

Sequence Number: 06-09-17
 Notice ID(s): 2709
 File Date: 06/12/17

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission: Department of Labor and Workforce Development
Division: Bureau of Workers' Compensation
Contact Person: Troy Haley
Address: 220 French Landing Dr. 1-B
Phone: 615-532-0179
Email: troy.haley@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact: Troy Haley
Address: 220 French Landing Dr. 1-B, Nashville, TN 37243
Phone: 615-532-0179
Email: troy.haley@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Tennessee Room		
Address 2:	220 French Landing Drive, 1-A		
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	08/16/17		
Hearing Time:	2:00 p.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0800-02-22	Workers' Compensation Appeals Board
Rule Number	Rule Title
0800-02-22-.01	Filing of Notice of Appeal
0800-02-22-.02	Appeal of an Interlocutory Order
0800-02-22-.03	Appeal of a Compensation Order

0800-02-22-.04	Oral Argument; Costs on Appeal; Settlement During Appeal
0800-02-22-.05	Appeal of Workers' Compensation Cases Filed Against the State

Chapter 0800-22-01 Workers' Compensation Appeals Board is amended by deleting the prior rule and replacing it with the following:

0800-02-22-.01 Filing of Notice of Appeal

- (1) Any party may appeal any order of a workers' compensation judge by filing a notice of appeal, on a form approved by the Bureau, with the clerk of the court of workers' compensation claims. Pursuant to Tennessee Code Annotated section 50-6-217(a)(2), the notice of appeal must be filed:
 - (a) Within seven (7) business days of the date an interlocutory order was filed by the workers' compensation judge; or
 - (b) Within thirty (30) calendar days of the date a compensation order was filed by the workers' compensation judge.
- (2) The appealing party shall serve a copy of the notice of appeal upon the opposing party or parties by any means as set forth in Rule 0800-02-21-.09.
- (3) Any appeal in which the notice of appeal is not received by the clerk of the court of workers' compensation claims within the time provided by paragraph (1) shall be dismissed.
- (4) Upon the filing of a notice of appeal, the court of workers' compensation claims no longer has jurisdiction over the case, absent a remand, until a decision is filed by the appeals board; except, after a notice of appeal has been filed, the court of workers' compensation claims retains jurisdiction to rule on motions in accordance with these rules or any applicable rule of the Tennessee Rules of Civil Procedure.

Authority: T.C.A. §§ 4-3-1409; 50-6-217; 50-6-233; 50-6-237. Administrative History: Original rule filed April 1, 2014; effective June 30, 2014. Repeal and new rule filed June 22, 2015; effective September 20, 2015. Repeal and new rule filed _____; effective _____.

0800-02-22-.02 Appeal of an Interlocutory Order

- (1) The parties to an appeal have the responsibility to ensure a complete record on appeal. A party or parties may have a transcript of any hearing pertinent to the appeal prepared by a licensed court reporter and filed with the clerk of the court of workers' compensation claims within ten (10) business days of the filing of the notice of appeal. Alternatively, the parties may file a joint statement of the evidence within ten (10) business days of the filing of the notice of appeal. The joint statement of the evidence must be approved by the workers' compensation judge before the record is submitted to the workers' compensation appeals board. Should there be a dispute between the parties regarding the contents of a statement of the evidence, the parties shall file a motion with the clerk of the court of workers' compensation claims within ten (10) business days of the filing of the notice of appeal asking the trial court to resolve disputes between the parties regarding the contents of the statement of the evidence.
- (2) The appellant shall file a brief or position statement with the clerk of the court of workers' compensation claims within ten (10) business days of the expiration of the time to file a transcript or statement of the evidence, or within ten (10) business days of the date the trial court enters an order resolving any dispute concerning the contents of the record or a joint statement of the evidence, whichever is later. The brief shall specify the issues presented for review and include any argument in support thereof. A party opposing the appeal shall file a brief in response with the clerk of the court of workers' compensation claims within ten (10) business days of the filing of the appellant's brief or the expiration of the time for the filing of the appellant's brief, whichever is

earlier. Briefs shall comply with the Practices and Procedures of the Workers' Compensation Appeals Board.

- (3) The clerk of the workers' compensation appeals board shall docket the appeal upon receipt of the record from the clerk of the court of workers' compensation claims and send a docketing notice to all parties.
- (4) If the appeals board affirms an interlocutory order awarding temporary disability or medical benefits, the employer shall begin making payments of benefits within five (5) business days from the date the decision affirming the interlocutory order is filed by the appeals board. Failure to begin benefit payments within five (5) business days may result in the assessment of a civil penalty pursuant to Tennessee Code Annotated section 50-6-118.
- (5) Upon the filing of a decision on an interlocutory appeal, the clerk of the workers' compensation appeals board shall forward a copy of the decision to the parties by regular or electronic mail and to the clerk of the court of workers' compensation claims.
- (6) Following the filing of a decision affirming, reversing, and/or modifying and remanding an interlocutory order, the claim shall continue in the manner provided by Tennessee Code Annotated section 50-6-239 and by these rules.

