NEW YORK STATE Workers' Compensation Board

Pre-Hearing Conference Statement PH-16.2

State of New York - Workers' Compensation Board

This Pre-Hearing Conference statement is submitted by (check one): ☐ **the claimant's legal representative**
☐ **the employer or workers' compensation insurance carrier**

WCB Case Number: _____ Date of Injury/Illness: _____/_____/_____

Carrier Case Number: _____ Carrier Code No.: **W** _____

Claimant: _____ Employer: _____

Carrier: _____

Other Parties-in-Interest: _____

Please answer all applicable questions completely.

1. Summary: Provide a brief summary of the claim. Give the theory of the case with statutory and, if appropriate, case citations.

_____

_____

_____

_____

_____

_____

2a. **Carrier/Self-Insured Employer Defenses:** [carrier/self-insurer only] List all the defenses that carrier is raising along with an offer of proof for each defense raised. If the carrier is raising an allegation that claimant has not presented prima facie medical evidence, please indicate and provide a basis for such challenge.

_____

_____

_____

_____

_____

2b. Did the injury occur while the claimant was working in the construction industry as defined in the New York State Construction Industry Fair Play Act (Labor Law § 861-B)? ☐ Yes ☐ No

Did the injury occur while the claimant was driving in the commercial goods transportation industry as defined in the New York State Commercial Goods Transportation Industry Fair Play Act (Labor Law § 862-B)? ☐ Yes ☐ No

If Yes to either of the above, does the employer continue to raise the issue of Employer-Employee relationship? ☐ Yes ☐ No
If Yes, please provide the Employer Name, Employer Address and Federal Tax ID #.

Employer Name: _____
Company/Agency Name

Employer Address: _____ _____ _____ _____
Number and Street City State Zip Code

Federal Tax ID #: _____ The Tax ID # is the (*check one*): ☐ SSN ☐ EIN

3. **Additional Parties:** Provide the names of additional parties, if any, necessary to the adjudication of the claim, and explain why they are necessary.

_____

_____

_____

_____

4. **Lay Witnesses:** Provide the names, addresses, and employers, if known, of all lay witnesses, including claimant, you intend to present, along with a statement as to the nature of their testimony and the estimated time needed for testimony. *Please note*: lay witness testimony will be taken at the first expedited hearing following the pre-hearing conference.

5. **Medical Witnesses:** Provide the names of any medical witnesses you intend to cross-examine, if known, whether you wish the cross-examination by deposition or at a hearing, and the estimated time needed for the cross-examination. *Please note*: depositions shall be conducted and transcripts filed with the Board no more than 55 days from the pre-hearing conference.

6. **Attachments:** List and attach all reports, forms, or documents necessary to the resolution of the claim that have not already been submitted to the Board's electronic case file.

7. **Discovery:** Has all discovery relative to the threshold issues of compensability been completed or will be completed by the pre-hearing conference? ☐ Yes ☐ No If no, detail what further discovery is necessary and why it will not be completed prior to the pre-hearing conference.

8. **IME:** Has the claimant been examined by the insurance carrier's doctor? ☐ Yes ☐ No If yes, when? _____/_____/_____
Please note: IME reports on the threshold issue of causal relationship shall be served and filed ***three days prior*** to the initial expedited hearing or the first hearing in accordance with 300.33(f)(12).

9. **Release of Medical Records:** Does the carrier request that the claimant provide a broader release for medical records than that provided on the Limited Release of Health Information (Form C-3.3)? ☐ Yes ☐ No
If yes, the carrier or its legal representative must file with the Board along with this conference statement an affidavit or affirmation setting forth the relevance of the medical records sought.

10. **Average Weekly Wage:** What is the proposed average weekly wage if the claim is found compensable? _____
On what evidence is this based? (If not already filed, carrier must attach Form C-240.)

11. **Work Status:** What is the claimant's current work status? (If not already filed, carrier must attach Form C-11, if appropriate.)

12. **Settlement**: Has a good faith effort been made to settle or otherwise resolve the claim for benefits? ☐ Yes ☐ No

13. The information contained in this form will facilitate the just, speedy and efficient disposition of the claimant's right to workers' compensation benefits, including settlement as required by Section 300.38(f)(1) of 12 NYCRR.

Signature of Person Preparing Form: _____ Date: _____

Print Name: _____ Title: _____

When to File this Form:

Where the Board's Electronic Case Folder (ECF) contains a Denial (FROI/04-SROI/04) and a medical report referencing an injury, the Board shall send to the parties a notice of pre-hearing conference, which shall occur no later than 30 days from the Board's receipt of the notice of controversy.

This statement must be completely filled out separately by claimant's representative and the employer or carrier, and each party must file with the Board and serve the completed statement on all parties NO LATER THAN TEN DAYS BEFORE THE DATE OF THE PRE-HEARING CONFERENCE.

For Claimants Without Legal Representation:

A claimant who has not retained a legal representative is not required to fill out this form. If a legal representative is retained by the claimant, and ten or more days remain before the pre-hearing conference, the legal representative is required to fill out this form. If the claimant retains a representative with less than 10 days remaining until the pre-hearing conference, the insurance carrier or employer will be able to adjourn the proceedings, which will result in a delay in a potential award of compensation and medical benefits.

Proper Filing with the Board:

All attachments to the form must be submitted to the Board with this form if they are not already in the electronic case folder. DO NOT SUBMIT ATTACHMENTS THAT ARE ALREADY IN THE BOARD'S FILE.

Consequences of Improper, Incomplete, or Untimely Filing:

A. Insurance Carrier or Employer:

Failure by the insurance carrier to timely serve upon all other parties and file with the Board the pre-hearing conference statement, or the filing by the insurance carrier of a materially incomplete statement shall result in a waiver of defenses to the claim.

Failure to list a witness on, or to include a copy of any document not in the ECF with the pre-hearing conference statement, which the insurance carrier had in its possession or could reasonably have obtained, shall constitute a waiver of the right to call such witness or introduce such document in the case. There shall be no waiver if the workers' compensation law judge finds, based on the affidavit of the insurance carrier's legal representative (or if the insurance carrier does not have a legal representative, by the insurance carrier) that the conduct at issue was due to good cause and the insurance carrier exercised good faith and due diligence.

B. Claimant's Legal Representative:

The legal fee of the claimant's legal representative shall be subject to a mandatory, substantial reduction for any of the following:

1) Failure to timely serve on all parties and file with the Board the claimant's pre-hearing conference statement
2) Filing of a materially incomplete pre-hearing conference statement
3) Failure to list a witness, who subsequently testifies, on the pre-hearing conference statement
4) Failure to include on the pre-hearing conference statement a copy of any document not in the Board's electronic file, which the claimant had in their possession or could reasonably have obtained, if such document is used by claimant's legal representative in seeking to establish the claim.

Reports should be sent directly to the Workers' Compensation Board at the address listed below:

NYS Workers' Compensation Board
Centralized Mailing
PO Box 5205
Binghamton, NY 13902-5205

Customer Service Toll-Free Line: 877-632-4996