

**Board of Industrial Insurance Appeals
State of Washington**

**YOUR RIGHT
TO
BE HEARD**

**Workers' Compensation
Assessment (Firm)
Crime Victim**

Can We Help You?

General information

360-753-6823 or 1-800-441-0447

EMAIL

webmaster@biia.wa.gov

FAX

360-586-5611

BIIA Internet address

<http://www.biia.wa.gov>

The Appeal Process - Video

http://www.biia.wa.gov/appeal_process_video.htm

Labor & Industries

<http://www.lni.wa.gov/ClaimsIns/Claims/default.asp>

Mailing address:

Board of Industrial Insurance Appeals
PO Box 42401
Olympia, WA 98504-2401

Headquarters location:

Board of Industrial Insurance Appeals
2430 Chandler Court SW
Olympia WA 98504-2401

Additional publications available online:

Your Right to Be Heard - WISHA
Rules of Practice and Procedure

Table of Contents

Introduction	5
What is the BIIA? Where do I find the statutes and rules regarding appeals?	
Granting and Denying Appeals	6
When the BIIA receives an appeal If L&I reconsiders its decision If L&I does not reconsider its decision	
Payment of Benefits When an Employer Files an Appeal	7
If You Did Not File the Appeal	8
Do I Need an Attorney?	8
The Mediation Conference	8
What happens when an appeal is granted? Advantages of Mediation The Mediator's role What do I need to bring to the Mediation conference? What happens if the appeal is resolved? What happens if the appeal is not resolved?	

Hearing	11
Rules for BIIA hearings	
Attorneys	
The judge’s role	
Location of BIIA hearings	
Witnesses	
Evidence	
Proposed Decision and Order	13
Petition for Review	13
What if I disagree with the decision reached in the proposed decision?	
How do I file a Petition for Review?	
Appeals to Superior Court	17
Interest	20
Attorney Fees	20

YOUR RIGHT TO BE HEARD

INTRODUCTION

What is the BIIA?

The Board of Industrial Insurance Appeals (BIIA) is a state agency that is **independent** from the Department of Labor and Industries (L&I). The BIIA hears appeals from decisions made by L&I in several areas. The three principal types of appeals are:

- Industrial insurance (workers' compensation)
- Safety citations under the Washington Industrial Safety and Health Act (WISHA)
- Crime victim compensation

The BIIA is administered by three full-time Board Members appointed by the Governor.

Where do I find the statutes and rules regarding appeals?

For more information you should refer to the booklet called *Rules of Practice and Procedure*. You can find this publication online at www.biiwa.gov. Statutes and rules can be found online at:

<http://www.leg.wa.gov/LawsAndAgencyRules>

GRANTING OR DENYING APPEALS

When the BIIA receives an appeal, it will:

- Assign a docket number to the appeal.
- Mail a Notice of Receipt of Appeal to the parties.
- Send a copy of the appeal to L&I.

In workers' benefits appeals, L&I must respond by either:

- Sending its record to the BIIA, which permits the appeal to proceed; or
- Changing or reversing the order under appeal; or
- Advising the BIIA that they will reconsider their decision.

The BIIA has 60 days to decide whether the appeal will be granted. L&I must respond to the appeal within this time frame.

If L&I reconsiders its decision:

The BIIA will return the appeal to L&I for further action.

If L&I does not reconsider its decision:

The BIIA will:

- Decide whether the BIIA has jurisdiction (the right to hear the appeal).
- If the BIIA does **not** have jurisdiction, the appeal will

be denied and an Order Denying Appeal will be sent to the parties.

- If the BIIA has jurisdiction, the appeal will be granted and an Order Granting Appeal will be sent to the parties. An order granting appeal does not mean that anyone has won or lost the appeal. It only means that the BIIA agrees to hear the appeal.

An order granting appeal does not mean that anyone has won or lost the appeal.

