

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

FILED

2004 APR 22⁴⁸⁴⁵ A 10: 25

WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Workers' Comp Bd of Review (formerly WC Appeal Bd) TITLE NUMBER: 102

RULE TYPE: Procedural CITE AUTHORITY: West Virginia Code § 23-5-11(o)

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒*

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

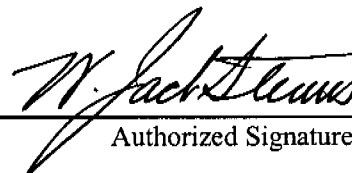
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 1

TITLE OF RULE BEING PROPOSED: Rule of Practice and Procedure
*Repeals and replaces current 102CSR1

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON June 11, 2004 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Workers' Compensation
Board of Review
P.O. Box 2628
Charleston, WV 25329-2628

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Bob Wise
Governor

Gregory A. Burton
Acting Commissioner

W. Jack Stevens
Chairman

Rita Hedrick-Helmick
Member

Robert G. Wolpert
Member

Workers' Compensation Board of Review

Offices located at 104 Dee Drive, Charleston
All communications should be addressed to the Board of Review
at the address shown at the bottom of this page.
an equal opportunity/affirmative action employer

April 21, 2004

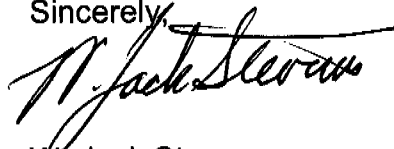
The Honorable Joe Manchin, III
West Virginia Secretary of State
State Capitol Complex, Building 1
Charleston, WV 25305

Re: Approval of Filing

Dear Secretary Manchin:

Enclosed is the Workers' Compensation Board of Review's proposed procedural rule and necessary documents, which have been prepared pursuant to the authority set forth in West Virginia Code § 23-5-11(o). As Chairman of the Board of Review, I give my consent and approval to the filing of this procedural rule.

Sincerely,



W. Jack Stevens
Chairman

WJS:jac

Enclosures

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2004 APR 20 A 10:25
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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Governor

Gregory A. Burton
Acting Commissioner

W. Jack Stevens
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Brief Summary of Proposed Rule

This proposed rule is intended to set forth the procedures for administrative appeals that are conducted by the West Virginia Workers' Compensation Board of Review pursuant to West Virginia Code §§ 23-5-10, 23-5-11 and 23-5-12.

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Statement of Circumstances which Require this Rule

Pursuant to West Virginia Code §23-5-11, the Workers' Compensation Appeal Board was abolished on January 31, 2004, and the Board of Review was created. The Workers' Compensation Board of Review's proposed procedural rule is required by West Virginia Code §23-5-11(o), which states as follows: "The board of review shall make general rules regarding the pleading, including the form of the petition and responsive pleadings, practice and procedure to be used by the board." This proposed procedural rule will repeal and replace the Workers' Compensation Appeal Board's Rules of Practice and Procedure.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules of Practice and Procedure

Type of Rule: _____ Legislative _____ Interpretive X Procedural

Agency: Workers' Compensation Board of Review (formerly Workers' Comp Appeal Board)

Address: 104 Dee Drive
Charleston, WV 25311

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of Above Estimates:

3. Objectives of These Rules:

To set forth the procedures for administrative appeals that are conducted by the Workers' Compensation Board of Review pursuant to West Virginia Code §§ 23-5-10, 23-5-11, and 23-5-12

Rule Title: Rules of Practice and Procedure

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

NONE

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

NONE

C. Economic Impact on Citizens/Public at Large.

NONE

Date: April 21, 2009

Signature of Agency Head or Authorized Representative:

W. Jack Stearns

TITLE 102
PROCEDURAL RULE
WORKERS' COMPENSATION BOARD OF REVIEW

FILED

2004 APR 22 A 10: 25

SERIES 1
RULES OF PRACTICE AND PROCEDURE

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§102-1-1. General.

1.1. Scope. This procedural rule is intended to set forth the procedures for administrative appeals that are conducted by the West Virginia Workers' Compensation Board of Review pursuant to W. Va. Code §§23-5-10, 23-5-11 and 23-5-12.

