

**RULES
OF THE
TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT**

**CHAPTER 0800-02-21
MEDIATION AND HEARING PROCEDURES**

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0800-02-21-.01 SCOPE.

These rules govern the procedures for resolution of workers' compensation disputes, including informal resolution and practice before the court of workers' compensation claims. They are intended to provide for an efficient and expedient resolution of issues within the jurisdiction of the Bureau.

Authority: T.C.A. §§ 4-3-1409 and 50-6-101; and Public Chapter 289 (2013), Sections 73 and 106.
Administrative History: Original rule filed April 1, 2014; effective June 30, 2014. Amendments filed September 1, 2016; effective November 30, 2016.

0800-02-21-.02 DEFINITIONS.

- (1) Appeals Judge. A judge of the board of workers' compensation appeals.
- (2) Appeals Board. Unless otherwise provided or clearly inapplicable in context, appeals board shall mean the board of workers' compensation appeals.
- (3) Catastrophic Injury. For the purposes of this section only, any of the following injuries shall be catastrophic:
 - (a) Spinal cord injury involving severe paralysis of an arm, a leg, the trunk or any combination of these;
 - (b) Amputation of an arm, a hand, a foot, a leg or any combination of these involving the effective loss of use of that appendage;
 - (c) Severe brain or closed head injury as evidenced by:
 1. Severe sensory or motor disturbances;
 2. Severe communication disturbances;
 3. Severe complex integrated disturbances of cerebral function;
 4. Severe disturbances of consciousness; or

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5. Severe episodic neurological disorders;
 - (d) Second or third degree burns to twenty-five percent (25%) or more of the body as a whole or third degree burns to five percent (5%) or more of the face or hands;
 - (e) Total or industrial blindness; or
 - (f) Total loss of hearing.
- (4) Chief Judge. The chief judge is the supervisor and coordinator of all activities in the court of workers' compensation claims. The chief judge is responsible for administration of the day-to-day operations of the court and supervision of its judges. The chief judge may also preside over hearings of workers' compensation cases. The chief judge has the authority to issue orders in furtherance of these responsibilities.
- (5) Claim. For the purposes of these rules, a claim shall refer to the assertion of the entitlement to a remedy provided by the Workers' Compensation Law as a result of an injury described therein.
- (6) Clerk. Unless otherwise provided, clerk shall mean the clerk of the court of workers' compensation claims and any deputy clerk.
- (7) Compensation Order. A compensation order is an order by a workers' compensation judge following conclusion of a full evidentiary hearing or a decision on the record and shall include a decision issued by a judge following a hearing related to an open medicals provision in a previously issued order or approved settlement. The parties may, by joint stipulation, request a compensation order resolving the issues in dispute without a hearing.
- (8) Court. Unless otherwise provided, court shall mean the court of workers' compensation claims.
- (9) Decision on the record: For purposes of an expedited hearing or a compensation hearing, upon the motion of either party or the joint motion of both parties, the workers' compensation judge may select a case for determination based on the review of the record. If the judge accepts the case for decision on the record, the parties will be afforded an opportunity to submit written position statements that support their respective positions. Appeal of a decision on the record shall proceed as set forth in the Workers' Compensation Law and these rules.
- (10) Dispute Certification Notice. The notice filed by the mediator with the clerk following the completion of alternative dispute resolution proceedings stating that, following mediation, a dispute concerning the issues set forth in the notice still exists. Unless permission is granted by the court in accordance with Tennessee Code Annotated section 50-6-239(b), no issue that is not contained within the dispute certification notice may be submitted to the judge for adjudication.
- (11) Bureau. Unless otherwise provided, Bureau shall mean the Bureau of Workers' Compensation.
- (12) Electronic signature. A pleading, order, or other document that is transmitted by electronic mail or other means of electronic transmission to or from the Bureau may be signed or verified electronically in the manner approved by the Bureau for such transmissions.
- (13) Expedited Hearing. A hearing conducted pursuant to these rules to determine the provision of temporary disability and/or medical benefits prior to a hearing that results in a compensation

(Rule 0800-02-21-.02, continued)

order. A workers' compensation judge shall convene a hearing of a request for expedited hearing unless the judge determines that convening a hearing is not necessary to determine the issues presented. If the judge determines that no hearing is necessary, the judge will issue an interlocutory order either awarding or denying temporary disability and/or medical benefits based on a review of the record without convening a formal hearing.

- (14) **Filed.** For purposes of this chapter, a pleading or other document required to be sent to the court shall be considered filed only on the date and time received by the clerk if delivered by hand to the clerk's offices in Nashville or any other office maintained by the Bureau during normal business hours; on the date posted to the clerk if sent by U.S. certified or registered mail, return receipt requested, or other equivalent manner; or when the material being transmitted reaches the Bureau or its designated agent, if transmitted by first-class mail, facsimile, electronic mail or other means of electronic transmission approved or required by the Bureau.
- (15) **Interlocutory Order.** An interlocutory order is an order by a workers' compensation judge that awards or denies temporary disability or medical benefits following a review of the submitted material, or a hearing if one is convened at the discretion of the workers' compensation judge, as a result of a motion for expedited hearing. An interlocutory order may be reviewed by the board of workers' compensation appeals upon timely request of a party. No other review of an interlocutory order is permitted.
- (16) **Judge or Workers' Compensation Judge.** A judge of the court of workers' compensation claims.
- (17) **Petition for Benefit Determination.** A petition for benefit determination is a request for the Bureau to provide assistance in the resolution of any disputed issues in a workers' compensation claim. Any party may file a petition for benefit determination, on a form approved by the Bureau, with the Bureau at any time after a dispute arises in a claim for workers' compensation benefits.
- (18) **Request for Hearing.** A request to the clerk to schedule a hearing before a workers' compensation judge for the adjudication of a disputed issue that has been certified by a mediator on a dispute certification notice.
- (19) **Request for Expedited Hearing.** A request for an expedited hearing is a request filed with the clerk of the court for a workers' compensation judge to conduct an expedited hearing and issue an interlocutory order for temporary disability and/or medical benefits. Either party may file a request for expedited hearing with the clerk at any time after a dispute certification notice has been filed.
- (20) **Scheduling Hearing.** With the exception of an expedited hearing, a scheduling hearing shall be the first hearing before a workers' compensation judge where the judge will consider issues related to the efficient processing of the case.

