

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 98-F-22

Date Issued: June 23, 1998

Requested by: Representative Lois Delmore, District 43

- QUESTION PRESENTED -

Whether a hearing held by the Workers Compensation Bureau regarding a person's claim for benefits is required to be open to the public.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a hearing held by the Workers Compensation Bureau regarding a person's claim for benefits is required to be open to the public unless the claimant requests that the medical portion of the hearing be closed, or records made confidential by state or federal law are being introduced or discussed in a way that would disclose confidential information and the confidentiality of the records has not been waived.

- ANALYSIS -

A party to a claim for workers' compensation benefits may request an administrative "rehearing" of an administrative order that is issued by the Workers Compensation Bureau (Bureau) in response to a claim for benefits. N.D.C.C. § 65-01-16. The rehearings are conducted as "hearings" under N.D.C.C. ch. 28-32 except as provided in N.D.C.C. § 65-01-16. Id. See also N.D.C.C. § 65-02-11.

I understand that Bureau hearings have historically been open to the public. The only North Dakota statute directly applying to public access to Bureau hearings is consistent with this historic practice. N.D.C.C. § 65-05-32 states that "[i]nformation contained in the claim files and records of injured employees is confidential and is not open to public inspection, other than to bureau employees or agents in the performance of their official duties." It then lists six exceptions to the confidentiality provision. The sixth exception provides: "At the request of a claimant, the bureau may close the medical portion of a hearing to the public." N.D.C.C. § 65-05-32(6).

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"All sections of a statute must be construed to have meaning because the law neither does nor requires idle acts." County of Stutsman v. State Historical Society, 371 N.W.2d 321, 325 (N.D. 1985), citing N.D.C.C. § 31-11-05(23). "Statutes are to be construed in a way which does not render them worthless or useless rhetoric." Lende v. North Dakota Workers Compensation Bureau, 568 N.W.2d 755, 760 (N.D. 1997). Here, N.D.C.C. § 65-05-32(6) would have no meaning and would be useless rhetoric unless the Bureau was otherwise required to keep the hearing open to the public. In my opinion N.D.C.C. § 65-05-32(6) creates an exception to the general confidentiality provision in N.D.C.C. § 65-05-32 by requiring Bureau hearings be open to the public except that the medical portion of the hearing can be closed at the request of the claimant.

The legislative history of N.D.C.C. § 65-05-32(6) supports the above conclusion. N.D.C.C. § 65-05-32 was adopted in its original form in 1977 by passage of Senate Bill 2158. See 1977 N.D. Sess. Laws 579, § 1. The language adopted in 1977 provided "[t]he bureau shall keep the medical files of claimants closed to the public, and may, at the request of a claimant, close the medical portion of the hearing to the public." As originally introduced, Senate Bill 2158 provided that "[t]he bureau shall keep the files of claimants closed to the public and may, at the request of a claimant, close a hearing to the public." Concerns were expressed about closing claimants' records and hearings to the public. Hearing on S. 2158 Before the Senate Comm. on Industry, Business and Labor 45 N.D. Leg. (Jan. 24, 1977) (committee minutes). A representative of the North Dakota Newspaper Association explained that the association members feel "anything which pertains to medical files should be closed, but they are in opposition to any other closing of records and hearings." Id. The bill was then amended to only make medical records confidential and to provide that the medical portion of the hearing could be closed at the request of a claimant. The language requiring the medical portion of the hearing be closed to the public at the request of a claimant has continued despite two amendments to N.D.C.C. § 65-05-32. See 1989 N.D. Sess. Laws ch. 766, § 11; 1993 N.D. Sess. Laws ch. 620, § 4. Thus, both the plain language of N.D.C.C. § 65-05-32(6) and the statute's legislative history demonstrate that Bureau hearings must be open to the public except that the medical portion of the hearing may be closed at the request of the claimant.

There is an additional exception to the requirement that Bureau hearings be open to the public. Similar to a public meeting, see N.D.C.C. § 44-04-19.2(1), a public hearing may be closed when confidential records are introduced or testimony is taken that would

improperly disclose confidential information in those records unless the confidentiality has been waived by the person or persons in whose benefit the records have been declared confidential. See N.D.C.C. § 31-11-05(4) (a person may waive the advantage of a law intended for the person's benefit). However, only the portion of the hearing where the confidential records are introduced or discussed may be closed. The remainder of the hearing must be open except to the extent a claimant has requested the medical portion of the hearing be closed. Thus, a Bureau hearing may be closed to the extent records deemed confidential under applicable state or federal laws are introduced or discussed.

In conclusion, a hearing held by the Workers Compensation Bureau regarding a person's claim for benefits must be open to the public unless the claimant requests that the medical portion of the hearing be closed or records made confidential by state or federal law are introduced or discussed in a way that would disclose confidential information.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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