

Talking It Out: Temporary Conference Order

Chairperson: Edward M. Moriarty, Jr., Esq.

Monday, March 24th, 2025

Parallel Session B: 3:00-3:40pm

Temporary Conference Order

DEFINITION

LEGAL SIGNIFICANCE

EXPEDITED DUE
PROCESS

Disclosures

NONE

Temporary Order: Definition

- Judge decides
- Based on evidence and legal argument
- Benefit/Meds claimed or denied
- Ordered
- Denied
- Paid
- Appealed to Hearing

Temporary Order: Legal Significance

- Benefits: ordered/denied
- With specificity
- Dates of award: retro and/or present and continuing
- Meds/TX/RX ordered plus weekly benefits for loss of earnings
- Pay of Order required
- Pay to Play - Appeal require payments of Order

Temporary Order: Expedited Due Process

- Summary
- Transparent
- With Employee and Insurer documents in support of or denial of benefits claimed
- Docs
 - Medical records and opinions and tests
 - Employment records
 - Witness statements
 - Private Investigative Reports
 - Vocational reports
- Legal Brief
- Oral Arguments
- Order Entered

Temporary Conference Order: The Ball Game regarding all Claims and Defenses for Insurer

- Order: Power broad and deep: retro, present and continuing
- Set framework for rest of claim
- Indemnity
- Medical
- Reserve
- Continued litigation
- Settlement
- Appeal: Full evidentiary Hearing De Novo
 - Same Judge
 - Same issue
 - Result timely
 - Submit MA IPE re all medical issues in controversy

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Thank you!

Temporary Conference Order: Employee's Attorney Perspective

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Disclosures

NONE

What is a Conference?

- ❖ A Conference is the second step in the litigation process following a Conciliation
- ❖ It is the first proceeding before the Judge who will hear the case and will issue a temporary Conference Order.
- ❖ Participants at the Conference include the Employee, Employee's Attorney and Insurer's Attorney.

Preparing for a Conference as the Employee's Attorney

- ❖ Understand the Employee's vocational background.
 - ❖ Be familiar with the Employee's job title, job duties, and length of employment.
 - ❖ Know how the injury occurred and to whom it was reported.
 - ❖ Identify where and when the Employee received treatment for the work injury.
 - ❖ Determine if the Employee has had prior work injuries or previously injured the same body part.
 - ❖ Review the status of the Employee's medical treatment.
 - ❖ Be aware of the IME (Independent Medical Examination) findings and any surveillance or job offers that may be submitted.
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Presenting the Employee's Case at Conference

- ❖ Present the Employee's Story to the Judge
 - ❖ Begin by introducing the Employee's background, including their educational history and work history.
 - ❖ Highlight the Employee's job role before the work injury, specifying their job duties, responsibilities and how long they were with the Employer.
- ❖ Explain how the Injury Occurred
 - ❖ Provide a clear, chronological account of the incident.
 - ❖ Include details such as the time, location and any special circumstances (e.g. equipment used, working conditions, etc.).
 - ❖ Mention any witnesses to the injury and who the injury was reported to.
- ❖ Describe the Medical Treatment Received and Future Recommendations
 - ❖ Summarize the medical diagnosis and point out any findings on diagnostic studies and surgical procedures.
 - ❖ Discuss what future treatment is being recommended, such as ongoing therapy, surgical intervention, injection therapy, etc.

Presenting the Employee's Case at Conference

- ❖ Reference Disability and Causation Notes
 - ❖ Point the Judge to the medical evidence that supports the Employee's disability claim.
 - ❖ Highlight causation notes directly linking the diagnosis to the workplace injury.
- ❖ Analyze the IME Report
 - ❖ Review the IME findings, highlighting any discrepancies or inconsistencies that would impact the overall finding in the report.
 - ❖ Point out any positive findings in the IME report, including agreement the treating physician or assigning significant restrictions.
- ❖ Clearly State What you Want the Judge to Order
 - ❖ Conclude by specifying what benefit the Employee is seeking, such as when the benefits should start, how much it should be weekly, any specific medical treatment to be addressed.
 - ❖ Support this request with cites to treating physician's recommendation or evidence presented.