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-233, and 50-6-239; and Public Chapter 289 (2013), Sections 73, 76, 79, 82, 83, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Amendments filed September 1, 2016; effective November 30, 2016.

0800-02-21-.03 COMPUTATION OF TIME.

- (1) Unless otherwise noted, the time required for completing any actions provided in these rules shall be calculated in the manner provided by Rule 6.01 of the Tennessee Rules of Civil Procedure.

(Rule 0800-02-21-.03, continued)

- (2) Except in regard to filing a petition for benefit determination pursuant to T.C.A. § 50-6-203 and a request for hearing pursuant to T.C.A. § 50-6-239(a), when an act is required to be done at or within a specified time, the workers' compensation judge or board of workers compensation appeals judge may, at any time:
 - (a) Order the period enlarged, without notice, if the request is made before the expiration of the period originally prescribed or extended by a previous order; or
 - (b) Order the period enlarged, thereby permitting the act to be done late, upon motion made after the expiration of the period originally prescribed if the failure to complete the act within the prescribed period was the result of excusable neglect.
- (3) Nothing in this section shall be construed to allow any ex parte communications with a workers' compensation judge or workers' compensation appeals board judge concerning any issue in the proceeding that would be prohibited by T.C.A. § 4-5-304.

Authority: T.C.A. §§ 4-3-1409, 50-6-233, and 50-6-239; and Public Chapter 289 (2013), Sections 73, 79, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Amendments filed September 1, 2016; effective November 30, 2016.

0800-02-21-.04 OMBUDSMAN.

- (1) The workers' compensation ombudsman program provides assistance to employees, employers or any other party or participant in a workers' compensation claim who is not represented by legal counsel. The ombudsman can provide information on workers' compensation law and rules; inform participants of their rights and obligations under the law; assist participants in completing forms; obtaining medical records and scheduling appointments; and perform any other duties as required by the administrator.
- (2) Any party who is not represented by counsel may request the services of a workers' compensation ombudsman by contacting the Bureau.
- (3) An ombudsman shall have authority including, but not limited to:
 - (a) Meeting with and providing information to unrepresented parties about their rights and responsibilities under the law;
 - (b) Investigating claims and attempting to resolve disputes without resort to alternative dispute resolution and court proceedings;
 - (c) Communicating with all parties and providers in the claim;
 - (d) Assisting the parties in the completion of forms; and
 - (e) Facilitating the exchange of medical records.
- (4) An ombudsman cannot provide legal advice.
- (5) An ombudsman cannot be called to testify in any proceeding and no statement or representation made to an ombudsman shall be considered by a workers' compensation judge for any purpose.
- (6) Any unrepresented person or entity seeking the services of an ombudsman shall contact the Bureau and the Bureau shall assign an ombudsman to assist the person or entity so long as the Bureau determines that the person or entity is qualified to receive the services of the

(Rule 0800-02-21-.04, continued)

ombudsman. The Bureau shall retain sole authority to determine the nature of the services to be provided by the ombudsman, pursuant to T.C.A. § 50-6-216(a).

- (7) If a person or entity receiving the services of an ombudsman obtains legal counsel in the case or dispute for which the services of an ombudsman were sought, the person or entity shall immediately notify the Bureau of the representation and shall discontinue use of the services provided by an ombudsman.

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-216, and 50-6-233; and Public Chapter 289 (2013), Sections 73 and 77. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Amendment filed December 22, 2014; effective March 22, 2015. Amendments filed September 1, 2016; effective November 30, 2016.

0800-02-21-.05 REPRESENTATION BY COUNSEL.

