

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

Do Not Mark In this Box

FILED
1991 JAN 29 PM 4:04
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Workers' Compensation Fund TITLE NUMBER: 85

RULE TYPE: Procedural; CITE AUTHORITY WV Code, 23-1-1; 23-1-5; 23-1-8; 23-1-13; 23-1-14; 23-1-15; 23-5-1; 23-5-1f; 23-5-1g; 23-5-1h

AMENDMENT TO AN EXISTING RULE: YES NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 8 / 2

TITLE OF RULE BEING PROPOSED: Rules for Settlement of Permanent
Partial Disability Awards.

DATE OF PUBLIC HEARING: March 1, 1991 TIME: 10:00 a.m.

LOCATION OF PUBLIC HEARING: Workers' Compensation Fund
Third Floor Conference Room
601 Morris Street
Charleston, WV

COMMENTS LIMITED TO: ORAL WRITTEN X, BOTH _____

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Workers' Compensation Fund

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

Attn: Henry Haslebach
Legal Division
601 Morris Street
Charleston, WV 25301

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Andrew N. Richardson

Workers' Compensation Fund
601 Morris Street
Charleston, West Virginia 25301-1416

Gaston Caperton, Governor
Andrew N. Richardson, Commissioner
John H. Kozak, Executive Secretary



January 29, 1991

The Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, W. Va. 25305

FILED
1991 JAN 29 PM 4:05
OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

Dear Secretary Hechler:

RE: Filing of Proposed Procedural Rule, Title 85, Series 8; Settlement of Permanent Partial Disability Awards.

Pursuant to West Virginia Code, §5F-2-2(a)(12), please consider this letter to be my written approval of the above noted proposed procedural rule.

With much appreciation for your assistance in this matter, I remain

Very truly yours,

A handwritten signature in cursive script, reading "Taunja Willis Miller".

Taunja Willis Miller
Secretary

TWM:NH:se

FILED

1991 JAN 29 PM 4:05

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 85

PROCEDURAL RULES FOR

SETTLEMENT OF PERMANENT PARTIAL DISABILITY AWARDS

BUREAU OF EMPLOYMENT PROGRAMS WORKERS' COMPENSATION FUND

SERIES 8

SUMMARY OF PROPOSED RULES

These proposed rules are promulgated to put into effect the provisions in West Virginia Code, 23-5-1f. Prior to this particular code section being enacted in 1990, no settlement of litigation of Workers' Compensation permanent partial disability awards was allowed.

These rules address the conditions under which permanent partial disability awards can be settled as well as the procedure for vacating an order approving a settlement. Forms have been included for the convenience of the parties seeking to use this procedure.

It is hoped that by allowing parties to settle litigation on permanent partial disability awards, the number of claims in litigation at the Workers' Compensation Fund will be reduced.

FISCAL NOTE FOR PROPOSED RULES

FILED

1991 JAN 29 PM 4:05

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Rule Title: Settlement of Permanent Partial Disability Awards, Title 85,
Series 8

Type of Rule: Procedural

Agency: Workers' Compensation Fund
Address: 601 Morris Street
Charleston, West Virginia 25301

	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
1. Effect of Proposed Rule					
Estimated Total Cost	\$0	\$0	\$0	\$0	\$0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

Prior to the 1990 amendments to Chapter 23 of the West Virginia Code, the Workers' Compensation Fund did not allow settlement of any issue in litigation. The proposed rule will implement West Virginia Code, 23-5-1f to allow for settlement of permanent partial disability awards. This will not add to the cost of the system. It is expected that after the rules have been in place for a number of years, they will likely decrease the number of claims in litigation. This will result in savings to the Workers' Compensation Fund through a decrease in litigation costs. However, such savings will occur in the future and cannot be quantified at this time.

3. Objectives of these rules:

To allow settlement and compromise of permanent partial disability awards by the Workers' Compensation Fund. Rules also allow for vacating of such settlements when the settlement was obtained by fraud, undue influence or coercion. It is hoped that this will decrease the number of claims in litigation by not requiring that the issue of permanent partial disability be fully litigated.

