



FILED

February 12, 2018

**TENNESSEE
WORKERS' COMPENSATION
APPEALS BOARD**

Time: 2:00 P.M.

BUREAU OF WORKERS' COMPENSATION WORKERS' COMPENSATION APPEALS BOARD

IN RE: PRACTICES AND PROCEDURES

For the purpose of establishing uniform practices and procedures before the Workers' Compensation Appeals Board, the Appeals Board hereby adopts the following Practices and Procedures:

SECTION 1: SCOPE

1.1 Applicability

The Practices and Procedures of the Tennessee Workers' Compensation Appeals Board ("Appeals Board") are effective as of February 12, 2018, and shall pertain to all matters on appeal before the Appeals Board. Any practices and procedures as outlined below that are deemed to be in conflict with any statute, administrative regulation, or other controlling authority, are superseded by any such law.

1.2 Construction

These Practices and Procedures shall be construed to secure a just and speedy determination of all matters at issue during the pendency of an appeal. The Appeals Board may suspend any of these Practices and Procedures during the pendency of any appeal if justice so requires.

1.3 Memorandum Opinion

The Appeals Board may, in an effort to secure a just and speedy determination of matters on appeal and with the concurrence of all judges, decide an appeal by an abbreviated order or by memorandum opinion, whichever the Appeals Board deems appropriate, in cases that are not legally and/or factually novel or complex.

SECTION 2: REPRESENTATION AND CONDUCT

2.1 Representation by Counsel

In any appeal pending before the Appeals Board, any party may be represented by a Tennessee licensed attorney in good standing. An attorney licensed outside of Tennessee may apply for admission *pro hac vice* in accordance with Tennessee Supreme Court Rule 19. Any party that is a natural person may represent himself or herself in any proceeding before the Appeals Board. Any corporation or other artificial person must be represented by counsel in all proceedings before the Appeals Board.

2.2 Signatures

Any brief, motion, or other writing submitted on behalf of a party to the Appeals Board must be signed by an attorney who has entered an appearance in the case for such party or by a self-represented individual in accordance with paragraph 2.1. Any joint motion submitted to the Appeals Board involving a self-represented party must be signed by the self-represented party. An attorney may not sign an unrepresented party's name "by permission."

2.3 Conduct of Parties and Attorneys

At all times during the pendency of an appeal before the Appeals Board, all parties and their counsel shall conduct themselves in a manner respectful of the judges of the Appeals Board and all other parties and their counsel.

2.4 Written Materials

All briefs, motions, or other writings submitted to the Appeals Board shall contain language respectful of judges, parties, and their counsel. Any brief, motion, or other writing which contains language disrespectful of any court, judge, party, or attorney may be stricken or disregarded by the Appeals Board.

2.5 Ex Parte Communications

Attorneys and/or parties are prohibited from contacting any Appeals Board judge ex parte in any manner during the pendency of an appeal concerning or relating to the appeal. An appeal is pending from the date the notice of appeal is filed until the time a subsequent final order or judgment is entered in the case, or time for appeal of any subsequent final order or judgment has expired, whichever is later.

SECTION 3: RECORD ON APPEAL

3.1 Content of the Record

The record on appeal shall consist of: (1) all papers filed in the trial court except as hereafter provided; (2) exhibits; (3) a transcript or statement of the evidence, if any; (4) briefs or position statements filed before or after the filing of the notice of appeal; and (5) any other document(s) designated by a party and approved by the Court of Workers' Compensation Claims pertaining to the issues decided in that court and pertinent to an issue on appeal.

3.2 Excluded From the Record

The following papers filed in the Court of Workers' Compensation Claims are excluded from the record: (1) subpoenas or summonses for a party or witness unless admitted into evidence and pertinent to an issue on appeal; (2) papers relating to discovery unless admitted into evidence and pertinent to an issue on appeal; and (3) notices, motions, and orders relating thereto, unless pertinent to an issue decided by the Court of Workers' Compensation Claims.

3.3 Duplication

No paper shall be included in the record more than once.

