



**NATIONAL ASSOCIATION
OF WORKERS' COMPENSATION JUDICIARY
COMPARATIVE ADJUDICATION SYSTEMS PROJECT**

**THE WORKERS' COMPENSATION JUDGE AND
FINALITY OF FACT-FINDING AMONG STATES:
INTRODUCTION AND TABLES**

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Introduction

The estimable Larson treatise is, by tradition, the critical reference to which to turn for analysis of workers' compensation issues. One of the book's many essential declarations is addressed to adjudication within the system. The late Professor Larson's book perceptively declares, at it always has, "in the spectrum of administrative agencies ... the compensation commission ... while deciding controverted claims ... is as far towards the judicial end of the spectrum as it is possible to go without being an outright court."¹ This enduring, correct observation is critical to the understanding of the workers' compensation adjudicative process. The hearing officer, in this regard, is adjudicating a dispute between two private parties.² Though interpreting and enforcing a law of public importance, he or she is not implementing agency policy.³

The Larson treatise also addresses the issue of the *fact-finding* status of the hearing officer in workers' compensation adjudication as he or she resolves such disputes. The treatise has always identified as the majority and "orthodox" rule one having the commission – not the

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¹ ARTHUR LARSON, WORKERS' COMPENSATION, § 79:90 (Desk ed. 2000).

² *Moore v. Roemer*, 567 So.2d 75, 81 (S. Ct. Louisiana 1990) ("[W]orker's compensation is a matter of great public interest and is subject to extensive governmental regulation as to the nature and extent of the remedy.... However, while the Legislature in the field of worker's compensation defined relationships, rights and duties that the parties are not free to derogate by contract, the litigation nevertheless adjudicates a dispute between private parties and results in a money judgment affecting only those parties.").

³ See generally Thomas E. Wing, *Oregon's Hearing Officer Panel*, 23 NAALJ JOURNAL 57, 69 (2003) (drawing general distinction between "one party" and "two party" cases entertained by administrative law judges); Charles H. Koch, Jr., *Administrative Presiding Officials Today*, 46 ADMIN. L. REV. 271, 282 (1994) (describing the role of federal administrative law judges).

first-level hearing officer or referee – the arbiter of credibility and final fact-finder. Notably, early courts occasionally analyzed this relationship by analogy to the equity offices of “special master” (a subordinate), and “chancellor” (the trial court and fact-finder).⁴

The treatise, indeed, considers as *aberrant* a system which maintains the hearing officer as final fact-finder. “A small group of states and the Longshore Act,” the book complains, “have deliberately separated themselves from the majority on this point.”⁵ The December 2007 version of the text identifies nine states as subscribing to this purported aberration, setting forth in discrete subsections the “minority rule” as maintained by Florida, Arizona,⁶ Pennsylvania, Oklahoma, Michigan, Colorado, Kentucky, Nebraska, and the Longshore Act.⁷

This writer’s research has not, however, found this analysis to be particularly convincing in the present day. The survey of states upon which he reports in this article does not, in this regard, support the proposition that having the hearing officer as final fact-finder currently reflects an aberration. The “typical compensation system” of the 1950’s, when Larson first penned his book, is not the overwhelming contemporary model. (This article will hereafter use the title Workers’ Compensation Judge or WCJ to refer to this office.)

⁴ *United States Cas. Co. v. Maryland Cas. Co.*, 55 So.2d 741, 744 (S. Ct. Florida 1951) (“The chancellor ... should give due consideration to the findings of facts made by a special master and should consider the many advantages which the master had in personally hearing and observing the witnesses.... However, although the Chancellor may use the services of a special master ... and receive from him his advisory findings and recommendations, the fact remains that it is the Chancellor who under the law is charged with the duty and responsibility of making findings of facts and entering the final decree.”); *Rodriguez v. Industrial Comm’n*, 21 N.E.2d 741,743 (S. Ct. Illinois 1939) (“[t]he arbitrator in his consideration of the case is but the agent of the commission, similar in character to that of a master in chancery “). *Compare Hamby v. Everett*, 627 S.W.2d 266, 268 (Ct. Appeals Arkansas 1982) (“Most any law school graduate is aware that our Court reviews chancery cases de novo. However, where credibility issues arise, we will not reverse the findings of the chancellor unless they are clearly erroneous, giving due regard to the opportunity of the trial court to judge the credibility of the witnesses.”). This approach is familiar to administrative law specialists as the standard which prevails under the federal Administrative Procedure Act (APA). *See* 5 U.S.C. § 557(b) (“When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”). *See generally* WILLIAM F. FOX, JR., UNDERSTANDING ADMINISTRATIVE LAW § 8.09 (Lexis-Nexis 4th ed. 2000).

⁵ ARTHUR LARSON, WORKERS’ COMPENSATION, § 130.03[4] (December 2007).

⁶ The Larson treatise states that this rule was created in 1967 with the decision in *Powell v. Industrial Comm’n*, 418 P.2d 602 (Ct. Appeals Ariz. 1966). That decision, however, was unambiguously reversed by the Supreme Court. *Powell v. Industrial Comm’n*, 423 P.2d 348 (S. Ct. Ariz. 1967) (“The Commission of course was not bound by the finding of its referee”). A subsequent decision, *Ohlmaier v. Indus. Comm’n*, 776 P.2d 791 (S. Ct. Arizona 1989), explains that the legislature changed the law in 1973 to have it comport with the holding of the appeals court. *See infra* Section V(C).

⁷ ARTHUR LARSON, WORKERS’ COMPENSATION, § 130.03[4] (December 2007). The book also recognizes that this rule is followed in the District of Columbia. *Id.*, § 130.03[4], n.8.1 (citing *Potomac Elec. Power Co., v. Dep’t of Employment Services*, 835 A.2d (D.C. 2003). At another section, the treatise recognizes a change to the Minnesota Act to make the ALJ the fact-finder. *Id.* at § 130.03[8] (citing *Even v. Kraft, Inc.*, 445 N.W.2d 831 (S. Ct. Minn. 1984)).

