

Form #1

WEST VIRGINIA
SECRETARY OF STATE

Authorized Signature
Robert J. Smith
Commissioner, BEP

\$4.00

Bob Wise
Governor

Robert J. Smith
Commissioner



West Virginia Bureau of Employment Programs

• Job Service • Labor Market Information
• Unemployment Compensation • Workers' Compensation
an equal opportunity/affirmative action employer

February 8, 2002

The Honorable Joe Manchin, III
Secretary of State
Capitol Building, Room W-157
Charleston, West Virginia 25305

Re: Proposed Procedural Rule
Title 85, Series 12
"Settlement of Permanent Partial Disability Awards"

Dear Secretary Manchin:

Please consider this letter to be my written approval for the filing of the above-noted proposed Rule.

Pursuant to Enrolled Committee Substitute for House Bill 4030, Regular Session, 1994, the Department of Commerce, Labor and Environmental Resources was abolished. Pursuant to that same bill and to Executive Order No. 5-94 of the Governor, the Commissioner of the Bureau of Employment Programs is empowered to promulgate rules without the consent or approval of a department secretary.

Thank you very much for your assistance in this matter.

Very truly yours,

Robert J. Smith
Commissioner

RJS/mab

Enclosures

Workers' Compensation Division - Rating Services

Post Office Box 3587, Charleston, West Virginia 25336-3587 • www.state.wv.us/bep
Offices located at 4700 MacCorkle Avenue SE Charleston WV 25304

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Series 12 Settlement of Permanent Partial Disability Awards

Type of Rule: Legislative Exempt Interpretive x Procedural

Agency Bureau of Employment Programs

Address 112 California Avenue

Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	Unknown	Unknown	Unknown	Unknown	Unknown
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	Unknown	Unknown	Unknown	Unknown	Unknown

2. Explanation of above estimates:

The proposed changes to this rule will make the rule consistent with current legislative authority, which has been in effect since 1999. Therefore, there should be no change in expenses associated with this proposal.

3. Objectives of this rule:

The purpose of this rule is to establish a process whereby the parties to a workers' compensation claim can resolve issues in a claim by agreement and in accordance with legislative authority.

Rule Title: Series 12 Settlement of Permanent Partial Disability Awards

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

It is expected that the impact of this rule will lead to a more efficient settlement process, which could result in savings for the Bureau.

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

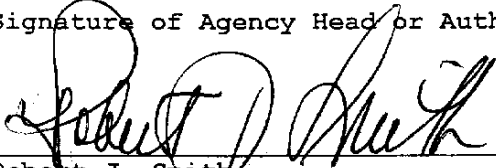
It is expected that the impact of this rule will encourage parties to a workers' compensation claim to settle claims rather than litigating, which could improve the timeliness of final decisions and reduce dockets at each level of the system.

C. Economic Impact on Citizens/Public at Large.

This rule will not have a direct economic impact on the citizens of West Virginia.

Date: February 8, 2002

Signature of Agency Head or Authorized Representative



Robert J. Smith
Commissioner, Bureau of Employment Programs

**SUMMARY OF PROPOSED PROCEDURAL RULE
STATEMENT OF CIRCUMSTANCES
TITLE 85, SERIES 12
SETTLEMENT OF PERMANENT PARTIAL DISABILITY AWARDS**

The proposed changes to "Settlement of Permanent Partial Disability Awards" involve the process by which parties to a workers' compensation claim can settle the claim pursuant to *W. Va. Code §23-5-7*.

The rule became effective in 1991 and was used in accordance with *W. Va. Code §23-5-1f* in providing for the settlement of permanent partial disability awards. This *Code* section was later repealed by the 1995 Act and was replaced by *W. Va. Code §23-5-7*.

The following are the primary changes included in this proposal.