3.4 Correction or Modification of the Record

Any dispute regarding the contents of a joint statement of the evidence submitted in lieu of a transcript or regarding whether the record accurately discloses what occurred in the Court of Workers' Compensation Claims shall be submitted to and settled by the Court of Workers' Compensation Claims. The party requesting correction or modification of the record shall file a motion with the Appeals Board requesting that the case be remanded to the Court of Workers' Compensation Claims for resolution of the dispute. If necessary, the Appeals Board may direct that a supplemental record be submitted to the Appeals Board.

SECTION 4: EXTENSIONS OF TIME AND REQUESTS FOR CONTINUANCE

4.1 Motions for Extensions of Time

Any motion seeking to extend any time limit during the pendency of an appeal must be filed prior to the expiration of the applicable time limit. The motion may be decided by one Appeals Board judge. An order will be issued as soon as practicable after the motion is filed. The Appeals Board cannot extend the time for filing a notice of appeal. If a notice of appeal is not timely filed, the Appeals Board is without jurisdiction to review the case.

4.2 Good Cause and Exceptional Circumstances

Any motion seeking to extend any time limit during the pendency of an appeal must show good cause in support of the motion sufficient to establish exceptional circumstances. The existence of good cause and/or exceptional circumstances shall be determined in the discretion of the Appeals Board.

4.3 Extensions of Time

With the exception of the filing of a notice of appeal, the Appeals Board may extend deadlines during the appeals process upon motion filed by a party or its own motion as provided in Tennessee Code Annotated section 50-6-217(d)(1).

SECTION 5: BRIEFS AND POSITION STATEMENTS

5.1 Briefs in Interlocutory Appeals

Briefs filed in support of an interlocutory appeal shall specify the issues presented for review and include legal argument in support thereof. All briefs shall include: (1) a statement summarizing the facts of the case from the evidence admitted in the trial court; (2) a statement summarizing the trial court's disposition of the case; (3) a statement of the issue(s) presented for review on appeal; and (4) an argument, citing relevant statutes, case law, or other authority. The argument section is limited to a maximum of fifteen (15) pages unless otherwise directed by the Appeals Board. The brief shall include a table of

contents, a table of authorities, and a certificate of service. All briefs shall be signed by the attorney of record or the self-represented party filing the brief.

5.2 Briefs in Compensation Appeals

Briefs filed in support of a compensation appeal shall specify the issues presented for review and include legal argument in support thereof. All briefs shall contain: (1) a statement of the facts summarizing the facts from the evidence admitted during the trial; (2) a statement of the case summarizing the disposition of the case by the Court of Workers' Compensation Claims; (3) a statement of the issue(s) presented for review on appeal; and (4) an argument, citing relevant statutes, case law, or other authority. The argument section is limited to a maximum of fifteen (15) pages unless otherwise directed by the Appeals Board. The brief shall include a table of contents, a table of authorities, and a certificate of service. All briefs shall be signed by the attorney of record or the self-represented party filing the brief.

5.3 Cover Page

Briefs shall include a cover page setting forth: (1) the style of the case; (2) the designation "Brief of the Appellant" or "Brief of the Appellee;" and (3) the name and address of the attorney of record or self-represented party filing the brief.

5.4 Motions Relating to Length of Briefs

Any motion seeking to expand the page limit of a brief must be filed at least five business days prior to the date the brief is due. The motion may be decided by one Appeals Board judge. An order will be issued as soon as practicable after the motion is filed.

5.5 Issues Waived

Issues or arguments not raised in the Court of Workers' Compensation Claims will be deemed waived on appeal.

SECTION 6: ORAL ARGUMENT

6.1 When Allowed

No oral argument shall be allowed unless otherwise directed by the Appeals Board either upon its own motion or upon motion of a party.

6.2 Motions for Oral Argument

A party wishing to request oral argument shall do so by written motion. The motion shall be filed within five business days of the filing of the notice of appeal and must state with specificity the reason or reasons the decision-making process would be aided by oral argument.

6.3 Methods for Conducting Oral Argument

Oral argument may be conducted telephonically, by video conference, or in person, at the discretion of the Appeals Board. The Clerk will advise the parties regarding the method of oral argument as determined by the Appeals Board.

