



Further Guidance on the Unauthorized Practice of Law

Questions have arisen as to the limitations of non-attorneys when conducting post-injury accident investigations. In addition, questions have arisen as to the admissibility of any transcript or written documentation obtained during accident investigation. The purpose of this memorandum is to provide further guidance in these areas.

I. Prior Guidance on the issue:

The first guidance in this area was provided in Section III (Attendance at Hearing), question thirteen (13), of the inter-office memorandum issued on May 23, 2005, which provides:

Question #13: Can a non-attorney representative submit a witness statement?

Yes. A non-attorney representative can prepare and submit a witness statement. However, a witness "statement" submitted by a non-attorney representative does not meet the standards of the Resolution when such a statement consists of a series of questions posed by a non-attorney representative to the witness and a list of responses. Such a witness "statement" is in violation of the prohibition on direct examination and indirect examination of witness found in Part (B)(1) of the Resolution.

A non-attorney representative cannot submit a document that is the written equivalent of oral direct examination or cross-examination of a witness that is prohibited under the Part (B)(1) of the Resolution.

In addition, Section V (Actions outside of the IC facilities), question one (1) of that same memorandum provided the following:

Question #1: Do the prohibitions set forth in (B) of the IC Resolution apply to the actions of non-attorney representatives outside of the IC and BWC facilities?

Both the permitted activities as well as the prohibited activities set forth in the Resolution, apply to actions within, as well as outside of the agency hearing rooms with regard to workers' compensation matters.

Additional guidance was provided in question three (3) in an inter-office memorandum dated June 27, 2005, which provided the following:

Question #3: May an investigation report be submitted to a file and considered by the hearing officer?

An investigation report prepared following an accident may be submitted and considered as evidence. However, the investigation should have been conducted in a normal course of business and not to circumvent limitations contained in Industrial Commission Resolution 04-1-01. (See response to question 13 in Section 3 of the May 23, 2005 memo.)

Finally, in a one page inter-office memorandum dated May 03, 2007, in question three (3), the following guidance was given:

Question #3: May a non-lawyer contact a witness or other individual to obtain evidence which may be submitted at hearing?



It depends on the circumstances. If the contact or interview is for the purpose of conducting a post-injury investigation to determine whether a claim should be certified/pursued or whether any other safety ramifications are implicated, then that discussion is proper. However, if the discussion or questions are related to obtaining evidence in anticipation of a hearing in a contested claims matter, then that activity is not permitted.

II. Additional Guidance:

It is clear that post-accident injury investigations can be conducted by non-attorneys in an attempt to determine what happened at the time of the injury. However, the tenor of the investigation should be limited to fact-finding, and any statement obtained should not be the written equivalent of oral direct or cross-examination. In addition, the veracity of any witnesses, including the injured worker, should not be challenged by the non-attorney in conducting the investigation. To that end, no warnings to the witnesses regarding untrue or fraudulent answers should be given by a non-attorney during the investigation.

Because the tenor of the investigation should be one of fact-finding, it is also improper for a non-attorney to comment on the evidence or give any interpretation or recommendation to any witness (including but not limited to advice on compensability of the claim). In no circumstance should the non-attorney comment on the compensability of a claim or on the veracity of any witness or evidence which has been submitted to substantiate the claim.

Should a hearing officer come across a written statement, transcript, or other evidence on file that documents an investigation, conducted by a non-attorney, which does not comport with the guidance provided herein, the evidence can be given whatever weight the hearing officer feels is appropriate. However, in those circumstances, the hearing officer shall forward the matter to the Director of Hearing Services so that it may be investigated.

It is hoped this provides helpful guidance in this area. Should you have further questions or concerns feel free to contact the Director of Hearing Services.