Indeed, this writer's research demonstrates that a sizeable minority of states now maintains systems where the WCJ is statutorily the final fact-finder. The tendency over the years is for legislatures to prefer the first level hearing officer in such role. Of course, this preference echoes the common law, which generally calls for deference to the fact-findings of the individual who saw and heard the witnesses and assessed their demeanor.⁸ This policy may be seen at work in the trend to make the first-level hearing officer the final fact-finder. Still, this legislative preference, manifested during a long period of reform, exists mainly because finality at the first level of adjudication is thought to enhance efficiency in the litigation of contested cases.⁹ In a number of jurisdictions, meanwhile, including Pennsylvania and the Longshore Act, establishing the judge as fact-finder was part of a general restructuring of the administrative agency responsible for enforcing the law.¹⁰ In still others, the change was effected as part of the most fundamental institutional reform: changing the forum for contested cases from civil court to an administrative forum.¹¹

The appended table shows that, of 52 critical jurisdictions – 50 states, the Longshore Act (LHWCA), and the District of Columbia (D.C.) – 26 state programs hew to the majority rule. A full 22, meanwhile, plus the LHWCA and D.C., subscribe to the minority rule. This writer places Alabama and Tennessee, which entertain the litigation of contested cases in civil court, in their own category.¹² Even here, however, a plain distinction exists. In Alabama, the trial judge is the final fact-finder, whereas in Tennessee the appellate courts reserve the right to reassess credibility and change the facts.

The contents of the table are distilled below. The author sets forth this distillation with a caveat: a great deal of variety and nuance attends the issue of WCJ adjudicative finality. An ironclad taxonomy is thus impossible. This phenomenon has been noted from the very earliest days of the program. The early treatise writer Bradbury declared, “The administration and procedure under no two of the compensation acts of the American states are exactly alike. The revolution wrought by the adoption of the compensation principle is nowhere more strongly

⁸ *Colby v. Klune*, 178 F.2d 872, 872 (2nd Cir. 1949) (“Trial on oral testimony, with the opportunity to examine and cross-examine witnesses in open court, has often been acclaimed as one of the persistent, distinctive, and most valuable features of the common-law system. . . . For only in such a trial can the trier of the facts (trial judge or jury) observe the witnesses’ demeanor; and that demeanor – absent, of course, when trial is by affidavit or deposition – is recognized as an important clue to witness’ credibility.”). See James P. Timony, *Demeanor Credibility*, 49 CATHOLIC UNIV. L. REV. 903 (2000). See also *Universal Camera Corp. v. NLRB*, 71 S. Ct. 456 (U.S. 1951) (indicating that an agency, though not bound by ALJ decision, should not ignore the findings of fact and credibility determinations contained in initial federal ALJ order).

⁹ See, e.g., ORIN KRAMER & RICHARD BRIFFAULT, *WORKERS COMPENSATION: STRENGTHENING THE SOCIAL COMPACT*, p. 40 (1991) (critics complaining that “costs are likely to be greater and the role of attorneys enhanced when appellate review, whether administrative or judicial, is not limited to questions of law but rather can include reconsideration of the questions of fact determined at the initial hearing. . . .”). See also Section V(B).

¹⁰ See *infra* Section V(D).

¹¹ See *infra* Section V(F).

¹² See *infra* Section III.

emphasized than in the manner in which controversies growing out of claims for compensation are determined.”¹³ This writer nevertheless offers the following general delineation¹⁴:

Majority and “Orthodox” Rule: Board, Commission, or judicial branch is final fact-finder	AR, CA, GA, HI, ID, IL, IN, IO, KS, MD, MS, MO, NV, NH, NY, ND, NC, OH, OR, SC, SD, UT, VT, VA, WA, WI
Minority Rule: WCJ is final fact-finder; Board, Commission, or judicial branch exercises appellate review or the like	AK, AZ, CO, CN, DE, FL, KY, LO, ME, MA, MI, MN, MT, NE, NJ, NM, OK, PA, RI, TX, WV, WY, DC, LHWCA
States where workers’ compensation cases are litigated in civil court	AL, TN
States where appeal from agency adjudication may involve jury trial	MD, OH, TX, VT, WA
States where appellate court reserves right to reassess credibility	SD, TN
States where workers’ compensation disputes are addressed in a judicial branch workers’ compensation court	NE, RI, OK

The issue of WCJ adjudicative finality is not, of course, unique to workers’ compensation. The issue has been current, indeed, in the debate over “central panels” of ALJ’s. Some states have created central panels that feature the ALJ as the final fact-finder, a development which has been described as a dramatic shift away from the model provided by the federal Administrative Procedure Act.¹⁵ Virtually all of the literature that addresses finality in the administrative law context is found in discussions of central panels.¹⁶ This writer has *not* encountered the issue discussed in the discrete realm of workers’ compensation.

This article, addressing this issue in the workers’ compensation field, reports in detail on the basic findings summarized above. This article explains the nature of WCJ and commission adjudication, and seeks to determine why the original commission-as-fact-finder model, though

¹³ HARRY F. BRADBURY, BRADBURY’S WORKMEN’S COMPENSATION AND STATE INSURANCE LAW OF THE UNITED STATES, p.960 (3rd ed. 1917).

¹⁴ More nuanced characterizations of most state systems are provided throughout the text of this article, and also in footnotes to the tables.

¹⁵ James F. Flanagan, *Redefining the Role of the State ALJ: Central Panels and their Impact on State ALJ Authority and Standards of Agency Review*, 54 ADMIN. L. REV. 1355 (2002) (referring to “emerging trend of restricting or eliminating agency review of state ALJ’s ... decision, thereby making them actually or effectively final and subject only to judicial review,” and positing that such change “represents a fundamental change in state administrative adjudication.”).

¹⁶ Thomas E. Wing, *Oregon’s Hearing Officer Panel*, 23 NAALJ JOURNAL 57, 57 n.2 (2003) (collecting multiple citations to articles treating the history of and issues surrounding central hearing panels). *But see* LeRoy, *Crowning the New King: The Statutory Arbitrator and the Demise of Judicial Review*, 2009 JOURNAL OF DISPUTE RESOLUTION 1 (2009) (author expressing disapproval of mandatory arbitration clauses, and positing that empirical evidence shows that district court judges are reversed 12% of the time – much more than mandated arbitrators).

it endures as the majority rule, has seemingly eroded. This article also provides an introduction to the manner in which workers' compensation adjudication is organized among the states.

