

PREFERENCES FOR HEARINGS

My preferences for hearing are:

Contact information:

Phone: 515-242-5041 Cell: 641-373-1552

Email: Heitlandjo@aol.com

Preference for contact regarding pending motions: phone

Prehearing motions: phone

Procedure for requesting continuance before deputy: phone

Continuance motions: Same as for other prehearing motions

Preferences regarding exhibits at hearing:

Binding of Exhibits: no preference

Numbering for Claimant: Numbers

Numbering for Defendant(s): Letters

Highlighting: yellow for claimant, any other color for defendant(s).

Presentation of video evidence: DVD preferred but VHS acceptable.

Video evidence must be reasonable in length.

Other: Rule 4.19(3) has a purpose and will be enforced.

Hearing Preferences:

Opening/Closing Statements: Both appreciated-highlight ratings, restrictions, causal connection opinions, IMEs.

Trial Briefs/Contentions of Parties: appreciated with summary of facts, address all disputed issues

Timekeeping at hearing: direct examination charged against party conducting, same for cross.

Post-hearing Requirements:

Briefs: include summary of facts, address all disputed issues.

Additional Evidence: motions to hold record open are the exception not the rule.

Transcripts: helpful but not required.

Additional Matters:

Continuances: Hearing slots are a precious commodity and continuances will not be granted absent compelling circumstances. A backup hearing for a road trip (a venue other than Des Moines) will not be released prior to 24 hours before the scheduled time for the hearing. If it is less than 24 hours before the hearing, and you have spoken with one of the attorneys in that same time frame of less than 24 hours before the hearing (not two or three days before), and the attorney for the primary says it will go to hearing, then I will release the back up hearing. Call me on my cell phone above. If you are the backup hearing, you are expected to be ready to go. Keep in

touch with the primary attorneys; do not just rely on the website hearing schedule and assume the primary is going to go to hearing just because it's still on the schedule. Sometimes settlements come in late in the day and there is a delay in updating the website schedule.

Normally, continuances will be granted only upon a showing of some kind of emergency (a situation that arises unexpectedly and that could not have been avoided through the exercise of reasonable diligence). These might include, but are not limited to death or serious illness of an attorney, party or necessary witness, or of a close relative of the claimant or an attorney in the case.

Newly discovered evidence, but only if it could not have been discovered sooner through the exercise of due diligence. In other words, a genuinely new and unexpected development that affects the party's preparation for hearing and cannot be cured by holding the record open after the hearing.

An Iowa District Court or federal court scheduling conflict, and the other judge has declined to change that hearing, but only if the motion is made within two weeks of hearing. I do not want to continue the workers' compensation case only to learn later that the other hearing was itself continued or cancelled.

The claimant was at maximum medical improvement but is no longer at maximum medical improvement because his or her medical condition has suddenly and unexpectedly changed and he or she is now scheduled for further treatment, it is medically indicated that recuperation will not be completed in time for the results of the care to be considered at the hearing, the results are material to the outcome of the case, and proceeding with this hearing without the new results would likely make a second hearing necessary in order to properly assess disability. This means a genuine change in medical condition, not just a party finally getting around to seeing what further treatment might be available when that treatment could have been attempted earlier in the pendency of the case.

Continuances will probably not be granted for:

Claimant is not at maximum medical improvement yet (UNLESS both counsel stipulate that the claimant is not yet at maximum medical improvement and the healing period has not ended, healing period benefits are being paid, liability is admitted, disability cannot be assessed at this time, and the claimant has no objection to the attorneys' motion to continue the hearing to a later date. A signature of the claimant to this effect is not required but helpful.)

Counsel's vacation plans that would be difficult to reschedule. Counsel should not schedule a vacation during a hearing, or vice versa. Consider having another member of the firm fill in.

A party is not ready for the hearing.

Claimant has not kept in touch with counsel and their whereabouts are unknown.

A situation that existed when the hearing assignment order was issued and counsel did not use the rescheduling process.

Information that was not known to counsel because of a failure to communicate with the client shows lack of due diligence.

Unavailability of a witness; instead, use a deposition, stipulate to the testimony, or we can recess the hearing and reconvene later.

Just because both parties agree to a continuance.

No present dispute between the parties.

Counsel needs more time to prepare or conduct discovery.

The claimant has not yet obtained a rating of impairment.

Opponent hasn't responded to discovery requests.

Didn't know the primary case settled.

Can't get doctor deposed until after hearing; instead, use depositions, stipulation to testimony, or recess the hearing and reconvene later.

Doctor's opinion has changed.

Late evidence. If an exhibit is late, it can be objected to at the hearing. If it is admitted, we can consider holding the record open for rebuttal.

