

PRACTICE TIP:

WRITING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS

BY TERESA P. FRONCEK RANKIN, ESQ.

Hurrah! You've successfully presented your evidence, met your burden of proof and won your contested case before the hearing officer. Now the officer has ordered you to write the findings of fact, conclusions of law and the order for the officer's approval and signature. Where do you begin? Here are some tips for writing these documents to gain your hearing officer's approval and to withstand reversal by a court.

Gather Your Material

Prepare to write by gathering and reviewing any documentary or other evidence you need for the findings of fact, obtaining copies of, or citations to, the statutes and regulations or cases for the conclusions of law, reviewing the transcript of the hearing (if necessary), and reviewing samples of prior findings of fact, conclusions of law and orders written by the hearing officer. Also, pull out from your trial notebook the outline of the findings of fact, conclusions of law and order with annotations about the relevant burdens of proof, case law and statutes you drafted before the hearing.

Set Up Your Document

Format your document so it is identical to the samples you received from the hearing officer or agency. If no sample is available, following the format described in this article should meet the needs of most hearing officers.

Fill In the Document

Caption:

Include the parties' names, docket or file number and related information.

continued on page 27



WRITING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS

continued from page 25

Introduction or Statement of the Case:

Write a brief paragraph describing the parties and their attorneys and listing the agency, hearing officer, date or dates of the hearing and statutory authority. This paragraph may also include comments about procedural events or orders affecting the final order issued by the hearing officer – for example, the inclusion of indispensable parties and intervening orders. Make sure to indicate whether or not the order is made upon remand from a court, and similar concerns. Be sure to cover all the issues describing “who, what, when, where and how” in this introductory paragraph.

Issue:

This is a very brief statement or question defining the issue presented at the hearing; for example:

“Issue: *Should the injured worker continue to receive rehabilitation benefits?”*

Conclusion:

This is another very brief sentence containing the conclusion or order made by the hearing officer; for example:

“Conclusion: *The severity of the worker’s injuries and the disability award requires the continued payment of rehabilitation benefits.”*

Note that the issue and conclusion are both presented at the beginning of the document. They are the points every reader is looking for – the parties, opposing counsel, the hearing officer and any reviewing judge or the law clerks. Therefore, place them at the beginning of the document. The conclusion as an order will be repeated at the end of the document.

Findings of Fact

The findings of fact are the essence of any decision made in a contested case. They tell the story of the case. On appeal, a decision may be reversed by a reviewing court if it is not based upon substantive facts. Therefore, the findings must include the

continued on page 28

WRITING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS

continued from page 27

substantive facts meeting the required burden of proof and supporting the conclusions of law.

The facts should be organized chronologically or sequentially and describe the story of the case in simple narrative sentences. If there are several issues or events involved in the facts, use subheadings to break up the topics. Although some agencies continue to use numbered sentences or paragraphs in the findings of fact, if that format is not required, do not use numbers. It is better to tell the story with short narrative sentences and paragraphs without the distraction of numbering them.

Conclusions of Law

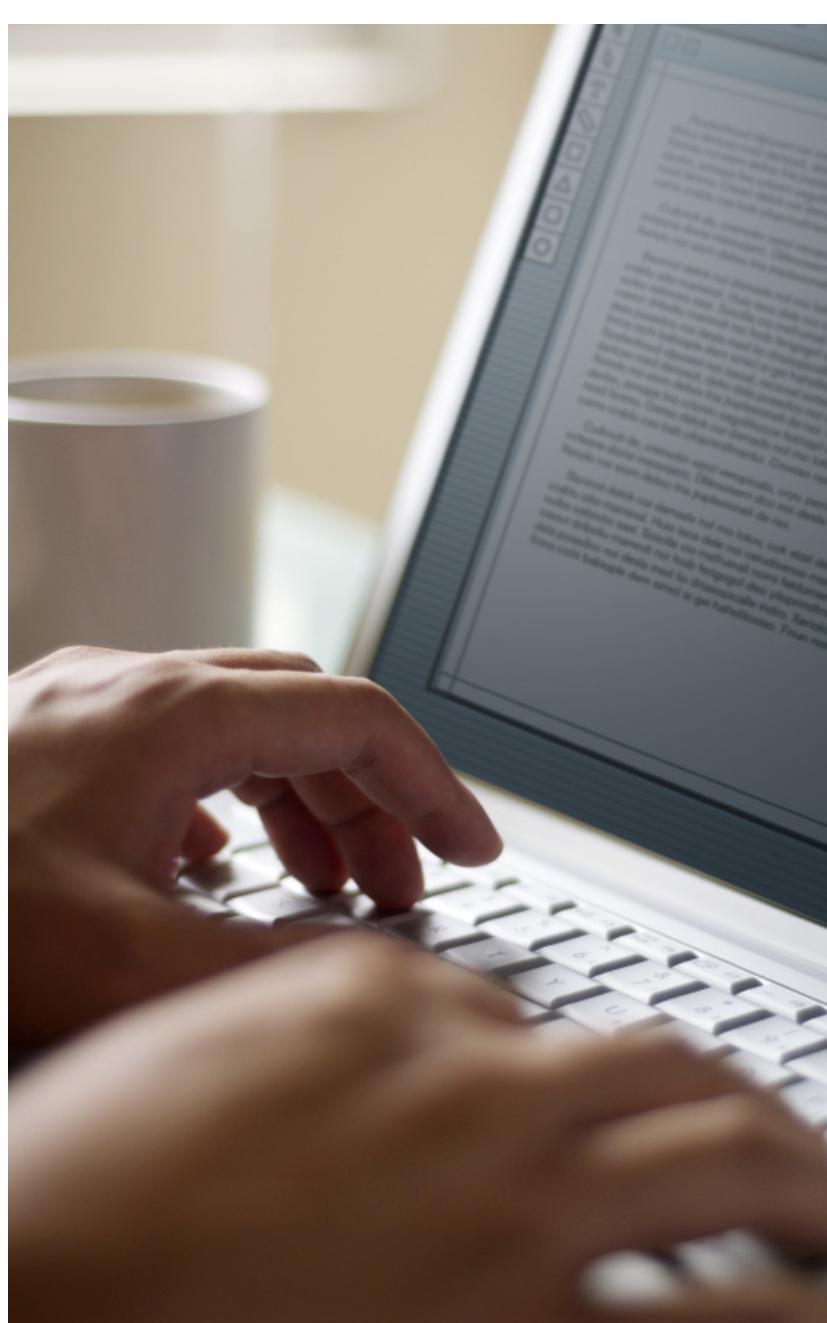
If you wrote the findings of fact clearly and concisely, these will be a snap to write. Although you can use more complex sentences in the conclusions than in the findings of fact, keep them brief. Avoid simply quoting statutes, regulations or case law for the conclusions; instead, paraphrase the relevant law. If you are not using an analysis or discussion section in your document, you must refer to any relevant facts as you describe the applicable law.