This article then seeks to ascertain the current state of the law – and the practice as well – among the states on the issue of WCJ adjudicative finality. This article also treats the related issue of whether an appeal or request for review of the WCJ's adjudication operates as an automatic stay on the award. It seems impossible to ponder the practical import of fact-finding finality without taking into account this crucial procedural issue. The tables at the conclusion of this article set forth an accounting of the laws of the various jurisdictions on these issues of WCJ finality and stays of adjudication. They also identify the procedural schemes of each state and the precise standard of review that applies once a compensation case, however finalized, is ready for true judicial review.

It may be noted that to speak of WCJ adjudicative finality on the facts is to at once speak of the *standard of review* that is employed by the Board, commission, or court to which the appeal has been taken.¹⁷ Indeed, in many state laws the final fact-finding power of the WCJ is defined not by some bold declaration of the same, but by a proviso that defines the review power of the appellate entity. An example of the former can be found in the Kentucky statute, which states, in part, “(1) An award ... of the [ALJ] shall be conclusive and binding as to all questions of fact”¹⁸ An example of the latter, meanwhile, is that of Pennsylvania, where the statute provides, “The board shall hear the appeal on the record certified by the [WCJ] office. The board shall affirm the [WCJ] adjudication, unless it shall find that the adjudication is not in compliance with section 422(a) and the other provisions of this act.”¹⁹ The lawyer or other analyst, to derive the Pennsylvania WCJ's power, must resort to statutory cross-reference and the precedents before he or she may discover that such finality is precisely the same as in Kentucky.²⁰

¹⁷ Some studies, when addressing standards of review, divide states into those where review is for “law and fact” and those that review for “law” only. *See, e.g.*, DUNCAN S. BALLANTYNE, DISPUTE PREVENTION AND RESOLUTION IN WORKERS' COMPENSATION: A NATIONAL INVENTORY, 1997-1998 (1998). This use of terms may also be found on occasion in statutes.

In this article, the writer will not use this terminology. Generally, those that apply these terms mean that a commission or court that reviews for “law and fact” will reassess credibility and potentially substitute new fact-findings. In contrast, a commission or court that reviews only for law will not do so. Nothing is offensive about this language, but lawyers and judges simply do not speak in this fashion. An appellate law clerk who tells his boss that, in a workers' compensation appeal, the standard of review is “law only” would be taken as a poseur. The legal formulation would likely be, instead, something like (1) “error of law,” and (2) a determination of “whether essential findings of fact are based on substantial evidence.” It may well be that a judge or commission that has issued a finding of fact based on legally insufficient evidence has committed an error of law. *Revello v. Acme Markets, Inc.*, 1986 Del. Super. LEXIS 1064, *9 (Del. Super. 1986). This does not, however, change the reality that appellate review in a “law only” state always takes into account review of facts. No system tolerates an arbitrary and capricious WCJ.

¹⁸ K.R.S. § 342.285.

¹⁹ Section 423(c) of the Act, 77 P.S. § 854.2.

In this writer's view, this analysis and ascertainment of the current law of WCJ finality is important because of two policy questions. First, in an environment where we seek to ensure that disputed claims are litigated as efficiently as possible, is making the WCJ the ultimate fact-finder the superior approach? A critical issue here is whether the parties are more or less likely to appeal, hence extending the litigation, when a "second bite of the apple" may be obtained at the commission level.²¹ This has been an issue talked about for over a half-century.²² Second, in an environment where we seek to afford due process to the parties, is making the WCJ the ultimate fact-finder the superior approach? A critical issue here is whether the parties perceive such a system to be affording them an equitable process before a competent, impartial, and accountable judge.²³

This article concludes with the assertion that the WCJ as ultimate fact-finder constitutes the superior method of administrative adjudication. In submitting that this is so, this article evaluates the issue, as foreshadowed above, in the context of the familiar administrative adjudication values of efficiency, impartiality, and accountability.

²⁰ The landmark case in Pennsylvania that defines the WCJ as the final fact finder is *Universal Cyclops Steel Corp. v. WCAB*, 305 A.2d 757 (Pa. Commw. 1973). Most Pennsylvania lawyers, even specialists, could not identify the statute which by inference defines the WCJ as final fact-finder, but all know and hold close to their heart the case name, "Cyclops."

²¹ See, e.g., PETER S. BARTH, *WORKERS' COMPENSATION IN CONNECTICUT: ADMINISTRATIVE INVENTORY*, p.24 (WCRI 1987) ("Few appeals are successful.... Many denials of appeals have been based on the CRD's [*viz.*, Compensation Review Division's] consistent position that a commissioner's conclusion cannot be reviewed when it rests on the weight of the evidence and the credibility of the witnesses.... This view, perhaps in conjunction with the low rate of success, largely explains the small number of appeals to the CRD.").

²² HERMAN M. SOMERS & ANNE RAMSAY SOMERS, *WORKMEN'S COMPENSATION*, p.158 (1954).

²³ See JERRY L. MASHAW, *BUREAUCRATIC JUSTICE: MANAGING SOCIAL SECURITY DISABILITY CLAIMS*, pp.88-97 (1983) (identifying and discussing the importance of "process values.").

TABLE 1

WORKERS' COMPENSATION AND ADJUDICATORY POWER
FIFTY STATES, DISTRICT OF COLUMBIA, LHWCA (2012)

