

# WEST VIRGINIA CODE: §23-5-9

## **§23-5-9. Hearings on objections to Insurance Commissioner; private carrier or self-insured employer decisions; mediation; remand; effective until June 30, 2022.**

(a) Objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, made pursuant to the provisions of §23-5-1 *et seq.* of this code shall be filed with the Office of Judges. Upon receipt of an objection, the Office of Judges shall notify the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, and all other parties of the filing of the objection. The Office of Judges shall establish by rule promulgated in accordance with the provisions of §23-5-8(e) of this code an adjudicatory process that enables parties to present evidence in support of their positions and provides an expeditious resolution of the objection. The employer, the claimant, the Insurance Commissioner, private carrier, or self-insured employer, whichever are applicable, shall be notified of any hearing at least 10 days in advance. The Office of Judges shall review and amend, or modify, as necessary, its procedural rules by July 1, 2007.

(b) The Office of Judges shall establish a program for mediation to be conducted in accordance with the requirements of Rule 25 of the West Virginia Trial Court Rules. The parties may agree that the result of the mediation is binding. A case may be referred to mediation by the administrative law judge on his or her own motion, on motion of a party or by agreement of the parties. Upon issuance of an order for mediation, the Office of Judges shall assign a mediator from a list of qualified mediators maintained by the West Virginia State Bar.

(c) The Office of Judges shall keep full and complete records of all proceedings concerning a disputed claim. Subject to the rules of practice and procedure promulgated pursuant to §23-5-8 of this code, the record upon which the matter shall be decided shall include any evidence submitted by a party to the Office of Judges and evidence taken at hearings conducted by the Office of Judges. The record may include evidence or documents submitted in electronic form or other appropriate medium in accordance with the rules of practice and procedure. The Office of Judges is not bound by the usual common law or statutory rules of evidence.

(d) All hearings shall be conducted as determined by the chief administrative law judge pursuant to the rules of practice and procedure promulgated pursuant to §23-5-8 of this code. Upon consideration of the designated record, the chief administrative law judge or other authorized adjudicator within the Office of Judges shall, based on the determination of the facts of the case and applicable law, render a decision affirming, reversing, or modifying the action protested. The decision shall contain findings of fact and conclusions of law and shall be mailed to all parties.

(e) The Office of Judges may remand a claim to the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, for further development of the facts or

administrative matters as, in the opinion of the administrative law judge, may be necessary for a full and complete disposition of the case. The administrative law judge shall establish a time within which the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, must report back to the administrative law judge.

(f) The decision of the Office of Judges regarding any objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, is final and benefits shall be paid or denied in accordance with the decision, unless an order staying the payment of benefits is specifically entered by the Workers' Compensation Board of Review created in §23-5-11 of this code or by the administrative law judge who granted the benefits. No stay with respect to any medical treatment or rehabilitation authorized by the Office of Judges may be granted. If the decision is subsequently appealed and reversed in accordance with the procedures set forth in this article, and any overpayment of benefits occurs as a result of such reversal, any such overpayment may be recovered pursuant to the provisions of §23-4-1C(h) and §23-4-1D(d) of this code, as applicable.

(h) This section is of no force and effect after June 30, 2022.