

PUBLIC COMMENTS

HB 1752

HOUSE COMMITTEE ON BUSINESS & INDUSTRY

---

Hearing Date: March 30, 2021 8:00 AM

---

TIMOTHY WHITE

White Espey, PLLC

Austin, TX

This bill would dramatically change how Benefit Review Conferences are conducted. For the past 20+ years, these hearings have been conducted in person. This system worked. This is the injured worker's first introduction to the workers' compensation dispute system. At the BRC, they are able to meet with their attorney or Ombudsman (often for the first time). They are also able to meet the mediator and the attorney representing the employer/insurance carrier. Injured workers are able to put faces with names and see the system actually working.

Having these hearings via videoconference does not work. In my experience of doing this for nearly 16 years and especially over the past year, most injured workers do not have videoconference capabilities. Having a good, clear telephone line is often not an option. In the past if there was a need to appear by video or phone, then a motion was filed. On limited occasions, appearing via video/phone is understandable. That's the way it has always been and that system worked.

This bill was also filed without requesting any stakeholder input. The Division of Workers' Compensation is behind this bill yet they have never asked the actual system participants how these videoconference hearings are going. These hearings have not been going well. Most injured workers never appear on screen because they are unable to do so. The audio during the hearings is not good. The internet connections also are not good. Has the DWC asked any of the system participants to comment on the BRCs by teleconference? No. Has the DWC studied if videoconference BRCs have resulted in more agreements than regular BRCs? Likely not. Has the DWC studied how many more BRCs are now held due to videoconference issues versus the past? Again, not likely. Having BRCs by videoconference only slows down the dispute process as it leads to more hearings. That is not consistent with the goal of getting an injured worker back to work as soon as possible.

The DWC system was created for the injured workers and the system participants, not for the workers of the DWC. We should do what is best for all system participants and not just what is most comfortable for the worker at the Division.

Tim White

White Espey, PLLC

Brandi Prejean

Legal Representative to Insurance Carriers, Employers, Political Subdivisions and Third Party Administrators in the workers' compensation system.

Austin, TX

Last week, a letter was sent to Commissioner Brown from a majority of the legal representatives in the workers' compensation system urging for a return to in-person proceedings. Attorneys for injured workers, employers and insurance carriers believe that BRCs are most productive when conducted in person. Indeed, there are cases that would make sense to be held telephonically or via video conference, which is a determination that should be made by the parties. Legal representatives should be afforded the opportunity to represent their clients in the manner they deem best without a showing of good cause to the Division of Workers' Compensation (DWC.) In 2005, the workers' compensation system was overhauled with a stated goal of less agency regulation. Over the last several years, parties have experienced a dramatic increase in agency regulation, over almost every aspect of their case. The parties have been stripped of their ability to freely negotiate and resolve disputes, because of the burdens imposed by agency involvement and approval. This bill exemplifies the DWC's trend towards over-regulation of the dispute resolution

Printed on: April 26, 2021 11:09 AM

process. The DWC seeks via this bill the statutory authority to dictate to the parties the manner in which their disputes will be handled. The DWC did not request feedback from injured workers, employers, insurance carriers or their respective legal representatives regarding this statutory change. If they had requested feedback, they would have learned that the majority of the system participants do not support abandoning the long standing practice of in-person proceedings.