

Basic Claims Examiner (CE) Training Course

**DEEOIC Final Adjudication Branch
Hearing Training Session**

PARTICIPANT GUIDE

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Session Description

This session focuses on how to prepare for and conduct a hearing as well as what activities must be completed once a hearing has been conducted.

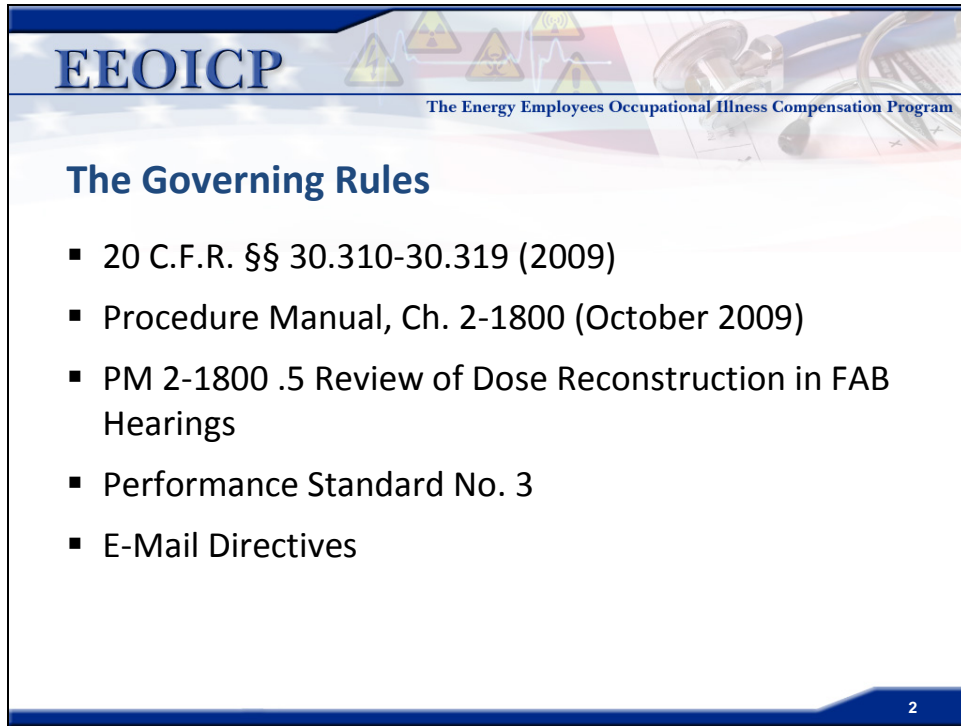
Instructional Objectives

Upon completion of this session, you will be able to list the steps that must be completed before, during, and after a hearing.

Overview

Governing Rules

These are the general rules that govern the conduct of hearings with which the FAB hearing process must comply:



The slide features a header with the EEOICP logo and the text 'The Energy Employees Occupational Illness Compensation Program'. The background includes a collage of radiation warning symbols, a medical monitor, and a microscope. The title 'The Governing Rules' is prominently displayed. Below it, a bulleted list contains five items. A small number '2' is in the bottom right corner of the slide.

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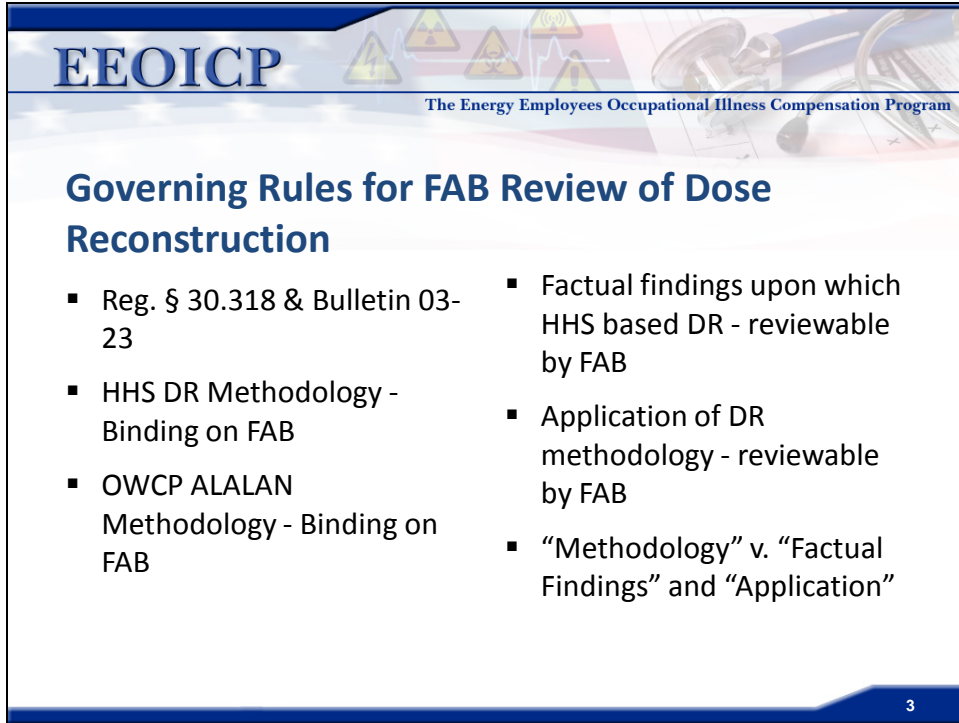
The Governing Rules

- 20 C.F.R. §§ 30.310-30.319 (2009)
- Procedure Manual, Ch. 2-1800 (October 2009)
- PM 2-1800 .5 Review of Dose Reconstruction in FAB Hearings
- Performance Standard No. 3
- E-Mail Directives

