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Division of Publications**

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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:	Tennessee Department of Labor and Workforce Development
Division:	Workers' Compensation
Contact Person:	Josh Baker
Address:	220 French Landing Drive, Nashville, Tennessee 37243
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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:	Evelyn Gaines-Guzman 220 French Landing Drive Floor 4-A
Address:	Nashville, Tennessee 37243
Phone:	(615) 253-1331
Email:	evelyn.gaines.guzman@tn.gov

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

Address 1:	The Tennessee Room		
Address 2:	220 French Landing Drive		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	October 15, 2013		
Hearing Time:	9:30 a.m.	<input checked="" type="checkbox"/> _x_ 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
0800-02-21	Mediation and Hearing Procedures
Rule Number	Rule Title
0800-02-21-.01	Scope

0800-02-21-.02	Definitions
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0800-02-21-.17	Post-Discovery Alternative Dispute Resolution
0800-02-21-.18	Compensation Hearing Procedure
0800-02-21-.19	Settlement Approvals
0800-02-21-.20	Voluntary Dismissal – Nonsuit
0800-02-21-.21	State Employee Claims

Chapter Number	Chapter Title
0800-02-22	Board of Workers' Compensation Appeals
Rule Number	Rule Title
0800-02-22-.01	Filing the Request for Appeal
0800-02-22-.02	Docketing Appeal, Filing Briefs and Rendering Decision
0800-02-22-.03	Appeals of Workers' Compensation Cases Filed Against the State

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 0800-02-21
Mediation and Hearing Procedures

New Rules

Rule 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 Division.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 106

Rule 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:
 - i. Severe sensory or motor disturbances;
 - ii. Severe communication disturbances;
 - iii. Severe complex integrated disturbances of cerebral function;
 - iv. Severe disturbances of consciousness; or
 - v. 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.
- (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. After a Request for Hearing has been filed, the Division may select cases where no material fact is in dispute for determination on the record. The parties will be afforded an opportunity to submit written position statements regarding the law that support their respective positions as well as an opportunity to respond to the written position statement of the other party. The case shall be assigned to a judge for a decision on the record. Review of a decision on the record shall proceed as set forth in the Tennessee 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, no issue that is not contained within the dispute certification notice, including a party's duly recorded objections to the mediator's descriptions of the issues, may be submitted to the judge for adjudication.
- (11) Division. Unless otherwise provided, division shall mean the Division 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 Division may be signed or verified electronically in the manner approved by the Division for such transmissions.
- (13) Expedited Hearing. A hearing to determine an issue of appropriateness of temporary disability or medical benefits prior to a hearing that results in a compensation order, conducted pursuant to these rules. A workers' compensation judge may issue an interlocutory order either awarding or denying temporary

disability or medical benefits based on a review of the documents submitted and without convening a formal hearing. A workers' compensation judge shall have discretion to convene a hearing of a motion for temporary disability or medical benefits if the judge determines that convening a hearing is necessary to determine the issues presented.

- (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 Division 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 as established by the Division; or when the material being transmitted reaches the Division or its designated agent, if transmitted by first-class mail, facsimile, electronic mail or other means of electronic transmission approved or required by the Division.
- (15) Initial Hearing. With the exception of a hearing of temporary benefit issues conducted on an expedited basis, an initial 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.
- (16) 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.
- (17) Judge or Workers' Compensation Judge. A judge of the court of workers' compensation claims.
- (18) Motion for Expedited Hearing. A motion for an expedited hearing is a request filed with the clerk for a workers' compensation judge to issue an interlocutory order for temporary disability or medical benefits. An employee may file a motion for expedited hearing with the clerk at any time after a dispute certification notice has been filed and the claim has been placed on the docket for an initial hearing.
- (19) Office of Mediation Services. The office within the Division that is responsible for providing alternative dispute resolution proceedings and overseeing the services of ombudsmen.
- (20) Petition for Benefit Determination. A petition for benefit determination is a request for the Division 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 Division, with the office of mediation services at any time after a dispute arises in a claim for workers' compensation benefits.
- (21) 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.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 76, 79, 82, 83, 106

Rule 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.
- (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 board 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; Public Chapter 289 (2013), Sections 73, 79, 106

