

# **Workers' Compensation Working Group**

**September 9, 2016**

**Hearings Process:**

**Informality vs. Efficiency**

## Form WC-5

### **Compensability issues**

(initial compensability  
and additional body  
parts/conditions)

Form WC-5 currently  
under revision to  
clarify the claimant's  
position

## Form WC-77

**All issues other than  
compensability**  
(e.g. denial of  
treatment plans,  
termination of TTD,  
determination of PPD,  
etc.)

Form WC-77 under  
revision to clarify  
what is expected of  
the parties in the  
hearings process

THE HEARING REQUEST IS THE FIRST LOOK AT THE ISSUE

# Informal Hearings

HRS 386-86:

“The hearing shall be informal and shall afford the parties a full and fair opportunity to present the facts and evidence to be considered.”

- Not subject to Chapter 91
- “No stenographic or tape recording shall be allowed”
- Order of presentation shall not alter the burden of proof
- Order of presentation shall not alter the burden of production
- Order of presentation shall not alter the burden of persuasion
- Failure to appear at hearing does not result in default decision against the movant

STATUTORY REASONS REQUIRE AN “INFORMAL” HEARING

# Hearings Proceedings

HRS 386-86:  
Proceedings upon claim

- Compensability decisions shall not be rendered without a hearing
- Decision rendered within 60 days of the hearing, unless to prevent deterioration or further injury, within 30 days (Act 26, 2009)

## Problem 1

- Compensability cases take too long to schedule



## Solution 1

- Move Scheduler into Hearings Branch



## Solution 2

- Streamline process = cases scheduled faster

INFORMALITY VS. EFFICIENCY



PRESCREENING PLACES EMERGENT CASES ON A DIFFERENT TRACK THAN THE NON-EMERGENT CASES



CASES SCHEDULED FOR OPTIMAL RESULT AND ALL NECESSARY FACTORS CONSIDERED

# Medical Opinion Reports

HAR § 12-10-75:

Provide medical opinion reports to other side within 15 calendar days of receipt OR at least 15 calendar days before hearing, whichever is sooner

- Balances informal hearing with the need to provide a full and fair opportunity to present the facts and evidence to be considered

**\*\*\* Rules smooth over bumps in the process**

**RULES GOVERNING CONDUCT AT HEARING ARE LIMITED**



## Problem 1

- Compensability cases take too long to schedule



## Solution 1 & 2

- Compensability cases scheduled faster



## Discovery of Problem 2

- Lack of deadlines for Independent Medical Examinations now prevent faster scheduling of compensability cases

