Virginia Workers' Compensation Commission
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Petition and Order Requirements

General Requirements

All documents must be sent together. The Commission will not hold the file for the missing documents. Exception: Where the settlement papers are prepared by counsel for the carrier, the Commission will wait five days for the employee's attorney to forward the required informational letter.

Documents shall be sent to the Commission's Richmond Office unless the file is in a Deputy Commissioner's regional office.

Because the Commission must mail a copy of the final Order or disposition of a proposal to all parties, the proposed Order must include the employer's correct name and address as well as the carrier's and/or third party administrator's name and address.

In accordance with the Supreme Court Rules, counsel licensed in Virginia must prepare all papers. Non-attorney insurance representatives cannot prepare the Petition and Order. All endorsing attorneys must be licensed to practice in Virginia (Va. Workers' Compensation Comm'n R. 1.7(B)).

The Commission may require a conference with the employee before a settlement is approved.

The Commission's Processing Procedure
Settlement papers will be examined upon receipt to determine if the papers are properly executed, the appropriate information is contained, and the required documentation is provided. All parties must initial any addendum to the original documents.

Settlement papers that are technically compliant will be reviewed to determine if the settlement is in the best interest of the employee. Parties will be notified if a conference is required or if additional information is necessary. It is therefore unnecessary to contact the Commission. The parties will be notified in writing if a settlement proposal is approved or declined. The Commission carefully scrutinizes settlements and is particularly reluctant to approve a settlement that ends lifetime medical benefits.

Indemnification provisions concerning Medicare set-aside issues
The Commission discourages the inclusion of indemnification provisions in compromise settlements. The Commission will not approve any settlement that contains broad indemnification language, and will allow only indemnification provisions that are limited to issues of liability that are solely under the claimant's control (e.g. misapplication of set-aside funds, misrepresentation regarding Medicare eligibility or intent to apply for Medicare, etc.).

Ancillary agreements
All agreements related to the compromise settlement must be disclosed to the Commission and each settlement petition must contain a certification that either there are no such agreements or that all such agreements have been disclosed to the Commission. If the settlement documents reference an ancillary agreement which contains a general release of all claims, that agreement must contain a specific clause indicating that the release does not apply to any claims under the jurisdiction of the Virginia Workers' Compensation Commission. Alternatively, the settlement order can contain the following (or similar) language:

The parties agree that any ancillary agreement shall not be construed to affect the claimant's rights or responsibilities with respect to Medicare, or to affect the claimant's rights with respect to any claim under the jurisdiction of the Commission. It is ORDERED that the Commission's approval of the settlement of the claimant's workers' compensation claim(s) referenced herein shall not be construed as the approval of the terms of any ancillary agreement.

Preparation Requirements for the Petition and Order:
Sample Petition for Guidance Only
Sample Order for Guidance Only

A. SIGNATURES. Signatures of all required parties must be on the documents. Under each signature, there must be the following:
1. Full typed name of individual;
2. Correct address of signer;
3. Name of business or law firm;
4. Name of party who counsel represents;
5. Title of Claims representative if signing;
6. Name of insurance company; and
7. Telephone number of each signer.

B. INTRODUCTORY PARAGRAPH. An introductory paragraph containing the following language is required.

The case is before the Commission upon Petition for Compromise Settlement seeking approval of settlement whereby employee receives _____ and upon payment employer and carrier are released from liability from _____.

C. STATEMENT OF CASE. A statement of the case containing the following information must be included:
1. Date of accident or alleged accident;
2. Average weekly wage;
3. Dates for which compensation has been paid; and
4. Date of the most recent award, if any

D. PAYMENTS. The petition must state the amount of all payments made in the case:
1. To the employee;
2. To medical providers;
3. For vocational rehabilitation services and placement; and
4. The total amount paid on the case to date.

E. STATEMENT OF CONTROVERSY. A statement of the controversy leading to settlement must be included.

F. SUMMARY OF MEDICAL TREATMENT. A summary of medical treatment, including specific reference to most recent medical examination and conclusions of the doctor regarding future medical treatment, must be included (Recent medical reports must be submitted with the settlement documents).

G. STATEMENT OF AGREEMENT. A statement of the agreement is required, including at least:
1. The amount of money to be paid to the employee;
2. The agreement regarding medical treatment;
3. Identification of other pertinent settlement terms; and
4. The method of payment (such as lump sum, installment, or annuity).

H. COST OF TREATMENT DEADLINE. The documents must identify the last date for which the carrier will accept financial responsibility for the cost of medical treatment incurred by the claimant. If medicals are being paid through the date of approval, the Commission suggests the following language be included in the petition and order:

IT IS FURTHER ORDERED that the defendants shall be responsible for medical treatment pursuant to §65.2-603 incurred by the claimant through the date of the entry of this Order approving the settlement, and the claimant shall be responsible for any and all medical expenses or any other costs incurred thereafter.

I. ATTORNEY FEES. The documents must include a clause that the employee understands that the Commission will award attorney fees that will be deducted from the settlement amount unless the petition and order contain an agreement to the contrary. In the proposed Order, the attorney fee and costs incurred portion of the Order must be blank. The Commission will enter these amounts.

J. PAYMENT AMOUNTS. The documents must include a clause containing space for the Commission to specify the amounts to be paid to the employee and the attorney.

K. SPOUSAL AND CHILD SUPPORT. The parties must file any documentation reflecting a legally enforceable spousal and/or child support order. The carrier, without the Commission's approval, can deduct for child support when the carrier has been served with a legally enforceable Order to Withhold.

