

Workers Compensation Mediations in North Carolina

What is a mediation?

A mediation is an informal conference where the parties sit down together to discuss the issues in the claim and see if they can agree on a dollar figure to resolve the case.

What happens at a mediation?

During a mediation, the parties all initially meet in one large conference room. The mediator gives an opening statement about the rules and purpose of the mediation. This statement should include: reminding the parties that the mediator does not have any power to force anyone to settle or resolve their claim; that the mediator will keep information confidential if they are requested to do so; that the mediator is paid for their time; and that the Defendants are responsible for paying for the mediator if the claim is not resolved.

The Plaintiff's Attorney is then asked to outline the case. I will give a simple statement of facts concerning your injuries, earnings, medical treatment, and any other significant issues in the file. I will then talk about the dollar value of your claim including: payment for permanent injuries, payment if there is a permanent reduction in earning ability or permanent loss of earning ability, and cost of future medical expenses. I explain to the Defendants all the reasons why we expect that they will have to pay a certain dollar figure in your claim.

You will not be asked to speak about your claim. You will not have to answer questions about your claim, unless I believe it is appropriate for you to do so. Your only job at the mediation will be to listen and to work with me to make a decision on the best way to resolve your claim.

The Defense Attorney is given an opportunity to respond and provide their view of the case. Traditionally, the Defense Attorney indicates that I have overstated the value of the claim, that you are not hurt as badly as I have indicated, that you can go back to work earning more money than what you did before your injury, or that your medical expenses will not be as significant as I outlined.

Our job during the Defense Attorney's presentation is to simply sit and listen. We do not have to agree. We do not interrupt the Defense Attorney. I prefer that the Defense Attorney outline all the reasons why they disagree with my evaluation of the claim, primarily because it allows me to see what issues or concerns the insurance company may have in your file or will help us get ready for our hearing if one is necessary.

After both attorneys have had an opportunity to speak, the mediator will divide us into separate rooms. You and I will go into one room where we can sit and talk about the presentation and the offers that the Defendants have made privately. The Defense Attorney and any of their clients will be in a separate room.

At that point, the mediator will talk to each party about their dollar figure for settling or resolving the claim and will most likely play “Devil’s Advocate” by pointing out perceived weaknesses in each side’s argument. From that point on, the mediator carries back and forth the parties’ messages concerning settlement terms, including dollar amounts and other terms. The Mediator also communicates the parties’ further comments about issues in the case.

What is the goal of mediation?

The goal of mediation, as seen by the North Carolina Industrial Commission, is to ensure that the parties have made a good faith effort to resolve the claim. From my point of view, the goal of a mediation is to obtain the best possible dollar figure that the Defendants will pay to resolve the claim, so that my client can make a decision about whether to accept the offer or continue with the current status of their claim.

How long will a mediation take?

Mediations traditionally take two to three hours. I have attended mediations that took twenty minutes, and I have attended mediations that went on for seven to ten hours. However, I usually find that if a mediation is not resolved within four to five hours, there is little use in continuing beyond that point.

Who can attend mediation?

You can bring anyone you wish to mediation. If you give permission for the individual to be in the room with you, it is appropriate that they are included in mediation. I strongly encourage my clients to bring a family member or trusted friend with them to mediation. At some mediations, the terms of the settlement can be quite complex, and having a second pair of ears to listen to what is being discussed can often be very helpful for my client.

What should I wear to the mediation?

We recommend that our clients wear dressy casual clothing. We ask that you dress as if you were going to church or to a nice restaurant.

What if my case doesn’t settle at mediation?

Even if your case does not settle at mediation, you still have the right to pursue your Workers’ Compensation claim. If the mediation is unsuccessful, your case may then be set for a hearing before the North Carolina Industrial Commission, you may continue to engage in job search, or you may continue receiving disability benefits into the future. Each client’s situation depends upon the status of their claim at the time mediation is conducted.

Why do I have to be at the mediation early?

I like to take the time to sit down with you and discuss the issues in your case as well as some of the dollar figures that I have generated to calculate the value of your claim. I find it reduces any surprises for you when the Defense attorney talks about potential values. It allows you to begin the process of thinking about options for settling and resolving your claim.

What happens if my case does settle at mediation?

There are different ways to settle Workers' Compensation cases. The terms of the settlement will affect your right to collect future benefits in your claim.

However, eight percent of Workers' Compensation cases settle by way of final settlement compromise agreement or what is commonly called a "clincher" agreement. A clincher agreement is a final settlement with the insurance company. Final settlement means we can never go back and ask the insurance company for additional monies due to your work-related injury. Even if the doctors were able to find that something else was wrong with you that was not discovered initially, or if you needed a subsequent surgery or were out of work for another time period - if you have settled your case by a clincher agreement - you are not entitled to any further monies. We will include the anticipated cost for future medical expenses and future lost time out of work when discussing any settlement terms in your case.

Can I get my money the day of the mediation?

No. Mediation is simply an agreement to do the paperwork to settle the claim. If we are able to resolve your claim by way of a "clincher" agreement, there is still a significant amount of paperwork to complete and send to the North Carolina Industrial Commission. The Defense Attorney will prepare a proposed clincher agreement, I will make revisions as appropriate, send it back to the Defense Attorney for additional revisions, and when the agreement is finalized, I will send it to you for your signature. You will send it back to me, and I will sign it and send it to the Defense Attorney. The Defense Attorney will then sign it and send it on to the North Carolina Industrial Commission, with a copy of your medical records.

Once at the North Carolina Industrial Commission, the Agreement will be reviewed by a special Deputy Commissioner who will issue an Order approving the Agreement. Once the Order to approve the agreement is issued, under the law, the Defendants have 24 days to make payment of the final settlement check. Once I have received and deposited the check, we then issue your settlement checks according to the NCIC Order.

As part of our negotiations with the Defendant, I work to reduce these delays. However, you need to be advised that it can take two to three months for an average clincher with no complications and up to for months for a clincher that had complications, before you would be paid your final settlement monies.

What if I don't want to attend the mediation?

The North Carolina Industrial Commission has the power to compel your appearance at the mediation. If you have significant anxiety or concerns about your physical ability to be present at the mediation, you should discuss them with me so that I can determine the best method of resolving your concerns. Almost all my clients wish to be an active participant in the mediation process, which I encourage, so that they know and understand what has happened and occurred in their claim.