4. Explanation of Overall Economic Impact of Proposed Rules.

A. Economic Impact on State Government.

None in the immediate future. Savings will result in the longer term.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

By providing for a more expeditious handling of permanent partial disability awards in litigation, employers and injured employees will both benefit by having their cases promptly handled. This will not only result in lower costs of the Workers' Compensation Fund but will result in lower legal fees for the employers and claimants.

C. Economic Impact on Citizens/Public at Large.

Not applicable.

Date:

Andrew N. Richardson
Andrew N. Richardson
Commissioner
Bureau of Employment Programs

FILED

1991 JAN 28 PM 4:05

TITLE 85

PROCEDURAL RULES

BUREAU OF EMPLOYMENT PROGRAMS

WORKERS' COMPENSATION FUND

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 8

SETTLEMENT OF PERMANENT PARTIAL DISABILITY AWARDS

85-8-1. General.

1.1. Scope. -- These rules shall govern the compromise and settlement of permanent partial disability awards in contested Workers' Compensation claims.

1.2. Authority. -- W. Va. Codes, 23-1-1; 23-1-5; 23-1-8; 23-1-13; 23-1-14; 23-1-15; 23-5-1; 23-5-1f; 23-5-1g; and 23-5-1h.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Purpose. -- On July 1, 1990, West Virginia Code, 23-5-1f became effective. This particular section provided for the compromise and settlement of permanent partial disability awards to which objections had been made by any party. Prior to this date no such settlement was allowed.

85-8-2. Settlement Process.

2.1. Parties.

(a) Any parties to a Workers' Compensation claim may enter into an agreement to settle or compromise such claim pursuant to the requirements of West Virginia Code, 23-5-1f and the regulations hereinafter set forth. All corporate employers must be represented by an attorney licensed to practice law in the State of West Virginia. Any claimant or employer who is a natural person may represent themselves in any settlement agreement or proceedings. In cases in which all parties are represented by attorneys, a copy of the settlement agreement shall be mailed to the Commissioner or, after July 1, 1991, the Office of Judges for approval. No hearing or further proceedings shall be necessary for approval or rejection of the agreement.

(b) In cases in which any party is not represented by an attorney, the parties to said agreement shall request a hearing before a hearing examiner, or after July 1, 1991, an administrative law judge. This hearing will be on an add-on basis to existing dockets of Workers' Compensation claims and said request may be by telephone or orally to the presiding officer of an ongoing docket. Before accepting the settlement agreement, the presiding

officer shall make an inquiry of the unrepresented party or parties to ascertain if such party has entered the agreement voluntarily and without fraud, coercion, or undue influence and is fully cognizant of their procedural rights. The unrepresented party or parties shall be given the same oath or affirmation as witnesses and a record shall be made of all such inquiries. Said inquiry is attached hereto in the appendix.

(c) If the presiding officer is a hearing examiner, the agreement and record of said inquiry shall then be forwarded to the Commissioner for approval or rejection. An administrative law judge acting as presiding officer shall approve or disapprove the agreement within sixty days pursuant to Rule 2(a). All such agreements must be signed by the actual parties as well as by their respective counsel. In the case of corporations, any employee of the corporation who is authorized by said corporation may sign the agreement on behalf of said corporation.

2.2 Procedure.

The claimant and employer or employers in any Workers' Compensation claim may jointly petition the Commissioner or, after July 1, 1991, an administrative law judge, for approval of a compromise settlement as follows:

(a) The parties to any petition for a compromise settlement shall provide documentation sufficient to show that the settlement is a fair, reasonable and just compromise. The Commissioner or administrative law judge, whichever is the appropriate approving authority, shall have discretion to approve or reject a petition for a compromise settlement. Said petition shall be approved or rejected in writing within sixty (60) days after the receipt by either the Commissioner or the Office of Judges, whichever is appropriate. In reviewing said petitions, the Commissioner or administrative law judge may consider among other things, the facts and circumstances involved, medical reports, and any other factors deemed relevant to said settlement.

(b) The parties may settle any permanent partial disability award or any permanent partial disability award made pursuant to a reopening of the claim to which a timely protest was filed. Said awards may be from no permanent partial disability up to and including 15% permanent partial disability. In multiple employer claims, all employers must be parties to the settlement agreement. Bankrupt or otherwise defunct employers shall be represented by the Commissioner or the Commissioner's duly authorized representative.

