

**Division of Workers' Compensation  
Court Administrator's Labor Code § 5502 Report  
Timeliness of Hearings Held**

**2011 Annual Report**

**I. INTRODUCTION**

Labor Code §5502 prescribes specific timelines for certain types of hearings. The hearings covered are expedited hearings, status conferences, priority conferences, mandatory settlement conferences, and trials that follow a mandatory settlement conference. The timelines are measured from the filing of a declaration of readiness to proceed (DOR) to the hearing. The timeframes for each of these hearings are prescribed as follows:

- A. Expedited Hearing and Decision. Labor Code § 5502(b) directs the Court Administrator to establish a priority calendar for issues requiring an expedited hearing and decision. These cases must be heard and decided within 30 days following the filing of a DOR to proceed.
- B. Priority Conferences. Labor Code § 5502(c) directs the Court Administrator to establish a priority conference calendar for cases when the employee is represented by an attorney and the issues in dispute are employment or injury arising out of employment (AOE) or in the course of employment (COE). The conference shall be conducted within 30 days after the filing of a DOR to proceed.
- C. Mandatory Settlement Conference (MSC) and Ratings MSC. Labor Code § 5502(e) establishes time frames to schedule MSCs and trials in cases involving injuries and illnesses occurring on and after January 1, 1990. MSCs are to be conducted not less than 10 days and not more than 30 days after filing the DOR.
- D. Trials. Labor Code § 5502(e) mandates that if the dispute is not resolved at the MSC, a trial is to be held within 75 days after filing the DOR.

This report is submitted pursuant to Labor Code § 5502(d), which requires the administrative director to "report quarterly to the Governor and to the Legislature concerning the frequency and types of issues which are not heard and decided within the period prescribed in this section and the reasons therefor." This report covers hearings scheduled during 2011. In the following, the frequency of the specific hearing types are described, and the reasons for hearings falling outside the prescribed timelines are discussed.

**II. FREQUENCY OF HEARINGS**

DWC held a total of 42,032 hearings during the first quarter, 33,948 hearings during the second quarter, 38,420 hearings in the third quarter, and 37,262 in the fourth quarter of 2011, for a total of 151,662 hearings held in 2011.

The table below describes, for each enumerated type of hearing, the total number of hearings held, the number and percentage outside the statutory timeline, and the average number of days outside the timeline.

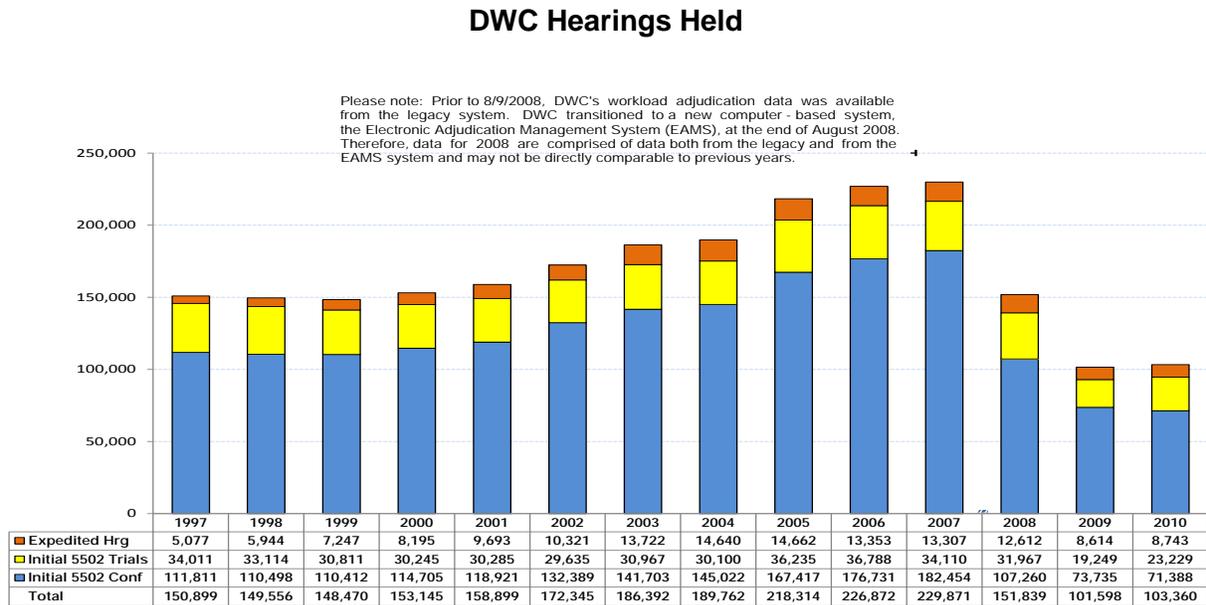
**Totals for 2011**

<b>Labor Code Section</b>	<b>Statutory Timeline</b>	<b>Total Number First Hearings</b>	<b>Number Outside of Timeline</b>	<b>Percent Outside of Timeline</b>	<b>Avg. Days Outside of Timeline</b>
5502(b) Expedited Hearings	Within 30 days of DOR	9,500	4,951	52.1%	23
5502(c) Priority Conferences AOE/COE	Within 30 days of DOR	4,967	4,059	81.7%	124
5502(e) MSCs	Within 30 days of DOR	78,410	64,319	81.3%	127
5502(e) Trials	Within 75 days of DOR	21,377	19,638	91.9%	405

### III. DISCUSSION

#### Numbers of Hearings

The graph below indicates the numbers of different types of hearings held in DWC from 1997 through 2010. The total number of hearings held increased by 52 percent from 1997 to 2007, and then decreased from 2007 to 2010 by 55 percent.