TITLE, POWER, PROCESS

~ David B. Torrey²⁴

State	Title, 1 st Level Hearing Officer (H.O.)	1 st Lev. H.O. Final Fact- Finder?	Structure, Adjudication & Appeal
Alabama	Trial Judge of the County Circuit Court	Yes	WC cases litigated in civil court; appeal to Court of Civil Appeals and then, with permission, to state supreme court.
Alaska	WC Board of Dept. of Labor & Workforce Development ²⁵	Yes	WC cases litigated before WC Board. Since 2005, decisions of the Board appealed to the Alaska WC Appeals Commission (Board remains final fact-finder); judicial review in Alaska Supreme Court.
Arizona	ALJ of the Industrial Commission	Yes	WC cases litigated before ALJ, with right to an essential reconsideration before same ALJ ²⁶ ; direct appeal to Court of Appeals (no intra-agency review); appeal thereafter to state supreme court.
Arkansas	ALJ of the WC Commission	No	WC cases litigated before ALJ, with appeal to full WC Commission, which undertakes <i>de novo</i> review and is final fact-finder; judicial review in Court of Appeals and thereafter, with permission, in state supreme court.
California	WCJ of the WC Appeals Board	No	WC cases litigated before WCJ, with appeal to the WC Appeals Board, which may reweigh the evidence. Appeal thereafter is to Court of Appeals and, thereafter, with permission, to state supreme court.
Colorado	ALJ of Office of Administrative Courts	Yes	WC cases litigated before a "central panel" ALJ, with appeal to the Industrial Claims Appeals Office (ICAP or "panel"), which undertakes substantial evidence review. Appeal thereafter is to the Colorado Court of Appeals and then state supreme court.
Connecticut	Commissioner of the WC Commission	Yes	WC cases litigated before a single Commissioner, with appeal to the Compensation Review Board of the WC Commission; no reweighing of the evidence. Appeal thereafter is to the Court of Appeals (note: state supreme court may hear such appeal via transfer).
Delaware	Industrial Accident Board or, upon consent, hearing officer (all of Dept. of	Yes	WC cases litigated before Board or its hearing officer; judicial review in Superior Court and thereafter in state supreme court.

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²⁵ **Alaska:** Two members of a quasi-judicial hearing panel of the Alaska WC Board constitute a quorum for taking action on a disputed benefits claim.

²⁶ **Arizona:** For a description of this process, authored by the Chief ALJ, see p.8, Indus. Comm'n of Arizona, 2009 ANNUAL REPORT, available at <http://www.ica.state.az.us/Commissioners/Forms/2009AnnualReport.pdf> (last visited Dec.16, 2012).

	Labor, OWC)		
Florida	Judge of Comp'n Claims (JCC), Office of JCC's, Florida Division of Administrative Hearings	Yes	WC cases litigated before JCC, with appeal to 1 st Dist. Ct. Appeals (special jurisdiction over WC cases), with appeal thereafter to state supreme court.
Georgia	ALJ of the Legal Division, Board of WC	No	WC cases litigated before an ALJ, with appeal to a three-member Board (the Appellate Division); in their judicial capacity, the three members of the Board function as an appellate review panel, which hears and reviews cases when a party files an appeal from an award of an ALJ; appeal thereafter to Superior Court, and then to state supreme court.
Hawaii	Hearings Officer of the Director of the Disability Compensation Division, Department of Labor	No	WC cases litigated before Hearings Officer, appeal to Labor & Industrial Relations Appeals Board (LIRAB); judicial review thereafter in Intermediate Court of Appeals, and then in state supreme court.
Idaho	Referee or Commissioner of the Industrial Commission	No ²⁷	WC cases litigated before the Industrial Commission or its referee – full Commission may grant reconsideration and alter findings*; appeal thereafter to Idaho Supreme Court, which undertakes substantial evidence review.
Illinois	Arbitrator of the WC Commission	No	WC cases litigated before an Arbitrator of the Commission; review thereafter by Commission, which has “original jurisdiction” and is not bound by credibility determinations of arbitrator; appeal thereafter to district court, then to appellate court (which has a “Workers’ Compensation Commission Division”), and then to state supreme court
Indiana	“Single Hearing Member” of Workers’ Compensation Board	No	WC cases litigated before a single member of the WC Board; appeal thereafter to full board, which generally does not take further evidence. Judicial review thereafter in Court of Appeals (supreme court may take case by transfer).
Iowa	Deputy Commissioner, Division of WC, “Workforce Development” Department	No	WC cases litigated before the Deputy Commissioner; any party aggrieved by a decision of deputy commissioner may appeal to the Commissioner, who “may affirm, modify, or reverse the decision of a deputy commissioner or the commissioner may remand” Appeal thereafter to District Court, and then to Supreme Court; these two courts undertake substantial evidence review.
Kansas	ALJ of the Division of WC, Department of Labor	No	WC cases litigated before an ALJ. Appeal <i>de novo</i> to WC Appeals Board, which reviews the record made by the ALJ. Appeal thereafter, based on substantial evidence, to Kansas Court of Appeals, and thereafter to state supreme court.
Kentucky	ALJ of the Department of Workers’ Claims	Yes	WC cases litigated before an ALJ of the Commission; appeal thereafter is to WC Board, which undertakes review for whether decision of ALJ is “clearly erroneous,” or whether ALJ has otherwise been arbitrary and capricious; appeal thereafter to Court of Appeals and then to state supreme court.
Louisiana	WCJ of the Office of WC, Workforce Commission	Yes	WC cases litigated before a WCJ of the Office of WC; appeal thereafter to Court of Appeals and then to state supreme court.
Maine	Hearing Officer of the WC Board	Yes	WC cases litigated before a hearing officer of the WC Board. According to Board’s website, appeal thereafter is to

²⁷ **Idaho:** As a party may appeal directly from a referee’s decision to the Idaho Supreme Court, in some circumstances the first level fact-finder may be the final fact-finder.

