

Appendix 8

(Chapter 8-Hearings)

1. Outline of Claimant's Testimony.
2. Hearing Record.
3. Sample APA Submission.
4. Deposition Letter to Client.
5. Proposed Amendments to Regulation 67-612.

D/I: _____

WC—CLAIMANT'S TESTIMONY

GENERAL INFORMATION

1. Name: _____
2. Address: _____
3. DOB: _____ Age: _____ Birthplace: _____
4. Marital Status: M/D/S/W/___ Spouse's Name: _____ Occupation: _____
5. Children—Number: _____ Ages: _____
6. Height: _____ Weight: _____ Changes in Weight: _____
7. Dominant Hand _____ 8. Drivers License _____ 9. Driving Frequency: _____

HEALTH HISTORY

1. General state of health, Pre-D/I: _____
2. Any significant/serious prior health problems: _____
3. Any prior problems with _____
before _____ (D/I).

EDUCATION AND TRAINING

1. Last Grade Completed: _____ 2. GED: _____
3. Tech School or Vocational School: _____
4. College: _____
5. Military Service: _____
6. Reading/Writing Ability: _____
7. Add/subtract/multiply/divide: _____
8. _____

D/I: _____

WORK HISTORY—PRE-DEFENDANT

1. What type work done in the past, before going to work for defendant:

Job/Type Work	Employer	Period	Duties

WORK HISTORY WITH DEFENDANT

1. When started work with defendant: _____

2. What does defendant make/do: _____

3. Other jobs with defendant besides one doing when hurt: _____

4. Duties of prior jobs with defendant: _____

5. Job with defendant on _____ (D/I): _____

6. Duties of job at D/I: _____

7. Physical requirements of job at D/I:

a lift _____

b walk _____

c stand _____

d sit _____

e bend/stoop/squat _____

f climb _____

g push/pull _____

h reach _____

i twist/turn _____

D/I: _____

j _____

8. Shift normally worked: _____

9. Hourly or salary rate: _____ 10. Hours per week: _____

11. Other jobs/employers at D/I: _____ Wages: _____

12. _____

THE ACCIDENT

1. Date of Injury: _____ Time: _____ Location: _____

2. Tell me how you got hurt: _____

3. Tell me what was hurting: _____

NOTICE

1. Who did you notify about your accident: _____

2. His/her position: _____

3. Date notified: _____ Time: _____

POST ACCIDENT EVENTS

3. What happened after that: _____

MEDICAL TREATMENT

1. When and where did you first receive medical tx: _____
2. Who sent you there: _____
3. What was bothering you at that time: _____
4. What did he/she do for you: _____
5. Did tx. help: _____
6. Other medical treatment: _____

LOST TIME

1. Have you missed any time from work due to your injury: _____
 2. Dates missed: _____
 3. Could you have worked during that time: _____
 4. Were you paid worker's comp for the time you missed: _____
 5. When did you start getting your worker's comp: _____
 6. Any problems with late checks: _____
 7. When did checks stop: _____
 8. What has your financial situation been like with no checks/late checks: _____
- _____

CURRENT WORK SITUATION

1. Still working with defendant: _____
2. If not, why: _____
3. Could you do your old job: _____
4. Could you do any of your previous jobs: _____
5. Do you know of jobs at defendant's business you could do: _____
6. Working elsewhere now: _____
7. Duties of current job compared to old job: _____
8. Any problems with current job: _____
9. Earning as much as before injury: _____
10. Have you looked for other work: _____ Where: _____ Why or why not: _____
11. Results of job search: _____
12. Ever been to SC Voc Rehab: _____

CURRENT CONDITION/PERMANENCY

Condition One.

1. What kinds of problems are you having now: _____
2. Part(s) of body affected: _____
3. How often does it bother you: _____
4. Do you have PAIN: _____ Where: _____ How often: _____
5. Describe the pain, sharp/dull/ache/stabbing/burning/ _____
6. How bad is PAIN on scale of 1 to 10: _____
7. Things which AGGRAVATE pain: _____
8. Things you do to EASE pain: _____
9. Recovery time after aggravation: _____
10. Medications you take now--prescription: _____
11. Medications you take now--non-prescription: _____
12. How often: _____ Side effects: _____
13. Still seeing a doctor: _____
14. Condition getting better/worse/same: _____

Condition Two.