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Your Notes

Governing Rules for FAB Review of Dose Reconstruction



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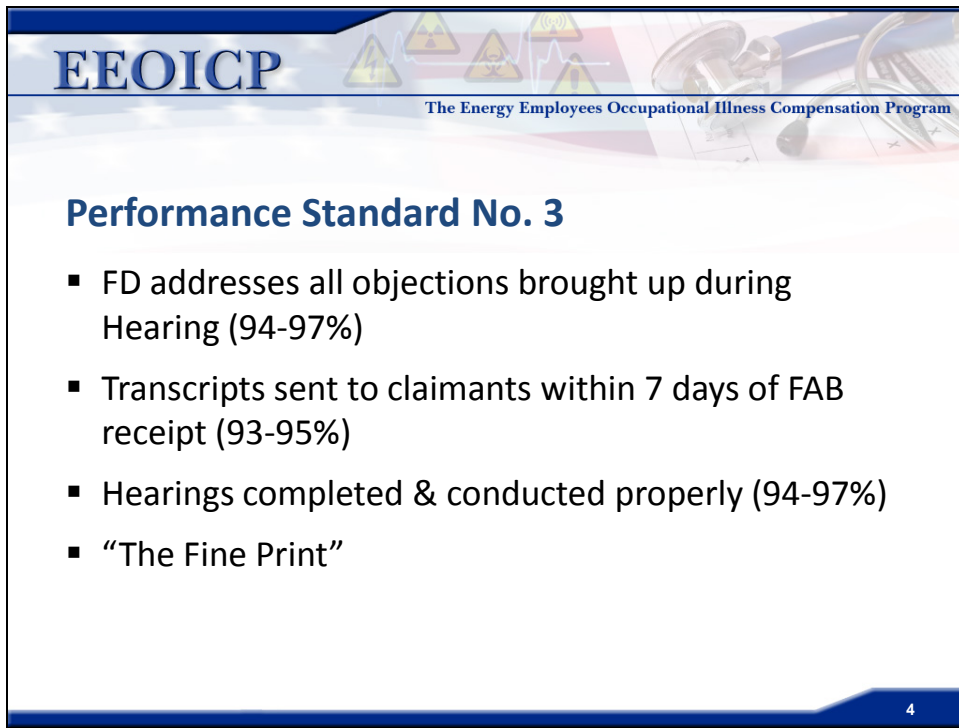
Governing Rules for FAB Review of Dose Reconstruction

- Reg. § 30.318 & Bulletin 03-23
- HHS DR Methodology - Binding on FAB
- OWCP ALALAN Methodology - Binding on FAB
- Factual findings upon which HHS based DR - reviewable by FAB
- Application of DR methodology - reviewable by FAB
- “Methodology” v. “Factual Findings” and “Application”

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Your Notes

Performance Standard No. 3

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Performance Standard No. 3

- FD addresses all objections brought up during Hearing (94-97%)
- Transcripts sent to claimants within 7 days of FAB receipt (93-95%)
- Hearings completed & conducted properly (94-97%)
- “The Fine Print”

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Your Notes

Email Directives (Sampler)



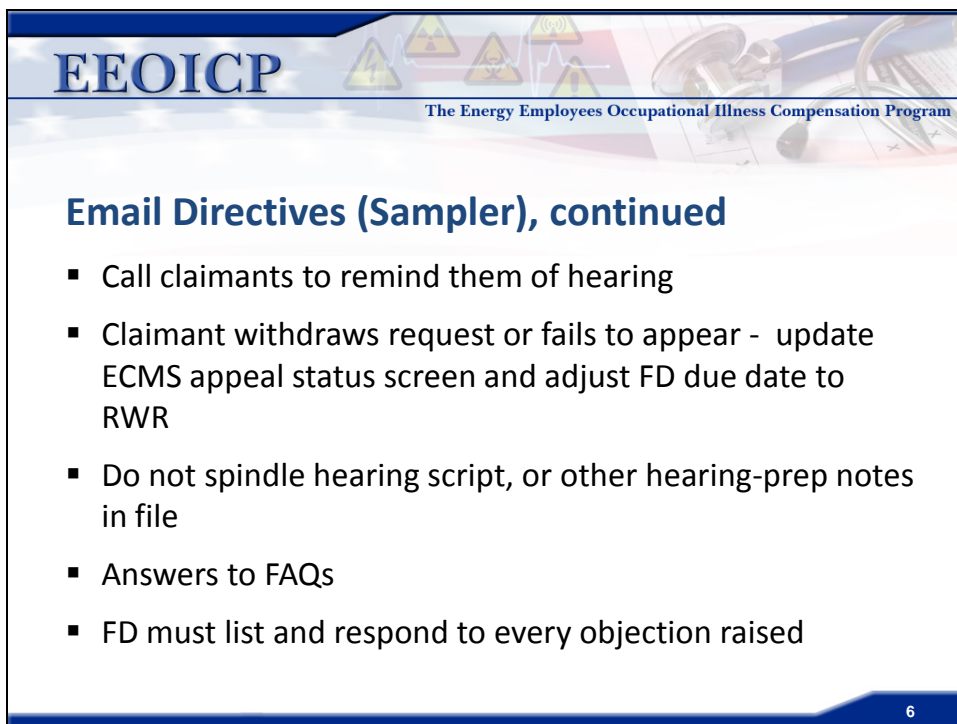
The slide features a header with the EEOICP logo and the text "The Energy Employees Occupational Illness Compensation Program". The background includes a collage of hazard symbols and a stethoscope. The main content is a list of directives for email communication.

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Email Directives (Sampler)

- Claimants must give one week's notice of non-claimant, non-AR attendees
- Waivers must be signed for all non-claimants and non-ARs attending hearing
- No independent audio or video recording of proceedings

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Email Directives (Sampler), continued

- Call claimants to remind them of hearing
- Claimant withdraws request or fails to appear - update ECMS appeal status screen and adjust FD due date to RWR
- Do not spindle hearing script, or other hearing-prep notes in file
- Answers to FAQs
- FD must list and respond to every objection raised

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Answers to FAQs (see **pages 8 - 9** for the FAQ Sheet).

Your Notes

[illegible]

Waiver of Rights to Confidentiality

I, _____, (File Number _____), residing at _____
_____, am aware that persons other than claimants involved in the
above case or their authorized representative may be present at a hearing convened
under the Energy Employees Occupational Illness Compensation Program Act
(EEOICPA) on _____, at _____ AM/PM in _____, in the State
of _____.