			the state supreme court, which is not obliged to accept such appeal: “[A party] may appeal the decision ... to the Supreme Judicial Court The Supreme Judicial Court does not have to hear your appeal. They can choose which cases they want to hear.”*
Maryland	Commissioner of the WC Commission	No	WC cases litigated before a single Commissioner of the Commission. Appeal thereafter to trial court (county circuit court), where trial (including jury trial) <i>de novo</i> is possible; under statute, “the decision of the Commission is presumed to be <i>prima facie</i> correct.”
Massachusetts	Administrative Judge (AJ) of the Department of Industrial Accidents, Labor and Workforce Development	Yes	WC cases litigated before the Division of Dispute Resolution. If no agreement is reached at Conciliation, AJ convenes an informal conference and thereafter issues a temporary order; either party may thereafter appeal and request a formal <i>de novo</i> hearing with the AJ; appeal thereafter to Reviewing Board, made up of six Administrative Law Judges (ALJs). Two panels of three ALJs function as appellate body of the DIA; appeal thereafter to state supreme court.
Michigan	Magistrate, WC Board of Magistrates, Michigan Administrative Hearing System	Yes	WC cases litigated before a Magistrate; appeal thereafter to the Workers’ Compensation Appellate Commission, and then to the Michigan Court of Appeals and state supreme court. Note: Effective August 1, 2011, the Workers’ Compensation Appellate Commission became the Michigan Compensation Appellate Commission.
Minnesota	Compensation Judge of the WC Division, Department of Administrative Hearings	Yes	WC cases litigated before a compensation judge. Appeal thereafter to a special Workers’ Compensation Court of Appeals, and supreme court thereafter.
Mississippi	ALJ of the Workers’ Compensation Commission	No	WC cases litigated before ALJ of the Commission. Appeal thereafter to Commission, and then to Circuit Court and state supreme court.
Missouri	ALJ of the Division of WC, Department of Labor	No	WC cases litigated before an ALJ of the Division. Appeal thereafter to the Labor and Industrial Relations Commission, and then to Court of Appeals and state supreme court.
Montana	WCJ of the Workers’ Compensation Court	Yes	WC cases litigated before the WC Court (one judge). A direct appeal thereafter may be taken to the Montana Supreme Court, which exercises substantial evidence review.
Nevada	Hearing Officer of the Department of Administration	No	WC cases litigated before a Hearing Officer. Appeal thereafter <i>de novo</i> to the Appeals Officer, who is the final fact-finder. Judicial review follows in the district court and then in state supreme court.
Nebraska	Trial Judge of the Workers’ Compensation Court (WCC)	Yes	WC cases litigated before a single trial judge of the seven-member WCC, with appeal on substantial evidence review to three-member review panel of the WCC. Appeal thereafter to Court of Appeals and/or to state supreme court.
New Hampshire	Hearing Officer of the Commissioner	No	WC cases litigated before a hearing officer; <i>de novo</i> review thereafter before Compensation Appeal Board (CAB), which hears evidence. Judicial review thereafter in state supreme court.
New Jersey	Judge of Compensation,	Yes	WC cases litigated before JWC; judicial review in Superior

	Division of WC, Department of Labor & Workforce Development		Court and thereafter in state supreme court.
New Mexico	WCJ, WC Administration	Yes	WC cases litigated before the WCJ. Appeal thereafter to Court of Appeals, and then by permission to state supreme court.
New York	Workers' Compensation Law Judge of the WCB	No	WC cases litigated before WCLJ. Appeal thereafter to Board, and then to Appellate Division of Supreme Court (trial court). Review thereafter in New York Court of Appeals.
North Carolina	Deputy Commissioner of the Industrial Commission	No	WC cases litigated before the Deputy Commissioner. Appeal thereafter to the Full Commission, which is the final fact-finder. Judicial review in Court of Appeals and, thereafter, in state supreme court.
North Dakota	ALJ of the Office of Administrative Hearings	No	WC cases litigated before ALJ, who makes a recommendation to Workforce Safety & Insurance (WSI) on whether WSI's decision is correct; WSI conducts review "to ensure that the facts and the law support the decision" and issues final order; appeal thereafter to district court, and then to state supreme court.
Ohio	District Hearing Officer (DHO) of the Industrial Commission ²⁸	No	WC cases litigated before DHO, with appeal to Staff Hearing Officer (SHO), and then, with permission, to Industrial Commission. Appeal available thereafter to trial court, which will convene jury or bench trial; at this level, facts may be found again. Appeal thereafter to Court of Appeals and state supreme court.
Oklahoma	Trial Judge of the Workers' Compensation Court	Yes	WC cases litigated before a single judge; awards are final unless appealed to a panel of three WC Court judges, or directly to the Supreme Court; an order of the three-judge panel may be appealed to the Supreme Court.
Oregon	ALJ of the Hearing Division of the Board	No	WC cases litigated before ALJ, with appeal to the Board, which can make new or additional findings; judicial review in Court of Appeals, then to state supreme court.
Pennsylvania	WCJ of the Department of Labor & Industry, Office of WC Adjudication	Yes	WC cases litigated before WCJ; appeal thereafter to WC Appeal Board, which reviews for substantial evidence and error of law. Appeal thereafter to Commonwealth Court and then, with permission, to state supreme court.
Rhode Island	Trial Judge of the Workers' Compensation Court	Yes ²⁹	WC cases litigated before trial judge of the WCC, with appeal on "clearly erroneous" standard to Appellate Division of WCC. Judicial review in state supreme court.
South Carolina	Commissioner of the Industrial Commission	No	WC cases litigated before a single commissioner; appeal thereafter to a panel of three commissioners, then to a panel of six commissioners ("Full Commission"); for injuries after 2007, judicial review is to Court of Appeals, and then state supreme court.
South Dakota	ALJ of the Department of Labor	No	WC cases litigated before an ALJ with appeal to the Secretary of the state DOL; judicial review in circuit court and then state supreme court, which undertakes "clearly erroneous" review and reserves the right to reweigh

²⁸ **Ohio:** The decision of the "Staff Hearing Officer" (SHO) of the Industrial Commission, however, can be final as to the fact-findings if the Commission denied review.

²⁹ **Rhode Island:** Appellate Division may be able to reassess credibility if it first finds that trial judge has made findings of fact that are "clearly erroneous."