1. What kinds of problems are you having now: _____
2. Part(s) of body affected: _____
3. How often does it bother you: _____
4. Do you have PAIN: _____ Where: _____ How often: _____
5. Describe the pain, sharp/dull/ache/stabbing/burning/ _____
6. How bad is PAIN on scale of 1 to 10: _____
7. Things which AGGRAVATE pain: _____
8. Things you do to EASE pain: _____
9. Recovery time after aggravation: _____
10. Medications you take now--prescription: _____
11. Medications you take now--non-prescription: _____
12. How often: _____ Side effects: _____

- 13. Still seeing a doctor: _____
- 14. Condition getting better/worse/same: _____

Condition Three.

- 1. What kinds of problems are you having now: _____
- 2. Part(s) of body affected: _____
- 3. How often does it bother you: _____
- 4. Do you have PAIN: _____ Where: _____ How often: _____
- 5. Describe the pain, sharp/dull/ache/stabbing/burning/ _____
- 6. How bad is PAIN on scale of 1 to 10: _____
- 7. Things which AGGRAVATE pain: _____
- 8. Things you do to EASE pain: _____
- 9. Recovery time after aggravation: _____
- 10. Medications you take now--prescription: _____
- 11. Medications you take now--non-prescription: _____
- 12. How often: _____ Side effects: _____
- 13. Still seeing a doctor: _____
- 14. Condition getting better/worse/same: _____

In General.

- 1. What do you do in an average day: _____
- 2. Spend time lying down on sofa or bed: _____ Recliner: _____
- 3. Are there things you can't do any more or have trouble doing:
 - a sitting _____ how long at one time: _____
 - b standing _____ how long at one time _____
 - c walking _____ how long at one time _____
 - d lifting _____ how long at one time _____
 - e bend _____
 - f stoop _____
 - g reach _____
 - h push/pull _____
 - i twist/turn _____

- j cook _____
- k sweep _____
- l vacuum _____
- m mop _____
- n dust _____
- o make beds _____
- p clean bathroom _____
- q laundry _____
- r dishes _____
- s drive car _____
- t ride in car _____
- u shop _____
- v church _____
- w yard work _____
- x hobbies _____
- y sports _____
- z personal needs _____
- aa sleep _____
- bb sex _____
- cc concentrating _____
- dd reading _____
- ee TV _____
- ff other _____
- gg other _____
- hh other _____

MISCELLANEOUS

1. Have you received any duns for unpaid bills: _____
2. Have you been reimbursed for your mileage: _____ Distance to Dr.'s office: _____
3. Exhibits:
 - a. _____
 - b. _____
 - c. _____
 - d. _____

HEARING RECORD

Hearing Date _____

Commissioner _____

PRE TESTIMONY

Evidence submitted (APA/Depts./Etc.) _____

Commission's filed admitted? _____

AWW / CR stipulated? _____

Other stipulations _____

Claimant's contentions _____

Defendant's contentions _____

TESTIMONY SUMMARY

Claimant's
Witnesses

1. Name: _____

2. Name: _____

3. Name: _____

Additional exhibits _____

Defendant's
Witnesses

1. Name: _____

2. Name: _____

3. Name: _____

Additional exhibits _____

POST TESTIMONY

Commissioner rules: _____

Other:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

BEFORE THE SOUTH CAROLINA
 WORKERS' COMPENSATION COMMISSION

_____, EMPLOYEE,)
 CLAIMANT,)
 VS.)
 _____, EMPLOYER,)
 AND)
 _____, CARRIER,)
 DEFENDANTS.)

CLAIMANT'S
 APA SUBMISSION
 W.C.C. FILE NO.

TO: COMMISSIONER _____ AND _____,
 ATTORNEY FOR DEFENDANTS.

YOU ARE HEREBY NOTIFIED that the claimant, pursuant to Regulation 67-612 and S.C. Code Ann. §1-23-330, hereby submits the following reports/records as evidence on claimant's behalf:

JOINT EXHIBITS

<u>Ex. No.</u>	<u>Source-Name and Address</u>	<u>Dates</u>	<u>No. Pages</u>

CLAIMANT'S EXHIBITS

<u>Ex. No.</u>	<u>Source-Name and Address</u>	<u>Dates</u>	<u>No. Pages</u>

DEFENDANTS' EXHIBITS

<u>Ex. No.</u>	<u>Source-Name and Address</u>	<u>Dates</u>	<u>No. Pages</u>

YOU ARE FURTHER NOTIFIED that you have the right to cross-examination. Should you desire to exercise said right, you are to forthwith schedule the deposition of the person you want to cross-examine.

YOU ARE FURTHER NOTIFIED that copies of these records will be submitted as evidence on claimant's behalf at the time of the hearing in this matter.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called to testify on claimant's behalf:

- 1.
- 2.
3. Any and all witnesses listed in the Form 58 or APA submissions of either party.

