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Processing a Workmen's Compensation Case in Ohio

James L. Young*

THE WORKMEN'S COMPENSATION SYSTEM, which has been a part of Ohio law since May 31, 1911,¹ represents a sharp departure in concept from the earlier methods of redressing work injuries. Under Workmen's Compensation, neither the negligence of the employer nor that of the employee plays any part in the determination of the employee's entitlement to the stated benefits. It is the fact of injury sustained in the course of and arising out of employment which is critical. In the days before Workmen's Compensation, redress of a work injury was dependent upon the fault of the employer and the absence of the common law defenses.

In the industrialized society which existed at the turn of the century the negligence-oriented concept of work injury relief had become inadequate, primarily because only 16.81% of the injuries sustained could be attributed to the fault of the employer.² Full protection for both employee and employer at the lowest cost and with the greatest speed were cited as the principal advantages of the new system.³ Not all persons agreed that speed was a virtue. One contemporary critic, using 130,000 annual claims, 320 annual working days, and eight working hours per day, calculated that the three member board would have to hear approximately fifty claims per hour. Of that situation he said, "Now just imagine the consideration that your neighbor's leg would be receiving, or your neighbor's neck; disposed of at the rate of one a minute. I tell you it is a case of speed run mad."⁴

Speed, however, won the day and six years after the first enactment, the Supreme Court of Ohio had this to say about the emergence of Workmen's Compensation in the course of a decision upholding the constitutional validity of the noncomplying employer provisions of the law:

The sentiment which brought about these consecutive advance steps was of slow but sure growth. It came to be believed that em-

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¹ 102 Ohio Laws 524.

² Address by Wallace D. Yapple, Report of Proceedings of the Thirty-Fourth Assembly of the Ohio State Bar Association 46 (1913).

³ Prefatory note, Ohio State Insurance Manual, State Liability Board of Awards, 1912.

⁴ Smith W. Bennett, Report of Proceedings of the Thirty-Fourth Assembly of the Ohio State Bar Association, 75 (1913).

ployees should receive compensation for injuries received in the course of their employment, without reference to questions of negligence, unless the injury was caused by their own wilful act; that as a matter of justice, based upon scientific considerations, injuries to workmen in the course of their employment, which were not caused by their own wilful act, should be regarded as a charge upon the business in which they were engaged. This principle and the position in the line of causation which employers sustain in industrial pursuits, are the foundations upon which rest the enactments to compel employers to contribute to state compensation funds. The obligation which arises from that basic relation has been sanctioned by the judgment of society as necessary to the public welfare.⁵

Workmen's compensation has unique features, but in its increased complexity it has not differed materially from other forms of administrative law. A mere twenty-eight years after the origin of the system, the Supreme Court appeared to express doubt as to the achievement of all of the original objectives when it said:

Theoretically at least, a primary object of the Workmen's Compensation Law is to afford a speedy and inexpensive method for the adjustment and payment of compensation claims, without the delay and expense incident to the litigation as was formerly the case.⁶

In the over half century of experience under the Workmen's Compensation program it has been suggested on occasion that representation of claimants for benefits is unnecessary. Any individual who has endeavored to explain the implications of the election to take an award as temporary partial benefits or as a percentage of permanent partial benefits can state a good case for representation of the highest competency. Writings contemporary with the creation of the system do not indicate that the elimination of representation was a goal of the new program even though protracted litigation was an evil to be remedied. Indeed, there has been a continuous history of representation of the two principals by lawyers and by laymen since the inception of the state insurance fund.

Statutory recognition was accorded both lay and legal representation in 1931 with the enactment of § 1465.111, Ohio General Code (Ohio Revised Code 4123.06). The question of the unauthorized practice of law by lay representatives in this field has appeared periodically. *Goodman v Beall*⁷ held that laymen could not represent claimants in the rehearing process or in subsequent steps. With the elimination of the rehearing process in 1955 and the introduction of an appeal *de novo*, these questions reappeared. In a sweeping decision, *McMillan v. Mc-*

⁵ *Fassig v. The State ex rel. Turner, Attorney General*, 95 Ohio St. 232, 116 N.E. 2d 104 (1917).