			credibility.
Tennessee	Trial Judge of the Circuit Court	No	WC cases litigated before a trial judge of the circuit court; appeal to state supreme court, including the Special WC Appeals Panel; credibility can be reassessed on appeal: “The standard of review of issues of fact is <i>de novo</i> upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise.”
Texas	Hearing Officer of the WC Commission	No	WC cases litigated before hearing officer after mandatory benefit review conference, with appeal to Appeals Panel. On basic issues of compensability and eligibility, appeal <i>de novo</i> to district (trial) court for bench or jury trial; in such cases, trial court is final fact-finder. On collateral issues, Appeals Panel is final fact-finder and court undertakes substantial evidence review. Appeal thereafter to Court of Appeals, and then to state supreme court.
Utah	ALJ of the Utah Labor Commission, Adjudication Division	No	WC cases litigated before ALJ, with appeal to Utah Labor Commission Appeals Board; judicial review thereafter in Court of Appeals, and then in state supreme court.
Vermont	Hearing Officer, Vermont Department of Labor (for the Commissioner)	No	WC cases litigated before Commissioner, though hearing officer makes record for Commissioner, Department of Labor, who is the initial fact-finder. Appeal to trial court on certified issues, which may include factual issues. Trial <i>de novo</i> in Superior (trial) court, which may include jury trial. Appeal thereafter to state supreme court.
Virginia	Deputy Commissioner of the WC Commission	No	WC cases litigated before Deputy Commissioner, with appeal to Full Commission; judicial review thereafter in the Court of Appeals and the state supreme court
Washington	Industrial Appeals Judge (IAJ), of the Bd. of Indus. Ins. Appeals (BIIA)	No	WC cases litigated before IAJ (who issues a proposed D&O), with appeal to BIIA. Appeal thereafter to superior court (trial court), which may involve a jury trial. Judicial review to Court of Appeals, and then to state supreme court.
West Virginia	ALJ of the Office of Judges, Insurance Commission	Yes	WC cases litigated before ALJ, with recourse thereafter to Board of Review, which is essentially appellate review. Appeal, with permission, to state supreme court.
Wisconsin	ALJ of the WC Div., Dept. of Workforce Development	No	WC cases litigated before ALJ, with appeal to the Labor & Industry Review Commission. Judicial Review in the circuit court, with appeal thereafter to Court of Appeals and then to state supreme court.
Wyoming	Hearing Examiner of the Office of Administrative Hearings	Yes	WC cases are litigated before Hearing Examiner, then judicial review in District Court; appeal thereafter to state supreme court.
District of Columbia	ALJ of the D.C. Dept. of Employment Services (DES)	Yes	WC cases litigated before ALJ, appeal to Compensation Review Bd. (CRB), DC DES; judicial review thereafter in D.C. Court of Appeals.
LHWCA	ALJ of the US Department of Labor, Office of ALJ’s (OALJ)	Yes	WC cases litigated before ALJ, with appeal to Benefits Review Board; judicial review in U.S. Court of Appeals and then, with permission, to U.S. S.Ct.

TABLE 2

WORKERS' COMPENSATION AND ADJUDICATORY POWER
FIFTY STATES AND DISTRICT OF COLUMBIA, LHWCA (2012)

STATUTE AND CASE LAW:
FACT-FINDING, APPEAL, AND STAY

~ David B. Torrey³⁰

State	Title, 1 st Level Hearing Officer	1 st Lev. H.O. Fact- Finder?	Stay on Appeal to Comm'n or Ct?	Selected Statute(s)	Illustrative Case
Alabama	Trial judge of the County Circuit Court	Yes	No	Code of Ala. § 25-5-81(1); Code of Ala. § 25-5-81(2).	<i>DeShazo Crane Co., LLC v. Harris</i> , 2009 Ala. Civ. App. LEXIS 489 (Ct. Civ. App. 2009) .
Alaska	WC Board of Dept. of Labor & Workforce Development ³¹	Yes	No	Alaska Statutes § 23.30.128.	<i>Pietro v. Unocal Corp.</i> , 233 P.3d 604, 610 (Alaska 2010).
Arizona	ALJ of the Industrial Commission	Yes	No ³²	A.R.S. § 23-942; A.R.S. § 23-943.	<i>Vandever v. Industrial Commission</i> , 714 P.2d 866 (Ct. Appeals AZ 1985) .
Arkansas	ALJ of the WC Commission	No	Yes	Arkansas Code § 11-9- 205; Arkansas Code § 11-9- 711.	<i>Wilson v. Cargill, Inc.</i> , 873 S.W.2d 171 (Ct. Appeals Ark. 1994).
California	WCJ of the WC Appeals Board	No	No	Labor Code § 5310; Labor Code § 5315.	<i>Coast Framing, Inc. v. WCAB (Palacio)</i> , 2005 Cal. Wrk. Comp. LEXIS 293 (Ct. Appeals CA 2005).
Colorado	ALJ of Office of Administrative Courts	Yes	Yes	C.R.S. § 8-43-301(8).	<i>Wecker v. TBL Excavating</i> , 908 P.2d 1186 (Ct. Appeals Colorado 1995).
Connecticut	Commissioner of the WC Commission	Yes	Yes	Conn. Stat. § 31-298; Conn. Stat. § 31-280b.	<i>Healey v. Hawkeye Construction</i> , 4 A.3d 858 (App. Ct. Connecticut 2010).
Delaware	Industrial Accident Board	Yes	Yes	19 Del. C.	<i>Steppi v. Conti Elec., Inc.</i> ,

³⁰ Workers' Compensation Judge, Pennsylvania Department of Labor & Industry, Pittsburgh, PA.

³¹ **Alaska:** Two members of a quasi-judicial hearing panel of the Alaska WC Board constitute a quorum for taking action on a disputed benefits claim.

³² **Arizona:** An automatic stay *does* apply upon a party's request for reconsideration; no stay on further appeal to Court of Appeals.

	or, upon consent, hearing officer (all of Dept. of Labor, OWC)			§ 2301A; 19 Del. C. § 2301B.	991 A.2d 19 (S. Ct. Del. 2010).
Florida	Judge of Comp'n Claims (JCC), Office of JCC's, Florida Division of Administrative Hearings	Yes	No	Fla. Stat. § 440.271; Fla. Stat. § 440.33; Fla. Stat. § 440.45.	<i>James W. Windham Builders, Inc. v. Van Overloop</i> , 951 So.2d 40 (Fla. Ct. App., 1 st Dist. 2007).
Georgia	ALJ	No	Yes	O.C.G.A. § 34-9-47; O.C.G.A. § 34-9-48; O.C.G.A. § 34-9-103.	<i>Georgia Mountain Excavation, Inc. v. Dobbins</i> , 710 S.E.2d 205 (Ct. Appeals Georgia 2011).
Hawaii	Hearings Officer of the Director	No	No	Hawaii Statutes § 386-87.	<i>Freedle v. City and County of Honolulu</i> , 2007 Haw. App. LEXIS 602 (Int. Ct. Appeals Hawaii 2007).
Idaho	Referee or Commissioner	No	Yes	Idaho Code § 72-506(1); Idaho Code § 72-717.	<i>Stewart v. Sun Valley Co.</i> , 94 P.3d 686 (S. Ct. Idaho 2004).
Illinois	Arbitrator	No	No	820 ILCS § 305/19 (e); 820 ILCS § 305/19 (f).	<i>R&D Thiel v. Illinois Workers' Compensation Commission (Robledo)</i> , 923 N.E.2d 870 (App. Ct. Illinois 2010)
Indiana	"Single Hearing Member" of Workers' Compensation Board	No	Yes	Burns Ind. Code Ann. § 22-3-1-3. 631 I.A.C. § 1-1-15.	<i>AG One Co-Op v. Scott</i> , 914 N.E.2d 860 (Ct. Appeals Indiana 2009).
Iowa	Deputy Commissioner, Division of WC, "Workforce Development" Department	No	Yes	Iowa Code § 86.2; Iowa Code § 86.24; Iowa Code § 86.26.	<i>Beef Products, Inc. v. Rizvic</i> , 2011 Iowa App. LEXIS 859 (Ct. Appeals Iowa 2011).
Kansas	ALJ of the Division of WC, Department of Labor	No	No	K.S.A. § 44-555c; K.S.A. § 44-556.	<i>Rausch v. Sears Roebuck & Co.</i> , 263 P.3d 194 (Ct. Appeals Kansas 2011).
Kentucky	ALJ of the Department of Workers' Claims	Yes	Yes	KRS § 342.215; KRS § 342.275; KRS § 342.285; KRS § 342.290.	<i>Jefferson County Public Schools v. Stephens</i> , 208 S.W.3d 862 (S. Ct. Ky. 2006).
Louisiana	WCJ of the Office of WC, Workforce Commission	Yes	Yes	La. R.S. § 3:1291(C)(1) La. R.S.	<i>Chaisson v. Philip Services Corp.</i> , 917 So.2d 514 (Ct. Appeals