- (1) At any hearing or mediation proceeding:
 - (a) 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.
 - (b) Any party that is a natural person may represent himself or herself at any hearing or mediation proceeding.
 - (c) Any corporation or other artificial person may participate through a duly authorized representative such as an officer, director or appropriate employee, but must be represented by counsel in all proceedings occurring the in court of workers' compensation claims and the board of workers' compensation appeals.
 - (d) No party may be represented by a non-attorney.
- (2) Immediately upon engaging in representation of a party, an attorney shall file a notice with the Bureau indicating their appearance. After a licensed attorney has appeared on behalf of any party, all pleadings, motions, notices, and other documents shall be served upon the attorney. In lieu of filing formal notice, an attorney's signing of a petition for benefit determination, request for hearing, proposed scheduling hearing order, wage statement, pretrial statement or any other document that is filed with the clerk or the Bureau shall satisfy the notice of appearance requirement.
- (3) Representation shall continue until the case is concluded, including any appeals to the appeals board, or until withdrawal from representation has been approved by a judge. All withdrawals of an attorney following an appearance shall be upon motion with reasonable notice provided to the represented party. The motion to withdraw must be accompanied by an affidavit from the attorney setting forth the last known address of the client and a statement declaring that the attorney has provided notice to the client of both the effects of the attorney's withdrawal from the case and of any deadlines and scheduled proceedings. The motion shall be heard by the court by convening a hearing, unless the presiding judge determines that a hearing is not necessary.
- (4) If a party is represented by an attorney, then all pleadings, motions, and other documents filed with the Bureau shall be signed by at least one attorney of record. If a party is not represented by an attorney, then the party must include his or her signature on the filing. Individuals signing a filing must include their address and an attorney signing a filing must also include the attorney's Tennessee board of professional responsibility number. Unless otherwise required by statute or regulation, signatures do not need to be accompanied by affidavit. The signature of an individual signifies that the individual has read the filing, the

(Rule 0800-02-21-.05, continued)

filing is well grounded in fact and is warranted by existing law or an extension or modification of existing law, and the filing is not made for any improper purpose.

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-233, and 50-6-239; and Public Chapter 289 (2013), Sections 73 and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Amendments filed September 1, 2016; effective November 30, 2016.

0800-02-21-.06 FOREIGN ATTORNEYS.

Unless permission has been granted by the court, only attorneys who have been admitted to practice law by the Tennessee Supreme Court may appear before judges of the court of workers' compensation claims. The Bureau may admit foreign attorneys to appear pro hac vice upon application on a form approved by the Bureau.

Authority: T.C.A. §§ 4-3-1409 and 50-6-101; and Public Chapter 289 (2013), Sections 73, 79, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Amendments filed September 1, 2016; effective November 30, 2016.

0800-02-21-.07 FEES.

A filing fee of \$150 shall be paid to the clerk by the employer at the time of settlement approval or at the conclusion of a case. The filing fee shall be submitted to the clerk before a scheduled settlement approval hearing or within five (5) business days after the fee has been assessed by the workers' compensation judge. Payment shall be made in a form, and submitted in a manner, approved by the Bureau.

Authority: T.C.A. §§ 4-3-1409 and 50-6-101; and Public Chapter 289 (2013), Section 82. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Amendments filed September 1, 2016; effective November 30, 2016.

0800-02-21-.08 FORMS.

All documents filed with the Bureau, including those allowed or required to be filed electronically, shall be in the form approved by the Bureau.

- (1) Pursuant to T.C.A. § 50-6-244, the following statistical data form is to be used for settlements approved by the court of workers' compensation claims involving injuries occurring on or after July 1, 2014:

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(Rule 0800-02-21-.08, continued)



Tennessee Bureau of Workers' Compensation
 220 French Landing Drive, I-B
 Nashville, TN 37243-1002
 800-332-2667

STATISTICAL DATA FORM FOR INJURIES ON/AFTER JULY 1, 2014—Form SD-2

EMPLOYEE INFORMATION

Docket # _____ State File # _____ *Date of Injury _____
 Employee Last Name _____ First Name _____ MI _____ SSN _____
 Date of Birth _____ Year of Hire _____ Education Level *Less Than High School* *High School* *More than High School*

CLAIM/INJURY INFORMATION

Employer _____ Is Employer Self-Insured? Yes No
 Is Employer a member of the Bureau's Tennessee Drug Free Workplace Program? (select one) Yes No
 Insurer _____ TPA _____
 Injury occurred in TN Yes No County of Injury _____
 First date out of work _____ Date of return to work _____ Total # of days lost _____
 Date of MMI _____ ATP Impairment Rating % _____
 Average Weekly Wage _____ Compensation Rate _____
 Was claim denied? Yes No If yes, basis of denial? *Statute of Limitations* *Notice* *Not Work-Related*
 Vocational Assessment performed? Yes No *Intoxication/+ Drug Test* *Other (Specify) _____*
 Nature of Primary Injury/Body Part _____ Occupational Illness Yes No
 Chiropractic Treatment? Yes No Physical Therapy? Yes No Case Manager? Yes No
 Was there an Employee IME? Yes No If yes, Impairment Rating % _____
 Was there an Employer IME? Yes No If yes, Impairment Rating % _____

SETTLEMENT / HEARING INFORMATION

Type of Conclusion: **Compensation Hearing** **Settlement Approval**
 Was Bureau Mediation conducted? Yes No If yes, was dispute resolved in mediation? Yes No
 If concluded by a Compensation Hearing: Style of Case _____
 Date of Hearing _____ Name of Approving/Hearing Judge _____
 Date of Settlement Approval _____ Impairment Rating % used to settle the claim _____
 Has Initial Compensation Period expired? Yes No If no, insert date this Period will expire _____
 PPD increased benefits awarded? Yes No Vocational Impairment for Increased Benefits _____
 If yes, check all that apply: **Did not return to work** **40+ years old** **County Unemployment Rate** **Education level**
 Was there a trial for increased benefits Yes No Was there a judgment for increased benefits? Yes No
 Was there a judgment for the Employer? Yes No If yes, what was the basis: **Statute of limitations** **Notice**
 Not work related **No permanency** **Intoxication** **Willful Misconduct** **Other _____**
 Did Employee return to work for any Employer? Yes No If yes, was return to work pay Less Same Higher
 Was claim settled pursuant to T.C.A. §50-6-240(e)? Yes No

(Rule 0800-02-21-.08, continued)

Authority: T.C.A. §§ 4-3-1409, 50-6-101, and 50-6-244; and Public Chapter 289 (2013), Sections 73 and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Amendments filed September 1, 2016; effective November 30, 2016. Amendments filed February 5, 2018; effective May 6, 2018.

