

RESOLUTION 09-04-2014

DIGEST

Workers Compensation: Declarations of Readiness to Proceed

Amends Title 8 of the California Code of Regulations section 10250 to allow more than one declaration of readiness to proceed to be filed in workers' compensation cases.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Title 8 of the California Code of Regulations section 10250 to allow more than one declaration of readiness to proceed to be filed in workers' compensation cases. This resolution should be approved in principle because the current practice unnecessarily delays completion of worker's compensation cases.

On its face, the declaration of readiness states that it can be filed for a variety of purposes, including (1) a mandatory settlement conference hearing, (2) a status conference hearing, (3) a rating mandatory settlement conference hearing, or (4) a priority conference hearing. In addition, the form asks the party completing the form to identify the principal issues "at the present time" indicating that other issues may have previously been presented or may be presented at a later time.

Some Workers' Compensation Appeals Board divisions have declined to accept more than one declaration of readiness. In doing so, these divisions prevent the parties from requesting a mandatory settlement conference, or a decision on preliminary issues that could shape the claim or assist the parties to resolve the matter. This resolution would solve the problem and preserve the administrative law judge's discretion to control the matter by either combining issues to be heard or setting the order in which the issues are determined.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Title 8 of the California Code of Regulations section 10250 to read as follows:

§ 10250

- 1 (a) Except when a hearing is set on the Workers' Compensation Appeals Board's own
2 motion, no matter shall be placed on calendar unless one of the parties has filed and served a
3 declaration of readiness to proceed in the form prescribed by the Appeals Board. The declaration
4 of readiness shall be served on all parties and lien claimants. A party may file more than one
5 declaration of readiness to proceed, in which case, the Worker's Compensation Appeals Board or
6 the Administrative Law Judge assigned to hear the matter may combine the hearing of issues
7 presented in declarations of readiness to proceed or otherwise set the order in which the issues
8 are to be determined.
- 9 (b) Where the declaration of readiness is for a lien conference or lien trial, it shall be
10 served on all parties and lien claimants listed on the official participant record in EAMS at the
11 time of service and, if represented, on their attorney or nonattorney representative(s) of record.

12 (c)(1) Except for a lien claimant listed in section 10205.10(c)(5), a declaration of
13 readiness shall not be filed by any person or entity unless it is a “party” as defined by section
14 10301(dd).

15 (2) Where a lien claimant is required to pay a filing or activation fee, it shall not file a
16 declaration of readiness unless it has: (A) paid the requisite fee; and (B) entered a valid
17 confirmation number for that fee in the confirmation number field of the declaration of readiness
18 form. If the lien claimant asserts it is exempted from payment of a fee, it shall indicate the basis
19 for the claimed exemption in the designated field of the lien form.

20 (d) All declarations of readiness to proceed shall state under penalty of perjury that the
21 moving party has made a genuine, good faith effort to resolve the dispute before filing the
22 declarations of readiness to proceed, and shall state with specificity the same on the declarations
23 of readiness to proceed. Unless a status or priority conference is requested, the declarant shall
24 also state under penalty of perjury that the moving party has completed discovery and is ready to
25 proceed on the issues specified in the declaration of readiness.

26 (e)(1) A false declaration or certification by any party, lien claimant, attorney or
27 representative, including a false declaration or certification pertaining to payment of a lien filing
28 or activation fee, may give rise to proceedings under Labor Code section 134 for contempt or
29 Labor Code section 5813 for sanctions.

30 (2) Except for lien claimants listed in section 10205.10(c)(5), if a declaration of readiness
31 is filed without complying with the provisions of this section, the Workers' Compensation
32 Appeals Board may order the hearing off calendar and may impose sanctions and award
33 attorney's fees and costs in accordance with Labor Code section 5813 and Rule 10561.

34 (f) If a party or lien claimant is represented by an attorney or representative any
35 declaration of readiness filed on behalf of the party shall be executed by the attorney or
36 representative.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: The current California Code of Regulations governing worker’s compensation proceedings requires parties to file a declaration of readiness to proceed as a prerequisite to having disputes arising in a worker’s compensation case decided by the assigned Administrative Law Judge or the Worker’s Compensation Appeals Board. The problem is that current practice only allows the filing of one declaration of readiness to proceed on an issue requiring a decision, even though there may be additional issues that are ready to be resolved in the case. This unnecessarily delays completion of worker’s compensation cases.

The Solution: This resolution would amend 8 California Code of Regulations section 10250 to allow the filing of more than one declaration of readiness to proceed. It also gives the WCAB or assigned Administrative Law Judge discretion to hear the issues together or determine the order in which the issues will be heard and determined.

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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