⁶ *McCamey v. Payer*, 135 Ohio St. 660, 22 N.E. 2d 127 (1939).

⁷ 130 Ohio St. 427, 200 N.E. 470 (1936).

*Cahan*⁸ the Stark County Court of Common Pleas held practice before the agencies administering the Workmen's Compensation law to be the practice of law. The issue came before the Supreme Court in the case of *In re Brown, Weiss and Wohl*,⁹ and there the Court held that a layman could not represent a claimant for a fee. With that exception, representation both lay and legal continues before the Bureau of Workmen's Compensation, the Regional Boards of Review and the Industrial Commission.

Two other points of background information are in order before we come to the principal concern of this article, the preparation and processing of a claim. The first is that representation is not as common as popularly supposed. Busy hearing rooms and a high volume of public traffic provide a false perspective. The contested matters attract attention but constitute a minor portion of the administrative claim load. New claim filings exceed 300,000 annually and of this total, only 5% are contested.¹⁰ A study of representation in Workmen's Compensation claims was made by the Bureau of Workmen's Compensation in 1958. The study related to claimant representation in the 5,176,119 state fund claims filed in the period 1938 to 1958 and includes representation at any stage of the case. Employer representation is not by individual claim authorization and thus not included. The study revealed that there was representation in 2.3% of the total number of claims filed during the period. Over four million of the claims were for medical benefits only and there the representation extended to only .6% of those claims. In the non-complying employer cases it was 3.3% and in the public employee claims it was 3.6%. Representation was recorded in 5.3% of the occupational disease claims. In the most significant category, loss of time in excess of seven days, the claimant was represented at some stage of the proceedings in 12.2% of such claims. The lost time claims totaled 681,451.¹¹

At the outset of the four stage administrative adjudication experience both claimant and employer are represented in approximately 50% of the cases. By the time the cases reach the fourth stage, Industrial Commission hearings, the percentage has increased to 75-85%.¹²

The second point is a complication produced by the fact that the administrative process is structured to proceed without representation and without reliance upon the individual claimant or employer to pro-

⁸ 14 Ohio Op. 2d 221, 167 N.E. 2d 541 (1960).

⁹ 175 Ohio St. 149, 192 N.E. 2d 54 (1963).

¹⁰ Bureau of Workmen's Compensation Annual Reports.

¹¹ Bureau of Workmen's Compensation, 1958 Claims Statistical Study. (Unpublished.)

¹² Bureau of Workmen's Compensation Statistical Report, quoted in *In re Brown, Weiss & Wohl*, *supra* note 9.

duce all of the required information. The Bureau maintains an investigative staff to ascertain facts and to secure supporting evidence. The result is that lack of industrious application on the part of a representative does not seriously disadvantage a claimant for benefits; the administrative procedure will go forward irrespective of the representative's lack of diligence in his client's behalf. In a system which treats such a large volume of cases, habit and survival go hand in hand. A perfunctory performance by a representative is isolated, identified, and highlighted and the inevitable adverse attention is the program's self-executing device for maintaining a fairly uniform standard of effort.

In considering the preparation and processing of a Workmen's Compensation claim, the emphasis will be upon the claimant's burden in establishing his eligibility for benefits. In large measure, the comments are equally applicable to the employer's responsibilities with only the objective being reversed.

The representative has little to do with the origination of the claim, yet the proper completion of the initial application is a critical stage of the proceedings. Many a lawyer has been haunted throughout a claim's life by an inadvertency of inclusion or exclusion in that original document. In fact, much of a representative's problem rests in curing deficiencies which occurred at the outset because he enters the picture quite often after there has been a denial of entitlement and a part of the fact base has already been entered in the record and found wanting as to legal sufficiency.