I have requested the presence of these persons, or accept their presence at this
proceeding, and I hereby waive any right to confidentiality of records, documents, or
other materials contained in files maintained by the Office of Workers Compensation and
disclosed during the hearing. I further waive any right to privacy under the Privacy Act of
1974 in the disclosure of records, documents, or other materials related to my claim that
may be released during the course of the hearing.

Acknowledged and signed this _____ day of _____, 20____.

(Signature)

Hearing Frequently Asked Questions (FAQs)

Can a Hearing Representative cancel a hearing that has been scheduled?

A Hearing Representative cannot cancel a hearing without supervisory and management approval. The Hearing Representative should request approval from his direct supervisor stating the specific reasons for the need to cancel. The direct supervisor will request approval via email from the Assistant Branch Chief supervisor of the Hearings Unit. (Note: this does not apply to a claimant's withdrawal of their hearing request. The claimant should provide the Hearing Representative with a written request to cancel the hearing. If the case has multiple claimants with multiple hearing request, all claimants must withdraw their individual requests before the scheduled hearing can be considered "cancelled." A duly appointed Authorized Representative or Power of Attorney can withdraw a hearing request on behalf of a claimant.)

If a hearing is cancelled, what notification is to be provided to the claimant(s) and the Hearing Schedulers?

In situations where the claimant(s) withdraw their request for a hearing, the Hearing Representative should acknowledge the claimant's withdraw and subsequent cancellation of the hearing in writing and give the claimants not less than 10 days from the date of the acknowledgement letter to submit additional evidence. A copy of the cancellation acknowledgment letter should be sent to the Hearing Schedulers. In situations where the Hearing Representative's request to cancel the hearing has been approved, the Hearing Representative should provide the claimant(s) with written confirmation of the cancellation of the hearing.

Can a Hearing Representative request a hearing be rescheduled or approve a claimant's request to reschedule a hearing?

A hearing representative cannot approve a request to reschedule a hearing without supervisory approval from the Assistant Branch Chief supervisor of the Hearings Unit. The Hearing Representative should request approval from his direct supervisor stating the specific reasons for the need to reschedule the hearing. The direct supervisor will request approval via email from the Assistant Branch Chief supervisor of the Hearings Unit.

Can people other than the claimant and/or their Authorized Representative attend a hearing?

Yes, however, the claimant(s) associated with the hearing request must complete and sign a "WAIVER OF RIGHTS TO CONFIDENTIALITY". There is a separate waiver for media presence. If there are multiple claimants in a case where a hearing has been requested, each claimant must complete and sign a separate waiver.

What should happen before I go on the record the day of the hearing?

A Hearing Representative must informally explain to the claimant(s) the hearing process, to include the recording of the hearing, the hearing transcript, and that the record will remain open for 30 days after the date of the hearing. Additionally, if there are individuals in attendance other than the claimant(s) and authorized representative, the Hearing Representative must request the identity of these individuals and if necessary, have the claimant(s) complete a "WAIVER OF RIGHTS TO CONFIDENTIALITY" before convening the hearing. Give the claimants your business card (or provide your contact information if you do not have a business card). The hearing representative should identify all those present who are to give testimony and make sure that each person testifying is sworn in on the record.

Is there a time limit for each hearing?

Generally speaking each hearing is scheduled to last one (1) hour. However, the Hearing Representative should not specifically limit the hearing to 1 hour in all cases and the Hearing Representative should never tell a claimant that they are limited to one hour.

Is there any required material I need for the hearing?

All Hearing Representatives must take along additional Authorized Representative forms, both Waiver of Rights to Confidentiality forms, a tape recorder, blank tapes, batteries for the tape recorder, writing pad, pen, post-it flags, exhibit labels, business card, and government ID on every trip.

Are there any special situations which I should report to my supervisor?

When the Hearing Representative reviews the case file in order to prepare for the hearing, he/she should report to their supervisor situations where there is congressional interest, public relations issues or other situations the Hearing Representative believes should be brought to management's attention.

Additionally, the Hearing Representative should notify their supervisor if something out of the ordinary occurs at the hearing. This includes such things as:

Media presence which the Hearing Representative was not aware of in advance,

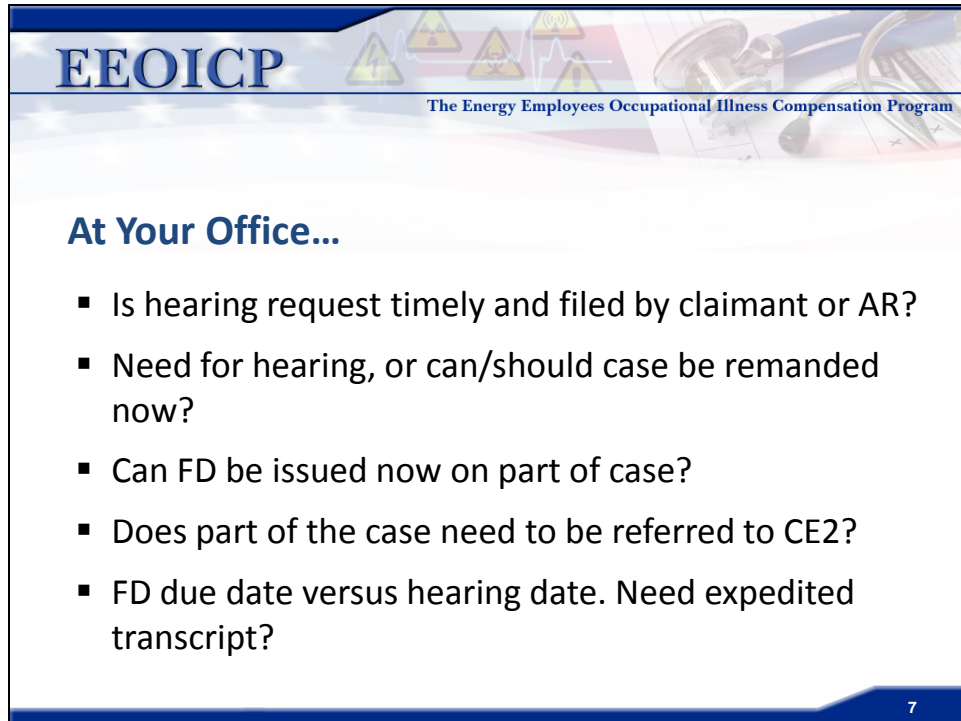
- Congressional office presence which the Hearing Representative was not aware of in advance,
- Abusive claimant/authorized representative,
- Court reporter does not show or is late,
- Court reporter using video equipment vs. audio only, or
- Hearing room issues
- The hearing does not take place (other than claimant being a no-show).

