

# Overview of Appeal to the Nebraska Court of Appeals



## Appealing the decision of a Nebraska Workers' Compensation Court judge

If either party (either the injured worker or the employer/workers' compensation insurance carrier) is not satisfied with the trial judge's decision, that party may appeal the decision by asking for an appeal to the Nebraska Court of Appeals. In order to request an appeal, a Notice of Appeal document must be filed in the Workers' Compensation Court clerk's office within 30 days of the date of the judge's decision. The Notice of Appeal should include payment of Court of Appeals costs in the form of a \$26 check made payable to Nebraska Court of Appeals and a \$75 check made payable to Nebraska Workers' Compensation Court (or Affidavit and Application to Proceed without Payment of Costs, described below).

Three of the six Court of Appeals judges will decide the case, and they may only consider the record made at trial when they decide the appeal. The trial record is the evidence that was offered at trial. It usually includes written documents and a transcript of the oral testimony. No additional evidence (such as oral testimony or written documents) can be offered by either party at the time of the oral argument. When the Court of Appeals decides a workers' compensation case, it may modify, reverse, or set aside a judgment, order, or award of the Nebraska Workers' Compensation Court only upon the grounds that (1) the compensation court acted without or in excess of its powers; (2) the judgment, order, or award was procured by fraud; (3) there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award; or (4) the findings of fact by the compensation court do not support the order or award.

Each step of the appeals process is governed by statutes (laws) and court rules which must be consulted and followed. The Workers' Compensation Act, including Neb. Rev. Stat. §§ 48-182 and 48-185 regarding appeals, can be found on the Workers' Compensation Court's web site at <http://www.wcc.ne.gov/legal/statutes.aspx>. The Nebraska Court Rules of Appellate Practice can be found on the Nebraska Judicial Branch web site at <http://supremecourt.ne.gov/supreme-court-rules/ch2/art1>. You may also wish to review the "Citizen's Guide to the Nebraska Appellate Courts" on the Supreme Court's web site at <http://supremecourt.ne.gov/sites/supremecourt.ne.gov/files/self-help/citz-guide-appellate-courts.pdf>.

## Time period for appeal

The Notice of Appeal must be filed in the Workers' Compensation Court clerk's office in Lincoln within 30 days of the date of the trial judge's decision. The date of the judge's decision will be written on the decision at the end, just before the judge's signature and will also be stamped on the first page of the decision. Calculating the date of the 30-day deadline to file the Notice of Appeal may vary with the circumstances. Court staff cannot calculate the deadline for you.

## Appeal documents

There are three documents you must prepare and file with the Workers' Compensation Court in order to appeal a decision: a Notice of Appeal, a Praecipe for Transcript, and a Request for Bill of Exceptions. Forms and instructions for these documents are available on the Workers' Compensation Court's web site at <http://www.wcc.ne.gov/publications/publications.aspx#adj> and on the Supreme Court's web site at <http://supremecourt.ne.gov/self-help/welcome>. These documents must be filed in the Workers' Compensation Court clerk's office in Lincoln.

- 1. Notice of Appeal** — This document notifies the court and the other parties that you are appealing the decision of the Workers' Compensation Court.

The Notice of Appeal should include payment of the Court of Appeals costs in the form of a \$26 check

made payable to Nebraska Court of Appeals and a \$75 check made payable to Nebraska Workers' Compensation Court (or Affidavit and Application to Proceed without Payment of Costs, described below). See Neb. Ct. R. App. P. § 2-101.

**2. Praecipe for Transcript** — A “Praecipe” is a document that requests the clerk of the court to do something. A party filing a Praecipe for Transcript is asking the clerk’s office to prepare the Transcript. Upon filing the Notice of Appeal, you should file a Praecipe for Transcript. The Transcript is a copy of the relevant pleadings and decisions in the case. Pleadings are the papers that the parties have filed during the litigation, and they generally include the petition, answer, and motions. The clerk’s office will prepare the Transcript based on your request and forward it to the Court of Appeals. The clerk’s office is required to include:

- The pleadings upon which the case was tried, as designated by the appellant;
- The judgment, decree, or final order sought to be reversed, vacated, or modified; and
- A copy of the supersedeas bond, if any, given in the compensation court, or, if none has been given, a recital of the fact that a bond for costs was given and approved in the Workers’ Compensation Court, or a deposit made as required by Neb. Rev. Stat. § 25-1914.
- In cases where an Application to Proceed without Payment of Costs has been filed, a copy of the order of the compensation court granting or denying such.

