



# Employers' Application for Hearing

Presented By:

Linda G. deLamorton

*Senior Claims Examiner – Claims Services Department*

---

# Agenda

- **Basic concept**
  - Why and when must the employer file an application to suspend compensation benefits
- **Technical compliance with statutes and rules**
  - Section 65.2-708 and Commission Rule 1.4
- **Common pitfalls and technical defects**
- **Documentary evidence required to support a finding of probable cause**

# Basic Concept

- When a claimant is under an open or ongoing Award of compensation benefits, an employer who wishes to suspend or terminate the payment of such benefits must file an application and/or agreement form with the Commission.
- Failure to do so could result in the employer being required to pay additional compensation benefits, along with penalties and/or other sanctions.

# Technical compliance with Va. Code Section 65.2-708 and Commission Rule 1.4

- **Complete Commission Form 5A**
  - Allegations
  - Relief Request
  - Date of last payment
    - Last paid in accordance with §65.2-708 and Commission Rule 1.4(C)
      - Compensation must be paid to the date of filing, except
        - Return to work – must be paid within 2 years of filing
        - Refusal of selective employment or medical attention or examination – must be paid within 14 days of filing
  - Applicant signs form under penalty of perjury
  - Application and evidence sent to the claimant and his or her counsel, if any, at the same time it is sent to the Commission

# Common pitfalls and technical defects

- A greater number of employer's applications are rejected due to technical deficits than are rejected for insufficient preliminary evidence
  - Unsigned
  - Compensation paid through the wrong date
  - Documentary evidence not submitted
  - Relief Request is not provided
  - No Award of ongoing compensation benefits

# Documentary Evidence to support a finding of probable cause

## ■ Return to work

- Evidence may consist of a statement from the employer; or, a statement from a private investigator indicating direct knowledge under oath. Proof of the claimant's post-injury weekly earnings should be included for a return to light-duty work

## ■ Release to Return to pre-injury work

- A current physician's report; or
- Physician-approved job description

# Documentary Evidence (continued)

- **Failure to Cooperate with Vocational Rehabilitation Efforts**
  - Must include a medical release to perform work, evidence that vocational rehabilitation efforts have been established and the claimant failed to cooperate, i.e. a physician's report and a report from the vocational rehabilitation agency
- **Refusal of medical care**
  - Must show that the claimant was aware of the offered medical treatment and refused the treatment or failed to attend appointments

# Documentary Evidence (continued)

- **Undocumented Worker**

- Must include a medical release to perform work and evidence that the claimant cannot be legally employed in the United States

- **Incarceration**

- Must include a medical release to perform work, i.e. light-duty work and documentation that the incarceration followed sentencing for criminal conviction

- **Death**

- Supply a copy of death certificate



# Documentary Evidence (continued)

- **Refusal of selective employment**
  - Must include a medical release to perform work, evidence of an offer of work to the claimant and evidence that the claimant refused work
- **Credit**
  - Must describe reason or basis for this relief request
- **Amendment of the pre-injury Average weekly wage**
  - Proof of the claimant's average gross pre-injury earnings

# Documentary Evidence (continued)

- **Change in Treating Physician**
  - Requires a physician's report
- **Third-Party Settlements: Subrogation**
  - Requires proof that a settlement occurred and an allegation that the settlement occurred without the defendants' knowledge or consent

# Questions?

**Index cards or bulletin board by registration desk**

**OR**

**Contact the Customer Contact Center:**

- [questions@workcomp.virginia.gov](mailto:questions@workcomp.virginia.gov)
- Toll free - 877-664-2566