In cases where the court reporter is using the wrong equipment, the Hearing Representative must tell the court reporter that only audio equipment can be used for EEOICP hearings and the hearing cannot be convened until proper audio equipment is set up.

Preparing for the Hearing

At Your Office

Consider these questions:



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At Your Office...

- Is hearing request timely and filed by claimant or AR?
- Need for hearing, or can/should case be remanded now?
- Can FD be issued now on part of case?
- Does part of the case need to be referred to CE2?
- FD due date versus hearing date. Need expedited transcript?

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At Your Office..., continued


- Make travel arrangements
- Familiarize yourself with provisions of “temporary duty travel guide”
- Use Carlson Wagonlit’s eTravel system for authorizations, actual arrangements and vouchers

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Your Notes

Travel Considerations

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Travel Points

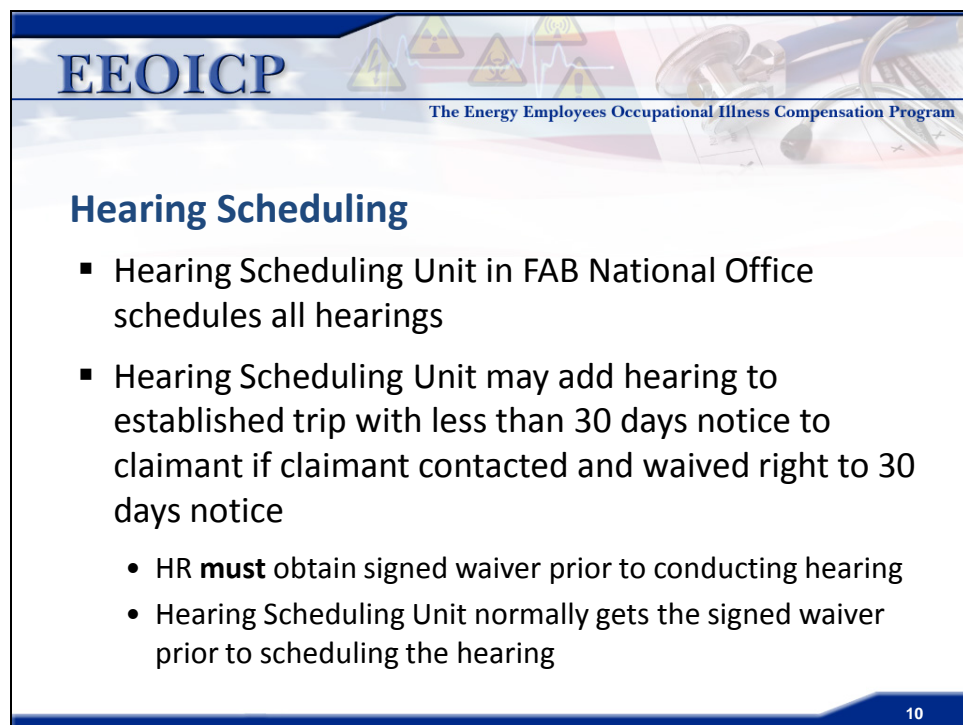
- Plan your travel to minimize time away from the office.
- Know what the allowed GSA per diem (lodging and MI&E) rates are before you make reservations.
- Do not simply rely on what the government travel agent tells you.
- You cannot claim “actual” for lodging above amount allowed in per diem unless justified and approved by FAB chief in writing and in advance of travel.
- Car rentals – “prudent person” rule – make sure to use a rental car company that does not charge mileage.
- Driving POV versus common carrier – must have supervisor’s prior approval subject to DOL guidelines (only when advantageous to the government, not to the employee).
- Complete and submit travel voucher within five (5) days of return from trip. Supporting receipts must be scanned into the system.

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Your Notes

Your Notes

Hearing Scheduling



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Hearing Scheduling

- Hearing Scheduling Unit in FAB National Office schedules all hearings
- Hearing Scheduling Unit may add hearing to established trip with less than 30 days notice to claimant if claimant contacted and waived right to 30 days notice
 - HR **must** obtain signed waiver prior to conducting hearing
 - Hearing Scheduling Unit normally gets the signed waiver prior to scheduling the hearing

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Various factors are considered in scheduling the hearing, and the scheduler takes a “big picture” approach to the scheduling.

Requests to Change a Hearing Schedule



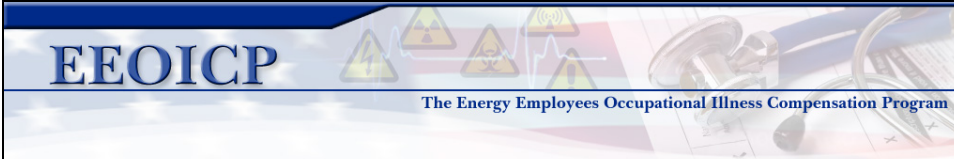
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Requests to Change a Scheduled Hearing

- Must go from HR to supervisor
- Supervisor contacts supervisor in charge of Hearing Scheduling Unit
- Under **no** circumstances should HR contact any member of Hearing Scheduling Unit for changes or attempt to exert influence in hearing scheduling process
- If something occurs prior to hearing that would eliminate need for hearing, HR should bring it to attention of supervisor who will contact the Hearing Scheduling Unit supervisor

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NOTE: The HR should notify his/her supervisor immediately of a withdrawal so that the court reporter and hearing location can be cancelled, even if it is a verbal withdrawal.



