



STATE OF WEST VIRGINIA
PUBLIC EMPLOYEES INSURANCE BOARD

Glen B. Gainer, Jr., Chairman
State Auditor

A. James Manchin
Treasurer of State

John F. Laaberry
Commissioner
Worker's Compensation

Arch A. Moore, Jr.
Governor

STATE CAPITOL COMPLEX
Bldg. 5, 10th Floor
Charleston, West Virginia 25305
(304) 348-7850

Robert D. Chehi
Executive Secretary

NOTICE OF PUBLIC COMMENT PERIOD ON PROPOSED RULE

COMMENT PERIOD

AGENCY: Public Employees Insurance Board

RULE TYPE: West Virginia Procedural Rules

RULE TITLE: Rules of Procedure for Contested Case Hearing and
Declaratory Rulings Chapter 5-16, Series III (1986)

A COMMENT PERIOD ON THE ABOVE PROPOSED RULE HAS BEEN SCHEDULED
AND WILL END ON FEBRUARY 2, 1987 AT 8:30 AM. WRITTEN COMMENTS
ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

PUBLIC EMPLOYEES INSURANCE BOARD
CAPITOL COMPLEX
BUILDING 5, 10th FLOOR
CHARLESTON, WEST VIRGINIA 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.

Robert D. Chehi, Executive Secretary
December 29, 1986

FILED
1986 DEC 22 AM 10:49
SECRETARY OF STATE



STATE OF WEST VIRGINIA
PUBLIC EMPLOYEES INSURANCE BOARD

Glen B. Garner, Jr., Chairman
State Auditor
A. James Manchin
Treasurer of State
John F. Leaberry
Commissioner
Worker's Compensation

Arch A. Moore, Jr.
Governor

STATE CAPITOL COMPLEX
Bldg 5, 10th Floor
Charleston, West Virginia 25305
(304) 348-7850
Robert D. Chehi
Executive Secretary

December 29, 1986

The Honorable Ken Hechler
Secretary of State
Building 1, Suite 157-K
Charleston, West Virginia 25305

Re: Procedural Rules
Series III

Dear Mr. Hechler:

Attached you will find a Comment Period Notice and Procedural Rules for contested case hearings and declaratory rulings per Chapter 5-16, of the State Code.

Please consider this an official filing notice of said rules and to start the required Notice of Comment Period.

Thank you for your help in this matter.

Respectfully,

Robert D. Chehi
Executive Secretary

RDC/nf

Attachments

FILED
1986 DEC 22 AM 10:49
SECRETARY OF STATE

FILED

1986 DEC 22 11 10 49

CLERK OF COURT
STATE OF WEST VIRGINIA

WEST VIRGINIA PROCEDURAL RULES
PUBLIC EMPLOYEES INSURANCE BOARD

Rules of Procedure for Contested Case Hearings
and Declaratory Rulings

Chapter 5-16
Series III
(1986)

WEST VIRGINIA PROCEDURAL RULES
PUBLIC EMPLOYEES INSURANCE BOARD

Rules of Procedure for Contested Case Hearings
and Declaratory Rulings

Chapter 5-16
Series I
(1986)

INDEX

	<u>Page</u>
Section 1. General	1
Section 2. Application	2
Section 3. Definitions	2
Section 4. Hearing	2
Section 5. Continuation and Adjournment	6
Section 6. Transcription of Reported Testimony and Evidence	6
Section 7. Submission of Proposed Findings of Fact and Conclusions of Law; Time for Submission	7
Section 8. Appointment of Hearing Examiner; Function of Hearing Examiner	7
Section 9. Conferences; Informal Disposition of Cases; Disposition of Cases Without Hearing	8
Section 10. Discovery	8
Section 11. Orders; Content	9
Section 12. Declaratory Ruling - Procedures	9
Section 13. Appeal	10
Section 14. Severability	10

WEST VIRGINIA PROCEDURAL RULES
PUBLIC EMPLOYEES INSURANCE BOARD

Chapter 5-16
Series I
(1986)

Subject: Rules of Procedure for Contested Case Hearings and
Declaratory Rulings

Section 1. General

1.1. Scope - These procedural rules establish the general procedures for conducting contested case hearings and the issuance of declaratory rulings. The purpose of these rules is to facilitate the resolution of contested cases in a just, speedy, and inexpensive manner and to provide for declaratory rulings in accordance with Chapter 29A, Article 4, Section 1 of the West Virginia Code of 1931, as amended.

1.2. Authority - These procedural rules are issued under the authority of Chapter 5, Article 16, Section 18 and are related to Chapter 29A, Article 5, Section 1(a) and Chapter 29A, Article 4, Section 1 of the West Virginia Code of 1931, as amended.

1.3. Filing Date - These procedural rules were promulgated on the ____ day of _____, 19__, and were filed on the ____ day of _____, 19__, in the Secretary of State's office.