The current rule provides that the parties may only settle permanent partial disability issues with awards of 15% or less. The proposed changes are consistent with *W. Va. Code §23-5-7*, which allows the parties to settle any and all issues in a claim, except medical benefits, wherever the claim may be in the review or appellate processes. Further, the parties may agree to settle the claim on a final basis, whereby the claimant agrees to waive any rights to reopen the claim for future indemnity benefits.

The current rule also provides that the Commissioner has the discretion to participate in the settlement process when the employer is a subscriber to the fund. The proposed changes, in accordance with *W. Va. Code §23-5-7*, provide that the Commissioner of the Bureau of Employment Programs must consent to all agreements and the Office of Judges must undertake a review of all agreements to ascertain that the agreement is fair and reasonable to all parties.

Finally, the current rule provides that the Administrative Law Judge's final order is appealable. The proposed changes provide that the order of the Office of Judges is final and non-appealable, in accordance with *W. Va. Code §23-5-7*.

The proposal takes into consideration these major statutory changes and aligns the rule with *W. Va. Code §23-5-7*.

TITLE 85
PROCEDURAL RULE
BUREAU OF EMPLOYMENT PROGRAMS
WORKERS' COMPENSATION FUND
SERIES 12

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

SETTLEMENT OF WORKERS' COMPENSATION ISSUES

§85-12-1. General.

1.1. Scope. -- These rules shall govern the compromise and settlement of workers' compensation issues pursuant to W. Va. Code §23-5-7.

1.2. Authority. -- W. Va. Code §21A-2-6(2); 21A-3-7(b); 21A-3-7(c); 23-1-1; 23-1-5; 23-1-8; 23-1-13; 23-1-14; 23-1-15; 23-4-1 et seq.; 23-5-1; 23-5-7.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal of former rule. - This legislative rule repeals and replaces WV 85 CSR 12 "Settlement of Permanent Partial Disability Awards" filed April 11, 1991 and effective May 13, 1991.

§85-12-2. Purpose.

The purpose of this rule is to establish a consistent process to govern the settlement of workers' compensation issues.

§85-12-3 Definitions.

As used in this legislative rule, the following terms have the stated meanings unless the context of a specific use clearly indicates another meaning is intended.

3.1 "Commissioner" means the commissioner of the bureau of employment programs.

3.2 "Division" refers to the workers' compensation division of the bureau of employment programs.

3.3 "An employer that is not active in the claim" means an employer who has not participated in the settlement negotiation process. An employer is considered inactive for settlement purposes either when the employer is defunct, when the division has notified the employer of settlement negotiations by certified mail and the employer has failed to respond or has chosen not to participate or when the employer is a corporation and has failed to hire an attorney to represent it in the claim.

3.4 "Review process" refers to the period between the identification of a potential claim and the final closure of the claim pursuant to the statute.

§85-12-4. Parties.

The claimant, the employer and the division may negotiate a settlement of any and all issues in a claim or claims pursuant to the requirements of W. Va. Code §23-5-7 and the regulations herein set forth. The division and the claimant may negotiate a settlement of a claim when the employer is not active in the claim. All settlement agreements must be signed by the claimant. Counsel may sign an agreement on behalf of an employer. In multiple employer claims, all employers must be parties to the settlement agreement. All corporate employers must be represented by an attorney licensed to practice law in the State of West Virginia.

§85-12-5. Notice.

If the employer has not been notified of pending settlement negotiations, the division will notify the employer by certified mail, giving the employer fifteen (15) days to respond to the division. If the employer fails to respond to the notice or chooses not to participate, the division may negotiate a settlement on behalf of the employer in accordance with W. Va. Code §23-5-7.

§85-12-6. Issues subject to settlement.

If the claim is in the review or appellate process, all claim issues, excluding medical benefits, may be settled, even though the issues may not be currently contested. These issues include, but are not limited to, temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, vocational rehabilitation and any other issues within the jurisdiction of the division.

§85-12-7. Manner of payment.

The parties to any settlement may arrange for any amount paid to be paid to the claimant or for the benefit of the claimant in a lump sum or in incremental payments or in any manner as agreed upon by the parties. If no mention is made in the settlement agreement regarding a permanent disability percentage, the claim record will not reflect a percentage for the settlement award.