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Requests to Change a Scheduled Hearing, continued

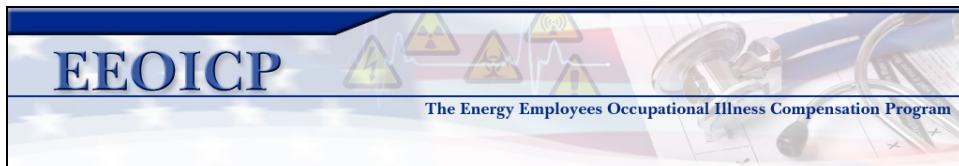
- Withdraws prior to scheduled hearing day, HR must acknowledge claimant's withdrawal and subsequent cancellation of hearing in writing
- Give claimant(s) 10 days from date of acknowledgement letter to submit any additional evidence
- Send copy of cancellation letter to Hearing Scheduling Unit as soon as it is received by HR

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Your Notes

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Preparing for the Hearing



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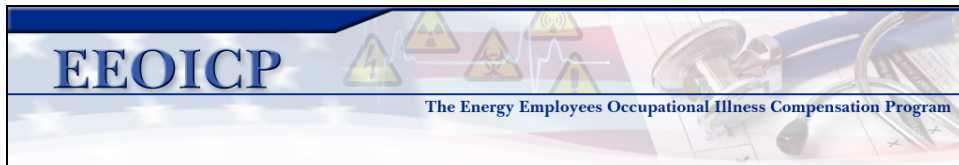
Preparing for the Hearing

- Have you done an initial review of the case?
 - Conduct an initial case review
 - Be very well prepared
 - Know all critical case facts
 - Know controlling law
 - Know what issues need to be developed
 - Anticipate questions you will be asked and be prepared to answer them
 - Know who AR is, if any

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Draft Script

Prepare a draft script for the hearing to include:



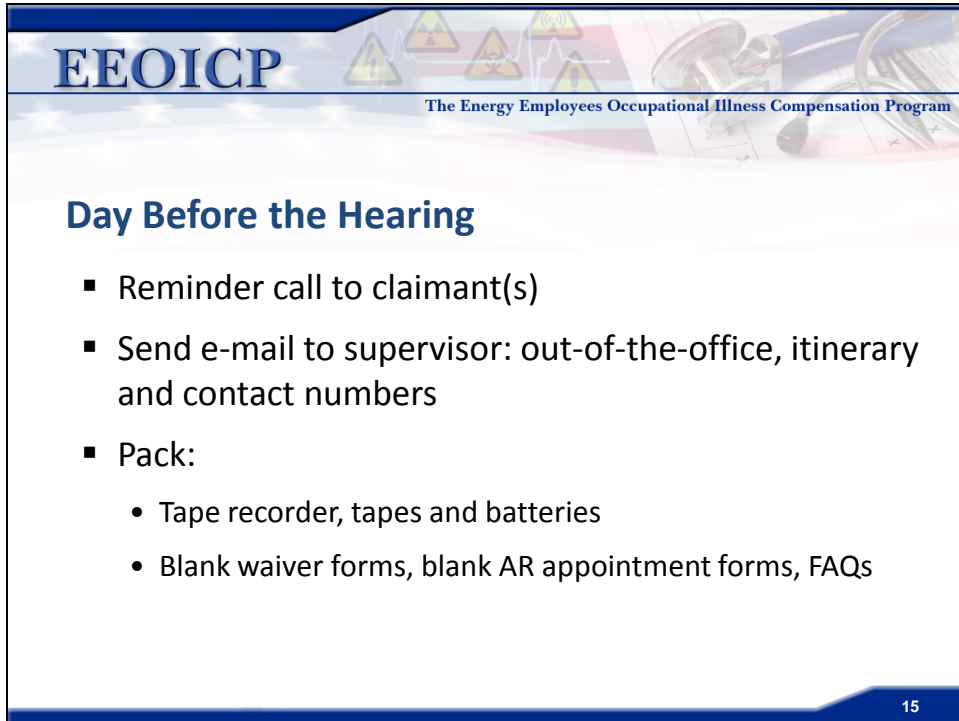
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Draft Script of Hearing

- Opening remarks
- Statement of case
- Claimant's objections
- Swearing-in and testimony
- Closing remarks and explaining further process

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Day before the Hearing



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Day Before the Hearing

- Reminder call to claimant(s)
- Send e-mail to supervisor: out-of-the-office, itinerary and contact numbers
- Pack:
 - Tape recorder, tapes and batteries
 - Blank waiver forms, blank AR appointment forms, FAQs

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Your Notes

AR Appointment Form

Employee Name:

File Number:

AUTHORIZATION FOR REPRESENTATION / PRIVACY ACT WAIVER

I,

(Name of Claimant)

(Address of Claimant)

(City, State, Zip of Claimant)

do hereby authorize

(Name of Representative/Person receiving records)

(Address of Representative/ Person receiving records)

(City, State, Zip of Representative/Person receiving records)

(Telephone Number of Representative/ Person receiving records)

To (check all that apply):

_____ Serve as my representative in all matters pertaining to the adjudication of my claim under the Energy Employees Occupational Illness Compensation Program Act of 2000.

_____ Receive copies of all factual and medical evidence contained in my claim filed under the Energy Employees Occupational Illness Compensation Program Act of 2000 from the Office of Workers' Compensation Programs, U.S. Department of Labor


I declare that the foregoing is true and correct. This authorization is effective on the date it is signed and is effective until specifically revoked by me in writing.