1.4. Effective Date - These procedural rules became effective on the ____ day of _____, 19__.

Section 2. Application - These procedural rules shall apply to every person, partnership, association, corporation, public corporation or governmental agency affected by any rules, regulations or statutes enforceable by the Public Employees Insurance Board.

Section 3. Definitions

3.1. Agency - means the West Virginia Public Employees Insurance Board.

3.2. Board - means the West Virginia Public Employees Insurance Board.

3.3. Employee - is defined in Chapter 5, Article 16, Section 2, subsection (2) of the West Virginia Code of 1931, as amended, and for the purposes of these regulations means any employee for whom insurance plans, coverage, or services are provided by an employer through the Board.

3.4. Employer - is defined in Chapter 5, Article 16, Section 2, subsection (4) of the West Virginia Code of 1931, as amended, and for the purposes of these regulations means an employer for whom insurance plans, coverage or services are provided by the Board.

3.5. Executive Secretary - means the executive secretary of the West Virginia Public Employees Insurance Board.

Section 4. Hearing

4.1. Demand for Hearing; Form Required - Any employee or employer can demand a hearing to have determined any constitutional rights, legal rights, duties, interests or privileges of specific parties as required by law. Such a

request shall be in writing and shall specify the grounds relied upon as a basis for the relief requested.

4.2. Hearing on Written Demand - When the executive secretary is presented with a demand for a hearing, he or she shall conduct a hearing or cause a hearing to be conducted within forty-five (45) days of receipt of such written demand, unless postponed to a later date pursuant to these rules. However, if the executive secretary shall determine that the hearing demanded:

(A) would involve an exercise of authority in excess of that available under law, or

(B) would serve no useful purpose, the executive secretary shall, within twenty (20) days of the receipt of such demand, enter an Order refusing to grant the hearing as requested, incorporating therein the reason for such refusal. Appeal may be taken from such Order as provided in Chapter 29A, Article 5, Section 4 of the West Virginia Code of 1931, as amended.

4.3. Notice of Hearing - Upon the receipt of a demand for hearing as described in Subsection 4.1 of this Section, the executive secretary shall, within twenty (20) days, provide the party making such demand, any employee or employer and any other party appearing to have an interest therein, with a notice of hearing, providing the executive secretary has not entered an Order denying a hearing as provided in Subsection 4.2 of this Section. Such notice shall contain:

(A) the date, time and place of the hearing;

(B) a short plain statement of the matters to be considered or shall incorporate by reference an attached document so stating;

(C) such other matters as are pertinent thereto.

Such notice shall be given at least ten (10) days in advance of the date of hearing.

4.4. How Hearings Conducted - Hearings shall be conducted as follows:

(A) Any party shall have the right to be represented by an attorney at law, duly qualified to practice in the State of West Virginia;

(B) The agency and employer may be represented by the Office of the Attorney General or counsel. If there is a conflict between the agency and employer, one may be represented by the Attorney General and the other shall be represented by counsel;

(C) The rules of evidence as applied in civil cases in the circuit courts of this state shall be followed. Irrelevant, immaterial or unduly repetitious evidence shall be excluded;

(D) When necessary to ascertain facts not reasonably susceptible to proof under said rules of evidence, evidence not admissible thereunder shall be admitted, except where specifically precluded by law, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs;

(E) The hearing shall be conducted under the rules of privilege recognized by law;

(F) Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference;

(G) Initially, the agency shall be given opportunity to present evidence, including testimony, papers, records, agency staff memoranda and documents in the possession of the agency, in support of its position. The employer, if not represented by the agency, shall then be given such opportunity;

(H) Every party shall have the right to cross-examination of witnesses who testify, and following the conclusion of the agency's and employer's presentation, shall have the right to submit rebuttal evidence;

(I) The agency and employer shall have the right to cross-examine witnesses and provide rebuttal evidence;

(J) Objections to evidentiary offers shall be notes in the record. Any party may vouch the record as to any excluded testimony or other evidence;

(K) Judicial notice shall be taken of judicially cognizable facts. All parties shall be afforded an opportunity to contest the facts so noticed;

(L) Statutes, rules and regulations, and executive orders may be recognized and need not be admitted into the record;

(M) Following the presentation of all the evidence, every party, including the agency and the employer, shall

have the right to offer argument, not to exceed a reasonable time limit as determined by the executive secretary or the hearing examiner.

Section 5. Continuation and Adjournment - Hearing may be continued from one day to another or adjourned to a later date or a different place by announcement thereof at the hearing or by appropriate notice to all parties. A written motion for a continuance shall be filed at least five (5) days prior to the hearing date. Each party, agency or employer shall be permitted one continuance. Any additional continuances shall be granted only upon good cause shown, which shall not include scheduling conflicts.

Section 6. Transcription of Reported Testimony and Evidence

6.1. What Reported - All testimony, evidence, arguments, and rulings on the admissibility of testimony and evidence shall be reported by stenographic notes and characters or by mechanical means.

6.2. Request from any Party - Upon the request to the agency from any party to the hearing, all reported materials shall be transcribed and a copy thereof furnished to such party at such party's sole expense.