M. Terry Haselden
Attorney for Claimant
P.O. Box 18182
Spartanburg, S.C. 29318
864-585-1045

April 16, 2000

Deposition letter to client

The attorney for KEYBOARD(DEFENDANT), KEYBOARD(OPPOSING ATTORNEY), of KEYBOARD(OPPOSING ATTORNEY'S FIRM), has scheduled your deposition for KEYBOARD(DAY), KEYBOARD(DATE) at KEYBOARD(TIME).

KEYBOARD(PLAINTIFF'S ATTORNEY) would like to meet with you at our office on KEYBOARD(DAY) the KEYBOARD(DATE) at KEYBOARD(TIME) to discuss the deposition procedure. After your meeting with KEYBOARD(PLAINTIFF'S ATTORNEY), you will be able to go together to KEYBOARD(OPPOSING ATTORNEY'S OFFICE) office at KEYBOARD(STREET) where the deposition will take place.

To get ready for your deposition, you might want to review the following pointers, although KEYBOARD(PLAINTIFF'S ATTORNEY) will go over all of this at your meeting.

1. Tell the truth, as briefly and to the point as possible. Avoid long narrative answers. The more subjects you bring up, the more questions they will ask. Do not volunteer guesses, opinions, or rumors. Do not let the other lawyer intimidate you by a stare.

2. Do not bring notes, diagrams, books, or other aids to the deposition unless commanded to by a subpoena or directed by KEYBOARD(PLAINTIFF'S ATTORNEY). If you rely on them for your deposition testimony, you may be cross-examined about them.

3. Think about the questions. Give yourself time to formulate an honest, short, and direct answer. Give your lawyer time to analyze the question should an objection be necessary.

4. Watch out for an examiner who conducts an informal but rapid conversation of rapid questions and answers to lead you and to get you to agree with his version of the facts.

5. If the examiner tries to build you up with flattering questions, beware.

6. Do not take the examiner's friendly manner at face value. Pay attention to the examiner's choice of words. Beware if he asks, "do you always...?" or talks about or uses phrases which tend to over-generalize your conduct of the situation at hand.

7. If you do not understand or need time to analyze a question, ask the lawyer to repeat it or have the Court Reporter read it back to you. Answer the question posed, not what you have guessed the lawyer is trying to ask. Let him earn his fee.

8. Remember that at trial, a portion of the deposition may be taken out of context and used to impeach you or offered into evidence. Try to answer each question so that the reader understands your testimony without reference to an explanation provided earlier in the deposition.

9. If you cannot remember, say so. If you are not sure, qualify your answer by saying "approximately" or "to the best of my recollection." You are required to tell the truth, not to guess.

10. Be careful when explaining distances, times, amounts, degrees and the like. Be sure your answers explain things in the proper time frame.

11. With any exhibit you are asked about, verify its effective date, check for completeness, consider the source, and be careful about speculating about why it was prepared unless you know.

12. When required to mark maps, photographs, and diagrams, draw large circles, wide brackets, or other sweeping marks, to avoid pinning yourself down where there is a possibility of inaccuracy.

13. If asked to second guess what another person did, remember that it is easy to have 20/20 hindsight. Without knowing all that was involved in another person's actions, you are second guessing. Your oath does not require that you speculate.

14. Listen to your lawyer's objections; they may indicate what was wrong with the question.

15. Any examiner can sometimes create a false or incomplete picture by asking only certain questions. It is not your job to clarify the record. Your lawyer will decide whether to obtain a fuller explanation either in deposition or at trial. Do not volunteer. Always answer the question first, then explain if necessary.

16. If the question calls for a yes or no answer, you have the right to explain your answer briefly if qualifications is necessary. But again, do not volunteer.

17. Beware of hypothetical questions formulated to be analogous to the facts but that omit essential information.

18. If you are questioned about embarrassing matters and your lawyer decides that you have to answer, be forthright and give a complete explanation of what happened. Arrest, failure in school, previous accidents, business ventures, and the like may have little bearing on the litigation but if you hide them and the opposition discovers them, your credibility will be damaged or destroyed. This is called "impeachment."

19. Be careful of questions such as, "Are these all the documents that you have reviewed?" or "Have you told me everything you know?" Qualify your answer in case you remember something between deposition and trial.

20. Do not be embarrassed but readily admit that you had a conference with your lawyer. That question is usually asked with raised eyebrows. Such a briefing is not only proper, but necessary. The subject may be privileged information, but that you conferred is not.