(Claimant Signature)

(Date)

Conducting the Hearing

HR Roles



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HR Role During Hearing

- HR must perform all of these roles:
 - Judge
 - Teacher
 - Resource

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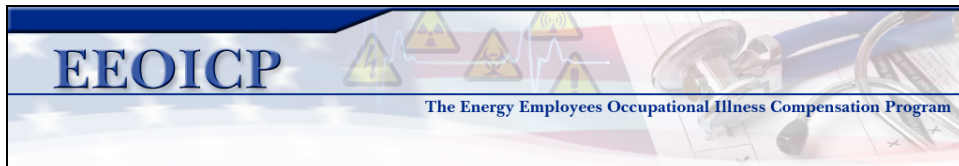


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“Judge” Role

▪ Conduct, control and guide proceedings	▪ Ensure testimony and evidence are material and relevant
▪ Ensure waivers signed	▪ Gather evidence on all critical elements
▪ Ensure good record made of hearing	▪ Assess credibility of witnesses
▪ Swear-in each witness before they testify	▪ Mark and accept offered exhibits
▪ Listen attentively to all testimony and argument	

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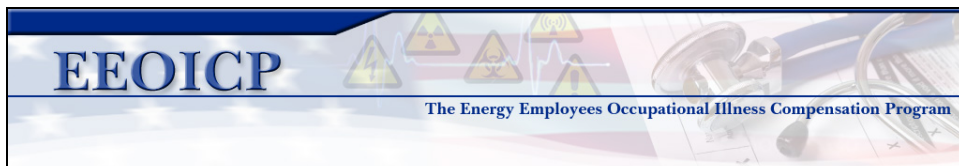


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“Teacher” Role

- Educate claimant(s) on purpose and process of hearing – help them understand
- Educate claimant(s) on law controlling their case
- Listen attentively and adjust to claimant’s needs and expectations
- Educate claimant(s) on what happens after hearing

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“Resource” Role

- Represent DOL and DEEOIC
- Give claimant(s) your contact information but not your direct phone number
- Answer all questions
- Offer and provide information to help claimant(s) through process

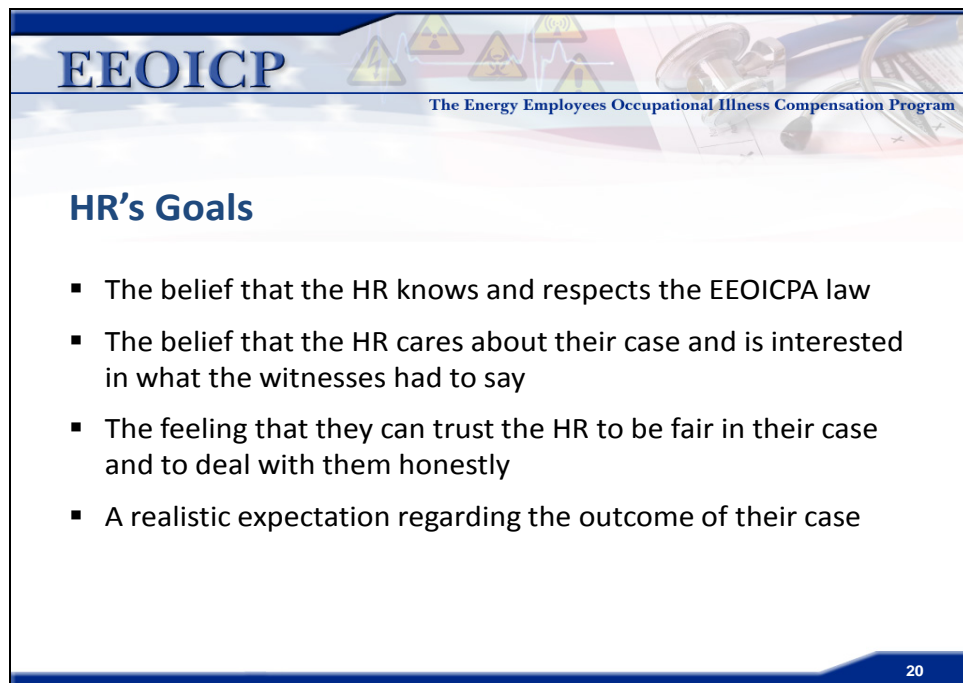
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Your Notes

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HR's Goals

The HR strives to accomplish the following goals:



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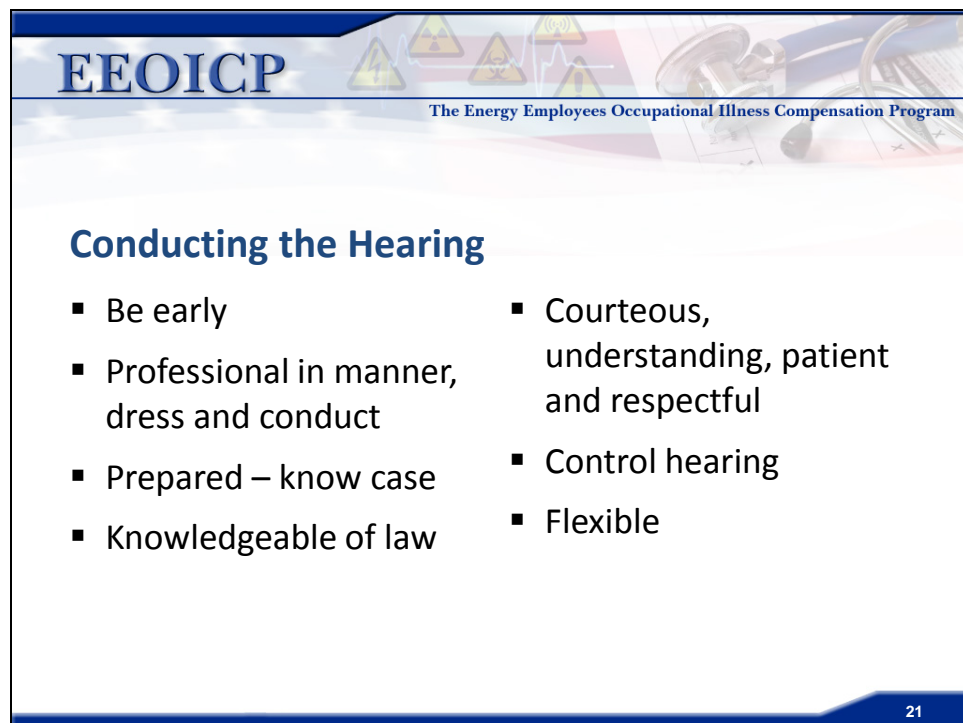
HR's Goals

- The belief that the HR knows and respects the EEOICPA law
- The belief that the HR cares about their case and is interested in what the witnesses had to say
- The feeling that they can trust the HR to be fair in their case and to deal with them honestly
- A realistic expectation regarding the outcome of their case