Rule 0800-02-21-.04 Ombudsman

- (1) The workers' compensation ombudsman program provides advice and assistance to employees, employers or any other party or participant in a workers' compensation claim that is not represented by legal counsel. The ombudsman can provide information on workers' compensation law and rules, advise participants of their rights and obligations under the law, assist participants in completing forms, assist parties and participants in obtaining medical records and scheduling appointments, assist parties in completing forms, and perform any other duties as required by the administrator.
- (2) Any party that is not represented by counsel may request the services of a workers' compensation ombudsman by contacting the office of mediation services.
- (3) An ombudsman shall have authority including, but not limited to:
- a. Meet with and provide information to unrepresented parties about their rights and responsibilities under the law;
 - b. Investigate claims and attempt to resolve disputes without resort to alternative dispute resolution and court proceedings;
 - c. Communicate with all parties and providers in the claim;
 - d. Assist the parties in the completion of forms; and
 - e. Facilitate 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 office of mediation services. The office of mediation services shall assign an ombudsman to assist the person or entity qualified to receive the services of an ombudsman. Access to the services provided by an ombudsman is a privilege, not a right, and the Division has sole authority to determine whether a person or entity qualifies for ombudsman services and the nature of the services to be provided by the ombudsman.
- (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 office of mediation services of the representation and shall discontinue use of the services provided by an ombudsman.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 77

Rule 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.
 - 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 Division 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 initial hearing order, wage statement, pretrial statement or any other document that is filed with the clerk or the office of mediation services shall satisfy the notice of appearance requirement.
- (3) Representation shall continue until the case is concluded, including any appeals to the board of workers' compensation appeals, 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. No motion to withdraw shall be granted unless the motion is 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 scheduled proceedings.
- (4) If a party is represented by an attorney, then all pleadings, motions, and other documents filed with the Division 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 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; Public Chapter 289 (2013), Sections 73, 106

Rule 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 Division may admit foreign attorneys to appear pro hac vice upon application on a form approved by the Division.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 106

Rule 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 division.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Section 82

Rule 0800-02-21-.08 Forms

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

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 106

Rule 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 Division, the office of mediation services, 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 Division 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 Division. Unless otherwise required by the Division, proof of service shall be by certification of the sender on the document filed with the Division. 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; Public Chapter 289 (2013), Sections 73, 106

Rule 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 Division, with the office of mediation services within the applicable time frames provided by T.C.A. § 50-6-203. If a petition for benefit determination is not filed within the applicable time frames 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 in their possession. Further, each party shall provide copies of any medical reports received during the course of the proceeding, as they receive them, to all other parties within five (5) business 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 five (5) business days of receiving notice that a petition for benefit determination has been filed with the Division, the employer shall provide a wage statement, on a form approved by the Division, detailing the employee's wages over the fifty-two (52) week period preceding the injury. If the employee was employed by the employer for less than fifty-two (52) weeks, the employer shall provide a wage statement detailing the employee's wages over the entire period of employment. The statement shall be filed with the office of mediation services and served upon the employee in the manner provided by these rules. The presiding mediator shall refer any employer who does not file a wage statement with the office of mediation services within the timeframe provided by this section for assessment of 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.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 76, 106

Rule 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 Division 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, on a form approved by the Division, 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 and file such with the clerk. 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. Unless permission is granted by the presiding workers' compensation judge, any defenses not itemized will not be considered by the workers' compensation judge.

- (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. The mediator may issue an amended dispute certification notice if the mediators' agrees with the objection. The other party shall then have five (5) business days to object to the amended dispute certification notice. If the mediator is not in agreement with the objection, then the mediator shall include the objection in the dispute certification notice 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; Public Chapter 289 (2013), Sections 33, 73, 79, 106

Rule 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 Division 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 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 Division, 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; Public Chapter 289 (2013), Sections 73, 79, 82, 106

Rule 0800-02-21-.13 Initial Hearing

- (1) All parties to any case shall participate in an initial hearing with a workers' compensation judge no more than thirty (30) calendar days after a request for hearing is filed.
- (2) After the initial 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 initial hearing. Unless the judge determines that an in-person hearing is necessary, all initial hearings shall be conducted telephonically or through other electronic means as determined by the workers' compensation judge.
- (3) At the initial 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 initial hearing order, in a format provided by the Division, to the judge for consideration. The proposed

order shall be submitted via electronic mail, unless another method of delivery is required by the Division, within three (3) business days of the conclusion of the initial hearing

- (4) At the conclusion of the initial hearing, the judge shall set dates for post-discovery alternative dispute resolution proceedings and the compensation hearing. Absent extraordinary circumstances as determined by the judge, the date of the compensation hearing shall not be modified.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 82, 106