Claims which originate with an application completed and filed by the claimant account for only 1% of the annual total number of claims filed with the Bureau. 60% originate with the employer, 30% with the hospital and 9% with the attending physician.¹³ Claim forms are prescribed, prepared, and furnished without cost by the Bureau and insured employers are required to keep a supply on hand for use by their injured employees.¹⁴ Employers are also required to report to the Bureau all injuries or occupational diseases resulting in seven or more days of total disability.¹⁵ The claim application has been modified to include this report, and thus simplify compliance with the reporting requirement and the administrative handling of such reports. Part II of the lost-time applications, most commonly Form C-1, is entitled employer's report of injury. Rule 8(A) (7) of Rules Governing Claims Procedures places a duty on the employer to assist his employees in the preparation and submission of a claim application. Beyond the reporting requirement, most employ-

¹³ Bureau of Workmen's Compensation, 1962 Claims Statistical Study. (Unpublished.)

¹⁴ Ohio Rev. Code 4123.07; Rule 2, Rules Governing Claims Procedures Before The Bureau of Workmen's Compensation, Boards of Review and the Industrial Commission.

¹⁵ Ohio Rev. Code 4123.28.

ers are staffed to provide assistance in this form of employee benefit, and it is also advantageous to maintain a completely current record of all claims and costs under the program. For many employers the cost is significant and in an industry using its costs as a bid basis, it is essential that the employer be in the position of knowing precisely what his obligations will be.

Hospitals and attending physicians originate claims in an effort to assure early payment for services rendered. This is particularly true in claims for medical benefits only which are usually minor in nature. If the initiative is left to the employee, the claim may not be filed because he has received the service and does not foresee the need for future benefits and will assume that the details are all taken care of as is generally true in any provided benefit plan. Returning a claim form to the employer has hazards for the supplier of medical services if the employer is not familiar with the compensation procedure. This source of origination has the tendency to produce duplicate claim applications, but the Bureau has established a system for identifying such situations and combining the applications into a single claim file. The time involved in that procedure is inconsequential when compared to the time problem and the administrative effort involved in remedying a failure to file.

Claim forms call for information essential to the establishment of the validity of the claim. As was indicated earlier, 85% of all claims meet the test without difficulty. In the remaining 15% of the total, $\frac{3}{5}$ can be cleared up in the course of investigation. Only 5% of the total represent matters which are truly contested. The problem in claim application preparation is one of communication. Individuals usually understate the descriptions of injury. "I bumped my elbow" can refer to a wide spectrum of injury, from the slightest touching to a disabling incident. The administrative reaction is to follow a literal reading of a description which may place a burden on a representative to later overcome an established view of an event as insignificant.

The statutory provision for claim administration in Sections 4123.511 to 4123.514, incl., of the Ohio Revised Code, contains a cumbersome set of directions for adjudicating the tentative validity of a claim. It requires notification to the employer of tentative validity and he is then afforded an opportunity to resist the final allowance of the claim. These procedures are never followed in administration of the law because they inject greater complications than they solve. It is provided that a hearing must be afforded on every disputed claim before making or denying an award at the initial stage of determination, which is the adjudication by the administrator.¹⁶ The administrative agencies sim-

¹⁶ Ohio Rev. Code 4123.515.

plify the process of determining whether or not a claim is disputed by placing a waiver of contest on the claim forms. The employer who certifies a claim, as the execution of a waiver is described, states that the employee's application is true as to its facts and that he waives a formal hearing and consents to immediate allowance and payment of an award. The disputed and the undisputed matters are thus separated and identified.

Even where there has been a certification, there is an informal hearing by a claims examiner in which he evaluates the legal sufficiency of the applications. Those which fail to meet the compensability requirement, are denied even though both employer and claimant are seeking the allowance of the claim for benefits.

