. The email notification contains a hyperlink that takes the attorney directly to the document referenced in the email.

Attorney, claimant, and claim administrator WebFile users have the option to "go paperless." Eligible parties may log into WebFile and opt into or out of the paperless program at any time; however, they may not change their paperless option more than once per day.

The paperless preference for attorneys is set by the individual attorney and not his or her firm. Conversely, the paperless preference for claim administrator WebFile users is set at the organization level, not individually by user. For claim administrators, the paperless preference applies to all claims, all users, and all organizations listed for the claim administrator organization. The paperless option cannot be applied to selected claims, claim administrator personnel, or selected claim administrator organizations if more than one exists in their group.

When parties log into WebFile there will be a banner at the top of the screen that displays their current paperless status. Attorneys who choose to be paperless will have the option to receive one email per notice (as they do today) or one email per day with all notices for the day. When uploading documents and web forms through WebFile, all parties to the claim are listed to remind the attorney of whom they need to copy on their filing. Parties who have chosen to be paperless will be labeled with a green leaf icon indicating that they do not need a mailed copy of the filing. WebFile users must continue to send paper copies of documents filed via WebFile to the other parties and counsel who have not selected the paperless option as indicated by the green leaf icon. Such copies must be sent on or before the date they are filed with the Commission. Parties may not use WebFile to send documents that do not need to be filed with the Commission to other parties.

The Commission developed a number of WebFile users' guides for various parties, including claimants, claim administrators, professional employer organizations, group self-insured associations and attorneys, all of which are available at the Commission's website, www.vwc.state.va.us.

6.2 CLAIMS REPORTS

6.201 In General. An employer must report every accident, regardless of its severity, to the Commission.¹ The initial report concerning an injury is called the "First Report of Injury" (FROI). A later report of medical or indemnity payment activity concerning an injury or of a decision to deny or no longer make payments with respect to an injury is called a "Subsequent Report of Injury" (SROI). Collectively, FROIs and SROIs are called "Claims Reports."²

6.202 Electronic Filing Required. The Commission will not accept any claims report in paper form. Rather, all claims reports must be filed electronically with the Commission in accordance with an implementation guide published by the Commission and updated annually.³ The current version of the implementation guide may be found at the Commission's website.

¹ Va. Code § 65.2-900. As used in this chapter, reference to "employer" includes its insurer, if insured, and the insurer's or self-insured employer's third party administrator.

² 16 VAC 30-91-10.

³ 16 VAC 30-91-20.

Most claims reports are required to be filed via electronic data interchange (EDI). The Commission has adopted the Claims Release 3.0 EDI Standards developed by the International Association of Industrial Accident Boards and Commissions. However, filers that typically report fewer than 100 accidents per year may file their claims reports electronically using the WebFile system accessible at the Commission's website.

6.203 First Report of Injury. An FROI must be filed for all injuries about which the employer has knowledge. Except for minor injuries, the employer is required to file an FROI within 10 days after notification of the accident. This report is not used to determine how the accident occurred but is probative as to whether and when an alleged accident was reported.⁴

When an FROI is received, the Commission creates a file and assigns a number to the case, called a "Jurisdiction Claim Number" (JCN). The JCN should be used on all future correspondence, document filings, and electronic submissions concerning the case. The Commission also sends a notification of injury to all parties and sends the injured worker a pamphlet entitled "How to Protect Your Rights, Part 1 of the Brief Guide to Workers' Compensation for Employees," which includes a claim form and a brief description of the Virginia Workers' Compensation Act (the Act). Under separate cover, the Commission sends the injured worker a confidential personal identification number, which the injured worker may use to electronically access the contents of the claim file using the Commission's WebFile system.

It is critically important that data submitted in the FROI be accurate because the FROI serves as the foundation of the Commission's electronic file. The Commission's EDI Quality Assurance Department will contact the claims administrator and ask for additional submissions to correct any data found to be incorrect. A summary of the data reported in an electronic FROI, called the "FROI EDI Report," is produced and placed with the other imaged documents contained in the electronic case file and may be viewed by WebFile users.

6.204 Subsequent Report of Injury. An SROI concerning denials, indemnity payments, medical payments and suspensions must be filed

⁴ *Blankenship v. K E T, Inc.*, 76 O.W.C. 68 (1977); *Kallan v. Abbott Bus Line*, V.W.C. File No. 193-37-58 (Sept. 24, 1999); see *Chesapeake Bay Bridge & Tunnel Dist. v. Robbins*, No. 1463-92-1, 1993 WL 40948 (Va. Ct. App. Feb. 2, 1993) (unpublished).

for all injuries that do not meet the definition of a minor injury. An SROI reporting an initial payment of indemnity or medical benefits must be filed within 10 days of the date of payment. Thereafter, SROIs that report paid-to-date amounts of indemnity and medical payments made must be filed quarterly every 90 days from the month of injury.

On receipt of an SROI, the Commission examines whether an award order is in place covering the benefits paid as reflected in the SROI. If the payments reflected in the SROI do not match an existing award, the Commission sends an order, called the “30-Day Order—Payments Made,” to the insurer asking whether agreement forms will be submitted that will result in an award that matches the payment information received. A response to the order must be made within 30 days and contempt sanctions can be imposed if a response is not filed as required.

A summary of the data reported in an electronic SROI, called the “SROI EDI Report,” is produced and placed with the other imaged documents contained in the electronic case file and may be viewed by WebFile users.

6.205 Minor Injuries. Less rigorous reporting requirements apply to minor injuries. A minor injury is one that does *not* meet any of the following criteria:

1. Time lost from work or partial incapacity exceeds seven days;
2. Medical expenses exceed \$1,000;
3. Compensability is denied or issues are disputed;
4. Medical reports indicate permanent partial disability or disfigurement;
5. A fatality occurred;
6. The Commission has requested additional details about the accident beyond those required to be reported for a typical minor injury.⁵

⁵ 16 VAC 30-91-10.

Employers must report minor injuries within 30 days after notification of the work accident by filing a “FROI UR,” which replaced the previously required Form 45-A. Less information is required in this report than in a standard FROI. If an injury meets the criteria of being a minor injury and is reported using an FROI UR, an SROI is not required unless the injury subsequently ceases to fit within the definition of a minor injury. An employer may choose to report a minor injury in the same manner that it would a non-minor injury. In that case, the FROI must be filed within 10 days after notification of the work accident, and SROIs reflecting any payment or other claim activity will be required.

6.206 Penalty. FROIs and SROIs are mandatory, and the Commission may assess a civil penalty of up to \$500 for a failure to properly file a report. The penalty may be as much as \$5,000 if the Commission determines that a failure to file a report is willful.⁶

6.3 UNCONTESTED CLAIMS

6.301 In General. Most cases are uncontested and can be resolved by agreement and without a formal hearing.

6.302 Award Agreement.⁷ If a claim is not contested, the parties should complete an Award Agreement (formerly called an “agreement to pay benefits”) whether the agreement is for an initial period of disability or subsequent periods after an initial award has been entered. An Award Agreement must be filed with the Commission within 14 days of its complete written execution, and an employer’s failure to do so may result in sanctions, including a fine not to exceed \$1,000.⁸ The agreement is submitted to the Commission for review and, if approved, an award order memorializing the agreement is issued.

If either party withdraws consent to an agreement that gave rise to an award order and files a request for review within 30 days of the date of the

⁶ Va. Code § 65.2-902.

⁷ See Appendix 5-3.

⁸ Va. Code § 65.2-701(B).