



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DEPARTMENT OF INDUSTRIAL ACCIDENTS

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JOINT PRE-HEARING MEMORANDUM

Board #: _____.

The Employee is: _____

The Employer is: _____

The Insurer/Self-Insurer is: Commonwealth of Massachusetts/HRD-WCS

The Employee is represented by Attorney: _____

The Insurer/Self-Insurer is represented by Attorney: _____

Will there be an interpreter? No.

Has there been any prior litigation?

- Prior Hearing Decision?
- Reviewing Board Decision?

Employee's Statement of the Case:

Insurer's/Self-Insurer's Statement of the Case:

PROCEDURAL HISTORY

Employee's claim: _____ Insurer's/Self-Insurer's complaint: _____

The resulting Conference Order, dated: _____

- _____ Denied Employee's claim
- _____ Ordered **Sec. 34** (Temporary Total Incapacity) benefits at the weekly rate of \$_____ based upon an AWW of \$_____ from _____ to _____
- _____ Ordered **Sec. 35** (Temporary Partial Incapacity) benefits at the weekly rate of \$_____ based upon an AWW of \$_____ [E/C of \$_____,] from _____ to _____
- _____ Ordered **Sec. 34A** (Permanent Total Incapacity) benefits at the weekly rate of \$_____ based upon an AWW of \$_____ from _____ to _____
- _____ Denied Insurer's/Self-Insurer's Complaint to Terminate EE's benefits.
- _____ Denied Insurer's/Self-Insurer's Complaint to Modify EE's benefits.
- _____ Allowed Insurer's/Self-Insurer's Complaint to modify Sec.(34/35/34A) benefits to the weekly rate of \$_____ beginning on _____ and (continuing / ending on _____)

Which parties appeal that conference order?

CLAIMS, DEFENSES & ISSUES:

The Employee makes the following claims:

- _____ Section 34, temporary total incapacity benefits from _____ to _____.
- _____ Section 34A, permanent and total disability benefits from _____ to _____.
- _____ Section 35, partial incapacity benefits from _____ to _____ at a weekly benefit rate of _____, and from _____ to _____ at a weekly benefit rate of _____;
- _____ Section 35A, dependency benefits.
- _____ Section 13 and 30, medical care benefits.
- _____ Section 36, permanent injury benefits (Reserved).
- _____ Section 50, appropriate interest.
- _____ Section 51, natural increase in wage benefits.
- _____ Section 28, serious and willful misconduct.
- _____ Other: _____

The Insurer/Self-Insurer raises the following defenses and issues:

- _____ Denies liability, the occurrence of an industrial injury.
- _____ Denies disability and extent of incapacity.
- _____ Denies causal relationship between industrial injury and disability.
- _____ Denies entitlement to Sec. 13 & 30, medical benefits.
- _____ Denies entitlement to Sec. 36 benefits.
- _____ Seeks the application of Sec. 1(7A), a *pre-existing condition*, i.e.: _____ and makes an **Offer of Proof** pursuant to 452 CMR 1.11(f).
- _____ Denies entitlement to Section 51, natural increase in wage benefits.
- _____ Denies entitlement to Section 28, serious and willful misconduct.
- _____ Other _____

STIPULATIONS:

The parties have entered the following stipulations:

_____ The Insurer/Self-Insurer has accepted liability for the work injury that occurred on _____.

_____ Employee/Employer relationship existed at all times material to these proceedings.

_____ Periods of indemnity benefits received to date: _____.

_____ Employee's average weekly wage on the date of the injury was \$ _____.

_____ Employee has _____ dependent(s).

_____ Insurer/Self-Insurer has paid Sec. _____ benefits from _____ to _____ and

Sec. _____ benefits from _____ to _____

_____ Insurer's/Self-Insurer's Complaint to Modify, Discontinue or Recoup benefits was filed on

_____.

_____ Accepted injuries are: _____

_____ Unaccepted alleged injuries are: _____

_____ Other _____

MEDICAL EVIDENCE:

Section 11A Impartial Medical Report

The Employee was examined by _____, an _____ dated _____

Do the parties have any motions relative to the Impartial report of Dr. _____?

Employee's motion: _____

Insurer's/Self-Insurer's motion: _____

Adequacy of the Impartial Medical Report:

The report of Dr. _____ is **adequate**. No evidence from another medical provider will be admitted contradicting this report.

Or:

The report of Dr. _____ is **inadequate** because _____

Or:

The medical issues are **complex** because of the diagnosis: Section 1(7A) requiring findings on pre-existing condition, combination, and 'major' cause opinions. Other: _____

Section 1(7A):

With respect to the offer of proof on 1(7A), Insurer/Self-Insurer counsel shall refer to specific medical opinions and data that support the defense.

Please list the supporting medical opinion: _____

Employee's counsel shall provide a written response with reference to medical records/reports etc. as to why the 1(7A) defense is either faulty/inappropriate or rebutted, i.e. major cause opinion.

Please list written response with supporting medical opinion: _____

DEPOSITIONS:

Parties shall schedule the deposition of any opinion witness prior to commencement of the hearing.

- 1.
- 2.
- 3.

ADDITIONAL MEDICAL RECORDS:

If the medical record is open, the parties shall electronically provide an annotated index with the additional medicals so the Court knows what medicals apply to the various issues in the case, i.e. dates of disability, causation, 1(7A), loss of function with reference to the subsection of 36. The medical documents must be properly bookmarked.

EXHIBITS:

The following Exhibits are admitted into evidence:

Ex. 1 The Statutory Exhibit, the Sec. 11A report dated _____ submitted by Dr. _____

Ex. 2 EE's Hearing Memorandum

Ex. 3 EE's Bio Data Sheet, which I mark and admit as if he/she had so testified.

Ex. 4 INS's Hearing Memorandum

EMPLOYEE'S EXHIBITS

Ex. 1 _____

Ex. 2 _____

Ex. 3 _____

Ex. 4 _____

Ex. 5 _____

Ex. 6 _____

INSURER/SELF-INSURER EXHIBITS

Ex. 1 _____

Ex. 2 _____

Ex. 3 _____

Ex. 4 _____

Ex. 5 _____

Ex. 6 _____

WITNESS LIST

Witness #1: _____

Anticipated Testimony: _____

Witness #2: _____

Anticipated Testimony: _____

Witness #3: _____

Anticipated Testimony: _____

Witness #4: _____

Anticipated Testimony: _____

Witness #5: _____

Anticipated Testimony: _____

Have the attorneys made an effort to resolve the case? _____

Briefly describe what effort has been taken? _____

Have the attorneys tried to resolve this matter via mediation? _____

THE PARTIES AGREE THAT THIS THESE ARE THE ISSUES, STIPULATIONS, WITNESSES AND EVIDENCE TO BE PRESENTED:

Atty _____ for the Employee

Atty _____ for the Insurer/Self-Insurer