PAYMENT OF BENEFITS WHEN AN EMPLOYER FILES AN APPEAL

The Legislature passed a law in 2008 that provides for continued benefits during an **employer appeal**. The law also allows the employer to request those benefits be stayed (stopped) by filing a motion to stay benefits with the appeal, or filing within fifteen (15) days after the appeal is granted. The employer's motion should **specifically request that benefits be stayed** during the appeal process.

The new law does not affect appeals filed by injured workers.

The BIIA will decide to grant or deny the motion based on **only** the information in the L&I file as it existed on the date of the order on appeal. New medical or vocational information in the file or offered by the parties in connection with the motion cannot be considered.

IF YOU DID NOT FILE THE APPEAL

If you did not file the appeal, you may choose whether to participate in the conferences and/or hearings. If you choose not to participate, it is possible that your interests could be substantially affected by the outcome of the appeal. In some instances, the outcome of the appeal might not have any effect on you.

If you have an opinion concerning the outcome of an appeal, you should participate in order to voice your opinion.

DO I NEED AN ATTORNEY?

Parties can represent themselves before the BIIA. They can also bring someone with them to give advice and support, or they may be represented by an attorney. They may also be represented by a lay representative (non-attorney) as allowed by WAC 263-12-020(3).

L&I will be represented by a paralegal or an attorney.

THE MEDIATION CONFERENCE

What happens when an appeal is granted?

After an appeal is granted, a mediation conference will be held in most cases. A mediation conference is an informal meeting of the parties with a mediation judge.

A notice will be sent to all parties

All parties will receive a notice indicating the date, time, and location of the conference.

- The conference may be held in person or by telephone.
- Mediation is not a hearing – witnesses will not be called to testify. An attorney is not required, although the assistance of an attorney may be helpful.
- The mediation judge may schedule further conferences, if needed.

Advantages of Mediation

- In mediation, parties are able to discuss the appeal in a relaxed, confidential, and informal setting.
- If a settlement can be reached in mediation, the parties avoid the uncertainty, expense, and delay of a formal hearing.

The Mediator's role

- The mediator will not decide the outcome of the appeal, but will discuss options for settling the appeal.
- The mediator can speak to parties privately. This process allows the mediator to meet separately with each party to explore settlement options.
- The mediator may look at the information supporting a party's position and may suggest what additional information may be necessary.
- The mediator cannot give legal advice, but will answer questions about the process.

What do I need to bring to the mediation conference?

- Look at L&I's decision that was appealed. Consider what it would take to settle the appeal. Gather all documents that support your position and bring them to the mediation conference.
- Bring the Jurisdictional History (yellow sheets sent with the order granting the appeal). This is a summary of the history of the case. Be ready to discuss whether this history is correct.

What happens if the appeal is resolved?

An appeal can be resolved in two ways:

- The party that filed the appeal can voluntarily dismiss the appeal.
- The parties can agree on a settlement.

The BIIA will then issue either an Order Dismissing Appeal or an Order on Agreement of Parties.

What happens if the appeal is not resolved?

When a settlement cannot be reached, the case will be given to a hearings judge, who will schedule a formal hearing. To ensure confidentiality, the mediator is not allowed to discuss the case with the hearings judge.

HEARING

Rules for BIIA hearings

BIIA hearings are like trials. The Rules of Evidence and Superior Court Civil Rules apply. Parties must be familiar with these rules in order to ensure that all their testimony and evidence will be admitted at the hearings.

Attorneys

At this point, the appealing party should consider finding an attorney. An experienced attorney will represent L&I or the self-insured employer. An attorney can negotiate with the opposing parties, help obtain necessary witnesses, and make objections.

The judge's role

The judge assigned to the case can help question witnesses, but will not act as an attorney for the parties. The hearings judge must remain neutral and cannot discuss the case without all parties present.

Location of BIIA hearings

All parties will receive a notice indicating the date, time, and location of the hearing. The first hearing in a workers' compensation case is usually held either in the county where the injury occurred or the county where the worker lives.

Witnesses

At the hearing, witnesses will testify under oath. All testimony will be recorded by a court reporter. In most cases, a

doctor will be required to appear in person to testify. Doctor's notes and letters may not be received into evidence if a party objects. Each party is responsible for arranging for their doctors and other witnesses to testify, and for paying witness fees.