0800-02-21-.09 SERVICE OF DOCUMENTS.

Copies of a petition for benefit determination, request for hearing, request for appeal and any other documents filed with the Bureau, the court of workers' compensation appeals or the appeals board shall be served upon all parties to the dispute or upon their attorneys, if represented. Service must be accomplished either before filing with the Bureau or within a reasonable time thereafter. Service may be accomplished by hand delivery, mail or common carrier, facsimile, electronic mail in PDF format, or other electronic means approved by the Bureau. Unless otherwise required by the Bureau, proof of service shall be by certification of the sender on the document filed with the Bureau. Such certification shall include the name of the person served, the date, the manner of service and the address where service was made.

Authority: T.C.A. §§ 4-3-1409 and 50-6-101; and Public Chapter 289 (2013), Sections 73 and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Amendments filed September 1, 2016; effective November 30, 2016.

0800-02-21-.10 COMMENCEMENT OF ALTERNATIVE DISPUTE RESOLUTION.

- (1) Resolution of a dispute over a claim for workers' compensation benefits shall commence by the filing of a petition for benefit determination, on a form approved by the Bureau, with the Bureau within the applicable timeframes provided by T.C.A. § 50-6-203. If a petition for benefit determination is not filed within the applicable timeframes provided by T.C.A. § 50-6-203, then the right to compensation under the Workers' Compensation Law relating to the dispute shall be forever barred.
- (2) After a petition for benefit determination is filed, each party shall promptly provide the other parties with copies of any medical records related to the claimed injury in their possession. Further, each party shall provide copies of any medical reports related to the claimed injury received during the course of the proceeding, as they receive them, to all other parties within fourteen (14) calendar days of receipt. The mediator may refer any party that does not comply with the requirements of this rule for the assessment of a civil penalty.
- (3) Within seven (7) business days after the request of the mediating specialist or within fifteen (15) business days after a dispute certification notice is filed with the clerk, whichever is sooner, the employer shall provide a wage statement, on a form approved by the Bureau, detailing the employee's wages over the fifty-two (52) week period preceding the injury. The form must be fully completed and signed by the employer or counsel. If the employee was employed by the employer for fewer than fifty-two (52) weeks, the employer shall provide a wage statement detailing the employee's wages over the entire period of employment. If the mediating specialist requests the wage statement, the employer shall send the wage statement directly to the mediating specialist. If the dispute certification notice has been filed with the clerk, the employer shall file the wage statement with the clerk. Under either circumstance, the employer shall serve a copy of the wage statement upon the employee in the manner provided by these rules. Any employer who does not file a wage statement within the timeframe provided by this paragraph may be assessed a civil penalty.
- (4) After a petition for benefit determination is filed, the case shall be assigned to a mediator who will schedule alternative dispute resolution proceedings under the procedures provided by these rules.

(Rule 0800-02-21-.10, continued)

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-233, and 50-6-236; and Public Chapter 289 (2013), Sections 73, 76, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Amendments filed September 1, 2016; effective November 30, 2016.

0800-02-21-.11 ALTERNATIVE DISPUTE RESOLUTION PROCEEDINGS.

- (1) Once a case has been assigned to a mediator, the mediator shall conduct alternative dispute resolution proceedings in any manner that is practical for the effective resolution of the issues in dispute, including allowing for telephonic, electronic, or in-person interactions.
- (2) The parties shall cooperate with the mediator and provide any information necessary for the resolution of the dispute. If the mediator determines that a party is not cooperating or is not negotiating in good faith, then the mediator shall refer the party for a penalty as provided by T.C.A. § 50-6-118. When a party is referred by the mediator for the assessment of civil penalty pursuant to this section, the referral shall be assigned to another employee of the Bureau who shall consider the referral and make a decision of whether assessment of a penalty is appropriate.
- (3) If the parties are able to reach a resolution of all disputed issues, the mediator shall reduce the terms of the resolution to a settlement agreement and file the agreement with the clerk. The clerk shall place the case on the docket and assign the case to a workers' compensation judge for a settlement approval hearing.
- (4) If the parties are unable to reach a resolution of all disputed issues, the mediator shall issue a dispute certification notice to the parties. The mediator shall note any issues that the parties have agreed upon in the notice as well as the remaining issues that are still in dispute including all defenses to the claim that were raised during the mediation.
- (5) If any party disagrees with the contents of the dispute certification notice issued pursuant to paragraph (4), then such party is required to file an objection with the mediator within five (5) business days of receipt. In the objection, the party shall provide a list of any additional disputed issues that it believes should be included in the dispute certification notice. The mediator shall issue an amended dispute certification notice to the parties and file the dispute certification notice with the clerk.
- (6) If the employee fails to appear at any scheduled alternative dispute resolution proceeding, the mediator shall issue a dispute certification notice stating that the employee has failed to appear for a scheduled alternative dispute resolution proceeding. The clerk shall place the case on the dismissal calendar for a show cause hearing and send notice of the show cause hearing to the parties as provided in rule 0800-02-21-.12(1). If the case is dismissed following the show cause hearing, the employee may revive the case by attending alternative dispute resolution proceedings within sixty (60) days of the date of the order as provided in T.C.A. § 50-6-203(f).

