

Nevada
Workers' Compensation Law Blog
NEWS & UPDATES ON WORKERS' COMPENSATION LAWS & HELPFUL INFORMATION ON THE CLAIMS PROCESS

POSTED ON MAY 25, 2011 BY **VIRGINIA HUNT**

After the Appeals Hearing Is Too Late

I receive many calls from injured workers who want me to take their case after they lost their case at the appeals officer level. Unfortunately, neither I, nor any of the more experienced workers' compensation attorneys, will agree to take over a case after the appeals officer hearing. Here's why you won't be able to find a lawyer to take your case on a petition for judicial review to the district court level, or why your NAIW attorney might refuse to file a petition after representing you at the appeals officer hearing.

Almost all contested work comp cases involving denied claims depend on whether the appeals officer thinks the injured worker is truthful about how an accident or injury happened. Many other appealed cases involve medical care, and they depend on whether the injured worker has favorable medical reporting from doctors. Only a very few cases involve purely legal issues that only lawyers find interesting. Only those few cases involving just legal questions can be reversed by a district court judge.

Nevada law requires that district court judges accept the appeals officer's findings about whether you or your witnesses were believable or not. The district court must also accept an appeals officer's decision based on which doctors' opinions are more convincing. That means that the last real opportunity an

injured worker has to win a case is when the case is heard by the appeals officer. If your attorney can't find a favorable witness, or doesn't realize the appeals officer thinks your doctor didn't adequately write about your need for more medical care, or you weren't prepared for the tough questions the insurer's attorney asked you on cross-examination, there is little that can be done after the hearing is over.

A district court judge (with rare exceptions) is not supposed to accept new evidence. You can't argue to the judge that you didn't have money to go see an independent doctor to get a new report until after the appeals officer hearing. Nor can you argue that you didn't expect the employer's witnesses to lie and therefore didn't bring in your own witnesses to tell the appeals officer what really happened on the day you were injured. You, and your attorney, must be fully prepared to present the best possible case when your case is decided by the appeals officer. For many injured workers, that means relying on their appointed NAIW attorney.

NAIW attorneys are excellent attorneys who take their jobs very seriously. When I was an appeals officer I had to decide many cases presented by NAIW attorneys, and when I was the attorney for the SIIS, the NAIW was trying cases against me. I therefore have nothing bad to say about NAIW attorneys. If anything, they are overworked and underpaid for what they do. I simply want to caution injured workers that if they feel they want a different attorney than their assigned one because their case requires more work than the typical case for example, they need to shop around before the case goes to the appeals officer hearing. A district court judge will not give you another chance to present your case because you didn't like your assigned NAIW attorney or don't think he or she had enough time to prepare your case.