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WCB UPDATES POLICY ON SUBMISSION OF VIDEO EVIDENCE

This newsletter is to provide updates on the latest revisions to the Workers' Compensation Board's policy regarding video evidence and how it is to be submitted. [On June 29, 2023 the Board issued a third revision](#) to its policy regarding the submission of video recorded evidence. The revisions to the Board's policy on video recorded evidence [first was issued on August 23, 2022](#) and then [revised again on September 30, 2022](#) for further clarification. The Board has now issued a third revision for further clarification. All three revisions will be covered in this newsletter as will best practices when submitting video evidence.

The [initial revision](#), dated August 23, 2022, to the Board's policy regarding video evidence was essentially to change from parties submitting video via DVD-R to video evidence being submitted via USB flash drive. The first part of the policy adequately summarizes the policy and states:

“Beginning August 29, 2022, the Board will no longer be accepting video evidence via DVD-R and will be transitioning to receive video evidence via USB flash drive. DVD-R will be accepted for 60 days following this announcement. If a video is received via DVD-R after the end of the 60-day period, the submitter will be informed, and they will need to re-submit the evidence via USB flash drive.”

The policy goes on to note the common situations for video evidence submission including supporting a claim for fraud and evidence of an IME. The board does not mention video of alleged accidents being used to controvert a claim and have it disallowed but this would be another common situation where this policy regarding video submission could come into play. In fact, that may be the most pertinent situation for carriers as [12 N.Y.C.R.R 300.38\(f\)](#) requires that all evidence in a controverted claim be submitted 10 days prior to the pre-hearing conference which would include video submission. While our office is always happy to help with submitting video evidence, and have already been complying with this policy for close to a year now, in the pre-hearing conference situation there are times where we may not get the video evidence to our office early enough and a carrier may need to submit the video evidence to the Board themselves to comply with 12 N.Y.C.R.R 300.38(f). While many judges will still allow the video evidence after the pre-hearing conference as long as it is submitted prior to trial this situation is worth noting, and understanding the Board’s current policy on video submission can be important for such a situation.

The Board notes the new submission process will make it easier for the Board Panel and Full Board to review such evidence when it is submitted. The Board also requires that the Video Evidence on the USB must “be formatted so that as part of any subsequent administrative review, Board personnel may play the video recorded evidence on Microsoft’s Windows Media Player or VLC media player.” The submission also must be accompanied by a paper cover letter to identify the case that the video goes with, and this cover letter should include the WCB case number, the claimant’s name, and what is on the USB flash drive. The Board has created a [Evidence Submission Template](#) so that it is easy for parties to supply such information which should be sent

with the USB flash drive. A link to that Evidence Cover Letter can be found [here](#).

The Board provides that the USB flash drive with the Evidence Cover Letter should be mailed to the centralized mailing address: NYS Workers' Compensation Board Centralized Mailing Address P.O. Box 5205 Binghamton, NY 13902.

The Board also notes that if a video is submitted in a way that is not a USB flash drive or the video on the flash drive is not viewable in the specified media players then the Board will send the party an Acknowledgement of Correspondence Received (Form EC-88) to inform the party to send the corrected video within 20 days. The Board notes that the policy regarding USB flash drives took effect August 29, 2022 and asks for cooperation in the new policy to help with better administrative review.

The [second revision](#), dated September 30, 2022, clarifies the prior policy noting that video evidence can be in the following formats: .mp4, .avi, .mkv, .wmv, and .mpeg. The Board also notes that documents submitted with the video evidence can be in the following formats: .txt, .pdf, .doc, and .docx.

The Board notes it is important that no .exe files are on the USB flash drive and states "Executable files cannot be accepted due to security concerns. If the Board receives a USB flash drive that includes an .exe file, the submitter will be informed, and they will need to resubmit the evidence." This revision is important as it specifies exactly what files the Board will and will not accept for video evidence.

The [most recent revision](#), dated June 29, 2023, the policy is further clarified to state that USB flash drive submission is only permitted for video evidence and materials related to such video evidence. The latest revision notes "if a party sends a USB flash drive without any video evidence (or materials related to video evidence), the submitter will be informed that they must resubmit the contents of the USB drive through one of the approved methods described on the Forms page of the Board's website." The revision also notes that "if the party chooses to

resubmit the contents of the USB flash drive to the Board's centralized mailing address, they must print the materials and mail paper copies to the Board." This new revision is essentially just to clarify that you are not supposed to submit typical non-video related forms or documents to the WCB via USB flash drive and the policy regarding USB flash drives only applies to video evidence and materials related to video evidence.

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If you have any questions on these bills or would like to schedule a presentation, please contact us at info@vecchionelaw.com.

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Vecchione, Vecchione, Connors & Cano, LLP

147 Herricks Road, Garden City Park
NY 11040 United States

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