TARGETING EMERGENT CASES CLARIFIED THE EXTENT OF UNDERLYING ISSUES CAUSED BY LACK OF RULES

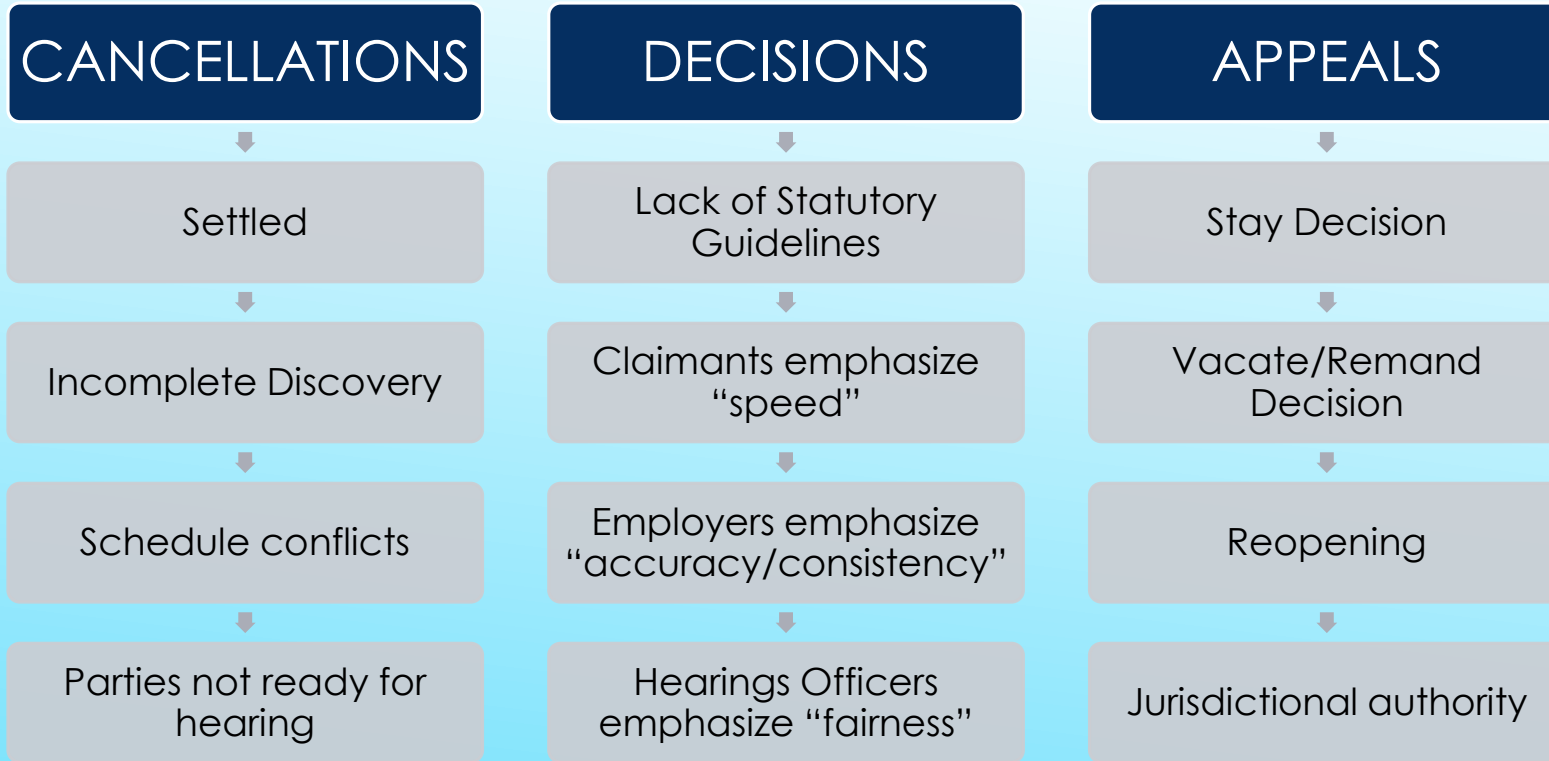
# Average Weekly Wages (AWW)

HRS § 386-51 and HAR § 12-10-23

“Average weekly wages shall be computed in a manner that the resulting amount represents most fairly, in the light of the employee’s employment pattern and the duration of the employee’s disability, the injured employee’s average weekly wages from all covered employment at the time of the personal injury.”

- Temporary Total Disability benefits are 66 and 2/3% of the employee’s AWW.
- **Form WC-14** has to address the competing concerns of the employer and the employee as to AWW
- **Form WC-14** addresses a **portion** of AWW analysis concerning the employee’s earnings during the 12 months preceding the personal injury, “where appropriate and feasible.”

FORM WC-14 INFLUENCES THE AVERAGE WEEKLY WAGES WHICH IN TURN AFFECTS THE BENEFIT RATE



VERTICAL AND HORIZONTAL ISSUES ARE DIFFICULT TO ADDRESS

1. Accuracy/consistency of decision
2. Waiting time for hearing
3. Backlog of cases

- Fix backlog of cases

1. Accuracy/consistency of decision
2. Waiting time for hearing

- After backlog fixed, new opportunity to fix scheduling of hearings to reduce waiting time for hearing

1. Accuracy/consistency of decision

- After scheduling fixed, new opportunity to fix accuracy/consistency of a decision

SOLVING PRECURSOR ISSUES ALLOW FOR  
SUBSEQUENT REALLOCATION OF RESOURCES

Legal Training/Education



Conformance of  
Internal Processes to  
Law



Concomitant Rule Changes



INFORMALITY CAN BE BALANCED AGAINST  
ADDITIONAL RULES FOR MORE EFFICIENT HEARINGS

## ► Overview

- ▶ Hawaii law requires informal hearings and affords the parties a full and fair opportunity to present facts and evidence
- ▶ Forms WC-5 and WC-77 are being revised to better address hearing process
- ▶ Facilitators and Hearings Review prescreen files to prioritize emergent from non-emergent cases
- ▶ Moved Scheduler into Hearings Branch and streamlined process
- ▶ Reduced backlog and schedule cases faster
- ▶ Rules governing the conduct of the hearing are currently limited
- ▶ Employee's average weekly wages is influenced by form WC-14
- ▶ Resolution of the underlying issues impeding the hearings process is a continual process