

**RULES  
OF  
THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

**CHAPTER 1030-5  
HEARINGS**

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**1030-5-1 NOTICE OF HEARING.** Notice of the time, place, and nature of a hearing shall be given to the parties and intervenors at least ten (10) days in advance of such hearing, except as otherwise provided in Rule 1030-7-2.

*Authority:* T.C.A. §50-554. *Administrative History:* Original rule filed April 5, 1974; effective May 5, 1974.

**1030-5-2 POSTPONEMENT OF HEARING.**

- (1) Postponement of a hearing ordinarily will not be allowed.
- (2) Except in the case of an extreme emergency or in unusual circumstances, no such request will be considered unless received in writing at least three (3) days in advance of the time set for the hearing.

*Authority:* T.C.A. §50-554. *Administrative History:* Original rule filed April 5, 1974; effective May 5, 1974.

**1030-5-3 FAILURE TO APPEAR.**

- (1) Subject to the provisions of paragraph (3) of this Rule, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the right to be served with a copy of the decision of the Commission.
- (2) Requests for reinstatement must be made, in the absence of extraordinary circumstances, within five (5) days after the scheduled hearing date.
- (3) The Commission or the Administrative Judge, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing may be rescheduled.

*Authority:* T.C.A. §50-554. *Administrative History:* Original rule filed April 5, 1974; effective May 5, 1974. Amendment filed January 14, 1978; effective February 13, 1978.

**1030-5-4 PAYMENT OF WITNESS FEES AND MILEAGE; FEES OF PERSONS TAKING DEPOSITIONS.** Witnesses summoned before the Commission or Administrative Judge and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for witnesses in civil actions in the circuit court. Witness fees and mileage shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

(Rule 1030-5-4, continued)

**Authority:** T.C.A. §50-554. **Administrative History:** Original rule filed April 5, 1974; effective May 5, 1974. Amendment filed January 14, 1978; effective February 13, 1978.

**1030-5-5 REPORTER'S FEES.** The basic reporter's fees shall be borne by the Commission, except as provided in Rule 1030-5-4. Parties or intervenors desiring copies of the transcript shall be responsible for the costs thereof.

**Authority:** T.C.A. §50-554. **Administrative History:** Original rule filed April 5, 1974; effective May 5, 1974.

**1030-5-6 TRANSCRIPT OF TESTIMONY.** Hearings shall be transcribed verbatim. The transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the Commission.

**Authority:** T.C.A. §50-554. **Administrative History:** Original rule filed April 5, 1974; effective May 5, 1974. Amendment filed January 14, 1978; effective February 13, 1978.

**1030-5-7 DUTIES AND POWERS OF COMMISSION AND ADMINISTRATIVE JUDGE.** It shall be the duty of the Commission or its Administrative Judge to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The Commission or Hearing Examiner shall have authority to:

- (1) Administer oaths and affirmations;
- (2) Issue authorized subpoenas;
- (3) Rule upon petitions to revoke subpoenas;
- (4) Rule upon offers of proof and receive relevant evidence;
- (5) Make or cause depositions to be taken whenever the needs of justice would be served;
- (6) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;
- (7) Hold conferences for the settlement or simplification of the issues;
- (8) Dispose of procedural requests or similar matters, including motions to amend pleadings, to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of the decision;
- (9) Call and examine witnesses and to introduce into the record documentary or other evidence;
- (10) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;
- (11) Adjourn the hearing as the needs of justice and good administration require;
- (12) Take any other action necessary under the foregoing and authorized by the published rules and regulations of the Commission.

**Authority:** T.C.A. §50-554. **Administrative History:** Original rule filed April 5, 1974; effective May 5, 1974. Amendment filed January 14, 1978; effective February 13, 1978.

**1030-5-8 DISQUALIFICATION OF MEMBERS OF COMMISSION OR ADMINISTRATIVE JUDGE.** A member of the Commission or the Administrative Judge may withdraw from a proceeding whenever he deems himself disqualified.

*Authority:* T.C.A. §50-554. *Administrative History:* Original rule filed April 5, 1974; effective May 5, 1974. Amendment filed January 14, 1978; effective February 13, 1978.

**1030-5-9 EXAMINATION OF WITNESSES.** Witnesses shall be examined under oath. Opposing parties shall have the right to cross-examine any witness whose testimony is introduced by an adverse party.

*Authority:* T.C.A. §50-554. *Administrative History:* Original rule filed April 5, 1974; effective May 5, 1974.

**1030-5-10 AFFIDAVITS.** An affidavit may be admitted as evidence in lieu of oral testimony if the matters therein contained are otherwise admissible and the parties agree to its admission.

*Authority:* T.C.A. §50-554. *Administrative History:* Original rule filed April 5, 1974; effective May 5, 1974.

