



WORKERS' COMPENSATION FUND

601 MORRIS STREET
CHARLESTON, WEST VIRGINIA 25301

JOHN D. ROCKEFELLER IV
Governor

TIMOTHY E. HUFFMAN
Commissioner

December 6, 1984

FILED

1984 DEC -6 AM 9 28

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Mr. A. James Manchin
Secretary of State
State Capitol
Suite 157-K
Executive Office
Charleston, WV 25305

Re: Emergency Legislative Rules
Workers' Compensation Commissioner
Series IV, V, and VI
Filed December 6, 1984

Dear Mr. Manchin:

Enclosed herewith for filing in the State Register are two copies of Emergency Legislative Rules promulgated by the Workers' Compensation Commissioner.

The filing includes three series of rules, designated Series IV, Series V, and Series VI, each of which is referred to below. These rules are intended to replace the Emergency Legislative Rules which were filed June 6, 1984, and which would expire by operation of law on December 7, 1984. The content of these emergency rules differs from the content of the prior emergency rules, reflecting amendments that were made upon the basis of public comment and experience with the prior rules. The content is identical to that of the Agency Approved Proposed Legislative Rules which were filed in the State Register and with the Legislative Rule-Making Review Committee on October 25, 1984.

The following is a statement of the facts and circumstances constituting the emergency that necessitates the promulgation of these rules.

The agency must have rules in effect under which it can operate until the Legislature has an opportunity to act upon the Agency Approved Proposed Legislative Rules.

All three series of rules pertain to subject matter that is integrally related to the administration of the Workers' Compensation Fund and its influence upon the health and welfare of injured workers and their dependents. Also, all three series of rules are promulgated for the express purpose of compliance with directives of the Supreme Court of Appeals of West Virginia.

Mr. A. James Manchin
Secretary of State
Page Two
December 6, 1984

Re: Emergency Legislative Rules
Workers' Compensation Commissioner
Series IV, V. and VI
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In the case of Meadows, et al v. Lewis, W.Va. , 307 S.E.2d 625 (1983), the Supreme Court of Appeals of West Virginia directed that the Workers' Compensation Commissioner promulgate administrative rules and regulations specifying internal procedural time limits through which adjudications and awards are made. The essential purpose therefor is to promote and protect the health and welfare of injured workers and their dependents by prompt, efficient delivery of benefits to which they are entitled.

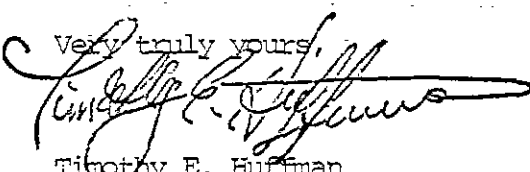
In the case of Meadows, et al v. Lewis, W.Va. , 307 S.E.2d 625 (1983), the Supreme Court of Appeals of West Virginia interpreted pertinent provisions of the West Virginia Code as providing that the Commissioner is required, in certain circumstances, to pay attorney fees and expenses to claimants in addition to the benefits they receive. Such fees and expenses have not previously been paid from the Workers' Compensation Fund. The purpose of these rules is to provide systematic administrative management of the action mandated by the Court.

In the case of UMWA, et al v. Lewis, W.Va. , 309 S.E.2d 58 (1983), the Supreme Court of Appeals of West Virginia ordered the Workers' Compensation Commissioner to ".....establish a procedure by which a claimant can institute an action to suspend or terminate an employer's status as a self-insurer, or to have a substantial fine, payable to the claimant, levied against the employer when a self-insurer is not meeting obligations to claimants....." These rules are designed to accomplish compliance with the order of the Court.

Enclosed herewith is a copy of the Notice of Agency Approval and Submission of the enclosed rules.

Thank you for your cooperation in this matter.

Very truly yours,


Timothy E. Huffman
Commissioner

TEH:WM:cm

Enclosures



WORKERS' COMPENSATION FUND

JOHN D. ROCKEFELLER IV
Governor

601 MORRIS STREET
CHARLESTON, WEST VIRGINIA 25301

TIMOTHY E. HUFFMAN
Commissioner

NOTICE OF AGENCY APPROVAL AND SUBMISSION

Subject: Emergency Legislative Rules of the Workers' Compensation
Commissioner, Series IV, Series V, and Series VI

The above titled Emergency Legislative Rules constitute the official rules approved by the Workers' Compensation Commissioner on the 6th day of December, 1984, and filed pursuant to law in the office of the Secretary of State, State of West Virginia.