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Temporary Conference Order: Insurer Attorney Perspective

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Insurer/Defense Attorney Conference Practice, Procedure, and Significance

- Assess Case
 - Employee Strengths
 - Insurer issues
 - Likelihood of success
 - Basis: employee, attorney, Judge, statutory and case law
- Bases of Defense
 - Factual
 - Medical
 - Legal
 - Hybrid: facts, medicals, law, equity and reason


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- Lead with Best Defense In Insurer Oral Argument
 - Liability
 - Disability
 - Causation
 - Reasonable and necessary medical care and treatment
 - Coverage
 - Exclusions as matter of law
 - Average weekly wage
 - Best Defense
 - Additional defense
 - Employee weakness re claim
 - Factual
 - Medical
 - Legal
- 

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- Remind Judge: Employee Burden of Proof to prove all elements of Employee claim
 - Benefit if awarded: limited to Employee rights or interests to protect
 - Conference Order
 - What's ordered
 - Double check:
 - Dates
 - Benefits
 - Average Weekly wage
 - Appeal to Hearing
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- Post Conference Communication with Insurer

- Report Conference; what employee attorney say/do; negotiations help/hurt case post Conference
- Receipt and review of Order carefully
- Get Order paid timely
- Seriously counsel efficacy appeal to Hearing v Lump Sum post IPE re question disability, extent, and causation

- Insurer Attorney Role in Conference Process

- Key to liability, disability. And extent and causation issues/ defense
 - Setting of reserve
 - Promote settlement early/often/with predictability regarding value vs outcome analysis
 - Prevent delay in file closure unless case has strong indicia for reversal at Hearing
 - Talk with Claims early and often: pre and post Conference
 - Respect Employee attorney and Employee
 - Respect process, procedure, and Judge
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Temporary Conference Order: Judge's Perspective

WHAT'S THE POINT?

WHAT IS IT?

WHY SHOULD YOU CARE?

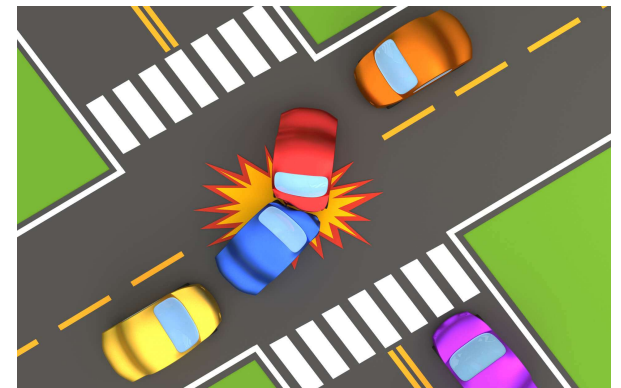
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Disclosures

- I was a Vermont ALJ. All I know about being an administrative judge in MA is what Ed told me.
- I did learn to drive in MA, which makes me a MA**hole wolf in VT sheep's clothing.




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Temporary Conference: What's the Point?

- **Provide a timely, streamlined approach to dispute resolution**
 - Promoting treatment, recovery and RTW ASAP is in both parties' best interests
- **Judicial economy**
 - Agree on undisputed facts/issues
 - Pinpoint disputed facts/issues
 - Collaborative atmosphere encourages negotiation/settlement

Temporary Conference: What is It?

- Second step in **dispute resolution process**, after conciliation
 - **“Informal” hearing** before administrative judge
 - **Evidence presented:**
 - Medical records
 - Employment records
 - Witness statements/affidavits (no live testimony)
 - Private investigative reports
 - Vocational rehabilitation reports
 - **Oral arguments/legal briefs**
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Temporary Conference Order: The Ball Game

- Administrative Judge has **broad power**:
 - **Sets framework** for rest of claim
 - **Grants or denies claims** for retroactive, current, and/or future benefits
- Either party can **appeal** – full evidentiary hearing *de novo*, **but . . .**
 - **Same** administrative judge
 - **Same** issues
 - **Temporary order remains in place** pending hearing/decision

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