Claims which are disputed, either by lack of certification by the employer or by having failed to satisfy the statutory requirements upon consideration by a claims examiner, are set for formal hearing in the district office of the Bureau nearest the residence of the claimant.¹⁷ The usual period for notice of hearing is two weeks although Rule 9 (C) (3) of the Rules Governing Claims Procedures merely specifies a reasonable period of time between notice and hearing. It is upon receipt of the notice of hearing that the parties generally seek their first assistance although many do not foresee the implications of a formal hearing and treat the notice as a matter of bureaucratic formality.

The lawyer who has been retained to represent a party to the claim must file a written authorization with the administrative agencies before they recognize his appearance. This is required by statute and rule¹⁸ and is in sharp contrast to the requirements for an appearance in court. The Bureau provides a form (R-2) for this purpose which form should be filed in triplicate with the Bureau (one for the file, one for the central claims section and one for the district office), however, any form of written authorization is accepted. When the claim number is not known, the authorization must include (1) the year of injury, (2) name and address of employer at time of injury, (3) employee's social security number and age, (4) city where accident occurred, and (5) nature of disability.¹⁹ The first step in preparation is to examine the file and determine what has transpired to date. Once a written authorization has been filed, the representative may see the file upon completing an inspection slip (Form R-3) which is retained in the file and is the basis of

¹⁷ Rule 9(C) (9), Rules Governing Claims Procedures Before The Bureau of Workmen's Compensation, Boards of Review and the Industrial Commission.

¹⁸ Ohio Rev. Code 4123.88; Rule 22, Rules Governing Claims Procedures Before The Bureau of Workmen's Compensation, Boards of Review and the Industrial Commission.

¹⁹ Rule 22(B), Rules Governing Claims Procedures Before The Bureau of Workmen's Compensation, Boards of Review and the Industrial Commission.

a record of who has had access to the claim file. The file may be in the local district office, in the central claims section, or even in another district for some special investigation. The location depends upon current activity and the nature of the claim. The Bureau will ship files from one point to another for a representative's inspection either by truck between regular delivery points or by mail where the postage is provided by the representative. They are held for a maximum of seven days.²⁰ If the inspection would constitute a material interference with the processing of the claim, the request is not honored.²¹

In examining a file, the first point to ascertain is the sufficiency of the application for benefits. One must know precisely why the application could not be allowed in the informal hearing. A failure to certify may put all of the elements of compensability into issue, but usually one can determine which points are being contested by the employer or the agency. The first question to answer is employment. Did the injured person work for this employer? The second question is whether or not the thing which happened occurred in the course of employment, that is, was the employee doing something on behalf of his employer when injured or was he engaged in a personal activity? The third question is whether or not the injury arose out of the employment. Is the injury causally related to the employment or is it the result of something wholly unconnected to the employment, e.g., being shot by a jealous husband while on the job? The fourth major question is whether or not there is a disability and is it the direct result of the injury? Obviously, the elements of compensability go far beyond these four questions but these are the principal ones about which most of the controversy centers.

Once the issues are identified, the representative must determine the most persuasive evidence to support his position. He must be careful to note the results of the agencies' investigation, and to ascertain his agreement or disagreement with it. If he disagrees about the facts as found by the investigator, his proof problems are compounded. He must anticipate the form and quantum of evidence that the opposing party is likely to adduce. This is where the lawyer's creative ability comes into play as it does in any adversary matter that requires a third party adjudication. There is considerable freedom in the evidentiary requirements. Ohio Revised Code, Sec. 4123.515, provides that neither the common law nor the statutory rules of evidence are binding upon the hearing officer. Lawyers are sometimes prone to extend this provision beyond its meaning. The fact that the statute makes a greater variety of evidence admissible does not mean that it will be given full

²⁰ Rule 22(F), Rules Governing Claims Procedures Before The Bureau of Workmen's Compensation, Boards of Review and the Industrial Commission.