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Conducting the Hearing

The HR must be:



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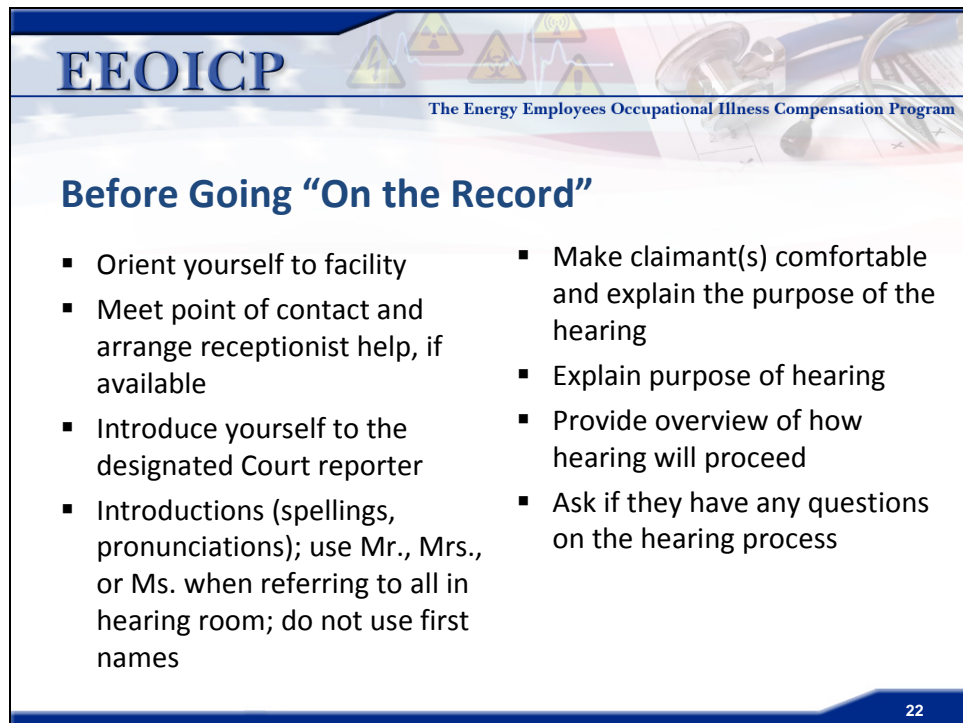
Conducting the Hearing

- Be early
- Professional in manner, dress and conduct
- Prepared – know case
- Knowledgeable of law
- Courteous, understanding, patient and respectful
- Control hearing
- Flexible

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Your Notes

Before Going “On the Record”



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Before Going “On the Record”

- Orient yourself to facility
- Meet point of contact and arrange receptionist help, if available
- Introduce yourself to the designated Court reporter
- Introductions (spellings, pronunciations); use Mr., Mrs., or Ms. when referring to all in hearing room; do not use first names
- Make claimant(s) comfortable and explain the purpose of the hearing
- Explain purpose of hearing
- Provide overview of how hearing will proceed
- Ask if they have any questions on the hearing process

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Your Notes

While “On the Record”

Make your opening remarks and then proceed to the statement of the case. Acknowledge the claimant’s written objections.

Swear-in all witnesses and take testimony including accepting all exhibits.

Make sure to listen attentively.

Ask questions as necessary and answer the claimant’s questions including those that may be specific to NIOSH.

Take notes of all critical testimony.

Advise the claimant(s) of the 20- and 30-day time frames.

Close the record.



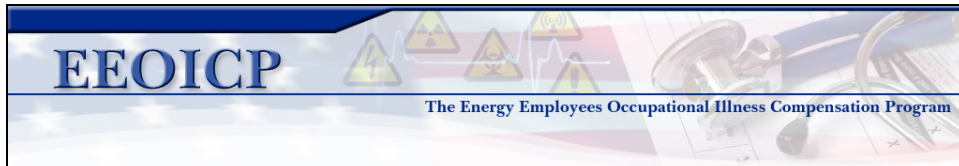
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While “On the Record”

- Opening remarks
- Statement of case
- Claimant’s written objections
- Swear-in witnesses
- Take testimony
- Listen attentively and ask questions
- Take notes of critical testimony
- Accept exhibits
- Answer questions, including those about NIOSH
- Advise of 20- and 30-day time frames
- Close record

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After Going “Off the Record”



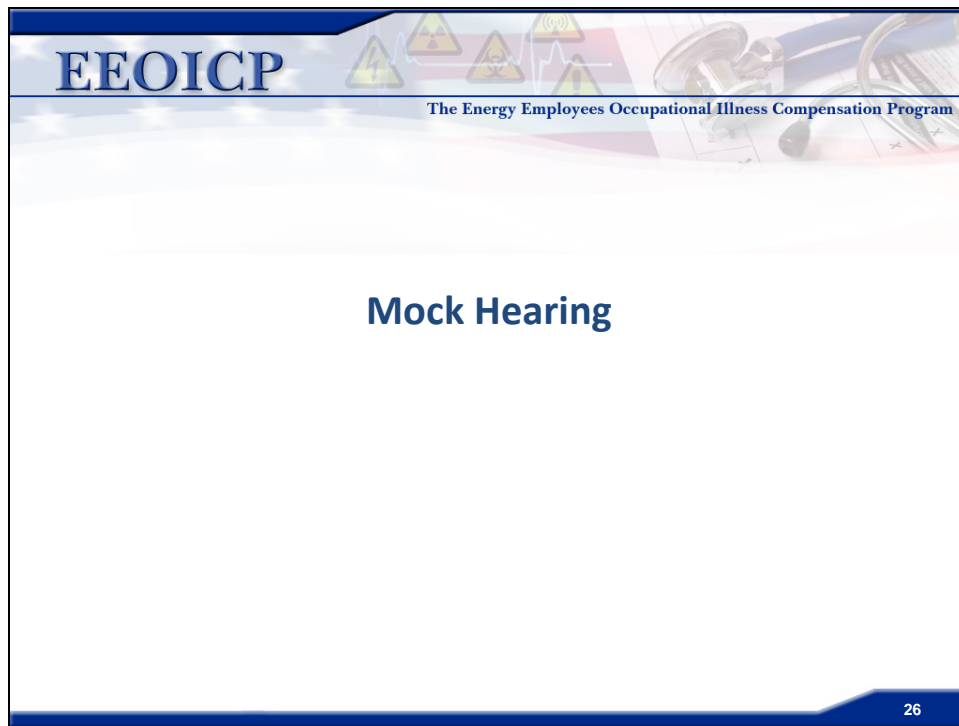
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After Going “Off the Record”

