

STATE OF TENNESSEE

OFFICE OF THE
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Opinion No. 02-134

Scheduling Workers' Compensation Benefit Review Conferences

QUESTION

Does Tenn. Code Ann. § 20-7-106 prevent the Department of Labor from scheduling a benefit review conference (BRC) on a case where the attorney is a legislator and the General Assembly is in session?

OPINION

No. Tenn. Code Ann. § 20-7-106 does not apply to a benefit review conference.

ANALYSIS

From your opinion request, we understand that you are an attorney in a workers' compensation case. We infer from your comments that you have requested a BRC on behalf of your client and that you are willing to have the conference prior to the General Assembly's next session. The Workers' Compensation Act, Tenn. Code Ann. §§ 50-6-101, *et seq.*, sets the criteria for scheduling a BRC. *See, e.g.*, Tenn. Code Ann. §§ 50-6-236, -237, and -238; *see also* Tenn. Admin. Rules, *Department of Labor and Workforce Development*, 0800-2-14-.06.

Tenn. Code Ann. § 20-7-106 applies to courts, administrative boards, commissions and other agencies authorized to conduct hearings. The statute reads as follows:

Upon the motion of a member of the general assembly qualified to make such motion under the provisions of this section, or the member's attorney or representative, any court, constituted under the laws of Tennessee, any administrative board or commission or other agency authorized to conduct hearings shall grant a continuance or postponement of the proceedings, at any stage of the action, if it is shown that an attorney, party or material witness is a member of the general assembly and that:

(1) The general assembly is in annual regular session or special session; or

(2) The attorney, party or material witness would be required to be absent from any meeting of a legislative committee while the general assembly is not in session if a continuance is not granted.

We know of no statute or case law that would support a conclusion that the BRC is a court, administrative board, commission or agency authorized to conduct hearings. A BRC is a nonadversarial, informal dispute resolution proceeding under the Tennessee Workers' Compensation Act. Tenn. Code Ann. § 50-6-237(a). It is not a hearing. The BRC is an informal conference conducted by a workers' compensation specialist, an employee of the Department of Labor and Workforce Development. Among other things, the BRC provides an opportunity for, but does not compel, a binding settlement of the issues of the claim. If the parties reach an agreement in the BRC, they do so voluntarily. The resulting agreement is not an order arising out of a judicial proceeding or a proceeding before a board, commission or agency. Therefore, Tenn. Code Ann. § 20-7-106 does not apply and does not affect the Department's scheduling of benefit review conferences.

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Requested by:

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