(c) The parties to any settlement may arrange for any amount paid thereto to be paid in a lump sum or in incremental payments of not less than one month of benefits per payment.

(d) The parties may agree for a final award of greater than 15% permanent partial disability or greater than 15% permanent partial disability in addition to that previously paid in the claim, provided that no settlement shall be approved which provides for or would result in a permanent total disability award either chargeable to the employer or employers or payable from the second injury reserve pursuant to West Virginia Code, 23-3-1.

(e) The order of the Commissioner or of the administrative law judge, whichever is appropriate, shall fully conform to the terms of the agreement if such agreement is approved.

(f) Any order approving or rejecting any settlement agreement shall be appealable.

(g) Rejection of any settlement agreement petition shall make said agreement null and void. Said rejection shall be without prejudice. In claims in which any settlement agreement is rejected, the claim shall proceed in the same manner as in a case in which no such settlement petition was filed and litigation shall proceed during the appellate process. Further petitions for compromise settlement under different terms may be filed subsequent to the rejection of any petition.

(h) The terms of a compromise settlement, whether approved or rejected, shall not constitute an admission against interest by any party.

2.3. Effective Date of Settlement.

The effective date of any settlement shall be the effective date of the order based upon said settlement agreement. Such orders and the awards made pursuant thereto shall be considered awards for all disability, both physical, mental, and any other form, suffered by the claimant up to and including the date of said order.

2.4. Minor Dependents and Claimants.

In any case in which a surviving dependent infant may be entitled to receive dependent's benefits on account of a death of an employee or in any case in which the claimant is an infant, the legal guardian of such infant may negotiate a compromise settlement of such claim with the employer or employers involved. If such compromise settlement is approved by the Commissioner or administrative law judge, whichever is appropriate, the legal guardian shall proceed as set forth in West Virginia Code, 44-10-14. The appointment of said guardian shall be done as set forth in Article 10 of Chapter 44 of the West Virginia Code. No bond shall be required of said guardian by the Commissioner or administrative law judge, whichever is appropriate, in addition to that required by the appointment of said guardian or approval by the circuit court of any settlement pursuant to the provisions of Article 10 of Chapter 44 of the West Virginia Code.

2.5. Forms.

Said settlement agreement and petition shall be on form or forms prescribed by the Commissioner, attached hereto in the appendix.

2.6. Death of Claimant.

Should a claimant to whom an award has been made pursuant to a compromise settlement of a permanent partial disability award die from a sickness or non-compensable injury, the unpaid balance of such award shall be paid to the claimant's dependents as defined in 23-4-10 of the West Virginia Code, if any. Such payment shall be made in the same installments which would have been made to the claimant if living, but no payment shall be made to a surviving spouse of such claimant after his or her remarriage and such liability shall not accrue to the estate of such claimant and shall not be subject to any debts or charges against such estate.

2.7. Vacating Order Approving Settlement

Any party may petition to vacate an order approving a settlement agreement as set forth in West Virginia Code, 23-5-1f(f).

2.8. Severability.

If any provision of these rules or the application thereof to any person, party, or circumstances is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the other provisions or application of these rules, and to this end the provisions of these rules are declared to be severable.

FORM INQUIRY FOR PRESIDING OFFICER AT WORKERS' COMPENSATION HEARING

Do you fully understand that you have the right to be represented in this settlement proceeding by an attorney?

Do you understand that if you wish an attorney you must hire one?

If you are a claimant, you are hereby advised that you may hire an attorney to represent you. His fee will be limited to no more than 20% of your benefits for up to a 208 week period.

Having been so advised, is it now your desire to proceed with this settlement agreement without a lawyer and that this is your own voluntary decision?

Do you regularly speak and understand the English language as I am speaking it to you now?

Do you believe that this is a fair agreement?

Have you been coerced or forced in any way to enter into this agreement?

Has any undue influence been made upon you to enter into this agreement?

Have any representations been made to you by the other party as to what will happen if you enter into this agreement? If so, please state them.

Have any promises been made to you which are not set forth in this agreement?

Can you read and write? If not, have the terms of this agreement been fully explained to you by the other party?