Rule 0800-02-21-.14 Expedited Hearing and Decision on the Record

- (1) After a case is placed on the docket, if there is a dispute over temporary disability or medical benefits, either party may request an expediting hearing of the issue of temporary disability or medical benefits only by indicating its desire for an expedited hearing on the request for hearing form. The indication of the desire for an expedited hearing on the request for hearing form shall serve as the motion for expedited hearing.
 - a. All motions for expedited hearing must be accompanied by affidavits and any other information demonstrating that the employee is entitled to temporary disability or medical benefits.
 - b. Immediately upon receiving the motion, but in no event later than five (5) business days after the motion is filed with the clerk, the opposing party shall submit all information in its possession demonstrating that the employee is not entitled to temporary disability or medical benefits.
 - c. Seven (7) business days after the motion is filed with the clerk, the clerk shall compile the file and the motion shall be assigned to a workers' compensation judge for a decision and the entry of an interlocutory order, if appropriate.
 - d. Any party aggrieved by an interlocutory order may appeal the interlocutory order to the board of appeals in the manner provided by the Tennessee Workers' Compensation Law and these rules.
 - e. An interlocutory order awarding or denying temporary disability or medical benefits shall not be binding on the workers' compensation judge assigned to preside over the compensation hearing.
- (2) Either the Division may order, or the parties may request, that a case be decided by a workers' compensation judge on the record and a compensation order issued, based on a judge's review of the written materials and without the benefit of a hearing.
 - a. Cases selected for on-the-record determination will be placed on a separate docket for a decision on the record.
 - b. 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 file 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.
- (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 of temporary benefits is affirmed by the appeals board or if no appeal is taken, the employer may file a motion to dismiss with the assigned workers' compensation judge. If a motion to dismiss 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.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 82, 106

Rule 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 the medical fee schedule.

- (2) A medical care provider is entitled to a reasonable fee, not to exceed the maximum allowable charges provided by the medical fee schedule, for preparation of a narrative report written in response to a request from a party if the report requires significant professional research or preparation.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 35, 73, 106

Rule 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 disposition which 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 case has been docketed by the clerk.
 - 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. Interrogatories shall be answered within the timeframe provided by the discovery plan in the initial hearing order and, unless ordered by a workers' compensation judge, no party shall be required to answer interrogatories before the initial hearing order has been entered.
 - 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 initial hearing order. Absent extraordinary circumstances to be determined at 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 a 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 Division no later than (10) business days before the scheduled hearing date. Except for good cause shown, 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 Division.
 - b. All medical records signed by a physician or accompanied by a certification that the records are true and accurate which has been signed by the physician or custodian of records shall be admissible. The Division shall provide a certification form for the parties' use. There is no requirement that the certification be accompanied by an affidavit.
 - 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 Division and each of the records shall be identified by author and date and numbered as in the table of contents.

Authority: T.C.A. § 4-3-1409 Public Chapter 289 (2013), Sections 73, 79, 82, 106

Rule 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 initial hearing order.
- (2) The judge shall include a date for post-discovery alternative dispute resolution proceedings in the initial hearing order.
- (4) Alternative dispute resolution proceedings under this section shall be conducted in the manner provided by rule 0800-02-21-.11.
- (5) If the parties do not reach settlement of all issues, the parties shall appear before the court for a compensation hearing at the time provided in the initial hearing order. The parties shall not file a request for hearing.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 76, 82, 106

Rule 0800-02-21-.18 Compensation Hearing Procedure

- (1) The compensation hearing shall be conducted at the time and place established in the initial 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) No more than 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 on a form provided by the Division.
- (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 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.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 82, 106

Rule 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.
- (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, a workers' compensation judge shall advise the claimant of the consequences of the settlement, if any, with respect to Medicare and TennCare benefits and liabilities and all settlements shall contain a statement that the claimant has been so advised.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 84, 106

Rule 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.
- (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; Public Chapter 289 (2013), Sections 73, 82, 106