6.4 When and Where Conducted

The Clerk will advise the parties regarding the date and location of oral argument as determined by the Appeals Board.

6.5 Continuance

Once oral argument is scheduled, it shall not be continued absent a showing of exceptional circumstances.

6.6 Conduct of Oral Argument

Oral argument shall be conducted under the supervision of the Appeals Board's presiding judge or, if the presiding judge is not a member of the panel to hear oral argument, by the Appeals Board judge designated by the presiding judge to preside at oral argument. The judge presiding at oral argument shall regulate all procedural matters arising during the course of argument.

- a. *Time Allotted for Argument.* Unless the Appeals Board otherwise orders, each side shall be permitted no more than twenty-five minutes for presentation of the party's oral argument. The appellant may reserve a portion of the appellant's allotted time for rebuttal. If a party believes additional time will be necessary for the adequate presentation of the case, the party may request additional time by motion filed in advance of the date fixed for oral argument. A party is not obligated to use all of the time allowed, and the Appeals Board may terminate the argument when in its judgment further argument is unnecessary.
- b. *Brief on Appeal Required for Argument.* No party may present oral argument unless the party has filed a brief.
- c. *Order of Arguments.* The appellant is entitled to open and conclude the argument.
- d. *Reading Discouraged.* Reading at length from the record, briefs, or authorities cited is discouraged.
- e. *Multiple Parties Requesting Relief.* If more than one party is requesting relief, the sequence of oral argument shall be as the parties agree or as the Appeals Board directs.
- f. *Divided Argument.* No more than two parties requesting the same relief will be heard except by leave of the Appeals Board. Divided arguments are disfavored, and care should be taken to avoid duplication of argument.

6.7 Presence of Parties

If a party fails to appear for oral argument, the Appeals Board will hear argument on behalf of the parties participating. If no party appears, the case will be decided on the record and the briefs unless the Appeals Board otherwise orders. If oral argument is granted upon motion of a party and that party fails to appear or participate in oral argument in the manner designated, the Appeals Board may tax costs to such party. A party represented by an attorney will be considered present at oral argument upon the appearance of the attorney.

6.8 Questions from the Appeals Board

If the Appeals Board determines that additional analysis of an issue or issues may be beneficial, the Appeals Board may, by order, direct the parties to submit arguments or additional briefing addressing those issues whether or not oral argument is held. Alternatively, the Appeals Board may correspond via email with the parties, through the Clerk of the Appeals Board, directing that specific issues be addressed whether or not oral argument is held. The party to whom any such questions are directed shall submit a response to the Clerk by email within five (5) business days of the transmission of the questions. Any other party shall respond to the initial response by email to the Clerk within five (5) business days of the transmission of the initial response. A reply to such response, if any, shall be submitted within three (3) business days of the transmission of the response. No further responses shall be permitted unless otherwise directed by the Appeals Board.

SECTION 7: MAINTENANCE AND DISPOSITION OF RECORDS

7.1 Maintenance of the Record on Appeal

All pleadings, forms, transcripts, depositions, briefs, motions, other writings, and all exhibits, shall be maintained by the Clerk of the Appeals Board during the pendency of the appeal.

7.2 Disposition of the Record on Appeal

After final determination of any case, the parties shall have one hundred eighty (180) days after entry of the decision on appeal to withdraw exhibits or depositions. The Clerk may destroy or dispose of any exhibits or depositions not so withdrawn in accordance with the Records Disposition Authorization of the Bureau.

SECTION 8: RECUSAL

8.1 Properly Supported Motion

Any party seeking recusal of an Appeals Board judge shall do so as soon as practicable by written motion supported by an affidavit under oath or a declaration made under penalty of perjury on personal knowledge and by other appropriate materials. The motion shall state, with specificity, all factual and legal grounds supporting disqualification of the judge and shall affirmatively state that it is not being presented for

any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

8.2 Disposition

Upon the filing of a motion seeking recusal, the judge in question shall act promptly by written order and either grant or deny the motion. If the motion is denied, the judge shall state in the order the grounds upon which he or she denies the motion.