Newly discovered or recently exchanged evidence prompts new discovery where due diligence would have avoided the problem (versus genuinely new evidence, above).

NOTE:

If we deny the continuance, claimant can always move to dismiss without prejudice. If this is within ten days of the hearing, it has to be approved by deputy.

Also keep in mind that a continuance of a hearing set for a "road trip" (non-Des Moines venue) will be re-scheduled for a hearing in Des Moines.

I encourage the parties to communicate with each other prior to the expiration of discovery deadlines as to what issues will be in dispute; finding out at the hearing when the hearing report is filled out is too late to realize an issue or issues thought stipulated is actually disputed. The fewer surprises, the better.

Hearings:

Please make sure the actual insurance company is shown on the caption of the hearing report, not just a third party administrator.

If the claimant's address has changed since the petition was filed, please give me his current address.

I usually invite opening statements but they are not required; they are often helpful in giving me an overview of the evidence and the party's positions on the issues.

It is not necessary to ask for permission to approach a witness during the hearing; I will consider all attorneys to have standing permission to approach any witness on the stand without having to ask for permission.

Also make sure I can tell, both in your questions to witnesses and in exhibits, whether restrictions were temporary or permanent.

At the hearing, I will be flexible as to the time allotted each party, but only within reason. A three hour hearing should be a three hour hearing; if I do not have another hearing immediately after, I am willing to go beyond this time if the attorneys are diligently trying to present their cases efficiently.

In keeping track of time used at hearing, I count direct examination against the party doing the direct examination, cross-examination against the party doing cross-examination. Time consumed in preliminary matters, such as objections to exhibits, are changed equally.

Please be sure to mark, one way or another, every section of the hearing report. I will take time to ask you about unmarked sections at the hearing if I can't tell whether something is disputed.

I also welcome explanatory notes in the margins of the hearing report, clarifying the positions of the parties and narrowing down just what is in dispute.

Exhibits:

I enforce our rule 4.19. It is designed to avoid unfair surprise and prejudice, and the parties are expected to comply with its deadlines. If an exhibit is objected to as untimely, I will first determine whether it is in fact untimely under the rule. If it is, I will then determine whether its admission will be prejudicial to the objecting party. I will seek to determine why the exhibit is offered late; and whether due diligence could have avoided the problem. I will ask the objecting party to show me how they are prejudiced, and how they would have prepared for the hearing differently if the exhibit had been timely served. The party offering the late exhibit will have the heavier burden, as they are the one not complying with the rule and causing the problem. I will then either exclude the exhibit, admit it, or admit it and entertain a motion to hold the record open for a number of days to allow the receipt of rebuttal evidence by the objecting party. The rebuttal evidence allowed will be limited; it is not an extension of the discovery deadlines.

I feel the intent of the hearing assignment order is to limit the exhibits to 50 pages. This is flexible but if it is abused by submitting several hundred pages, I may

require the offering party to use a portion of their allotted hearing time to pare them down to a reasonable size, or justify why more are necessary.

If rate is a contested issue, please give me an exhibit that not only shows what you feel the correct rate is, but how you calculated it.

I prefer exhibits to be arranged in chronological order rather than by doctor; I need to know the story of what happened and when it happened, and chronological order is best for this.

I welcome color highlights in exhibits---if both attorneys wish to highlight the same exhibit, please agree on what colors you are each going to use.

Duplication of exhibits should be avoided but I am not worried about a few pages duplicated here and there.

Since many factual matters are routine and not disputed (claimant's age, education, work experience, past medical conditions), I would not be adverse to an exhibit that represents stipulated facts the parties agree are true and correct, in either written or electronic form (similar to a partial proposed findings of fact).

Post-hearing briefs:

I usually do not like to allow more than two weeks for post hearing briefs, but this can be flexible if necessary. I realize attorneys have busy schedules, so if the due date set becomes a problem, contact me for an extension.

A good summary of the facts, with citations to exhibits, is always very helpful.

In briefs, please refer to the doctor's full name at least initially so I don't have to hunt for his or her first name, and whether they are an M.D. or a D.O. or something else.

Please address all issues marked as contested on the hearing report. I have to rule on all of these issues, and if you don't address it in the brief, I may not know your position on that issue. Give me your position on those issues and any law and facts that support your position, and tell me the relief or remedy you request on that issue.

I have no limit on brief length.

Please identify for me where I can find all causal connection opinions (where that is contested), ratings of permanent impairment, independent medical examinations and permanent work restrictions. I may ask you to direct me to these verbally at the end of the hearing. This helps me find these items that otherwise might be buried or obscured in the exhibits.

It is not necessary to cite basic, settled tenets of law on general matters that are not in dispute. Get to the heart of the disputed issues.

Be sure to give the exhibit and page number when referring to a document in evidence.