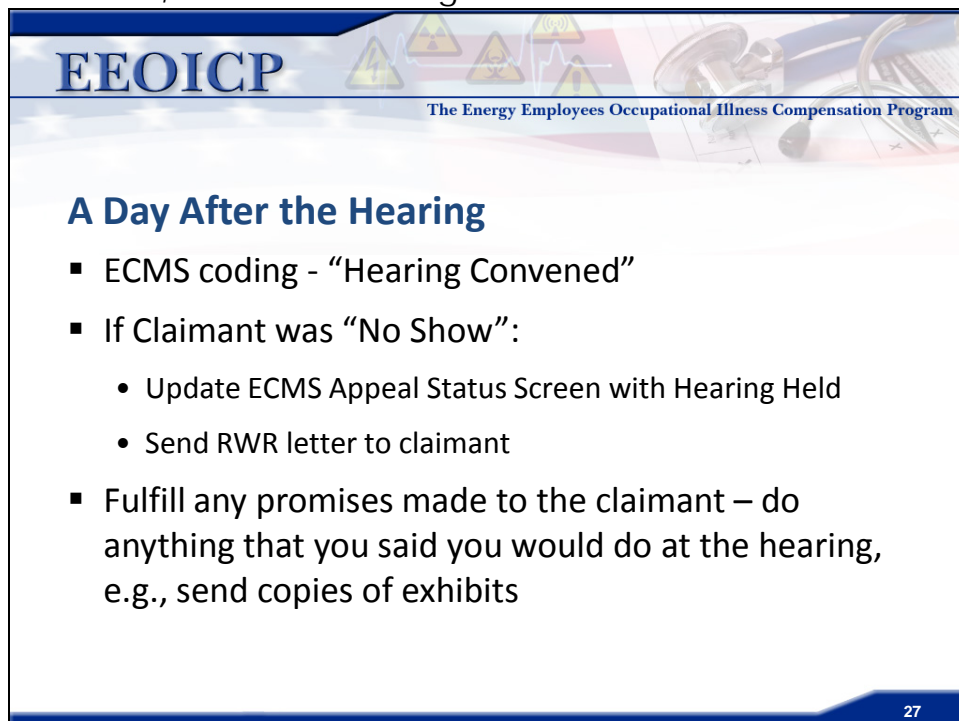
- Courteous good-byes
- Use formal names
- Stay professional
- Be careful what you say, even more so because you are off the record

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Your Notes



Back at the Office, After the Hearing



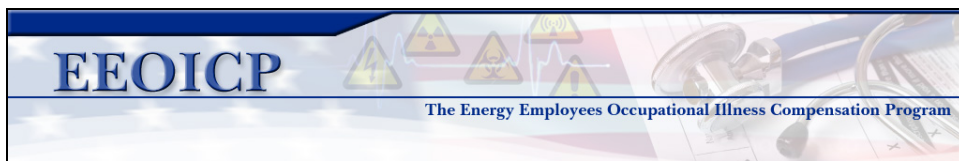


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Within 5 and 7 Days After the Hearing

- **Within 5 days** of return from hearing, complete and submit travel voucher – supporting receipts must be scanned into system
- Send out transcripts with cover letters

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A Month After the Hearing

- Receiving new evidence
- Receive new claim forms (Bulletin 03-29)
- Remand or not based on evidence/testimony at hearing?

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Your Notes

[illegible]

Summary



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Summary

- Numerous governing rules - be familiar with all of them
- Before hearing activities:
 - Conduct initial case review
 - Make all necessary travel arrangements in accordance with all rules and regulations
 - Obtain signed waiver
 - Prepare draft script

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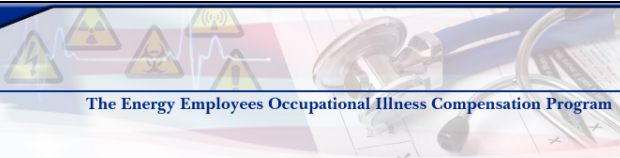
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Summary, continued

- Conduct hearing activities:
 - Ensure that you are judge, teacher, resource
 - Manage claimant goals
 - Establish positive atmosphere before going 'on record'
 - Be careful to conduct all 'on record' activities
 - Make sure to close hearing in professional manner

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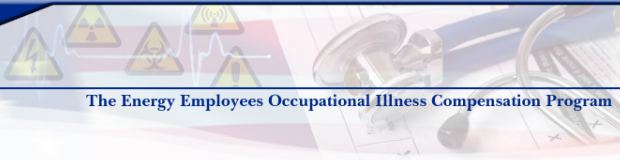


Summary, continued


- After hearing activities:
 - Next day – ECMS coding
 - Within 5 days of return to office – travel voucher and supporting receipts
 - Next week – transcripts with cover letters
 - Next month – receive new evidence and claim forms, remand determination
 - After 30 days – draft FD, issue FD, closeout in ECMS

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Questions



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Your Notes

Your Notes

[illegible]

Your Notes

[illegible]

Your Notes

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Evaluation Form

We value your opinion. Please rate the following:

	Poor	Fair	Good	Excellent
Organization of subject matter				
Explanation of key concepts				
Presenter's knowledge of subject				
Presentation was clear and understandable				
Appropriate pace for training				
Relevance of training material				
Correct level of detail				
Exercise content was appropriate				
Examples were clear and helpful				
Which topics were most beneficial to you?				
Which topics were least beneficial to you?				

Other comments or suggestions for improvement:

Name (optional): _____ Date: _____