A doctor's testimony is required if a party is requesting or challenging the following benefits:

- Allowance of the claim, or acceptance of medical conditions.
- Reopening of the claim for aggravation of an industrially-related condition.
- Further proper and necessary medical and surgical services.
- Payment of unpaid medical bills.
- Time loss compensation.
- Loss of earning power.
- Permanent partial disability.
- Permanent total disability .

Evidence

All evidence must be presented at the hearing. The evidence presented at the hearing will be the only basis for the decision at the BIIA or at a higher court.

In an **industrial insurance** case, the appealing party must present evidence first to show that L&I's decision is incorrect.

In a **willful misrepresentation** case, L&I or self-insured employer must present evidence first.

In a **WISHA** case, L&I must present evidence first.

PROPOSED DECISION AND ORDER

When all hearings are completed and all evidence has been received, the hearing judge will issue a Proposed Decision and Order, which is the hearing judge's decision on the appeal.

PETITION FOR REVIEW

What if I disagree with the proposed decision?

Any party who disagrees with any portion of the decision may request a review by the three Board Members. Your request **must be in writing** and should be titled **Petition for Review**.

How much time do I have to file a Petition for Review?

The Petition for Review must be filed with the BIIA's **Olympia** office within twenty (20) days from the date you receive the proposed decision.

How do I file a Petition for Review?

The Petition for Review **must** contain the following information:

1. The Case Name, BIIA Docket Number, and L&I's Claim Number (or Firm Number or Citation and Notice Number);
2. The reasons you believe the proposed decision is incorrect. State the evidence in the record that supports your petition.
3. Any rulings made by the judge that you think are incorrect.
4. A "Declaration of Receipt" stating the date the proposed decision was received.

The Petition for Review must be filed in the BIIA's **Olympia** office within 20 days. You may file **in person** in Olympia, or **by mail** to:

Executive Secretary
Board of Industrial Insurance Appeals
2430 Chandler Ct. SW
P.O. Box 42401
Olympia, WA 98504-2401

- If filed by mail, the petition is considered filed when it is deposited in the United States Postal Service, properly stamped and addressed.

- If you mail your petition on the date of your deadline, complete the "Certificate of Mailing" as proof of the mailing date.
- Copies of your petition must be mailed to the other parties. Their names and addresses appear on the certificate of mailing included with the proposed decision.

Can I get transcripts of the hearings?

The BIIA will provide you with copies of the transcripts, depositions, and exhibits of the proceedings free of charge. You must file a written request for these documents.

Can I get an extension of time to file a Petition for Review?

If you cannot complete your petition within the twenty (20) day time period, you may request an extension of time.

1. The request **must** be in writing and should state the reasons why the extension is needed.
2. The request **must** be filed with the BIIA's **Olympia** office within 20 days from the date of receipt of the Proposed Decision and Order.
3. The request must include a "Declaration of Receipt" stating the date the proposed decision and order was received.

If an extension is granted, the amount of time is determined by the BIIA.

Where do I find the statutes and rules regarding Petitions for Review?

Statutes and rules can be found in the Revised Code of Washington (RCW Chapter 51.52) and Washington Administrative Code (WAC 263-12). These are legal publications available in law libraries. They are also available on the Washington State Legislature website:

<http://www1.leg.wa.gov/LawsAndAgencyRules>

Most of these rules can be found in the BIIA's *Rules of Practice and Procedure*, a publication that you can request from the BIIA.

What if a Petition for Review is not filed?

If a Petition for Review is not filed within the time allowed, the proposed decision and order will be adopted as the final Decision and Order of the Board. No further appeal may be taken to the courts.

What if a Petition for Review is filed?

The Board will determine whether to grant or deny the petition.

Petition for Review Denied

The Board will issue an “Order Denying Petition for Review.” The proposed decision becomes the final order of the Board.