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-233, and 50-6-236; and Public Chapter 289 (2013), Sections 33, 73, 79, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Amendments filed September 1, 2016; effective November 30, 2016.

0800-02-21-.12 REQUEST FOR HEARING AND DOCKETING OF CASES.

- (1) Immediately after a dispute certification notice has been filed with the clerk, either party seeking further resolution of any disputed issues shall file a request for hearing with the clerk on a form approved by the Bureau and serve a copy of the request on the opposing party or their counsel, if any. If no request for hearing is filed within sixty (60) calendar days after the date of issuance of the dispute certification notice, the clerk shall docket the case and place the case on a separate dismissal calendar for a show cause hearing. The clerk shall send

(Rule 0800-02-21-.12, continued)

notice of the hearing to the parties, via regular or electronic mail, indicating the claim number, the time of the hearing and the judge assigned to the case. Either party may appear to show cause as to why the case should not be dismissed.

- (2) Except in cases where an employee has suffered a catastrophic injury or for similar reasons as determined by the Bureau, all cases shall be placed on the docket by the clerk in the order that the request for hearing is received. If the dates are available, the clerk will assign a date for the hearing based upon available dates provided by the parties, in coordination with the mediator assigned to the case.
- (3) The clerk shall consolidate all requests for hearing related to a single dispute certification notice into a single referral to the docket. If two or more filings that should be consolidated are not consolidated, then the cases shall be combined and assigned to the judge that was given the assignment for the first request that was filed, unless otherwise directed by the chief judge. Consolidation may occur upon the motion of a party or on a judge's own motion.

Authority: T.C.A. §§ 4-3-1409 and 50-6-101; and Public Chapter 289 (2013), Sections 73, 79, 82, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Amendments filed September 1, 2016; effective November 30, 2016.

0800-02-21-.13 SCHEDULING HEARING.

- (1) All parties to any case shall participate in a scheduling hearing with a workers' compensation judge no more than thirty (30) calendar days after a request for hearing is filed.
- (2) After the scheduling hearing has been set, the clerk shall send a docketing notice to all parties, via regular or electronic mail, indicating the case number, the time of the initial hearing and the judge assigned to the case. The clerk shall also send information to the parties detailing the actions required to prepare for and participate in the scheduling hearing. Unless the judge determines that an in-person hearing is necessary, all scheduling hearings shall be conducted telephonically or through other electronic means as determined by the workers' compensation judge.
- (3) At the scheduling hearing, the parties shall discuss and agree upon a discovery plan and a scheduling order designed to ensure timely and efficient resolution of the case. The parties shall jointly submit a proposed scheduling hearing order, in a format provided by the Bureau, to the judge for consideration. The proposed order shall be submitted via electronic mail, unless another method of delivery is required by the Bureau, within three (3) business days of the conclusion of the scheduling hearing.
- (4) At the conclusion of the scheduling hearing, the judge shall set a date for completion of post-discovery alternative dispute resolution, unless the court determines further mediation unnecessary. The judge shall also set a date for the compensation hearing. The date of the compensation hearing shall not be modified without permission from the presiding judge based on a finding of good cause.

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-233, and 50-6-239; and Public Chapter 289 (2013), Sections 73, 79, 82, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Amendments filed September 1, 2016; effective November 30, 2016.

0800-02-21-.14 EXPEDITED HEARING.

- (1) If there is a dispute over temporary disability and/or medical benefits, either party may file a request for expedited hearing.

(Rule 0800-02-21-.14, continued)

- (a) A request for expedited hearing must be accompanied by an affidavit containing a plain and concise statement of the facts upon which the request is based and any other documents demonstrating the party is entitled to the requested relief. The party requesting an expedited hearing shall list any witnesses it intends to introduce at a hearing on the request for expedited hearing form.
 - (b) The party opposing the request for expedited hearing must submit all documents to the clerk, including any affidavits, demonstrating the moving party is not entitled to the requested relief no later than ten (10) business days before the date of the expedited hearing. The party opposing the request or motion for expedited hearing must also provide a plain and concise statement detailing why the relief requested should not be granted and shall list any witnesses it intends to introduce at the expedited hearing.
 - (c) Evidence or witnesses not disclosed in accordance with this rule, except for witnesses or evidence intended for impeachment or rebuttal purposes, will not be considered unless good cause is shown as to why the evidence/witness was not disclosed.
 - (d) The court will entertain requests for reasonable extensions of the time periods set forth in this rule. The request should be made by motion to the court and filed with the clerk prior to the expiration of the time period the party seeks to extend. Any response in opposition to the motion for extension of time must be filed with the clerk, and served on all parties or their counsel, within five (5) business days after the filing of the motion for an extension of time. The response must be in writing and state with particularity the grounds for the opposition. The motion shall be decided on the written materials unless the judge determines that argument is needed.
 - (e) Documents filed with the Bureau during alternative dispute resolution proceedings in the claim need not be refiled with the request for expedited hearing or the response thereto.
 - (f) Any party may request that the court issue a decision on the record, in lieu of convening an evidentiary hearing, for any request for expedited hearing. Any party opposing the request for issuance of a decision on the record, shall have ten (10) business days from the date the request for expedited hearing is filed to file an objection with the clerk. The judge shall have discretion to either set the matter for an evidentiary hearing or enter a decision on the record. If the judge determines that issuing a decision on the record is appropriate, the clerk shall send a docketing notice to all parties, via regular or electronic mail, indicating the docket number and the judge assigned to claim. The clerk shall also send information to the parties detailing the actions required to present the case to the judge for a decision on the record.
 - (g) Any party aggrieved by an interlocutory order may appeal the interlocutory order to the appeals board in the manner provided by the Workers' Compensation Law and these rules.
 - (h) An interlocutory order awarding or denying temporary disability and/or medical benefits shall not be binding on the workers' compensation judge assigned to preside over the compensation hearing.
- (2) In consideration of the goal of expeditious resolution of the provision of temporary disability and/or medical benefits, letters or written statements addressing medical causation that have been signed by a doctor shall be admissible evidence at an expedited hearing; there is no requirement of presentation in affidavit form. At a compensation hearing, these letters or statements, even if in affidavit form may be excluded as appropriate through valid objection made pursuant to the Tennessee Rules of Evidence. This rule shall have no effect on the admissibility of form C-32 when properly presented at any proceeding.