Rule 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, 9-8-402

Chapter 0800-02-22
Board of Workers' Compensation Appeals

New Rules

Rule 0800-02-22-.01 Filing the Request for Appeal

- (1) Any party may appeal any order of a workers' compensation judge by filing a request for appeal, on a form approved by the Division, with the clerk. The request for appeal must be filed:
 - a. Within seven (7) business days of the date the order was entered by the workers' compensation judge if the order appealed is interlocutory; or
 - b. Within thirty (30) calendar days of the date the order was entered by the workers' compensation judge for appeal of a compensation order.
- (2) A copy of the request for appeal must be served upon the opposing party.
- (3) Upon receipt of a request for appeal of an interlocutory order, the clerk shall assemble the record from the judge and submit the appeal to the board of appeals for review. No transcript is required to be filed. Within seven (7) business days of the date the appeal is submitted to the board by the clerk, the board shall review the record and enter an opinion affirming, reversing, remanding, or modifying the decision of the judge. The opinion of the appeals board shall not be subject to further appeal.
- (4) For an appeal of a compensation order, within fifteen (15) calendar days after the request for appeal is filed, the party that filed the request for appeal shall file a copy of the transcript of the proceedings before the workers' compensation court or shall file notice that no transcript will be provided. A copy of this transcript or notice shall be served upon the opposing party. The party may file a statement of the evidence in lieu of a transcript. The following additional rules shall apply:
 - a. Upon receipt of a request for appeal, the clerk shall forward a copy of the request for appeal and the transcript or statement of the evidence, if any, to the workers' compensation judge that issued the order.
 - b. Within ten (10) business days after receiving a copy of the notice of appeal and the transcript or statement of the evidence, the judge shall review the information provided by the clerk and determine whether the transcript or statement of the evidence accurately reflects the proceedings at the hearing. Thereafter, the judge shall review the case record to ensure that it is complete, compile the contents of the record and forward the record to the clerk for submission to the board of appeals.
 - c. If a transcript or statement of the evidence is not timely filed, the workers' compensation judge may certify the record of proceedings if the judge believes that the record provides an accurate reflection of the proceedings that occurred at trial. If the judge determines that the record cannot be certified, the workers' compensation judge may either deny the request for appeal or issue an order compelling the party who filed the appeal to provide a copy of the transcript or a statement of the evidence.
- (5) Any request for appeal that is not received by the clerk within the time provided by paragraph (1) will be dismissed.

- (6) A request for appeal that is not timely filed will not toll the statute of limitations for filing an appeal to the Supreme Court pursuant to T.C.A. § 50-6-225(a)(1).

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 80, 83, 106

Rule 0800-02-22-.02 Docketing Appeal, Filing Briefs and Rendering Decision

- (1) The board of workers' compensation appeals will docket the appeal upon receipt of the record from the clerk of the court of workers' compensation claims.
- (2) After the record is received by the board, the appeal shall be docketed and assigned to a appeals board judge for review. A docketing notice shall be sent to all parties.
- (3) For appeals of compensation orders, the parties shall have fifteen (15) calendar days after the docketing notice provided in paragraph (2) is issued to submit briefs to the board for consideration. Review on appeal of interlocutory orders shall be on the record and briefing shall not be required. However, any party opposing the appeal of an interlocutory order may submit a response, in accordance with rules provided by the board, for consideration.
- (4) After the fifteen (15) calendar day period for the filing of briefs ends, or for appeals of interlocutory orders, after the appeal is filed, the board shall issue its decisions either certifying the order of the workers' compensation judge or remanding the case for further proceedings within:
 - a. Seven (7) business days for an appeal of an interlocutory order awarding or denying temporary disability or medical benefits; or
 - b. Forty-five (45) calendar days for an appeal of a compensation order issued pursuant to T.C.A. § 50-6-239(c)(2).
- (5) In rendering its decision, the board shall base its decision on a review of the record and the briefs or responses of the parties, if any. No oral argument shall be allowed.
- (6) Immediately upon issuing a decision on any appeal, the board shall forward a copy of the decision to the parties by regular or electronic mail.
- (7) Interlocutory orders.
 - a. If the 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 opinion affirming the order is issued 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 T.C.A. § 50-6-118.
 - b. Following the issuance of a decision either affirming or remanding an interlocutory order of temporary disability benefits, the claim shall continue in the manner provided by T.C.A. § 50-6-239 and by these rules.
- (8) Compensation orders.
 - a. If the board remands the case following an appeal of a compensation order, the clerk shall send a docketing notice to the parties, by regular or electronic mail, setting forth the procedure for preparing for and scheduling the hearing. The clerk shall also return the record to the previously assigned judge, unless otherwise directed by the Chief Judge.

- b. If the board certifies a compensation order as final, the time for filing an appeal to the supreme court pursuant to T.C.A. § 50-6-225 shall begin to run on the date the order is certified as final by the board. If no further appeal is filed, the compensation order shall become final and binding in thirty (30) calendar days and the benefits provided through the compensation order must be paid within five (5) business days after the order becomes final.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 80, 83, 106

Rule 0800-02-22-.03 Appeal of Workers' Compensation Cases Filed Against the State

The board of workers' compensation appeals 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, 9-8-402

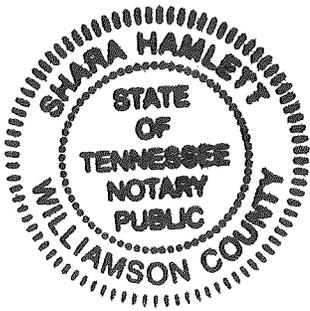
I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 8/20/2013

Signature: *Abbie Hudgens*

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Division of Workers' Compensation



Subscribed and sworn to before me on: August 20, 2013

Notary Public Signature: *Shara Hamlett*

My commission expires on: January 24, 2016

Department of State Use Only

Filed with the Department of State on: 8/23/13

Tre Hargett
Tre Hargett
Secretary of State

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