				§ 23:1310.1; La. R.S. § 23:1310.50.	Louisiana 2005).
Maine	Hearing Officer	Yes ³³	No	39-A M.R.S. § 152; 39-A M.R.S. § 318; 39-A M.R.S. § 320; 39-A M.R.S. § 322(3).	<i>Higgins v. H.P Hood, Inc.</i> , 926 A.2d 1176 (S. Ct. Me. 2007).
Maryland	Commissioner	No	No	Md. Labor & Employment Code § 9-745(b),(c).	<i>General Motors Corp. v. Bark</i> , 555 A.2d 542 (Ct. Special Appeals Maryland 1989).
Massachusetts	Administrative Judge (AJ) of the Department of Industrial Accidents, Labor and Workforce Development	Yes	No	M.G.L. c. 152 § 11C.	<i>Murphy v. Commissioner</i> , 612 N.E.2d 1149 (S. Ct. Massachusetts 1993).
Michigan	Magistrate, WC Board of Magistrates*	Yes	No	MCL § 418.206; MCL § 418.861a.	<i>Mudel v. Great Atlantic & Pacific Tea Co.</i> , 614 N.W.2d 607 (S. Ct. Michigan 2000).
Minnesota	Compensation Judge of the WC Division, Department of Administrative Hearings	Yes	Yes	Minn. Stat. § 176.421.	<i>Stately v. Red Lake Builders et al.</i> , 2010 MN Wrk. Comp. LEXIS 99 (Minnesota WC Ct. Appeals 2010).
Mississippi	ALJ of the Workers’ Compensation Commission	No	Yes	Miss. Code § 71-3-85; Miss. Code § 71-3-51.	<i>Short v. Wilson Meat House</i> , 36 So.3d 1247 (S. Ct. Miss. 2010).
Missouri	ALJ of the Division of WC, Department of Labor	No	Yes	R.S. Mo. § 287.495.	<i>Vice v. Advantage Waste Services, Inc.</i> , 298 S.W.3d 145 (Ct. Appeals Missouri 2009).
Montana	WCJ of the Workers’ Compensation Court	Yes	No	Mont. Code § 39-71-2901; Mont. Code § 39-71-2904.	<i>Michalak v. Liberty Northwest Ins. Corp.</i> , 175 P.3d 893 (S. Ct. Montana 2008).
Nebraska	Trial Judge of the Workers’ Compensation Court (WCC)	Yes	No	R.R.S. Neb. § 48-152; R.R.S. Neb. § 48-156; R.R.S. Neb. § 48-177; R.R.S. Neb. § 48-178; R.R.S. Neb. § 48-179; R.R.S. Neb.	<i>Al-Saddi v. Tecumseh Poultry</i> , 2010 NE Wrk. Comp. LEXIS 1232 (Nebraska WCC 2010).

³³ **Maine:** If Hearing Officer makes a special request, review by the Full Board may be undertaken. See 39-A M.R.S. § 320.

				§ 48-185.	
Nevada	Hearing Officer of the Department of Administration	No	No	Nevada Revised Statutes § 616C.315; Nevada Revised Statutes § 616C.330; Nevada Revised Statutes § 616C.340; Nevada Revised Statute § 616C.370.	<i>Vredenburg v. Sedgwick CMS and Flamingo Hilton-Laughlin</i> , 188 P.3d 1084 (Nevada S. Ct. 2008).
New Hampshire	Hearing Officer of the Commissioner	No	No	RSA § 281-A:42-b; RSA § 281-A:42-a; RSA § 281-A:43.	<i>Appeal of Carnahan</i> , 993 A.2d 224 (S. Ct. New Hampshire 2010).
New Jersey	Judge of Compensation, Division of WC, Department of Labor & Workforce Development	Yes	No	N.J. Statutes § 34:15-49.	<i>Sager v. O.A. Peterson Constr. Co.</i> , 862 A.2d 1119 (N.J. Supreme Ct. 2004).
New Mexico	WCJ, WC Administration	Yes	No	N.M. Stat. Ann. § 52-5-2; N.M. Stat. Ann. § 52-5-8.	<i>Ortiz v. Estate of Baros</i> , 237 P.3d 707 (S. Ct. New Mexico 2010).
New York	Workers' Compensation Law Judge of the WCB	No	No	NY CLS Work Comp § 140; NY CLS Work Comp § 142; NY CLS Work Comp § 150.	<i>Jones v. New York State Dept. Corrections</i> , 825 N.Y.S.2d 316 (S. Ct. New York App. Div. 2006).
North Carolina	Deputy Commissioner of the Industrial Commission	No	Yes	N.C. Gen. Stat. § 97-85; N.C. Gen. Stat. § 97-86.	<i>Johnson v. Southern Tire Sales & Service</i> , 599 S.E.2d 508 (S. Ct. No. Carolina 2004).
North Dakota	ALJ of the Office of Administrative Hearings	No	No	N.D. C.C. § 28-32-46	<i>Rojas v. Workforce Safety and Insurance and Holland Enterprises, Inc.</i> , 703 N.W.2d 299 (S. Ct. No. Dakota 2005).