(Rule 0800-02-21-.14, continued)

- (3) If, as a result of the expedited hearing, the claim is denied on the grounds of compensability, the claim shall continue as provided in these rules. The aggrieved party may file an appeal pursuant to Rule 0800-02-22-.01(1)(a). If the denial on the grounds of compensability is affirmed by the appeals board or if no appeal is taken, the employer may file a motion for summary judgment with the assigned workers' compensation judge that meets the requirements of Rule 56 of the Tennessee Rules of Civil Procedure. If a motion for summary judgment pursuant to this paragraph is filed, the employer shall serve a copy on the employee, or the employee's counsel, and the employee shall have thirty (30) calendar days to file a written response. Thereafter, the motion shall be set for a hearing and the judge shall issue an appropriate order.
- (4) A workers' compensation judge may, in conducting an expedited hearing, take testimony in any manner that is practical for the fair and effective resolution of the request for temporary disability and/or medical benefits including taking testimony from a witness by telephonic or video conferencing means.

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-233, 50-6-233(c), 50-6-239, and 50-6-239(c)(1); and Public Chapter 289 (2013), Sections 73, 79, 82, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Amendment filed March 3, 2015; effective June 1, 2015. Amendments filed September 1, 2016; effective November 30, 2016.

0800-02-21-.15 COPIES OF MEDICAL RECORDS.

- (1) A medical care provider attending to an injured employee shall, upon request from an employer or an employee, furnish a copy of required records, at no cost except for a nominal copying charge that shall not exceed the charges allowed by T.C.A. § 50-6-204 for paper records and rule 0800-02-17-.24 for non-paper records. The medical care provider shall make the records available to both the employee and employer within thirty (30) days after admission or treatment as required by T.C.A. § 50-6-204(a)(2)(A). After the records have been made available, the medical care provider shall provide the requested records within ten (10) business days of receipt of a written request for records. The records may be sent by email, facsimile, regular mail or common carrier and may be provided in paper or electronic format.
- (2) A medical care provider is entitled to a reasonable fee, not to exceed the maximum allowable charges provided by rule 0800-02-17-.15(4), for preparation of a narrative report written in response to a request from a party.
- (3) For the purposes of paragraphs (1) and (2) of this rule, medical provider shall include the authorized treating physician, a hospital, and any other entity or person who has provided medical care to the injured employee for the work-related injury that is the subject of the claim for workers' compensation benefits at issue pursuant to the employer's obligation under T.C.A. § 50-6-204. Acceptance of care from a medical provider for the work-related injury shall be deemed consent for the release of these records and no further consent shall be necessary.
- (4) Medical provider shall not include any physician, hospital or other person or entity that has provided treatment to the injured worker for injuries or conditions that was not provided pursuant to the employer's obligation under T.C.A. § 50-6-204 for treatment of the work-related injury that is the subject of the claim for workers' compensation benefits at issue.
- (5) Records from a medical provider as defined in Paragraph (4) of this rule may be provided with the appropriate HIPAA compliant written authorization of the employee which the employee shall be required to provide if ordered to do so by the presiding workers' compensation judge.

(Rule 0800-02-21-.15, continued)

Authority: T.C.A. § 4-3-1409 and Public Chapter 289 (2013), Sections 35, 73, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014.

0800-02-21-.16 DISCOVERY.

- (1) Parties are encouraged, where practicable, to attempt to achieve any necessary discovery informally, in order to avoid undue expense and delay. When such attempts have failed, or where the complexity of the case is such that informal discovery is not practicable, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure unless these rules provide an alternative procedure.
- (2) Discovery disputes. All discovery related motions shall be decided on the written materials provided by the parties unless the workers' compensation judge, in the judge's discretion, determines that argument is needed to resolve the dispute. Affidavits may be provided in support of any motion or response; live testimony is prohibited. Any motion to compel discovery, motion to quash, motion for protective order, or other discovery-related motion shall:
 - (a) Quote verbatim the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena, or excerpt of a deposition that shows the question and objection or response if applicable;
 - (b) State the reason or reasons supporting the motion; and
 - (c) Be accompanied by a statement certifying that the moving party or his or her counsel has made a good faith effort to resolve, by agreement, the issues raised in the motion and that agreement has not been achieved. Details of the effort to resolve the dispute shall be set forth with particularity in the statement.
- (3) Filing of Discovery Materials. Unless the subject of a discovery dispute, discovery materials shall not be filed with the court.
- (4) Interrogatories. A party may serve interrogatories on any other party at any time after a petition for benefit determination has been filed.
 - (a) All interrogatories must be answered under oath and the responding party shall be required to update its answers in a timely manner whenever additional information becomes available or the responses provided in a prior response have changed.
 - (b) Unless otherwise ordered by the presiding judge, interrogatories shall be answered within thirty (30) days of receipt by the responding party.
 - (c) No party may serve more than twenty (20) interrogatories, including subparts, on any other party, but the presiding workers' compensation judge shall have discretion to increase the number of interrogatories that may be served.
 - (d) The workers' compensation judge shall have authority to increase or decrease the time allowed for answering interrogatories.
 - (e) Except as required when filing a discovery-related motion, no interrogatories or answers shall be filed with the court.
- (5) Depositions. All depositions shall be taken within the timeframe provided by the discovery plan in the scheduling hearing order. Absent extraordinary circumstances to be determined at