§85-12-8. Dependent's benefits.

Except in cases where the claimant has previously been granted a permanent total disability award, dependents are not entitled to one hundred four (104) weeks of benefits as set forth in W. Va. Code §23-4-10 if the agreement is silent as to the claimant's entitlement to a permanent total disability award.

§85-12-9. Office of Judges.

9.1. The office of judges shall have discretion to approve, reject or deny a proposed settlement agreement. The agreement shall be approved, rejected or denied in writing. In reviewing the agreement, the office of judges may consider, among other things, the facts and circumstances involved, medical reports and any other factors deemed relevant to the settlement.

9.2. In cases in which a claimant is not represented by an attorney, a hearing shall be conducted before the office of judges pursuant to their procedural rules to ascertain if the claimant has entered the agreement voluntarily and without fraud, coercion, or undue influence and is fully cognizant of their procedural rights. Other cases may be subject to hearing at the discretion of the Office of Judges or at the request of the parties.

9.3. The order of the office of judges shall fully conform to the terms of the agreement if the agreement is approved.

9.4. Any order approving, rejecting or denying any settlement agreement shall not be appealable, and shall state with particularity the reasons for rejecting or denying the agreement.

9.5. Rejection or denial of any settlement agreement shall make the agreement null and void. Said rejection or denial shall be with prejudice. In claims in which any settlement agreement is rejected or denied, the claim shall proceed in the same manner as in a case in which no such settlement agreement was

filed. The office of judges may grant time frame extensions to allow the parties to further develop evidence if the time frames expired during the settlement process and the proposed settlement agreement is rejected or denied by the office of judges. Further settlement agreements, under different terms than those previously rejected or denied, may be filed subsequent to the rejection or denial of any agreement.

§85-12-10. Settlement not to be considered an admission against interest.

The terms of a settlement agreement, whether approved, rejected or denied, shall not constitute an admission against interest by any party. All communications and correspondence between the parties during settlement negotiations are confidential and may not be used against a party if a settlement is not reached.

§85-12-11. Effective date of settlement.

Unless otherwise agreed upon by the parties, the effective date of a settlement shall be the date of the order approving the agreement from the Office of Judges.

§85-12-12. Minor dependents and claimants.

In any case in which a surviving dependent infant may be entitled to receive the balance of a permanent partial disability award due to the death of a claimant before such award was paid in full or in any case in which the claimant is an infant, the legal guardian of such infant may negotiate a settlement of such claim with the employer or employers involved. If such settlement is approved by the office of judges, the legal guardian shall proceed as set forth in W. Va. Code §44-10-14. The appointment of said guardian shall be done as set forth in W. Va. Code §44-10-1 et seq. 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 W. Va. Code §44-10-1 et seq.

§85-12-13. Death of claimant.

Unless otherwise agreed upon by the parties, should a claimant to whom an award has been made pursuant to a settlement die, the unpaid balance of the award shall be paid to the claimant's dependents as defined in W. Va. Code §23-4-10, if

any. The 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 the 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 the estate.

§85-12-14. Deductions from settlement awards.

14.1. Pursuant to W. Va. Code §23-4-18, any amounts owed for child or spousal support will be withheld from settlement payments.

14.2. Overpayments will be deducted pursuant to W. Va. Code §23-4-1c and 23-4-1d, unless otherwise agreed upon by the parties in the agreement.

14.3. Any award of monetary benefits entered in the claim being settled by the workers' compensation division, the office of judges, the Appeal Board or the Supreme Court of Appeals of West Virginia, between the date the settlement agreement was signed by the necessary parties to the date that it is approved by the Office of Judges shall be deducted from the agreed upon settlement amount. If the amount of any such award is greater than the agreed upon settlement amount, the claimant's recovery shall be limited to the amount specified in the settlement agreement.

§85-12-15. 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.