1.2. Authority. - W. Va. Code §23-5-11.

1.2. Filing Date.--

1.3. Effective Date.--

1.5. Repeal and Replacement. --This rule repeals and replaces "The Rules of Practice and Procedure of the Workers' Compensation Appeal Board."

§102-1-2. Purpose.

The purpose of the appeal process before the Workers' Compensation Board of Review shall be to provide a review of any final action of the Workers' Compensation Office of Judges pursuant to the West Virginia Workers' Compensation Law, W. Va. Code §23-1-1 et seq.

§102-1-3. Appeal Process; Generally.

3.1. Right to Appeal. Any employer, claimant, dependent or the Workers' Compensation Commission aggrieved by a final decision by an Administrative Law Judge, shall have the right of appeal to the Board of Review for a review of the final decision pursuant to W. Va. Code § 23-5-10 and § 23-5-12.

3.2. Representation by Attorney. Claimants, dependents, and employers who are natural persons may proceed with or without an attorney. An incorporated employer or an employer

that is not a natural person may be represented only by an attorney duly licensed or authorized to practice law in the State of West Virginia.

3.3. Copies to All Parties. Copies of all documents or letters sent to the Board of Review must be sent to all parties. If a party is represented by an attorney, the copy is sent to the attorney instead of the party. It must be noted on the document or letter that copies were sent to all parties.

§102-1-4. Initiation of the Appeal Process.

4.1. Time Period for Filing Notice of Appeal. A written notice of appeal shall be filed with the Office of Judges directed to the Board of Review within thirty (30) days of receipt of notice of the Administrative Law Judge's final action complained of, or in any event, regardless of notice, within sixty (60) days after the date of the action complained of as set forth in W. Va. Code § 23-5-10 and § 23-5-12. A copy of this notice shall be served on all parties of record or the parties' counsel.

4.2. Action by Office of Judges. The Office of Judges shall notify the other parties immediately upon the receipt of a notice of appeal and shall transmit the appropriate documents to the Board of Review.

4.3. Form of Notice. The Notice of Appeal to be filed with the Office of Judges directed to the Board of Review shall be in form or effect as the "Notice of Appeal to the Workers' Compensation Board of Review", Form AB-1, as contained in Appendix 102-1-A of this rule.

a. The notice of appeal shall state the ground of review and whether oral argument is requested.

4.4. Number and Size of Notice and Attachments. One (1) copy of the Notice of Appeal shall be filed with the Office of Judges. The notice shall be written or typed on 8½" x 11" paper. A copy of the Administrative Law Judge's order that is the subject of the appeal shall be attached to the Notice of Appeal. In addition, in Occupational Pneumoconiosis claims, if the appeal involves an interlocutory order (e.g., non-medical question, presumption, compensability, etc.), a copy of the interlocutory order must be attached to the Notice of Appeal, along with a copy of the final order.

§102-1-5. Briefs.

5.1. Time Period for Filing Briefs. The brief for the appellant shall be filed with the Board of Review within sixty (60) days of the date of the letter from the Office of Judges that acknowledges the Notice of Appeal. The brief for the appellee shall be filed within thirty (30) days from the date on which the appellant's brief was filed. If the appellant is pro se and chooses not to file a brief, the appellee brief shall be filed within ninety (90) days from the date of the acknowledgment letter. If the appellant's brief is filed prior to the acknowledgment letter, the appellee's brief shall be filed within thirty (30) days from the date of the acknowledgment letter. If the due dates fall on a holiday, Saturday or Sunday, the brief will be considered timely if it is filed with the Board of Review on the next business day following the date due.

For purposes of these rules, briefs are deemed filed on the date of mailing if they are sent by first class mail, or other class of mail which is at least as expeditious, postage prepaid and bearing a postmark showing that the brief was mailed on or before the last day of filing. If a courier or third-party commercial carrier is used, the brief is deemed timely filed if given to the carrier on or before the due date, to be delivered within three (3) calendar days.