(Rule 0800-02-21-.16, continued)

the discretion of the workers' compensation judge, no scheduled hearing may be continued to provide a party additional time to secure deposition testimony.

- (a) The deposition may be taken on oral examination or upon written questions in the manner provided by the Tennessee Rules of Civil Procedure.
 - (b) Written notice shall be provided to all parties at least five (5) business days before any scheduled deposition when the deposition is to be taken in the employee's county of residence. When the locale of the deposition is in a county other than the employee's county of residence, written notice of the deposition shall be provided to all parties at least seven (7) business days before the scheduled deposition.
 - (c) No oral deposition shall continue for more than four (4) hours. Time used for breaks shall be excluded.
- (6) Medical Records. All medical records shall be exchanged among the parties in the manner provided by these rules.
- (a) All medical records designated by the parties to be presented as evidence at a scheduled hearing shall be filed with the Bureau no later than ten (10) business days before the scheduled hearing date. Absent good cause as determined by the presiding workers' compensation judge, failure to comply may result in the exclusion of any medical record that is not filed timely or the assessment of costs or sanctions against the party or the attorney of the party designating the medical record. Absent good cause as determined by a workers' compensation judge, no other medical records shall be filed with the Bureau.
 - (b) All medical records signed by a physician, including via electronic signature, or accompanied by a certification that the records are true and accurate which has been signed by the medical provider or custodian of records shall be admissible. The Bureau shall provide a certification form for the parties' use. There is no requirement that the certification be accompanied by an affidavit. For purposes of medical records, an electronic signature shall suffice if, in the opinion of the workers' compensation judge, the electronic signature demonstrates that the medical provider approved the contents of the medical record.
 - (c) All medical records designated to be presented as evidence at a scheduled hearing that exceed ten (10) pages shall include a chronological table of contents. The medical records designated shall be filed with the Bureau and each of the records shall be identified by author and date and numbered as in the table of contents.
 1. It shall be the duty of the parties, not the medical providers, to prepare the chronological table of contents required by part (c) of paragraph (6).
 2. A party proceeding pro se may, but shall not be required, to provide the chronological table of contents required by part (c) of paragraph (6).
- (7) Subpoenas compelling document production and deposition testimony. The clerk, at the request of any party shall issue signed subpoenas in blank in accordance with the Tennessee Rules of Civil Procedure.
- (a) Parties shall complete and serve their own subpoenas.
 - (b) Service of subpoenas for records may be by certified return receipt mail in addition to means of service provided by the Tennessee Rules of Civil Procedure.

(Rule 0800-02-21-.16, continued)

- (c) Any party or person that fails to timely respond to a subpoena for documents or testimony may be assessed a civil penalty.

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-233, and 50-6-239; and Public Chapter 289 (2013), Sections 73, 79, 82, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Amendments filed September 1, 2016; effective November 30, 2016.

0800-02-21-.17 POST-DISCOVERY ALTERNATIVE DISPUTE RESOLUTION.

- (1) Unless the presiding judge determines that additional mediation is unnecessary, the parties reach an agreed settlement, or the petition for benefit determination is voluntarily non-suited, all parties shall participate in alternative dispute resolution proceedings with a workers' compensation mediator following the completion of the discovery plan provided in the scheduling hearing order.
- (2) The judge may include a date for post-discovery alternative dispute resolution proceedings in the scheduling hearing order.
- (3) Alternative dispute resolution proceedings under this section shall be conducted in the manner provided by rule 0800-02-21-.11.
- (4) If the parties do not reach settlement of all issues, the mediator shall file a new dispute certification notice setting forth all issues that the parties have agreed upon, all disputed issues and all defenses to the claim proffered by the parties. If any party disagrees with the contents of the dispute certification notice, the party may file objections and an amended notice will be issued under the process provided by rule 0800-02-21-.11(5). Thereafter, the parties shall appear before the court for a compensation hearing at the time provided in the scheduling hearing order. The parties shall not file a request for hearing.

Authority: T.C.A. §§ 4-3-1409, 50-6-233, and 50-6-239; and Public Chapter 289 (2013), Sections 73, 76, 82, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Amendments filed September 1, 2016; effective November 30, 2016.

0800-02-21-.18 COMPENSATION HEARING PROCEDURE.