Ohio	District Hearing Officer (DHO) of the Industrial Commission ³⁴	No	No	O.R.C. § 4123.512.	<i>Luckett v. Ryan</i> , 2011 Ohio App. LEXIS 2545 (Ct. Appeals Ohio 2011).
Oklahoma	Trial Judge of the Workers' Compensation Court	Yes	No	85 Oklahoma Statutes § 340	<i>Dunkin v. Instaff Personnel (American Home Ass.)</i> , 164 P.3d 1057 (S. Ct. Oklahoma 2007).
Oregon	ALJ of the Hearing Division of the Board	No	Yes	Oregon Revised Statutes § 656.295(5); Oregon Revised Statutes § 656.295(6).	<i>Pietrzykowski v. Albertsons, Inc.</i> , 157 P.3d 1268 (Ct. Appeals Oregon 2007).
Pennsylvania	WCJ of the Dept. of Labor & Industry Office of Adjudication	Yes	No	Section 423(a) of the Act, 77 P.S. § 853; Section 423(c) of the Act, 77 P.S. § 854.2.	<i>Kasper v. WCAB (Perloff Brothers, Inc.)</i> , 769 A.2d 1243 (Pa. Commw. 2001).
Rhode Island	Trial Judge of the Workers' Compensation Court	Yes	No	RI Code § 28-35-28(a); RI Code § 28-35-28(b).	<i>Diocese of Providence v. Vaz</i> , 679 A.2d 879 (S. Ct. Rhode Island 1996).
South Carolina	Commissioner of the Industrial Commission	No	Yes	S.C. Code Ann. § 42-3-20 (C).	<i>Hargrove v. Titan Textile Co.</i> , 599 S.E.2d 604 (Ct. Appeals So. Carolina 2004).
South Dakota	ALJ of the Department of Labor	No	No	S.D. Codified Laws § 62-7-19.	<i>Vollmer v. Wal-Mart Store, Inc.</i> , 729 N.W.2d 377 (So. Dakota S. Ct. 2007).
Tennessee	Trial Judge of the County Circuit Court	No	*	Tenn. Code Ann. § 50-6-203; Tenn. Code Ann. § 50-6-236.	<i>Griffin v. Walker Die Casting, Inc., et al.</i> , 2010 Tenn. LEXIS 1020 (S. Ct. Tennessee, Sp. WC Appeals Panel 2010).
Texas	Hearing Officer of the Dept. of Insurance, DWC	No	No	Tex. Lab. Code § 410.165; § 410.168; § 410.203; § 410.304; § 410.304.	<i>State Office of Risk Management v. Trujillo</i> , 267 S.W.3d 349 (Ct. Appeals TX 2008).
Utah	ALJ of the Utah Labor Comm'n, Adjudication Div.	No	Yes	Utah Code Ann. § 34A-2-801; Utah Code	<i>Carter v. Labor Comm'n Appeals Bd.</i> , 153 P.3d 763 (Ct. Appeals Utah 2006).

³⁴ **Ohio:** The decision of the "Staff Hearing Officer" (SHO) of the Industrial Commission, however, can be final as to the fact-findings if the Commission denied review.

				Ann. § 34A-1-303	
Vermont	Hearing Officer, Vermont Department of Labor (for the Commissioner)	No	No	21 V.S.A. § 670; 21 V.S.A. § 671.	<i>Estate of Albert George v. Vermont League of Cities and Towns</i> , 993 A.2d 367 (S. Ct. Vermont 2010).
Virginia	Deputy Commissioner, WC Commission	No	Yes	Va. Code Ann. § 65.2-201; Va. Code Ann. § 65.2-203.	<i>Karban v. Universal Fiber Systems, LLC</i> , 2010 Va. App. LEXIS 274 (Ct. Appeals Virginia 2010).
Washington	Industrial Appeals Judge (IAJ), of the Bd. of Indus. Ins. Appeals (BIIA)	No	No	Rev. Code Wash. § 51.52.104; Rev. Code Wash. § 51.52.106; Rev. Code Wash. § 51.52.110 Rev. Code Wash. § 51.52.115	<i>Chunyk & Conley/Quad C v. Williams</i> , 2008 Wash. App. LEXIS 1595 (Ct. Appeals Wash. 2008).
West Virginia	ALJ of the Office of Judges, Insurance Commission	Yes	No	West Virginia Code § 23-5-12; West Virginia Code § 23-5-15	<i>Fenton Art Glass Co. v. West Virginia Office of Ins. Commissioner</i> , 664 S.E.2d 761 (S. Ct. West Virginia 2008).
Wisconsin	ALJ of the WC Div., Dept. of Workforce Development	No	Yes	Wis. Stat. § 102.18; Wis. Stat. § 102.23.	<i>Luetkens v. Wis. Dept. of Corrections</i> , 2010 WI Wrk. Comp. LEXIS 117 (Wisconsin. LIRC 2010).
Wyoming	Hearing Examiner of the Office of Administrative Hearings	Yes	No	Wyo. Stat. § 27-14-601; Wyo. Stat. § 27-14-614.	<i>Herrera v. State of Wyoming</i> , 236 P.3d 277 (S. Ct. Wyoming 2010).
District of Columbia ³⁵	ALJ of the D.C. Dept. of Employment Services (DES)	Yes	No	D.C. Code § 32-1521.01.	<i>Washington Metro. Area Trans. Auth. v. DC DES (Browne)</i> , 926 A.2d 140 (D.C. Ct. Appeals 2007).
LHWCA	ALJ of the US Department of Labor, Office of ALJ's (OALJ)	Yes	No	33 USC § 921.	<i>Bath Iron Works v. Fields</i> , 599 F.3d 47 (1 st Cir. 2010)

³⁵ **District of Columbia:** Law referenced is “DC Workers’ Compensation Act of 1979, as amended, DC Code §32-1501 et. seq. (private sector).” Law regarding review was amended in 2004.