Timothy E. Huffman
Commissioner

Entered

The above titled Emergency Legislative Rules are hereby submitted to the Legislative Rule-Making Review Committee.

Timothy E. Huffman
Commissioner

Entered

FILED
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
WORKERS' COMPENSATION COMMISSIONER

Chapter 23-1
Series VI
(1984)

ADJUDICATIONS AND AWARDS

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS
WORKERS' COMPENSATION COMMISSIONER

Chapter 23-1
Series VI
(1984)

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Subject: These rules provide time limits for the administrative processing of adjudications and awards.

Section 1. GENERAL

1.01. Scope. These are emergency legislative rules promulgated for the purpose of promoting and facilitating the prompt processing of claims within the operation of the Workers' Compensation Fund. Adjudications and awards are to be made, and other actions are to be taken, within the time limits prescribed herein. In all instances where a time limit herein prescribed is in conflict with a time limit set forth in the Workers' Compensation Law, the latter statutory time limit shall govern. Compliance with non-statutory time limits may be extended for good cause.

1.02. Authority. These emergency legislative rules are promulgated pursuant to the authority of West Virginia Code, Chapter 23, Article 1, Section 13, and directions of the Supreme Court of Appeals of West Virginia in the case of Meadows v. Lewis, W. Va. , 307 S.E.2d 625 (1983).

1.03. Filing Date. These rules were filed on the 6th day of December, 1984, in the Secretary of State's office.

1.04. Effective Date. These rules are to become effective on the 6th day of December, 1984, as emergency legislative rules.

1.05. Definitions. As used in these rules:

- A. Commissioner shall mean the Workers' Compensation Commissioner appointed pursuant to West Virginia Code, Chapter 23, Article 1, Section 1.
- B. Fund shall mean the Workers' Compensation Fund created pursuant to West Virginia Code, Chapter 23, Article 3, Section 1.
- C. Occupational Pneumoconiosis Board shall mean the board appointed pursuant to West Virginia Code, Chapter 23, Article 4, Subsection 8a.
- D. Appeal Board shall mean the Workers' Compensation Appeal Board appointed pursuant to West Virginia Code, Chapter 23, Article 5, Section 2.

Section 2. INITIAL RULINGS

2.01. Injury and Occupational Disease Claims. Those claims based upon injuries and occupational diseases other than occupational pneumoconiosis that are filed in the Fund upon properly executed, prescribed forms pursuant to the provisions of West Virginia Code, Chapter 23, Article 4, Subsections 1a, 1b, and 1c, shall be ruled upon within fifteen working days from the date of receipt in the Fund.

2.02. Occupational Pneumoconiosis Claims. Non-medical rulings shall be entered in occupational pneumoconiosis claims within fifteen working days from the date of receipt in the Fund of properly executed, prescribed forms from all parties involved.

Section 3. MEDICAL AUTHORIZATIONS

3.01. Medical Treatment. Requests for authorization of medical treatment shall be ruled upon within fifteen working days from the date of receipt in the Fund.

3.02. Appliances, Devices, and Supplies. Requests for authorization of purchase of prosthetic or other appliances, devices or medical supplies shall be ruled upon within fifteen working days from the date of receipt in the Fund.

Section 4. DISABILITY BENEFITS

4.01. Awards of Temporary Total Disability Benefits. Written medical reports submitted upon properly executed, prescribed forms and providing proper and sufficient evidence that claimants are entitled to awards of temporary total disability benefits shall be acted upon by issuance of orders granting awards of benefits within five working days from the date of receipt in the Fund or the date of issuance of the compensability ruling in the claim. Payment pursuant to such awards shall be issued in accordance with the provisions of West Virginia Code, Chapter 23, Article 4.

4.02. Cessation of Temporary Total Disability. Written medical or other information providing proper and sufficient evidence that claimants have ceased to be temporarily and totally disabled or have returned to work shall be acted upon by issuance of notices advising the parties that benefit payments shall be suspended pending final disposition. Such notices shall be issued within five working days from the date of receipt of incoming correspondence in the Fund.