5.2. Extension of Time Period for Filing Briefs.

The Board may grant, for good cause shown and upon written motion, an extension of time for filing a brief for a period of up to thirty (30) days. Absent extraordinary circumstances, the written motion for extension of time must be received by the Board at least seven (7) days prior to the original due date of the brief. A copy of the motion must be served upon the opposing parties. For extensions of time, good cause shall be strictly construed as provided by W. Va. Code § 23-5-13.

5.3. Failure to File Brief.

If any appellant represented by counsel fails to file a brief within the time period prescribed by subsection 5.1 or any extension pursuant to subsection 5.2, the Board may dismiss the appeal for failure to prosecute. A party who is represented by counsel or a party that may only be represented by counsel may

not present an oral argument or respond to an oral argument if the party did not file a brief.

Claimants without counsel and employers who are natural persons and who are proceeding without counsel are not required to file briefs. A party is considered to be represented by counsel for purposes of these rules if a notice of appearance has been filed before the Board of Review, Office of Judges, and/or Workers' Compensation Commission and no notice of withdrawal of counsel in the claim has been filed.

Filing of the briefs with the Board may be accomplished by mail in accordance with subsection 5.1 of this rule, or by personal delivery to the Board. Filing with the Commission and/or the Office of Judges will not be considered filing with the Board.

5.4. Number of Briefs. An original of each brief shall be filed with the Board, and one copy shall be served upon each of the opposing parties. Faxed copies will not be accepted.

5.5. Length of Briefs. Briefs shall not exceed twenty (20) pages in length, inclusive of all sections except the certificate of service and attachments. Upon written motion, for good cause shown, the Board may permit a brief to exceed the page limitation.

5.6. Attachments. Implementation of the Electronic Document Management System and changes to the Procedural and Time Standards Rules of the Office of Judges relative to "the designated record" eliminates the need to attach medical and vocational reports or testimony relied upon.

5.7. Certificate of Service. A certificate of service reflecting service of the brief upon the opposing parties must be attached to each copy of the brief served and filed.

5.8. Form of Brief. Each brief served and filed shall be written or typed on 8½ " x 11" paper. Text shall be double spaced using no smaller than 12 point spaced type and shall produce a clear black image on white paper.

a. Appellant's brief shall include in the following order:

1. The issue(s) on appeal and requested relief;

2. A brief statement of facts including the nature and extent of the injury, causation, dates or onset of disability;

3. The rulings of the Commission and Office of Judges thereon;

4. Conclusions of law including citation of authorities;

5. Argument; and

6. Conclusion.

b. Appellee's brief shall include in this order:

1. Any exceptions to the statement of fact in appellant's brief and any restatement of the facts according to the appellee's theory of the case;

2. Conclusions of law including citation of authorities;

3. Argument; and

4. Conclusion.

5.9. Reply Briefs. Unless requested by the Board, reply briefs are not necessary and will not be considered.

5.10. Failure to Comply. If an appellant or appellee represented by counsel fails to comply with the requirements of subsections 5.4, 5.5, 5.6, 5.7 or 5.8, the Board may, for good cause shown, permit an additional fifteen (15) days for compliance. Failure to comply with these rules without good cause shown may result in dismissal of the appeal.

5.11. Motions for Reinstatement after Dismissal. Any appellant, represented by counsel, whose appeal is dismissed pursuant to subsection 5.3 or 5.10, may submit a written motion for reinstatement of the appeal within thirty (30) days of the date of the dismissal order.

§102-1-6. Hearings and Decisions.

6.1. Review by the Board. The Board shall meet as often as necessary to hold hearings and decide appeals, at such times and places as the chairman may determine. Two members shall be present in order to conduct hearings or other business. All decisions of the Board of Review shall be determined by a majority of the members of the Board.

6.2. Place of Meeting. Unless indicated otherwise, the meetings of the Board shall be held at the Board of Review offices in the City of Charleston. The Board may meet at such other places throughout the State, as it may deem proper.