Petition for Review Granted

The Board will issue an “Order Granting Petition for Review.” The Board will review the record and issue a Decision and Order, which is the Board’s final order. The Board must issue the Decision and Order within 180 days of the date the Petition for Review was filed.

APPEALS TO SUPERIOR COURT

What if I disagree with the decision reached in the final order?

Any party who disagrees with any portion of the decision may appeal to superior court.

How much time do I have to appeal to superior court?

- In **workers’ compensation** and **WISHA** cases, your appeal to superior court must be filed within thirty (30) days from the date you receive the BIIA’s final order.
- In **crime victim** and **tax assessment** cases, your appeal must be filed within 30 days from the date the order was mailed to you.

In what county do I file a superior court appeal?

- In a **workers' compensation** case, file the appeal either (1) in the county where the injured worker lives, or (2) in the county where the injury took place.
- In a **WISHA** case, file the appeal in the county where the violation is alleged to have occurred.
- In a **crime victim or tax assessment** case, file the appeal either (1) in Thurston County, or (2) in the county where you live or where your principal place of business is located.

Do I need to send copies of the appeal to anyone?

Copies of the appeal **MUST** be mailed or hand-delivered to the BIIA, L&I and (if applicable) to the Self-Insured Employer:

Board of Industrial Insurance Appeals
2430 Chandler Court SW
P.O. Box 42401
Olympia, WA 98504-2401

Department of Labor and Industries
Office of the Director
P.O. Box 44001
Olympia, WA 98504-4001

Is there a form for filing an appeal in superior court?

No. Each superior court has its own filing requirements. There is a directory available on the Washington Courts website to help you locate the appropriate superior court:

http://www.courts.wa.gov/court_dir

What evidence will the superior court consider?

The case will be tried based on the record made before the BIIA. The record consists of transcripts, depositions, and exhibits offered during BIIA hearings.

Where do I find the statutes and rules regarding superior court appeals?

Statutes and rules can be found in the Revised Code of Washington (RCW) and Washington Administrative Code (WAC). These are legal publications available in law libraries. They are also available on the Washington State Legislature web site:

<http://www1.leg.wa.gov/LawsAndAgencyRules>

Most of these rules can be found in the BIIA's *Rules of Practice and Procedure*, a publication that you can request from the BIIA.

- **Workers' Compensation** – See RCW 51.52.110 and WAC 263-12-170.
- **Washington Industrial Safety and Health Act**

(WISHA/DOSH) – See RCW 49.17.150.

- **Tax Assessment** – See RCW 51.48.131 and RCW 34.05.510 – RCW 34.05.598.
- **Crime Victims** – See RCW 7.68.110 and RCW 34.05.510 – RCW 34.05.598.

INTEREST

Workers may receive interest on delayed benefits. There are two instances in which interest may be paid:

- When the worker files an appeal with the BIIA and is successful in obtaining additional time loss benefits.
- When an employer files an appeal and the worker wins.

ATTORNEY FEES

Workers/Beneficiaries/Crime Victims

A worker/beneficiary/crime victim represented by an attorney who succeeds in their appeal may ask the Board to set the attorney fee. The request must be in writing and must be filed within one year of receipt of the Board's final order. The Board has authority to set the fee even though a fee agreement was made with the attorney. The responsibility for paying the fee, however, remains with the worker/beneficiary/crime victim.

Attorney fees are usually charged on a contingent fee basis. This means that no attorney fee is charged unless additional benefits are received (or benefits retained in the case of an employer's appeal). The fee set by the Board is based upon the benefits obtained as a result of the appeal, the complexity of the case, the time involved, and other factors.

After the Board has issued an order fixing the attorney fee, it is unlawful for the attorney to charge any additional fee, unless the order is overturned by superior court. If no written request is made to the Board, the fee will be determined by private agreement.

Law Enforcement Officers and Fire Fighters Benefits Only

The Board can order L&I to pay attorney fees if the claimant is successful in reversing a decision to reject a claim for occupational disease. The fee set by the Board is based upon the benefits obtained as a result of the appeal, the complexity of the case, the time involved, and other factors.

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