The Commission's suggested language for addressing arrearages:

The defendants shall comply with any legally enforceable Division of Child Support Enforcement Order to Withhold to the extent required by law, and shall deduct an appropriate sum from the claimant's net recovery."

L. SOCIAL SECURITY DISABILITY AND MEDICARE. If the claimant is currently entitled to Medicare; or the settlement is over $250,000.00 and there is a reasonable expectation of Medicare entitlement within 30 months, then the parties must appropriately address the Medicare as Secondary Payer Act, normally by a Medicare set-aside trust in an amount approved by the Centers for Medicare and Medicaid Services (CMS). If a Medicare set-aside trust is appropriate, documentation of approval by CMS is required. CMS does not require a review of WCMSA proposals for Medicare beneficiaries where the total settlement amount is less than $25,000.

If the claimant is receiving, or anticipates receiving, Social Security disability benefits, then the parties should appropriately address a potential lifetime pro-ration of the net settlement proceeds.

M. STRUCTURED SETTLEMENT OR ANNUITY LANGUAGE. If the settlement is structured or is funded by an annuity, the appropriate language must be included.

N. DEFERRED PAYMENTS. Cases involving deferred payments, whether by annuity of otherwise, must include a provision for payment to the employee's named beneficiary if the employee dies before the payment period expires. In the event the employee dies without naming a beneficiary or the beneficiary should die first, the provision must state that payment will be made to the employee's estate.

O. SIGNATURE OF DEPUTY COMMISSIONER. A statement for the Commissioner's entry and signature should appear in the following form:
Entered this _____day of _____, ____.
_____
Deputy Commissioner

Documents Required in Addition to the Petition and Order

1. Medical reports to support the Petition and Order;
2. Statement from attorney explaining why the settlement is in the claimant's best interest.
3. A letter from the employee's counsel, or, if counsel is not retained, the employer's attorney, or the claimant, setting forth the following:
a. Procedural history of the case;
b. Personal history concerning the employee including age, family status, number of dependents, current employment status, and income from all sources;
c. Statement whether the employee is competent to enter into a settlement;
d. Statement regarding current medical status and treatment, including the existence of any permanent partial or total impairment;
e. Anticipated future medical expenses and whether other medical insurance will assist in payment;
f. Statement of the employee's intended use of the settlement proceeds;

- If outstanding debts are to be paid, list the total amount of the debts and payments that are to be made;
- If the proceeds are to be invested, identify the investments, amount, and terms. (For example, $5,000 to be placed in a certificate of deposit at 6-percent interest for five years);
- If the proceeds are to be invested in a business opportunity, identify and describe the business, amount of the investment and reasons why this is an appropriate use of the settlement funds; and
- A statement that the employee is literate in English or had the settlement papers read and explained in his native language. The identity of the translator must also be provided.

g. If medical benefits are being terminated, a statement explaining why this is in the claimant's best interest, and whether other medical insurance is available to the claimant. If medical benefits are not being paid through the date of the settlement Order, the parties must provide a satisfactory explanation. If there is an outstanding award of medical benefits, the parties must identify all outstanding medical bills, and explain why they are not being paid.

h. Blanket Release. A compromise settlement that includes a blanket release of all workers' compensation claims is not acceptable and will be rejected. A broad release will be accepted for claims arising from a particular accident(s) or occupational disease(s) for which the settlement is proposed. The settlement documents must identify the specific date(s) when the alleged accident or

accidents are claimed to have occurred, and shall reflect the Jurisdiction Claim Number (or VWC File number) for each such accident (unless the VWC File number is not yet assigned). The Commission will allow the documents to contain a representation by the claimant that he is aware of no other accidents or occupational diseases arising from the employment except those for which he has previously given notice to the employer, filed a claim or received an award.

Sample information letter, which must be used by unrepresented claimants
Sample information letter which must be used by unrepresented beneficiary in fatal case

4. A notarized affidavit
Sample of this mandatory affidavit.

5. Child Support Order

6. Medicare approval letter for set-aside trust

7. A signed attorney fee agreement identifying the fee agreement, fee request, itemized time schedule, or other documents identifying the time spent and the basis for the fee request. The employee must acknowledge the fee request and state whether he or she is in agreement with the fee request.

Structured or Deferred Settlements for Payment Under an Annuity

All Petitions and Orders for settlements involving funding by an annuity must include the following information:

1. The petition shall state that the company issuing the annuity is authorized by the State Corporation Commission to transact the business of insurance in the Commonwealth and that, in case of default, the employer or carrier shall remain responsible for payment. The employer and carrier shall be the owner of the annuity policy. The claimant shall have no legal interest in the contract except as it relates to the payment of benefits.

2. Payments under the annuity contract shall be mailed directly by the Annuity Company to the claimant. The claimant shall be responsible for providing a current mailing address and mortality information to the Annuity Company.

3. The Petition and Order must also include a provision that if the employee dies for any reason before payment is complete, the payments will continue to be made unaccelerated to a beneficiary named by the employee. In the event the employee dies without naming a beneficiary or the beneficiary dies first, payments will be made to the employee's estate.

Structured or Deferred Settlements for Payment Without an Annuity

All Petition and Orders for structured or deferred settlements without an annuity must include the following language:

1. The employer and carrier are solely responsible for the payment of benefits under the terms of this Order.

2. The Petition and Order must also include a provision that if the employee dies for any reason before payment is complete, the payments will continue to be made unaccelerated to a beneficiary

named by the employee. In the event the employee dies without naming a beneficiary or the beneficiary dies first, payments will be made to the employee's estate.