SECTION 9: NOTICE TO ATTORNEY GENERAL WHEN VALIDITY OF STATUTE, RULE, OR REGULATION IS QUESTIONED

9.1 Notice

When the validity of a statute of this state or an administrative rule or regulation of this state is drawn into question in any appeal of a matter to which the state or an officer or agency of the state is not a party, the party raising such question shall serve a copy of the party's notice of appeal, and any subsequent brief or position statement, on the Attorney General of Tennessee ("Attorney General").

9.2 Proof of Service

Proof that service has been made on the Attorney General shall be filed with the brief or position statement of the party raising such question.

9.3 Response Permitted

The Attorney General is entitled, within the time allowed for the filing of a responsive brief by a party, to file a brief. The Attorney General is also entitled to be heard orally if oral arguments are scheduled in the case.

SECTION 10: SUBSTITUTION OF PARTIES; SUBSTITUTION OR WITHDRAWAL OF ATTORNEYS

10.1 Substitution After Appeal is Filed

If substitution of a party is necessary due to death or other reason following the filing of the notice of appeal, a motion for substitution may be made by any party or by the successor or representative of any such deceased party.

10.2 Death of Party Before Appeal is Filed

If a party entitled to appeal should die before filing a notice of appeal, a notice of appeal may be filed and served by the deceased party's personal representative or, if there is no such personal representative, by the deceased party's counsel of record. After the notice of appeal is filed, substitution shall be effected in accordance with this section.

10.3 Substitution or Withdrawal of Attorney

Any substitution or withdrawal of any attorney shall comply with Rule 0800-02-21-.05 of the administrative rules and regulations of the Bureau of Workers' Compensation.

SECTION 11: FILING FEE/DISMISSAL OF APPEALS

11.1 Filing Fee/Affidavit of Indigency

The appealing party is responsible for payment of a filing fee in the amount of \$75.00. Within ten (10) calendar days after the filing of a notice of appeal, payment must be received by check, money order, or credit card. Payments can be made in person at any Bureau office or by United States mail, hand-delivery, or other delivery service. In the alternative, the appealing party may file an Affidavit of Indigency, on a form prescribed by the Bureau, seeking a waiver of the filing fee. The Affidavit of Indigency may be filed contemporaneously with the Notice of Appeal or must be filed within ten (10) calendar days thereafter. The Appeals Board will consider the Affidavit of Indigency and issue an order granting or denying the request for a waiver of the filing fee as soon thereafter as is practicable. In determining indigency, the Appeals Board will consider all relevant circumstances, including the Legal Services Corporation's poverty guidelines published in the Code of Federal Regulations. Failure to timely pay the filing fee or file the Affidavit of Indigency in accordance with this section may result in dismissal of the appeal.

11.2 Voluntary Dismissal of an Interlocutory Appeal

If any party who has filed a notice of appeal following an interlocutory appeal elects to dismiss the appeal voluntarily, such party shall file a motion to dismiss the appeal with the Clerk of the Appeals Board. Any party opposing the dismissal shall file a response to the motion within five (5) business days of the filing of the motion to dismiss. The Appeals Board will then act on the motion. If the motion is granted, the case shall be remanded to the Court of Workers' Compensation Claims for any further proceedings that may be necessary. If the motion is denied, the appeal shall proceed as directed by the Appeals Board.

11.3 Voluntary Dismissal of a Compensation Appeal

If any party who has filed a notice of appeal following a compensation hearing elects to dismiss the appeal voluntarily, such party shall file a motion to dismiss the appeal with the Clerk of the Appeals Board. Any party opposing the dismissal shall file a response to the motion within five (5) business days of the filing of the motion to dismiss. The Appeals Board will then act on the motion. If the motion is granted, the Appeals Board shall certify the compensation order as final. If the motion is denied, the appeal shall proceed as directed by the Appeals Board.

IT IS SO ORDERED.

ENTERED THIS 12TH DAY OF FEBRUARY, 2018.