6.3. Request for Oral Argument. After expiration of the time for filing briefs, the Board shall notify each party that the appeal is ready for decision by the Board. The notice shall inform the parties that each party who plans to present an oral argument must complete the bottom section of the notice and send a copy to the Board and the other parties. The request for oral argument must be received by the Board within ten (10) days from the date of the Board's notice. The appeal will be decided by the Board without an oral argument unless this request is timely received. This form must be submitted by the party who is requesting oral argument even if the party requested oral argument on the Notice of Appeal. If one party returns the form indicating that the party plans to present oral argument, other parties may appear to respond to the oral argument. A party who is represented by counsel or a party that may only be represented by counsel may not present an oral argument or respond to an oral argument if the party did not file a brief.

a. If the request for oral argument is timely received, the Board shall schedule the appeal for oral argument and shall notify the parties of the date and time for the hearing.

b. Each party participating in oral argument will be allotted a maximum of fifteen (15) minutes.

6.4. Continuances on Argument Docket. No continuance will be granted after an appeal is placed on the argument docket except upon an affirmative showing of good cause. In accordance with W. Va. Code § 23-5-13, good cause will be strictly construed. The party requesting the continuance must confer with the other parties to determine their agreement or opposition to a continuance. The motion for a continuance must set forth the opposing parties' position.

a. Motions for continuance shall be filed at least fourteen (14) days prior to the commencement of the oral argument. If the motion is filed less than fourteen (14) days before the hearing and there is no agreement to a continuance, the motion must also include good cause for why the motion was filed late.

b. After one continuance has been granted, no other continuance will be granted except upon a showing of extraordinary cause.

c. Transfers of oral arguments will be granted upon a showing of good cause and agreement of the parties from one hearing day to another in the same month.

§102-1-7. Motions.

7.1. Motion for Corrected Order. A motion for a corrected order may be filed with the Board by any party to correct clerical errors and inadvertences in the Board of Review's written order if the correction(s) can be made within the thirty (30) day time period provided for an appeal of the order of the Board to the West Virginia Supreme Court of Appeals.

7.2. Miscellaneous Motions. A motion filed with the Board by any party shall state with particularity the grounds on which it is based and shall set forth the relief sought. The motion shall be served on all parties and any party may file a response in agreement or opposition thereto. The Board may, in its discretion, rule on any motion without the need for a hearing.

§102-1-8. Settlements and Stipulations.

8.1. Settlements. The parties are encouraged to pursue settlements in accordance with the provision of W. Va. Code §23-5-7. Upon joint motion of the parties, the Board may extend the timeframes pending settlement negotiations or review by the Office of Judges of a settlement agreement.

8.2. Stipulations. The parties are requested to confer to determine whether there are any facts or stipulations upon which they can agree. The stipulations shall be provided to the Board within the timeframe for filing the briefs. Counsel must set forth that he/she is authorized by the other parties to submit the stipulations. Some examples follow. If a party requests that the claim be remanded for consideration of a medical

report, and the other parties agree that a remand is warranted, the parties shall notify the Board of their position. If a question has been raised regarding the timeliness of an appeal, and the parties agree that this is not an issue, the parties shall inform the Board. If the parties agree that a subsequent order has rendered the appeal moot or that a mandate from the West Virginia Supreme Court of Appeals necessitates a specific action, the parties shall notify the Board.

§102-1-9. Application of Rules.

These rules shall apply to all cases before the Board, including those cases pending before the Board as of the effective date of this rule. The Board may, by order, modify the application of these rules to cases pending at the time of approval to prevent manifest injustice.

Appendix 102-1-A

BoR-1

NOTICE OF APPEAL TO THE
WORKERS' COMPENSATION BOARD OF REVIEW

Claim No. _____

SSN No. _____

Case Style _____

vs.

Appellant: Claimant Employer Commission (Please circle)

The appellant is aggrieved by and appeals from the order attached
dated _____.

Ground for review: _____.

Oral argument requested: Yes No (Please circle)

Date _____

Appellant_____
Address_____
Counsel_____
Address

A copy of the Administrative Law Judge order must be attached.

(NOTE: One (1) copy of this or a similar form of notice must be filed with the Workers' Compensation Office of Judges within thirty (30) days from RECEIPT OF NOTICE or, in any event, regardless of notice, within sixty (60) days after the action complained of.)