The Transcript will also include copies of the appeal documents, if filed. **If you believe that additional pleadings are necessary for your appeal, your Praecipe must specifically direct the clerk’s office to include them.** See Neb. Ct. R. App. P. § 2-104(A).

**3. Request for Bill of Exceptions** — The Bill of Exceptions is made up of the trial evidence, which includes written documents (exhibits and a copy of the oral testimony from trial). The Request for Bill of Exceptions should be filed at the same time the Notice of Appeal is filed. If you do not request a Bill of Exceptions, the judges will not be able to review the trial evidence, and that may compromise your case on appeal. See Neb. Ct. R. App. P. § 2-105(B).

## Appeal document checklist

### To the Nebraska Workers’ Compensation Court:

- The original, completed Notice of Appeal
- A \$26 check payable to Nebraska Court of Appeals and a \$75 check payable to Nebraska Workers’ Compensation Court (or Affidavit and Application to Proceed without Payment of Costs)
- The original, completed Praecipe for Transcript
- The original, completed Praecipe for Bill of Exceptions
- The Affidavit and Application to Proceed without Payment of Costs, if applicable

### To the other party(ies):

- One copy of the completed Notice of Appeal
- One copy of the completed Praecipe for Transcript
- One copy of the completed Request for Bill of Exceptions

### To the court reporter:

- One copy of the completed Request for Bill of Exceptions (contact the clerk’s office to obtain the court reporter’s contact information).

## Appeal costs

Generally, the person requesting the appeal must pay the costs of the appeal, unless the court approves the Application to Proceed without Payment of Costs (see the next section for exceptions). These costs include

the cost to prepare the Bill of Exceptions, the cost to prepare the Transcript (\$1.00), the cash deposit (\$75.00), the Court of Appeals costs (\$26.00), and the costs you incur for printing briefs. You must pay for the cost to prepare the Bill of Exceptions. The court reporter will give you an estimate of the cost to prepare the Bill of Exceptions, and you may have to pay a deposit before he/she begins preparation.

## **When a party is unable to pay appeal costs**

If you are unable to pay or secure the means to pay for the costs of an appeal to the Court of Appeals, you can request the court to waive payment of the costs. You can request this waiver by filing an Affidavit and Application to Proceed without Payment of Costs (form available on the Workers' Compensation Court's web site at: <http://www.wcc.ne.gov/publications/publications.aspx#adj>). This request should be filed with the Notice of Appeal. A judge of the Workers' Compensation Court will review the information you provide on the form and send you an order informing you of whether you must pay the appeal costs.

## **Additional information regarding appeals**

For information on additional requirements such as briefs and oral arguments, see the Nebraska Court Rules of Appellate Practice (<http://supremecourt.ne.gov/supreme-court-rules/ch2/art1>) and the "Citizen's Guide to the Nebraska Appellate Courts" (<http://supremecourt.ne.gov/sites/supremecourt.ne.gov/files/self-help/citz-guide-appellate-courts.pdf>).

**This publication has been prepared by the Nebraska Workers' Compensation Court to answer some of the commonly asked questions concerning appeals to the Nebraska Court of Appeals. General inquiries regarding the appeals process may be directed to:**

**Nebraska Workers' Compensation Court  
P.O. Box 98908  
Lincoln, NE 68509-8908**

**800-599-5155 or 402-471-6468**

<http://www.wcc.ne.gov>

**THE NEBRASKA WORKERS' COMPENSATION COURT DOES NOT REPRESENT THAT THESE INSTRUCTIONS WILL BE APPROPRIATE IN EVERY CASE. CASE-SPECIFIC QUESTIONS SHOULD BE DIRECTED TO A LAWYER. COURT PERSONNEL CANNOT PROVIDE LEGAL ADVICE.**

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