²¹ Rule 22(G), Rules Governing Claims Procedures Before The Bureau of Workmen's Compensation, Boards of Review and the Industrial Commission.

faith and credit because it is allowed to be introduced. The hearing officer must still weigh the value of what is offered. A piece of incredible hearsay does not gain greater stature by virtue of its being made eligible for consideration.

Hearing officers are usually individuals of considerable experience in the agency and most are lawyers. They devote all of their time to the decision making process and they have gained an exceptional insight into the legal issues most commonly encountered. One does not have to plan to completely educate the hearing officer on all of the development of the law in the field. By the same token, he need not be more than cursory in his treatment of the uncontested facts. The last noted statute also provides that technical and formal rules of procedure do not bind the hearing officer. Expedition requires a semblance of order, however, and the claimant is permitted to state his case and offer his evidence. The employer does likewise, both having the right to cross-examine. The rules relating to hearings emphasize the necessity for reasonable cause for the granting of a continuance.²² This is adhered to because the volume of claims is a practical barrier to a casual attitude in the matter of continuances. The rules also emphasize the necessity of limiting the consideration at a special or formal hearing to the issues upon which an adjudication depends.²³ The statutory injunction against technical procedures is not permitted to encourage incoherency.

In most cases the claimant appears personally. His failure to appear can easily create an implication of disinterest on his part. Whether or not the claimant's lay witnesses appear may depend on convenience, the seriousness or complexity of the issue and the readiness of the witnesses' availability. In most situations the affidavit is a completely acceptable substitute. Affidavits should be complete and set forth all of the information desired from the witness. Something in writing and an adequate affidavit are not equivalents in any form of practice. Rarely does one ever present his medical testimony by having the physician present. Live testimony in this area is expensive beyond the value of the appearance and the time consumed is not economically expended. Medical testimony is best presented through reports and letters of opinion. This is an area where the lawyer must not abdicate his responsibility as to the form that the evidence takes. Physicians have fairly standard formats which they use to report their findings and the opinions which they hold based on those findings. Some tend to be superficial and others are inclined to window dressing in the making of reports. It is the lawyer's obligation to advise the physician as to what the report should include and how it is to be used. The doctor is

²² Rule 9(C)(10), Rules Governing Claims Procedures Before The Bureau of Workmen's Compensation, Boards of Review and the Industrial Commission.

²³ Rule 9(C)(6), Rules Governing Claims Procedures Before The Bureau of Workmen's Compensation, Boards of Review and the Industrial Commission.

not so apt to edit the format and exclude items which are pertinent to the determination when he has been properly advised. Hearing officers are familiar with a variety of medical evidence formats and know the styles of those physicians who submit reports with regularity, thus those do not have to be presented in as great detail. The lawyer should conserve his energy and apply it to the creative effort of interpreting the effect of the reports on both sides of the medical issue and making comparisons between opposing reports that have persuasive value.

Human communication is always hazardous. We think we understand when we don't. Claimants have difficulty in understanding why others don't comprehend the position of their machines, the procedures followed and what was wrong that day. If there is any problem in quick comprehension of the claimant's equipment and position, a photograph is an easy solution. Where there is progressive improvement in the individual, photographs near the accident time may be very helpful in reconstructing the condition at that time.

Counsel should spend enough time with his client in prehearing interviews to know whether or not the individual can demonstrate what happened or what part of his body was involved or how the pain ran. Hesitation at the hearing table implies that he really isn't sure. There is one item of prehearing preparation which should not be omitted and that is an explanation of what will take place at the hearing and the surroundings in which it will be held. Most individuals expect to see a robed judge on an impressive elevated bench, and they go away from an administrative hearing without realizing that there was an adjudication. They often describe it simply as "I went into this office and talked to those men. . . ." The danger in a misconception is that the individual may not provide all of the information which he has, or he may not be fully impressed with the necessity for a complete and accurate disclosure.