21. Appearance. Please dress in an appropriate manner (example: church type attire) for your deposition. KEYBOARD(ATTORNEY NAME) will discuss appearance in more detail during your pre-deposition appointment. If you have any questions regarding your attire, please address them at your meeting.

As indicated above, KEYBOARD(PLAINTIFF'S ATTORNEY) will discuss the deposition more fully when you meet. Should you have any questions concerning the above deposition pointers, please reserve them for your conference. KEYBOARD(PLAINTIFF'S ATTORNEY) will more fully explain what will be expected of you at KEYBOARD(TIME), KEYBOARD(DATE) when you meet here prior to your deposition.

67-612. Admission of Expert's Report as Evidence.

A. This regulation does not apply to the Form 14A filed according to R.67-1301.
B. A written expert's report to be admitted as evidence at the hearing must be provided to the opposing party ~~at least ten days before the scheduled hearing~~, as follows:

(1) The moving party must provide the report to the opposing party at least fifteen days before the scheduled hearing.

(2) The non-moving party must provide to the moving party any report not provided by the moving party at least ten days before the scheduled hearing.

(3) Where both parties file hearing requests, the first party to file shall be considered the moving party.

C. Proof of notice to the opposing party must be filed with the Commission at least ~~ten~~ fifteen days (ten days for the non-moving party) ~~prior to~~ before the scheduled hearing.

D. The report shall be filed with the Commissioner at the scheduled hearing, not before.

(1) The notice filed with the Commission must state the name and address of the expert and date and number of pages of the report.

(2) Serve the notice and a copy of the report on the opposing party according to R.67-211. Service is deemed complete upon mailing.

E. Failure to provide the opposing party at least ~~ten~~ fifteen days notice of the report (ten days notice for the non-moving party) may result in the report being ruled inadmissible.

F. If a party fails to meet the ~~ten-day~~ notice requirements, it must:

(1) Obtain the opposing party's consent to submit the report; or

(2) Provide for the expert to attend and testify at the hearing unless otherwise ordered by the Hearing Commissioner; or

(3) Take the de bene esse deposition of the expert before the hearing and promptly file the deposition with the Commissioner.

G. Administrative Procedures Act (APA) exhibits timely submitted.

(1) Prior to the hearing, ~~the moving~~ each party shall have the responsibility of organizing the proposed ~~its~~ APA exhibits into a single set following this format as follows:

(a) ~~Jointly offered~~ A cover sheet designating the exhibits as Claimant's or Defendant's;

(b) ~~Claimant's exhibits~~ An index sheet listing the APA number, name of the provider and number of pages in the APA, with the records from each medical provider identified in groups as APA#1, APA#2, etc.;

(c) ~~Defendants'~~ Each APA exhibits shall be in chronological order with the oldest record first, and pages shall be numbered consecutively beginning with the first page of APA#1 and continuing through the final page of the last APA submitted;

(d) ~~The records offered from each medical provider shall be identified in groups as APA#1, APA#2, etc.~~ Each APA shall be preceded by a cover sheet appropriately tabbed to identify the APA number;

(e) ~~The pages of lengthy individual records or reports shall be numbered~~ Any report submitted to the opposing party in accord with B(1) or B(2) above shall be submitted as an APA exhibit at the hearing unless withdrawn with the consent of the other party, and the non-moving party shall only submit any reports not submitted by

the moving party.

(2) Move for admission of the submitted APA exhibits.

(3) Counsel for all other parties appearing at the hearing:

(a) Shall be given the opportunity to review the ~~single set of~~ APA exhibits as prepared ~~by the moving party at the hearing in accord with G(1);~~

(b) Will be given the opportunity to supplement the record with any properly noticed APA exhibits which may have been omitted from the Claimant's and Defendant's single sets.

(c) Move for the admission of any omitted exhibits.

(4) Objections.

(a) ~~By including all proposed APA exhibits into a single set, t~~ The parties do not waive any evidentiary objections they may have to the individual exhibits, including objections counsel may have as to the relevancy, materiality, qualifications of the expert, timeliness, privilege, hearsay, authenticity, or weight to be given to the proposed APA exhibits.

(b) Shall be dealt with by the Hearing Commissioner on a case by case basis.

H. All available evidence and testimony shall be presented at the scheduled hearing or a party must move for adjournment according to R.67-613.

(1) The Commissioner may adjourn the hearing, and testimony of a necessary witness unable to appear at the scheduled hearing may be presented by deposition or at a hearing reconvened at a later date.

(2) The Commissioner may order the party moving for adjournment to take the de bene esse deposition of the expert. The Commissioner may order the party moving for adjournment to pay to the Commission hearing costs of two hundred fifty dollars if it is necessary to reconvene.