



## STATE OF INDIANA

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### WORKERS COMPENSATION BOARD

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### SHOULD A PLAINTIFF HAVE ATTORNEY REPRESENTATION?

QUESTION: As a plaintiff am I required to have an attorney represent me?

ANSWER: You are entitled to represent yourself, but experience tells us that this may not be the best choice for you.

QUESTION: Why do you say I shouldn't represent myself?

ANSWER: The presentation of a worker's compensation case involves technical provisions of the law, rules of evidence, and rules regarding the contents and exchange of medical information. Your failure to understand these rules could prevent the proper presentation of the evidence in your case and not allow the entry of an award in your favor. Your lawyer would assist you in not only collecting the necessary information and witnesses, but also in presenting your evidence to the Board.

QUESTION: Other people have told me that I have a good case and I don't need a lawyer, so why are you saying I should hire one?

ANSWER: The hearing before the Single Hearing Judge of the Board is your opportunity to present evidence to support your claim. Your employer is not required to disprove your right to receive benefits. In other words, it is your obligation to prove every element necessary in order to secure an award on your behalf. You have every right to do this yourself, but you will be held to the same standards as an attorney.

QUESTION: Don't I have a right to appeal the Single Hearing Judge's decision?

ANSWER: Yes, you have the right to appeal the decision providing it is done within certain time limits. Your appeal, however, is based on the evidence properly introduced before the Single Hearing Judge. Evidence that is ruled inadmissible or not in the proper form would not be considered at your appeal either.

QUESTION: I thought the Worker's Compensation Board was supposed to help injured workers. Why can't you help me?

ANSWER: In the Board's administrative function they provide general information regarding the Worker's Compensation Act and the benefits that are due under the Act. Our Case Coordinators do work to make sure injured workers understand what is necessary at a hearing, but they cannot give advice or represent you. When a claim is filed the Board must perform a judicial function and hear the evidence without assisting either plaintiff or defendant in the presentation of their case.

QUESTION: How do I find a lawyer?

ANSWER: You should seek the services of a lawyer familiar with the Worker's Compensation Act. Asking other people who have had worker's compensation cases would be one source or seeking the advice of your union would be another. Even if a lawyer that you have dealt with does not handle worker's compensation cases, they may be able to refer you to someone who does. Some county bar associations operate lawyer referral services or you can sometimes obtain the name of the President of the local bar association who will assist you in the referral process. Contacting your local court or the clerk's office may assist in the finding the bar association President's name.

QUESTION: How are lawyers paid in worker's compensation cases?

ANSWER: Fees of attorneys in worker's compensation cases are controlled by the law and the Board. The Board's procedural rules provide for the amount an attorney can charge. There is generally a minimum fee of \$200, plus 20 percent of the first \$50,000 recovered, and 15 percent upon all recovery in excess of \$50,000. The attorney may also receive a fee based on the recovery of medical expenses, which comes out of the payments made to the medical provider, not the injured worker.

QUESTION: Do I have to pay the fee for my lawyer?

ANSWER: Lawyers fees in worker's compensation cases are generally considered contingent fees; in other words, the fee comes out of any recovery you receive. If you do not receive any compensation in your case, you do not owe fees to your attorney.

QUESTION: What about expenses such as medical reports and depositions or copy, phone, and mileage charges?

ANSWER: You would be responsible for the payment of the expense for medical reports and depositions. You should discuss with your lawyer their policy on the charges for other items. An open discussion concerning fees and charges before your lawyer takes your case will avoid misunderstandings.

QUESTION: Can my employer ever be required to pay my attorney's fees?

ANSWER: In special circumstances, such as where an employer acted in bad faith, lacked due diligence in the handling of the case, or the employer failed to have worker's compensation insurance, attorney's fees for the plaintiff's attorney may be assessed against the employer. This would depend upon the acts and circumstances of each case and it is up to the judge in the case.