6.3. Transcription in the Event a Hearing Examiner is Appointed - In all cases where a hearing examiner is appointed, all reported material shall be transcribed and forwarded to the executive secretary. Any parties requesting a copy of a transcript prepared pursuant to this Subsection shall be furnished a copy at their expense.

6.4. Responsibility for Transcript - The agency shall have the responsibility for making arrangements for the

transcription of the reported testimony and evidence. In the event transcription is required pursuant to this Section, it shall be accomplished with all dispatch.

6.5. Correction of Error in Transcript - Upon the motion of the agency, employer, or any party assigning error or omission to any part of any transcript, the agency, through the executive secretary or the duly appointed hearing examiner, shall settle all differences arising as to whether such transcript truly discloses what occurred at the hearing and shall direct that the transcript be corrected and revised in the respects designated so as to make it confirm to the whole truth.

Section 7. Submission of Proposed Finding of Fact and Conclusions of Law; Time for Submission - Any party, including the agency and employer, may submit proposed findings of fact and conclusions of law within fourteen (14) days after the conclusion of a hearing or, in the event the proceedings of a hearing are transcribed, within fourteen (14) days from the date the final transcript is available.

Section 8. Appointment of Hearing Examiner; Function of Hearing Examiner - The executive secretary may, in the exercise of his or her discretion, appoint a hearing examiner who shall be empowered to issue orders for the production of witnesses and documents, administer oaths and affirmations, examine witnesses under oath, rule on evidentiary questions, hold conferences for the settlement or simplification of issues by consent of the parties, otherwise conduct hearings as provided herein, and issue findings of fact and conclusions of law and recommended decisions or action.

Section 9. Conferences; Informal Disposition of Cases;
Disposition of Cases Without Hearing

9.1. Conferences; Informal Disposition of Cases - At any time prior to the hearing or thereafter, the executive secretary or the duly appointed hearing examiner may hold status and pre-hearing conferences to:

- (A) dispose of procedural request or similar matters;
- (B) simplify or settle issues by consent of the parties; or
- (C) provide for the informal disposition of cases by stipulation, agreed settlement, or consent.

The executive secretary or the duly appointed hearing examiner may cause such conferences to be held on his or her own motion or by the request of any party.

9.2. Disposition of Cases Without Hearing - Where testimony is not necessary for adjudication of any issue, and where agreed to by all parties, cases may be submitted upon documentary evidence. In such instances, all documentary evidence must be received by the agency before the close of business on the day set for the hearing.

Section 10. Discovery

10.1. Depositions Permitted - Evidentiary depositions may be taken and read into evidence the same as in civil actions in the circuit courts of this state.

10.2. Agency and Employer Files - A copy of the agency and/or employer file shall be furnished to any interested party upon request, except for any matter specifically excluded by law.

10.3. Further Pre-hearing Discovery - Upon request and for good cause shown, the executive secretary or hearing examiner may, within proper limits under the circumstances, permit other forms of discovery normally used in trial courts of record in this State.

Section 11. Orders; Content - Within forth-five (45) days following the submission of all evidence, testimony, documents and materials necessary for the proper disposition of the case, including transcripts and proposed findings of fact and conclusions of law, the executive secretary or hearing examiner shall issue his or her findings of fact and conclusions of law and recommended decision or action, all of which shall be tendered to the Board for entry of a final order. Every final order entered by the Board following a hearing conducted pursuant to these rules shall be made pursuant to the provisions of Chapter 29A, Article 5, Section 3 of the West Virginia Code of 1931, as amended. A copy of the order and accompanying decision, findings, and conclusions shall be served upon each party and each party's counsel of record, if any, in person or by registered or certified mail.

Section 12. Declaratory Ruling - Procedures

12.1. On petition of any interested person, the executive secretary may issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any law, rule, regulation or statute enforceable by the Board.

12.2. Any interested person shall petition the executive secretary in writing succinctly stating the facts and issues upon which the declaratory ruling is requested.

12.3. Upon receipt of such petition, the executive secretary may cause a hearing to be held for the presentation of arguments and evidence.

12.4. A declaratory ruling issued upon petition, proper notice, and argument shall not preclude the petitioner from seeking a contested case hearing in accordance with the provisions of these Rules of Procedure for Contested Case Hearings and Declaratory Rulings. Such declaratory ruling shall serve only to explain or to elucidate the applicability to any person, property, or state of facts or any rule or statute enforceable by the Board, and shall not be binding on any person.

Section 13. Appeal - An appeal from any final order entered in accordance with these regulations shall be in accordance with the provisions of Chapter 29A, Article 5, Section 4 of the West Virginia Code of 1931, as amended.

Section 14. Severability - If any provision of these rules or the application thereof to any person or circumstance shall be held invalid, such invalidity thereof shall not affect the provision or application of these regulations which can be given effect without the invalid provision or application, and to this end the provisions of these regulations are declared to be severable.