4.03. Notice of Closing Claim. After the notice period provided in suspension notices has expired and review of claims reveals that sufficient medical evidence to support a further award of temporary total disability benefits has not been received, orders shall be issued within ten working days from the end of the aforesaid notice period advising the parties that the claims have been closed upon a temporary total disability basis.

4.04. Medical Evaluations.

- A. Referral of claimants to physicians for examinations and evaluations as required by West Virginia Code, Chapter 23, Article 4, Subsection 7a(d) shall be made within twenty working days of the end of the 120-day period of temporary total disability.
- B. Referral of claimants to physicians for examinations and evaluations in response to requests by or on behalf of claimants for consideration of permanent disability awards,

and requests of employers desiring evaluations by physicians of their choice when claims are in litigation upon the issue of the extent of permanent partial disability, in claims based upon injuries and occupational diseases other than occupational pneumoconiosis shall be made within fifteen working days from the date of receipt of such requests in the Fund.

- C. Examinations and evaluations to be performed by the Occupational Pneumoconiosis Board shall be scheduled and notice of the scheduling shall be transmitted to the parties within sixty days from the date of non-medical rulings directing referral to the Board.

4.05. Permanent Disability Rulings.

- A. Permanent disability evaluation reports received from physicians to whom claimants have been referred by the Commissioner in claims based upon injuries and occupational diseases other than occupational pneumoconiosis shall be acted upon within fifteen working days from the date of receipt in the Fund.
- B. Findings of the Occupational Pneumoconiosis Board shall be transmitted to the parties within ten working days from the date of examination by the Board.
- C. Payment pursuant to awards of permanent disability benefits shall be issued and delivered in accordance with the provisions of West Virginia Code, Chapter 23, Article 4.

4.06. Petitions for Reopening.

- A. Petitions for reopening of claims upon a temporary total disability basis shall be ruled upon within ten working days from the date of receipt in the Fund.
- B. Petitions for reopening of claims upon a permanent disability basis shall be ruled upon within thirty days from the date of receipt in the Fund.

4.07. Applications for Modification of Awards. Applications for modification of awards filed by employers shall be ruled upon within ten working days from the date of receipt in the Fund.

Section 5. VOCATIONAL REHABILITATION

5.01. Training Proposals. Individualized Written Rehabilitation Programs received from the Division of Vocational Rehabilitation shall be ruled upon within twenty working days from the date of receipt in the Fund.

Section 6. INVOICES

6.01. Medical Expenses. Invoices for payment or reimbursement of the cost of medical services or supplies submitted upon properly executed, prescribed forms shall be ruled upon within fifteen working days from the date of receipt in the Fund.

6.02. Travel Expenses; Wages. Invoices for reimbursement of travel expenses and wages submitted upon properly executed, prescribed forms shall be ruled upon within fifteen working days from the date of receipt in the Fund.

Section 7. PROTESTS; HEARINGS; MOTIONS

7.01. Protests. When awards or rulings of the Commissioner are protested within the time allowed therefor, written notices shall be issued which acknowledge receipt of the protests and advise the parties of the time and place that hearings will be conducted. Such notices shall be issued within fifteen days from the date of receipt of protest.

7.02. Hearings. A hearing shall be scheduled to be conducted within thirty days from the date of receipt of protest in the Fund.

7.03. Motions. Motions made at hearings regarding evidentiary or procedural matters shall be ruled upon whenever possible by trial examiners during the course of hearings. Motions that are necessarily referred to the Commissioner for consideration and ruling shall be ruled upon by written notice to be issued within thirty days from the date of hearing.

Section 8. COMMISSIONER'S FINAL DECISION; APPEAL

8.01. Appealable Orders. After final hearings appealable orders shall be entered and transmitted to the parties within thirty days from the date of final hearing, or the date of receipt of written submission or withdrawal by the parties.

8.02. Appeal. Upon receipt of written notices of appeal, notices shall be issued acknowledging receipt of the appeals and advising the parties that the claims will be transmitted to the Appeal Board. Such notices shall be issued within fifteen working days from the date of receipt of notice of appeal in the Fund. Claim files shall be prepared and transmitted to the Appeal Board within thirty working days from the date of receipt of notice of appeal in the Fund.

ADJUDICATIONS AND AWARDS

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