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# DICTA

## Take a Walk





By: Broderick L. Young  
*Arnett, Draper & Hagood, LLP*



*Judge Tim Conner*

## WORKERS' COMPENSATION APPEALS BOARD

The Tennessee Workers' Compensation Reform Act of 2013, which went fully into effect on July 1, 2014, has just passed its first anniversary. I recently had the opportunity to sit down with Judge Timothy W. Conner of the Workers' Compensation Appeals Board to discuss the new law, one year in.

During the salad days of the late 90s and early 2000s, a significant portion of my practice, and that of many other lawyers in our state, was devoted to workers' compensation law. However, over the past decade my practice has evolved into other areas of the law, to the point where I no longer practice in the field of workers' compensation at all. One of the first things I learned when speaking with Judge Conner was that much of the terminology I was accustomed to in the old law had changed. As of July 1, 2015, the "Division of Workers' Compensation" became the "Bureau of Workers' Compensation." "Benefit Review" is now "Mediation & Ombudsmen Services." A "Request for Assistance" is now an "Expedited Hearing," and an award of temporary disability or medical benefits at an Expedited Hearing is now an "interlocutory order." An award of permanent disability and/or future medical benefits is a "compensation order."

I was pleased to hear that many of the forms necessary to practice with the new law are available on the Bureau's website at <http://www.tn.gov/workforce/topic/forms>. Better yet, for now at least, practitioners can research the new system's emerging case law without having to add on to their existing Lexis or Westlaw subscription. When the Court was first formed the judges were not sure whether Westlaw or Lexis would be publishing the decisions of the Court. When the University of Tennessee Law School was approached about archiving the Court's opinions, it turned out the law school had already planned on archiving not only the workers' compensation appellate decisions but also the trial court opinions. Accordingly, all opinions of the Workers' Compensation Appeals Board and the Court of Workers' Compensation Claims are now published, searchable, and available for free at [http://trace.tennessee.edu/utk\\_workerscomp/](http://trace.tennessee.edu/utk_workerscomp/).

Prior to our meeting, Judge Conner was kind enough to poll some of his colleagues from the Court of Workers' Compensation Claims, and they were willing to provide some additional practice pointers. They were quick to point out the heightened level of formality with regard to the presentation of evidence at a hearing in new law cases. Judge Conner explained that this change has particularly impacted the manner in which Expedited Hearings (formerly Requests for Assistance) are conducted. "With respect to the Request for Assistance process, under the old law parties were used to explaining their case in a much more informal way, meaning that they weren't offering testimony, they weren't offering authentication of documents, and things of that nature. Under the new law, the Tennessee Rules of Civil Procedure and the Rules of Evidence apply. An expedited hearing is treated just like any other motion hearing you would have at any Court of record, so you have to have authentication of documents, you have to have admissibility of evidence, you have to have testimony. All of the objections that you

would typically hear in a Court setting could apply in an expedited hearing."

The trial court judges also pointed out that any motion that could have been filed in Circuit or Chancery Court in accordance with the Tennessee Rules of Civil Procedure under the old law, can now be filed in the Court of Workers' Compensation Claims. However, practitioners should take note that both the new trial court and appellate court have rules in the Tennessee Compilation of Rules and Regulations (Chapters 0800-02-21 and 0800-02-22) which must be followed, but are at least freely available here <http://www.state.tn.us/sos/rules/0800/0800-02/0800-02.htm>. Both courts also have "Practice and Procedure" guidelines, similar to local rules of court, which can also be found on the Bureau's website.

Judge Conner was careful to point out that Tenn. Code Ann. § 50-6-217, which governs the appeals process in both interlocutory and compensation orders, was amended significantly by the legislature this year, and those changes were incorporated in new guidelines which have been in effect since July 1st of this year. The new guidelines can be found here [http://tennessee.gov/assets/entities/labor/attachments/WC\\_AppealsBoardPracticeandProcedureGuidelines.pdf](http://tennessee.gov/assets/entities/labor/attachments/WC_AppealsBoardPracticeandProcedureGuidelines.pdf). A concern I often hear from practitioners is what effect the new law will have on the availability of legal representation for workers' compensation claimants and the challenges that might present to the claim resolution process. According to statistics maintained by the new Bureau, approximately 40% of claimants in new law cases are unrepresented.

I asked Judge Conner if the judicial process was affected by the increase in pro se litigants: "We are seeing more time committed to those hearings where an unrepresented litigant is involved. I think the trial judges would say that they spend more time explaining procedural aspects of the law; explaining what 'hearsay' means, what 'authentication' is, and otherwise how they have to present their evidence, etc."

Finally, I asked Judge Conner his perspective on the new process versus the old system: "You know, actually, I think there are more similarities now than there are differences. The Bureau has created, under the Court of Workers' Compensation Claims, a scheme that is similar to what we had in Circuit and Chancery Court. The biggest difference would be time deadlines. There is a very concerted effort to shorten the time frame within which decisions are made on any given issue. There are time deadlines that did not apply in the old law cases in Circuit and Chancery Court, but do apply now. With respect to when you have to initiate a claim for temporary disability benefits, how long it takes to get that claim resolved, how long you have to engage in discovery, how long you have to conduct a mediation to try to settle the claim, and then the ultimate hearing date. All of those things are set forth in a scheduling order that the Court is trying very hard to stick to in any given case. So, although procedurally, they have created a system that is similar to what we had before, I would say they have tried to create a more efficient and quick process that allows the parties to get to resolution of issues in a more expedited way."