**1030-5-11 DEPOSITION IN LIEU OF ORAL TESTIMONY; APPLICATION; PROCEDURES; FORM; RULINGS.**

- (1) An application to take the deposition of a witness in lieu of oral testimony shall be in writing and shall set forth the reasons such deposition should be taken, the name and address of the witness, the matters concerning which it is expected he will testify and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken (for purposes of this section, hereinafter referred to as "the officer"). Such application shall be filed with the Commission or the Administrative Judge and shall be served on all other parties and intervenors not less than 7 days prior to the time when it is desired that the deposition be taken. Where good cause has been shown, the Commission or the Administrative Judge shall make and serve on the parties and intervenors an order which specifies the name of the witness whose deposition is to be taken and the time, place, and designation of the officer before whom the witness is to testify. Such officer may or may not be the officer specified in the application.
- (2) Such deposition may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held. If the examination is held in a foreign country, it may be taken before any secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States.
- (3) At the time and place specified in the order, the officer designated to take such deposition shall permit the witness to be examined and cross-examined under oath by all parties appearing, and the testimony of the witness shall be reduced to typewriting by the officer or under his direction. All objections to questions or evidence shall be deemed waived unless made at the examination. The officer shall not have power to rule upon any objection, but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him, that the deposition is a true record of the testimony and exhibits given by the witness, and that the officer is not of counsel or attorney to any of the parties not interested in the proceeding. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, such fact shall be included in the certificate of the officer and the deposition may be used as fully as though signed. The officer shall immediately deliver one copy of the transcript, together with his certificate, in person or by registered mail to the Commission.
- (4) The Commission or Administrative Judge shall rule upon the admissibility of the deposition or any part thereof.
- (5) All errors or irregularities in compliance with the provisions of this section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, discovered.

(Rule 1030-5-11, continued)

- (6) If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used as other depositions.

**Authority:** T.C.A. §50-554. **Administrative History:** Original rule filed April 5, 1974; effective May 5, 1974. Amendment filed January 14, 1978; effective February 13, 1978.

#### **1030-5-12 EXHIBITS.**

- (1) All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.
- (2) In the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as a part of the record, unless excluded by the Commission or Administrative Judge pursuant to Rule 1030-5-13.
- (3) Unless the Commission or Administrative Judge finds it impractical, a copy of each such exhibit shall be given to the other parties and intervenors.
- (4) All exhibits offered, but denied admission into evidence, shall be identified as in paragraph (1) of this Rule and shall be placed in a separate file designated for rejected exhibits.

**Authority:** T.C.A. §50-554. **Administrative History:** Original rule filed April 5, 1974; effective May 5, 1974. Amendment filed January 14, 1978; effective February 13, 1978.

#### **1030-5-13 RULES OF EVIDENCE.**

- (1) The agency shall admit and give probative effect to evidence admissible in a court and may also admit evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. The agency shall give effect to the rules of privilege recognized by law and shall exclude evidence which in its judgment is irrelevant, immaterial or unduly repetitious.
- (2) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the agency. Upon request, parties shall be given an opportunity to compare the copy with the original, if reasonably available.

**Authority:** T.C.A. §50-554. **Administrative History:** Original rule filed April 5, 1974; effective May 5, 1974. Amendment filed January 14, 1978; effective February 13, 1978.

#### **1030-5-14 BURDEN OF PROOF.**

- (1) In all proceedings commenced by the filing of a notice of contest, the burden of proof shall rest with the Commissioner.
- (2) In proceedings under Rule 1030-3-6 for modification of the abatement period the burden of proof shall rest with the petitioner.

**Authority:** T.C.A. §50-554. **Administrative History:** Original rule filed April 5, 1974; effective May 5, 1974.

#### **1030-5-15 OBJECTIONS.**

- (1) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling by the Commission or the Administrative Judge may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

(Rule 1030-5-15, continued)

- (2) Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

**Authority:** T.C.A. §50-554. **Administrative History:** Original rule filed April 5, 1974; effective May 5, 1974. Amendment filed January 14, 1978; effective February 13, 1978.

**1030-5-16 REPEALED.**

**Authority:** T.C.A. §50-554. **Administrative History:** Original rule filed January 14, 1978; effective February 13, 1978. Repealed by Public Chapter 969; effective July 1, 1984.

**1030-5-17 FILING OF BRIEFS AND PROPOSED FINDINGS WITH THE COMMISSION OR HEARING EXAMINER; ORAL ARGUMENT AT THE HEARING.** Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the record. Any party shall be entitled, upon request made before the close of the hearing, to file a brief, proposed findings of fact and conclusions of law, or both. The Commission or the Administrative Judge may fix a reasonable period of time for such filing, but such initial period may not exceed 20 days from the receipt by the party of the transcript of the hearing.

**Authority:** T.C.A. §50-554. **Administrative History:** Original rule filed April 5, 1974; effective May 5, 1974. Amendment filed January 14, 1978; effective February 13, 1978.