SETTLEMENT AGREEMENT

Claimant

Employer

Re: Claim No.
S. S. No.
D. O. I.

The claimant and employer agree that the claimant was granted a _____% permanent partial disability award by the Commissioner's ruling of _____, that a timely protest was filed to this ruling, that the parties mutually agree that they wish to settle and compromise the protest to the ruling, and that they agree that a _____% permanent partial disability award to be paid _____ is a fair and reasonable settlement.

The claimant and employer, by signing this settlement, acknowledged that:

1. The Commissioner or Office of Judges must approve this settlement for it to be a valid settlement and that the settlement will not be effective until the date of the Commissioner's order,

2. The settlement order can only be vacated by a petition filed with the Commissioner or Office of Judges within six months of the date of said order, accompanied by proof that the settlement was obtained by fraud, undue influence or coercion,

3. The settlement is final as to all physical, medical, mental, or other disability of the claimant as of the date of the Commissioner's order but does not affect the claimant's right to future medical benefits, to physical or vocational rehabilitation, or to a reopening for permanent partial disability

benefits based upon an aggravation or progression of the compensable injury after the date of Commissioner's order approving this settlement, and

4. In an occupational pneumoconiosis case, any benefits paid under this claim may cause an offset of benefits paid under the Federal Black Lung Program.

5. The effective date of this agreement is _____.

Claimant Date

Counsel for Claimant Date

Employer Date

Counsel for Employer Date

FORM ORDER REJECTING SETTLEMENT AGREEMENT

Claimant

Employer

Re: Claim No.
S. S. No.
D. O. I.
Claimant

Gentlemen:

This claim came on this day pursuant to West Virginia Code, 23-4-1f and particularly upon the Commissioner's ruling of _____ granting the claimant a _____% permanent partial disability award and upon the attached joint written memorandum of settlement signed by all parties. It appearing that _____ and that the settlement of the protest to the _____ ruling is not fair and reasonable, it is hereby ordered that the attached written memorandum of settlement be and hereby is incorporated by reference in this order, that said settlement be rejected, and that said agreement is hereby null and void.

Any party has thirty (30) days from receipt of this order in which to appeal therefrom. In the event an appeal is taken, appeal forms must be filed with the Commissioner within thirty (30) days from receipt of this notice.

Very truly yours,

Andrew N. Richardson
Commissioner

ANR:
Attachment
cc:

FORM ORDER APPROVING SETTLEMENT AGREEMENT

Claimant

Employer

Re: Claim No.
S. S. No.
D. O. I.
Claimant

Gentlemen:

This claim came on this day pursuant to West Virginia Code, 23-5-1f and upon the entire record, particularly upon the Commissioner's ruling of _____ granting the claimant a _____% permanent partial disability award, upon protest thereto, and upon the attached joint written memorandum of settlement signed by all parties. It appearing that the claimant has at least a _____% permanent partial disability and that the settlement of the protest to the _____ ruling for _____% permanent partial disability is fair and reasonable, it is hereby ordered that the attached written memorandum of settlement be and hereby is incorporated by reference in this order, that the ruling of _____ be set aside and the claimant be granted a _____% permanent partial disability award. The effective date of this order is _____.

[Variable 1 and/or Variable 2]

Any party may seek to vacate this settlement order by filing a petition with the Commissioner of Office of Judges within six (6) months after the date of this order but only on the grounds that this settlement order was obtained by fraud, undue influence, or coercion. Such petition shall state with particularity the facts upon which alleged grounds it is based and shall be served upon all other parties to the settlement.

Re: Claim No.
Claimant

-2-

Date

Any party has thirty days from receipt of this order in which to appeal therefrom. In the event an appeal is taken, appeal forms must be filed with the Commissioner within thirty days from receipt of this notice.

Very truly yours,

Andrew N. Richardson
Commissioner

ANR:
Attachment
cc:

NOTE:

Variable 1: It is hereby ordered that the amount paid over and above a ____% permanent partial disability award be considered an overpayment and recovered pursuant to West Virginia Code, 23-4-1d;

Variable 2: It is hereby ordered that the ____% permanent partial disability award be paid in _____ (a lump sum; _____ monthly payments(s)).

300