The lawyer may safely assume that the hearing officer has examined the file before the hearing. He can ascertain that quickly in seeing the hearing officer's reaction to the factual situation. It may be necessary to adjust and provide more detail if it appears that he is not conversant with the details within the file. The more critical matter is for the advocate to be thoroughly prepared as to the contents of the file. If he is, there is little likelihood that the hearing will conclude short of all pertinent items being drawn to the attention of the hearing officer. Counsel should have developed a plan as to what he needs to present and how he will make the presentation. The lack of a plan and a checklist is an invitation to oversight.

Decisions may be announced at the table or reserved as the hearing officer desires. He may request briefs on an involved or troublesome point. Briefs may also be filed at the party's own volition. The rules

specify the style and filing procedure.²⁴ Decisions are reduced to writing and mailed to the parties and their counsel of record. If the parties or representatives fail to receive such a notice, without fault on their part, the limitations period may be extended upon an Industrial Commission determination.²⁵

Upon an adverse decision at the initial level of the Administrator's hearing, the aggrieved party has an option as to his further proceedings. He may ask for a reconsideration by the Administrator²⁶ or he may appeal to a Regional Board of Review.²⁷ Form C-88 has been prescribed for use in requesting Administrator reconsideration but any writing identifying the claim, the action complained of, and seeking relief will be accepted.²⁸ If not filed within the statutory time period, it is generally considered to be transformed into an application for Regional Board of Review consideration.

Reconsiderations by the Administrator are held in the central office only and are adjudicated by experienced personnel who do not hear other stages of claims. The reconsideration hearing is treated administratively as an opportunity to remedy an error committed at the first stage, or to make quick resolution of a matter which was rejected because of a failure to have essential facts before the hearing officer at the first stage. It is not a place to merely reweigh the evidence adduced below. To prevail at a rehearing, one must establish clear error or he must produce new evidence of persuasive weight. At this hearing, the procedure and the format for evidence remain the same except that there is a tendency to produce live testimony to supply deficiencies of the written form at the first stage. The issues are generally narrower and more sharply defined, and the hearing officer has generally been afforded more time for his own preparation to hear the claims on his docket. Legal problems tend to emerge at this stage and there is a greater tendency to require the briefing of particular points. Investigations may be carried out at the direction of the hearing officer and the matter continued until specific information is obtained. Counsel may ask for that to be done and may ask for additional medical evaluation by the agency or by a physician of his own choice.

The third stage of the administrative appeal procedure is to the Regional Board of Review. It may be taken by a party aggrieved by the Administrator's reconsideration decision or a party aggrieved by the

²⁴ Rule 17, Rules Governing Claims Procedures Before The Bureau of Workmen's Compensation, Boards of Review and the Industrial Commission.

²⁵ Ohio Rev. Code 4123.522.

²⁶ Ohio Rev. Code 4123.515.

²⁷ Ohio Rev. Code 4123.516.

²⁸ Rule 18, Rules Governing Claims Procedures Before The Bureau of Workmen's Compensation, Boards of Review and the Industrial Commission.

Administrator's original decision.²⁹ The claimant has an additional option. He may appeal directly from the Administrator's decision to the Court of Common Pleas.³⁰ This latter option is never used. There is a possibility of the provision of not meeting the tests of constitutionality. Apart from that, it is sure to generate considerable litigation and the course of exhausting the administrative remedy is surer and faster.

Form I-12 is prescribed for effecting the appeal to the Board of Review. As with the Form C-88, other written applications are accepted provided the information required by statute³¹ and rule³² is included. Ohio Revised Code, Sec. 4123.517, contains a provision for a pre-trial conference before an appeal to a Regional Board of Review is set for hearing on its merits.³³ Theoretically, this was a device to speed the administrative determinations, but it was immediately apparent that the matter could be disposed of by decision if the suggested pre-trial steps were followed. No such conferences are held and the Board orders uniformly recite that such hearing was dispensed with because it served no useful purpose.

