

## Sections of an Appellant's Opening Brief

These pages are provided as examples of the sections of an appellant's opening brief. You may use these pages for your brief, adding more pages if needed, or you may use them as a model to write your own brief. The sections of an appellant's opening brief are:

### Statement of Issues for Review

Here you list the important legal issues or questions that the Commission needs to decide in your appeal. As the appellant, you should look at your Statement of Grounds for Appeal that you filed with your Notice of Appeal, and think carefully about the questions you want the Commission to decide. Some of them you may decide you do not need to argue after all. Some may be combined into one issue.

Use one or two short sentences for each issue or question. Only include issues that the Commission can decide. List them in the order you discuss them in your argument, and state the issues in terms of how the Board made mistakes.

For example, "The Board made a mistake when it decided that \_\_\_\_\_." Another example could be, "Did the Board have substantial evidence when it decided \_\_\_\_\_?"

These are the questions that the Commission needs to decide in this appeal.

1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attach more pages if needed.

### Summary of the Facts

In this section, tell what happened before the claim was filed. State only the important facts about the claim that the Commission should know to be able to decide the appeal. Put the facts in chronological order, starting from the event that led to filing a claim or petition.

Every important fact must be cited to a page in the record, excerpt of record, transcript from the Board's hearing, or a deposition. The Commissioners must be able to check whether a factual assertion is accurate. The Commission cannot receive new evidence to decide an appeal, so the facts must be in the Board record, in depositions filed with the Board, or testified to in hearing. A fact summary might start like this:

John Smith began work for ABC Corporation in 2005 (R. 001). He was injured on July 8, 2007 (Exc. 12). On March 10, 2009, Dr. Jones' medical report stated that Mr. Smith was injured at work (Hr'g Tr. at 22). On November 2, 2009, Dr. Thomas' medical report stated that Mr. Smith's work injury was not the cause of the need for medical treatment (R. 2904). On January 4, 2010, Dr. Thomas stated in deposition that his opinion has not changed (Thomas Dep. at 44).

The fact citations in parentheses tell the Commissioners that on page 1 of the Board's record, a document shows appellant was an employee of ABC Corporation. On page 12 of the excerpt, a document (such as a Report of Injury) shows Mr. Smith was injured on July 8, 2007. On page 22 of the Board hearing transcript, someone testified at the Board hearing that Dr. Jones' medical report found that Mr. Smith was injured at work. Page 2904 of the Board's record is Dr. Thomas' medical report. On page 44 of Dr. Thomas's deposition transcript, he stated that his opinion has not changed.

- R. means the record page number.
- Exc. means the excerpt page number.
- Tr. means the page number of the Board hearing transcript.
- Dep. means the page number of the deposition transcript.

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## Argument

The argument is where you explain

1. how the Board made a mistake in deciding your case; and
2. why the mistake the Board made is so significant that the Commission should not uphold the Board's decision.

Remember that when you filed your Notice of Appeal, you stated the points or grounds on appeal. The argument section should address each point on appeal or the Commission will consider that you have abandoned that point. For each issue, tell the Commission your idea of how the Board made the wrong decision. Sometimes the way to show how the Board made a mistake is to describe the law, and then show where the Board failed to follow the law. Sometimes the Board saw the law, but the logic of their reasoning in applying it is flawed. Sometimes the Board relies on evidence that does not support the decision.

Whatever is wrong, you must show why it is so significant that it would make a difference in the outcome. Explain why the Board's mistake is so important that the error should cause the Commission to reverse the Board's decision. Use plain language to explain your arguments.

Keep in mind that if the Board decision contains a decision about credibility of a witness that appeared before the Board, the Board's decision on credibility is binding on the Commission. The Board gets to choose if it believes a witness's testimony because the Board sees and/or hears the witness, not the Commission. You may disagree, but asserting that the Board made a mistake because it believed opposing testimony by a witness that appeared before the Board is a very difficult argument.

Use headings to help the Commissioners understand what you are discussing. Set off each issue with a heading similar to a chapter title that describes the arguments that will follow. If possible, follow the order you used in the Statement of Issues section of your brief.

For every statement of law you make in the brief, try to cite to a court case, statute, regulation, or legal treatise that supports your statement.

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