For technical issues, you may wish to provide the agency's statutory authority, describe its special expertise or legislative direction regarding that expertise, and any historical or other actions taken by the agency supporting the finality of the decision being made.

Analysis or Discussion:

If the findings of fact are brief and the issues of the contested case straightforward, the analysis and discussion may be included within the conclusions of law and this section could be omitted. However, if the issues are complex, or a lengthy discussion about burdens of proof, standing, the weight given to evidence or similar issues is necessary, you should include an analysis or discussion section. In this section, apply the law to the facts and refer to or briefly describe the particular finding of fact. Each conclusion of the hearing officer must be supported by reference to the findings of facts.

If a fact demonstrates a particular burden of proof has been met, because the hearing officer gave greater weight to certain evidence, refer to



that finding of fact or specific evidence and describe the weight given to that evidence. For example, "Dr. X was the worker's treating physician and her testimony and examination was relied upon to resolve the dispute between the opinions of Dr. A and Dr. X regarding the cause of the worker's pain."¹

The analysis and discussion section of your document should consider, explain, compare, contrast and resolve any issues not otherwise described in the findings of fact and conclusions of law.

Order

The order should state the remedy you requested during the hearing. It should reflect both the conclusion stated at the outset of your document and include any instructions necessary to carry out the hearing officer's decision. For example: "The decision of the insurer denying

rehabilitation benefits is reversed and the appeal is remanded for the payment of appropriate benefits.”

Signature of the Hearing Officer:

Leave a line for the signature of the hearing officer. If the hearing officer’s order must be approved by an agency executive or other person, leave a signature line for that person.

Statement of Appeal Rights:

Agencies typically have a specific format describing the appeal rights available from the decisions of its hearing officers. That format should be available on copies of prior orders or in the statutes or regulations relied upon by the agency. If the agency has no specific statute, paraphrase the rights for filing the appeal to district court provided in NRS 233B.130.

Other Recommendations

When writing any legal document, remember your audience. For findings of fact, conclusions of law and orders, the audience may include your client, the opposing party and attorney, the hearing officer, any agency head and its staff, a reviewing court, other interested persons and perhaps the press. Your document should be directed to that audience and be professional, brief, concise, clear and accurate. The document should be correct, fair and well-reasoned. Avoid ambiguity and vagueness.

If you prepare these documents frequently, edit your computer formats and the final documents you produce. Do not send a hearing officer unedited documents naming the wrong client or describing the wrong issue simply because you and your staff failed to read the document, including every fact.

Read and edit your final document repeatedly – for format, for content, for typographical or other errors and as often as needed to catch errors. Your final document should accurately reflect the hearing, the issues, the evidence presented and the requirements of the hearing officer and any reviewing court. Producing such a complete and accurate document goes a long way to assuring your success if there is a petition for judicial review. ■

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References:

Mullins, Morell E. *Manual for Administrative Law Judges*, 23 J. Nat’l Ass’n Admin. L. Judges, Special Issue, 2004.
Scalia, Antonin and Bryan A. Garner. *Making Your Case: The Art of Persuading Judges*. Thompson/West, 2008.
Warnock, John P. with Harold C. Warnock. *Effective Writing: A Handbook with Stories for Lawyers*. Parlor Press, 2003.

1 For a discussion about the weight of evidence and burdens of proof for expert medical testimony, see: *Raley’s v. McClanahan*, 117 Nev. 921, 34 P.3d 573 (2001).