At this stage of the appeal proceedings, the issues should be even more sharply drawn, be they factual or legal. Where that is true, the burden of the lawyer is one of unearthing more persuasive evidence or fashioning more effective argument. The hearing at this level can take on other aspects, however. Some counsel see an appeal to court as inevitable and follow a perfunctory course through the administrative process. They probably discard opportunities for a favorable disposition and, other than in exceptional situations, it is a form of representation which is extremely difficult to justify. In some cases, the party may see little risk in pursuing the administrative remedy in the hope that someone else will see matters in a different light. Yet in other situations, there is a tendency to search for new issues rather than continue to be rebuffed in those issues originally drawn.

At the third stage, the climate changes in the adjudication of the claim. Although there is no record of the one or two hearings conducted below, the general approach is of appeal with the aggrieved party stating his case for reversal of the earlier decision. In effect, the burden of going forward rests with the appealing party but much of the same ground covered in the earlier hearings is retraced. The key to persuasive effort at this level is to produce determinative evidence not introduced below with an explanation of why it enters the cause for the

²⁹ Ohio Rev. Code 4123.516.

³⁰ Ohio Rev. Code 4123.519.

³¹ Ohio Rev. Code 4123.516.

³² Rule 18(A), Rules Governing Claims Procedures Before The Bureau of Workmen's Compensation, Boards of Review and the Industrial Commission.

³³ Ohio Rev. Code 4123.517.

first time at this stage. The thoroughness of the early investigation of the cause determines whether or not there is a possibility of securing new and additional evidence. The other route to success in the appeal is to convince the Board that the Administrator has not applied the law correctly to the facts of the case. A simple reweighing of the testimony by the Board may produce an occasional reversal but is not a procedure on which the appellant may rely with any degree of comfortable anticipation.

The Regional Board composition must include a lawyer who serves as Chairman.³⁴ The same statute requires that the other two members be selected with an employer and an employee background. The effect of a heavy and continuous docket is to submerge background experience and bring the general characteristics of the decision making process to the fore. Regional Board members, lay or legal, tend to place themselves in the posture of a reviewing jurist. Even when the Board member sees a basis for reversal in his own review of the file, he will still feel the natural inclination to presume the validity of the prior decision. He wants to have something *presented* which serves as the basis for reversal. Counsel should never be perfunctory and dispose of the opportunity before the Board with, "I have nothing new" or "The deputy administrator didn't know what he was doing." Such an attitude invites affirmance when the climate may easily support a reversal. A condemnation of one hearing officer or his subjection to ridicule before another won't receive a sympathetic ear. The Board member can easily visualize what counsel's first statements to the Commission will be. It is a useful practice to follow the rule of always filing something at each stage. Perhaps, one may be reduced to preparing a statement of his position as his sole contribution to additional material filed in the cause. The respect which is indicated for the tribunal and the system of adjudication is an asset to the well prepared advocate.

Board decisions are rarely announced at the hearing table, and the procedure of reducing the decision to writing and the forwarding of the notice of decision to the parties and their representatives is the same as that followed in the earlier stages of the proceedings.

The final administrative step is an appeal to the Industrial Commission. Such an appeal may be taken by an aggrieved party, claimant or employer, or by the Administrator. The appeal is not a matter of right, and the Industrial Commission has the discretion to permit or to refuse it.³⁵ The Industrial Commission requires that the application to permit an appeal, Form I-12,³⁶ be supplemented with a summary of relevant

³⁴ Ohio Rev. Code 4123.14.

³⁵ Ohio Rev. Code 4123.516.

³⁶ Rule 18(A), Rules Governing Claims Procedures Before The Bureau of Workmen's Compensation, Boards of Review and the Industrial Commission.

evidence or applicable legal authorities demonstrating why the application should be allowed.³⁷ One more opportunity to review the same evidence is the weakest of reasons. The Industrial Commission is mindful that it makes the final determinations of questions involving the extent of disability and of cases involving occupational diseases³⁸ and such cases receive final administrative appeal somewhat more readily than the injury case.

