

## **WCD Evidence Points - ALJ Sherman C. Mitchell**

1) The Wisconsin Rules of Evidence, Chapters 901 to 911 of the Wisconsin Statutes, apply to courts and municipal courts in the state of Wisconsin, but generally don't apply to Worker's Compensation administrative hearings.

2) Wisconsin Supreme Court in Goranson v. DILHR, 94 Wis.2d 537, 289 N.W.2d 270 (1980) ruled that the Evidence Code need not be applied in WC cases.

3) However, in the prior case of State v. McFarren, 62 Wis.2d 492, 215 N.W.2d 459 (1974), the Wisconsin Supreme Court noted that, while administrative proceedings are not bound by the same strict rules of evidence that govern trials, hearsay evidence not within an exception to the hearsay rule should not be received over objection where direct testimony to the same facts is available.

4) Regardless, at a WC hearing, the parties should make proper evidentiary motions to preserve their rights on appeal, as "the courts have applied evidentiary rules when considering the admissibility of evidence, competency of witnesses, presumptions and so on" (see Neal and Danas Worker's Compensation Handbook, State Bar of Wisconsin, Ch.9, Pg.20).

5) The parties should stipulate to as many non-disputed facts as possible prior to the taking of testimony: dates of employment, conceded compensation, dates of injury if not in dispute, wage, and conceded medical bills. Applicant's attorneys must serve the disputed medical bills on a timely filed, completed WKC-3 medical statement form, with the relevant bills attached (preferably itemized). The names of nonindustrial insurers and amounts of collateral benefits or medical expenses paid by them should be provided.

6) The applicant has the burden of proof regarding most issues in worker's compensation cases. During testimony, the parties should allow for leading questions as much as possible to promote efficient use of time, as long as they do not deal with disputed facts.

7) All attorneys should follow Professor Younger's cardinal rule of evidence and never ask a question unless they already know the answer!

8) Although the rules of evidence are not strictly followed, many Administrative Law Judges apply the rules when considering hearsay testimony, admissibility of evidence and competency of witnesses.