- (1) The compensation hearing shall be conducted at the time and place established in the scheduling hearing order. Absent extraordinary circumstances, no motion for a continuance shall be considered at the compensation hearing. If the parties reach a settlement of all issues prior to a scheduled compensation hearing, the parties shall immediately give written notice to the court and contact the clerk to schedule a settlement approval hearing.
- (2) Ten (10) business days before the date of a scheduled compensation hearing or as otherwise directed by the judge, each party shall file, either jointly or separately, a prehearing statement.
- (3) Concurrently with the submission of the prehearing statement, each party shall file the following:
 - (a) A copy of each proposed exhibit except for those intended for impeachment or rebuttal purposes; and
 - (b) A copy of the transcript of the deposition of any medical expert that the party intends to present at the hearing.
- (4) With the exception of witness testimony and exhibits intended for impeachment or rebuttal purposes, no witness whose name and address was not included in the prehearing statement

(Rule 0800-02-21-.18, continued)

may testify at the hearing and no exhibit that was not included in the list of proposed exhibits in the prehearing statement may be presented at the hearing unless permission to present the testimony or exhibit is granted by the presiding workers' compensation judge. Permission may be granted by the judge only upon finding that:

- (a) The party seeking to present the witness or exhibit did not have knowledge of the witness or exhibit prior to submitting the prehearing statement and could not have discovered the witness or exhibit despite reasonable investigation; and
 - (b) Prohibiting the presentation of the witness or exhibit would result in prejudice.
- (5) Absent good cause shown, a party failing to provide a prehearing statement as required by these rules may be sanctioned by the judge, up to and including prohibiting the party from introducing evidence or exhibits, or calling witnesses except for impeachment or rebuttal purposes.
- (6) Subpoenas compelling witnesses' attendance at trial. The clerk, at the request of any party, shall issue signed subpoenas in blank in accordance with the Tennessee Rules of Civil Procedure.
- (a) Parties shall complete and serve their own subpoenas.
 - (b) Service of subpoenas compelling witness attendance to a trial or a hearing shall be made through the means provided by the Tennessee Rules of Civil Procedure and a signed copy of the original must be filed with the clerk.
 - (c) All subpoenas compelling witness attendance to a trial or a hearing must be served no later than five (5) days before the scheduled trial or hearing unless the presiding workers' compensation judge has given leave to extend this period.
 - (d) Any party or person that fails to appear at a scheduled trial or hearing pursuant to a properly served subpoena issued pursuant to paragraph (6) of this rule may be assessed a civil penalty.
- (7) Upon the motion of either party or the joint motion of both parties, a case may be decided on the record and a compensation order issued based on a review of the written materials and without the benefit of a hearing. If a party moves the court to issue a decision based upon a review of the record, any party who opposes the motion for a decision based upon a review of the record must file a response with the clerk, and serve the response on all parties or their counsel, within ten (10) business days after the filing of the motion for a decision on the record. The motion shall be decided on the written materials unless the judge determines that argument is needed. If a case is selected for an on-the-record determination, the clerk shall send a docketing notice to all parties, via regular or electronic mail, indicating the docket number and the judge assigned to the request for hearing. The clerk shall also send information to the parties detailing the actions required to present the case to the judge for a decision on the record.

Authority: T.C.A. §§ 4-3-1409, 50-6-233, and 50-6-239; and Public Chapter 289 (2013), Sections 73, 82, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Amendments filed September 1, 2016; effective November 30, 2016.

0800-02-21-.19 SETTLEMENT APPROVAL.

- (1) In any case where the parties reach a full and final settlement, the settlement shall not become effective until it has been signed by both parties and approved by a workers' compensation judge.

(Rule 0800-02-21-.19, continued)

- (2) Unless the settlement is of a disputed claim, as provided by T.C.A. § 50-6-240(e), the settlement agreement must contain language stating that the employee is receiving, substantially, the benefits provided by the Tennessee Workers' Compensation Law.
- (3) If the settlement is of a disputed case pursuant to T.C.A. § 50-6-240(e), the settlement agreement must contain language stating that the settlement is in the best interest of the employee.
- (4) If there is a settlement of future medicals, the settlement shall contain a statement advising the claimant of the consequences of the settlement, if any, with respect to Medicare and TennCare benefits and liabilities.

Authority: T.C.A. §§ 4-3-1409, 50-6-233, 50-6-239, and 50-6-240; and Public Chapter 289 (2013), Sections 73, 84, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Amendments filed September 1, 2016; effective November 30, 2016.

0800-02-21-.20 VOLUNTARY DISMISSAL – NON-SUIT.

- (1) On no more than one occasion, a party may voluntarily non-suit a petition for benefit determination at any time after it has been filed unless the employee has been awarded temporary benefits through an interlocutory order. If a party files a notice of voluntary non-suit, either party may file a new claim to recover benefits within ninety (90) days of the order of dismissal.
- (2) A notice of voluntary non-suit shall not become binding until an order of non-suit has been issued by a workers' compensation judge.
- (3) If a claim is voluntarily non-suited, the party that has voluntarily non-suited the claim shall be required to pay a filing fee of \$150. The fee shall be due and payable on the date the order of non-suit is entered.

Authority: T.C.A. §§ 4-3-1409, 50-6-233, and 50-6-239; and Public Chapter 289 (2013), Sections 73, 82, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Amendments filed September 1, 2016; effective November 30, 2016.

0800-02-21-.21 WORKERS' COMPENSATION CLAIMS AGAINST THE STATE.

The court of workers' compensation claims is without jurisdiction to consider a claim for workers' compensation benefits filed against the state by a state employee.

Authority: T.C.A. §§ 4-3-1409, 9-8-307, and 9-8-402. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014.