Authority: T.C.A. §§ 4-3-1409; 50-6-217; 50-6-233; 50-6-237. Administrative History: Original rule filed April 1, 2014; effective June 30, 2014. Repeal and new rule filed June 22, 2015; effective September 20, 2015. Repeal and new rule filed _____; effective _____.

0800-02-22-.03 Appeal of a Compensation Order

- (1) The parties to an appeal have the responsibility to ensure a complete record on appeal. A party or parties may have a transcript of any hearing pertinent to the appeal prepared by a licensed court reporter and filed with the clerk of the court of workers' compensation claims within fifteen (15) calendar days of the filing of the notice of appeal. Alternatively, the parties may file a joint statement of the evidence within fifteen (15) calendar days of the filing of the notice of appeal, or a notice that no transcript or statement of the evidence will be filed. A joint statement of the evidence must be approved by the workers' compensation judge before the record is submitted to the workers' compensation appeals board. Should there be a dispute between the parties regarding the contents of a statement of the evidence, the parties shall file a motion with the clerk of the court of workers' compensation claims within fifteen (15) calendar days of the filing of the notice of appeal asking the trial court to resolve disputes between the parties regarding the contents of the statement of the evidence.
- (2) The clerk of the workers' compensation appeals board shall docket the appeal upon receipt of the record from the clerk of the court of workers' compensation claims and send a docketing notice to all parties.
- (3) The appellant shall file a brief within fifteen (15) calendar days after the issuance of the docketing notice with the clerk of the appeals board. Any opposing party shall have fifteen (15) calendar days after the filing of the appellant's brief or the expiration of the time for the filing of the appellant's brief, whichever is earlier, to file a brief with the clerk of the appeals board. No reply brief shall be filed unless the appellee raises an issue or issues on appeal not previously addressed in the appellant's brief. Under such circumstances, the appellant may file a reply brief addressing only the issue or issues not previously addressed. Briefs shall comply with the Practices and Procedures of the Workers' Compensation Appeals Board.
- (4) Upon the filing of a decision on a compensation appeal, the clerk of the workers' compensation appeals board shall forward a copy of the decision to the parties by regular or electronic mail and to the clerk of the court of workers' compensation claims.

Authority: T.C.A. §§ 4-3-1409; 50-6-217; 50-6-233; 50-6-237. Administrative History: Original rule filed April 1, 2014; effective June 30, 2014. Repeal and new rule filed June 22, 2015; effective September 20, 2015. Repeal and new rule filed _____; effective _____.

0800-02-22-.04 Oral Argument; Costs on Appeal; Settlement During Appeal

- (1) The appeals board shall base its decision on the record on appeal and the arguments of the parties. Evidence not contained in the record on appeal shall not be considered. Oral argument shall be allowed only upon motion of a party and/or by order of the appeals board. Any motion for oral argument filed by a party must state with specificity the reason or reasons the decision-making process would be aided by oral argument. Oral argument may be conducted telephonically, by video conference, or in person, at the direction of the appeals board.
- (2) No request to rehear or reconsider the decision of the appeals board will be granted.
- (3) Costs on appeal may be assessed as ordered by the appeals board. If an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the appeals board; if a judgment or order is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment or order is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated or modified, costs shall be allowed as ordered by the appeals board. Costs on appeal may include filing fees and costs associated with ensuring a complete record on appeal, among other necessary and reasonable costs.
- (4) If the parties agree to settle the claim following the filing of the notice of appeal, the parties shall file a joint motion requesting the appeal be held in abeyance and the case be remanded to the workers' compensation judge to consider approval of the settlement. If the settlement is approved within thirty (30) calendar days of the filing of the order remanding the case, the parties shall file a joint motion seeking to dismiss the appeal. The motion shall provide for the assessment of costs on appeal and shall be accompanied by a copy of the order approving the settlement. If the proposed settlement is not approved within thirty (30) calendar days of the filing of the order remanding the case, the appeal shall proceed in accordance with any further order of the appeals board.
- (5) Once a notice of appeal has been filed with the state supreme court, the appeals board no longer has jurisdiction to rule on any issue absent a remand.
- (6) When it appears to the appeals board that an appeal was frivolous or taken solely for delay, the appeals board may, either upon motion of a party or of its own motion, award expenses, including reasonable attorney's fees, incurred by the appellee as a result of the appeal.

Authority: T.C.A. §§ 4-3-1409; 50-6-217; 50-6-233; 50-6-237. Administrative History: Original rule filed April 1, 2014; effective June 30, 2014. Repeal and new rule filed June 22, 2015; effective September 20, 2015. Repeal and new rule filed _____; effective _____.

0800-02-22-.05 Appeal of Workers' Compensation Cases Filed Against the State

The workers' compensation appeals board is without jurisdiction to consider an appeal of any decision of the claims commission either awarding or denying workers' compensation benefits to 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.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: June 6, 2017

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Bureau of Workers' Compensation

Subscribed and sworn to before me on: June 6, 2017

Notary Public Signature: Shara Hamlett

My commission expires on: 2/19/20



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Filed with the Department of State on: 06/12/17

Tre Hargett
Tre Hargett
Secretary of State

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