Further Interpretation and Guidance Concerning Commission Resolutions R04-1-01 and R04-1-03

1. **May TPAs certify claims on behalf of their client employers?**

   Certification and rejection of claims are permitted activities by a non-attorney representative of a party, including the signature of a non-attorney representative on the FROI, so long as the non-attorney has been authorized and directed to certify the claim by the employer. A non-attorney representative may not independently decide whether to certify or reject a claim.

   A non-attorney representative should not execute the signature of a party. Also, supporting the rejection of a claim by referencing legal authority or stating a legal conclusion would be prohibited.

   BWC may revise the FROI and the online form in order to provide the ability of a non-attorney representative that completes the certification portion to indicate whether the non-attorney representative has been provided authority by the party to complete the certification portion of the form.

   Non-attorney employees of the employer may certify claims so long as it is within that non-attorney employee's authority. See reply to questions 5 & 6 in category I of the May 23, 2005 memo.

2. **Is a "blanket authorization" provided in a group rating plan sufficient documentation to establish an attorney-client relationship between an attorney and an employer who may be a member of the group?**

   No, the group rating authorization, by itself, would be insufficient to document an attorney-client relationship for purposes of participating at the hearing. However, that authorization would be sufficient to allow an attorney who maintains that they are present on behalf of the employer to participate in the hearing so long as specific written authorization is submitted to the file by the end of the business day. See the response to questions 3, 4 & 5 of Section 6 of the May 23, 2005 memo.

3. **May an investigation report be submitted to a file and be considered by the hearing officer?**

   An investigation report prepared following an accident may be submitted and considered as evidence. However, the investigation should have been conducted in a normal course of business and not to circumvent limitations contained in Industrial Commission Resolution 04-1-01. See response to question 13 in Section 3 of the May 23, 2005 memo.

4. **Because a TPA cannot file a reconsideration appeal to the Commissioners, does this mean that a TPA or BWC non-attorney cannot file a .52 or fraud motion?**

   See the response to question 8 in Section 1 of the May 23, 2005 memo. Please note that an attorney from the BWC Law Section would not be prohibited from filing this type of request.

5. **If an authorization for a TPA is not on file, should a hearing officer take a TPA's word on being authorized to represent a party and give the TPA until the close of business to submit their signed authorization?**

   Yes, however, the TPAs must be limited to engaging in activity that a TPA would be permitted to do at hearing.

6. **Since non-attorneys have been permitted to file various documents including appeals and motions, are non-attorneys other than TPAs and union representatives also contemplated by this permission i.e., medical providers?**

   The only non-attorney representation contemplated by the Resolution is union representation and TPAs. Medical providers are not parties to the claim and are not authorized representatives within the system. Therefore, motions and appeals filed by medical providers still would be handled under the guidance of Hearing Officer Manual Policy S.6 and thus, should be dismissed.

7. **The Resolution and its clarification seem to allow employees of employers to act as representatives at hearing. What activities are those employees limited to if any?**

   The Commission Resolution and its clarification treat employees of employers similarly to TPAs and thus, would permit non-attorney employees of an employer to represent that employer as if being a TPA.

8. **If an attorney files an R-1 card, signed by the employer, at the hearing in a case where there was previously only a TPA listed, do hearing officers have to inquire as to who is paying that attorney?**

   No, the only concern is that an attorney-client relationship exists between the attorney and the employer. Hearing officers need not be concerned about who might actually be paying the attorney's fees. An R-1 or any other documentation establishing that an attorney-client relationship exists between the employer and the attorney would be sufficient to comply with the requirements of the May 23, 2005 memo and questions 3, 4 & 5 of Section 6 of that document.

9. **If, in reviewing a settlement application, a staff hearing officer realizes that a TPA has signed the settlement agreement on behalf of an employer, what action should the staff hearing officer take?**

   The settlement application should be referred so that proper signatures may be obtained. If the settlement involves a self-insuring employer, the settlement papers should be returned to the self-insuring employer for a signature. If the settlement involves a state-fund employer, the application should be referred to BWC so that the employer's signature can be obtained. If the settlement involves an employer that is bankrupt or otherwise out of business, a proper signature on behalf of the Administrator would be sufficient to process the settlement.