The prehearing conference provisions of Ohio Revised Code, Sec. 4123.517, also apply to Industrial Commission determinations, and they are uniformly dispensed with for the same reasons as at the Regional Board level. As was true at the Regional Board in the third stage, the Attorney General appears before the Industrial Commission representing the position and interests of the Administrator. The degree of his participation will depend upon the circumstances of the case, and the vigor with which the counsel for the other parties press their positions.

By the time of the Industrial Commission hearing, the potential of securing new dispositive evidence has paled into insignificance assuming that there has been a reasonable attempt to investigate the underlying facts during the earlier stages. In most cases, the legal issues predominate at this final step and the premium is on research, discovery and interpretation. Commission decisions are not generally published although commercial summarizations of important cases are available on a subscription basis. They do constitute a natural body of precedent, however, among those who have business before the tribunal with any degree of regularity. Each Commission and each Commissioner develops certain identifiable tendencies which serve as a basis for the practitioner's prediction of result.

Industrial Commission hearings usually are limited to knotty questions of fact or law, and the hearings are normally scheduled so as to afford more time for presentation than in the earlier stages of appeal. Such hearings are conducted in the central office and the Commission may assign a referee to hear the matter in its stead.³⁹

The procedure for taking an appeal from the administrative agencies to the court of common pleas is specified in Ohio Revised Code, Sec. 4129.519, and a consideration of the method of appeal and the preparation of the court case for trial is beyond the scope of this article. There is a caveat which is to be observed with regard to the perfection of such an appeal, and it is that the appeal provisions are strictly construed. Careful compliance with all of the statutory directions is essential. For example, Ohio Revised Code, Sec. 4123.519 permits an appeal from an adverse

³⁷ Rule 18(F), Rules Governing Claims Procedures Before The Bureau of Workmen's Compensation, Boards of Review and the Industrial Commission.

³⁸ Ohio Rev. Code 4123.519.

³⁹ Rule 9(C), Rules Governing Claims Procedures Before The Bureau of Workmen's Compensation, Boards of Review and the Industrial Commission.

decision of the Industrial Commission, and it also permits a like appeal from the order of a Regional Board when the Industrial Commission refuses to hear an appeal of that order. Ohio Revised Code, Sec. 4123.516 provides that an order of the Board is an order of the Commission except for the purposes of an appeal pursuant to Ohio Revised Code, Sec. 4123.519. When the Commission refuses to permit an appeal, the court appeal is from the Regional Board order, and not from the order of the Commission refusing to permit the appeal, and an attempt to appeal from the Commission's refusal order is a fatal defect.⁴⁰

The pleading of a Workmen's Compensation case and its preparation for trial are very similar to that followed in other civil actions. There is one point of similarity that deserves additional mention because it is such an integral part of effective representation. The party to a compensation claim, employee or employer, wants to be assured and reassured that he has chosen a professional advocate who is indeed his alter ego and who is concerned about his problem. The mechanics for providing those assurances are well known, and easy to execute and yet more often breached than honored. It is not difficult to give the client undivided attention during an interview. It is not difficult to convey interest in the client and in his problem and to demonstrate a willingness to do whatever work is required in his behalf. It is not difficult to keep the client advised in the progress of his cause. It is not difficult to send the client copies of papers filed and letters written. It is not difficult to explain the order of procedure and the time required to carry it out. It is not difficult to act at times promised in the manner promised. It is as easy to maintain the client's faith in his representative as it is to destroy it. Somehow, the well ordered procedure of the high volume claim determination system tends to dehumanize lawyer and client alike and the client becomes a number, a part of the grist. It may require an extra measure of self-discipline, but the lawyer has it within his capability to maintain the best of professional relationships with his client in either the administrative or the judicial aspects of the Workmen's Compensation system. To do less is to the discredit of the profession.

⁴⁰ Parker v. Young, Adm., 172 Ohio St. 464, 178 N.E. 2d 798 (1961).