Data Source: DWC

#### Timeliness of Hearings

California Labor Code Section 5502 specifies the time limits for various types of hearings conducted by DWC on WCAB cases. In general:

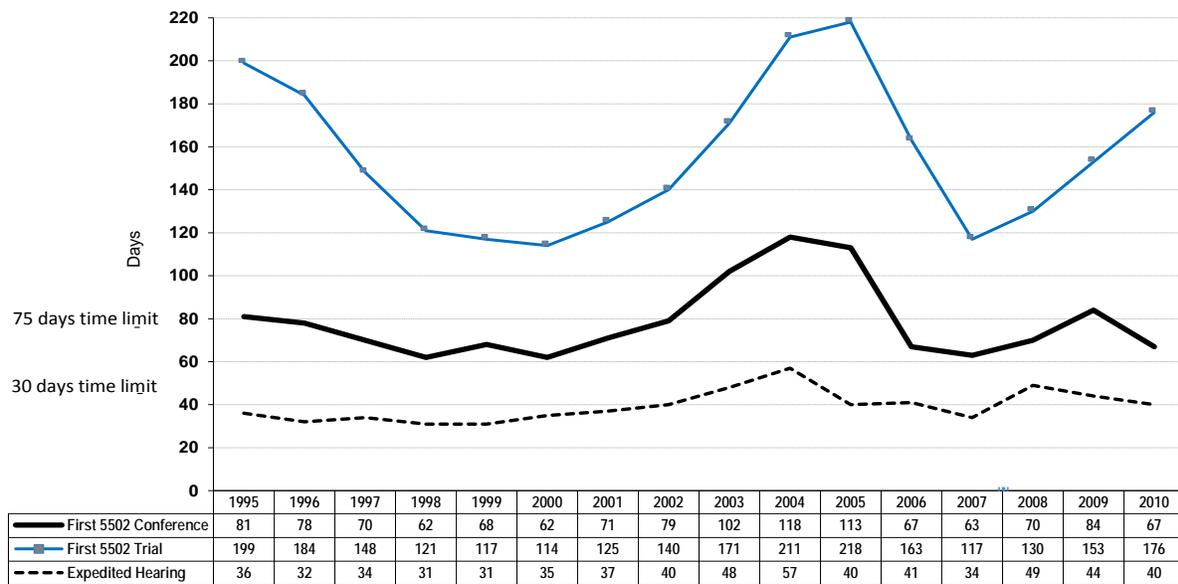
- A conference is required to be held within 30 days of the receipt of a request in the form of a DOR.
- A trial must be held within 75 days of the request if a settlement conference has not resolved the dispute.
- An expedited hearing must be held within 30 days of the receipt of the DOR.

As the following chart shows, the average elapsed time from a request to a DWC hearing decreased in the mid-1990s to late-1990s and then remained fairly constant. From 2000 to 2004, all of the average elapsed times have increased from the previous year's quarter and

none were within the statutory requirements. However, between 2005 and 2007, the average elapsed time from the request to a trial decreased by 46 percent, the average elapsed time for conferences decreased by 44 percent, and the average time for expedited hearings decreased by 15 percent.

### Elapsed Time in Days from Request to DWC Hearing (4<sup>th</sup> Quarter)

Please note: Prior to 8/9/2008, DWC's workload adjudication data was available from the legacy system. DWC transitioned to a new computer-based system, the Electronic Adjudication Management System (EAMS), at the end of August 2008. Therefore, data for 2008 are comprised of data both from the legacy and from the EAMS system and may not be directly comparable to previous years.



Source: DWC

From 2008 through 2010, the longer waiting times for regular trials (top line) coincide with the reduction in available court hours due to hiring freezes and furloughs. Governor Schwarzenegger's July 31, 2008 Executive Order froze hiring and barred the use of retired annuitants. Beginning February 1, 2009, judges and staff were placed on furlough two days a month.<sup>1</sup> Effective July 1, 2009, the furloughs were increased to three days per month.<sup>2</sup> With just over 20 working days a month, the furloughs represented cuts of first 10 percent and then 15 percent of available hours for hearing and resolving cases. The fact that the time to expedited hearing (dotted line) grew shorter from 2008 through 2010 shows that the courts gave priority to scheduling the urgent issues that are statutorily designated for expedited hearing.

Source: pre-publication draft of the CHSWC 2011 Annual Report

<sup>1</sup> Executive Order S-16-08

<sup>2</sup> Executive Order S-13-09

Between 1998 and 2004, the number of workers' compensation judges (WCJ) and other support staff fell steadily, and reached a statewide low of 129 WCJs and 234 staff in 2004.<sup>3</sup> Not surprisingly, 2004 is also the year in which MSCs and trials were most significantly delayed from their statutory timeframes. Following the 2003 and 2004 Workers' Compensation reforms, DWC added approximately 300 new positions to handle the workload. The increase in WCJs and support staff led to a steady decrease in the number of days conferences went past their statutory timeframes. As a result of the hiring freeze in summer 2008, staff numbers fell again, and the number of days it took for MSCs and trials to be heard rose accordingly.

Beginning in the last quarter of 2011 and continuing to the present, DWC has been granted exemptions from the hiring freeze in order to fill critical staff positions that had remained vacant as a result of the 2008 hiring freeze. To date, the division has hired 30 judges and 16 support staff. It remains to be seen what impact this hiring will have on the Labor Code §5502 timelines.

Respectfully submitted,

RICHARD NEWMAN  
Acting Chief Judge  
Division of Workers' Compensation

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<sup>3</sup> Staffing numbers based on Labor Reports (L02) 1996-2011, and represent filled positions as opposed to authorized positions.