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Sequence Number: 11-19-14
Rule ID(s): 2269
File Date: 11/19/2014

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.

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SECRETARY OF STATE

Agency/Board/Commission:	Tennessee Department of Labor and Workforce Development
Division:	Workers' Compensation
Contact Person:	Troy Haley
Address:	220 French Landing Drive, 1-B, Nashville, TN
Zip:	37243
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 Drive, 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:	220 French Landing Drive,
Address 2:	Side 1-A, Tennessee Room
City:	Nashville, TN
Zip:	37243
Hearing Date :	01/08/15
Hearing Time:	1:00 p.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) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. 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	Claims 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 0800-02-22
Workers' Compensation Appeals Board

New Rules

Rule 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 Division, with the clerk of the court of workers' compensation claims, in accordance with Rule 0800-02-21-.02(14). Pursuant to Tennessee Code Annotated section 50-6-217(a)(1), the notice of appeal must be filed:
 - (a) Within seven (7) business days of the date an interlocutory order was entered by the workers' compensation judge; or
 - (b) Within thirty (30) calendar days of the date a compensation order was entered 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 notice of appeal that is not received by the clerk within the time provided by paragraph (1) shall be dismissed.
- (4) A notice of appeal of a compensation order that is not timely filed will not toll the time limit for filing an appeal to the Supreme Court pursuant to Tennessee Code Annotated section 50-6-225(a)(1) and Rule 4(a) of the Tennessee Rules of Appellate Procedure.

Authority: T.C.A. § 4-3-1409; T.C.A. § 50-6-217; T.C.A. § 50-6-225.

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

- (1) If the appellant elects to file a position statement in support of an interlocutory appeal, the appellant shall file such position statement with the clerk of the court of workers' compensation claims within three (3) business days of the filing of the notice of appeal, specifying the issues presented for review and including any argument in support thereof. A party opposing the appeal shall file a response, if any, with the clerk of the court of workers' compensation claims within three (3) business days of the filing of the appellant's position statement.
- (2) The parties, having the responsibility to ensure a complete record on appeal, may have a transcript prepared by a licensed court reporter and file it with the clerk of the court of workers' compensation claims within ten calendar days of the filing of the notice of appeal. Alternatively, the parties may file a statement of the evidence within ten calendar days of the filing of the notice of appeal. The statement of the evidence must be approved by the judge before the record is submitted to the clerk of the appeals board. 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) Within seven (7) business days of the receipt of the record on appeal by the clerk of the workers' compensation appeals board, the appeals board shall review the record and enter an order affirming, reversing, or modifying, and remanding the interlocutory order of the workers' compensation judge. The order of the workers' compensation appeals board shall not be subject to further appeal.
 - (a) 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 order affirming the interlocutory 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 Tennessee Code Annotated section 50-6-118.

- (b) Following the issuance of a decision affirming, reversing, or modifying and remanding an interlocutory order of temporary disability benefits, 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; T.C.A. §50-6-118; T.C.A. § 50-6-217; T.C.A. § 50-6-225.

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

- (1) Upon the filing of a notice of appeal of a compensation order, within fifteen (15) calendar days, the party that filed the notice of appeal shall file with the clerk of the court of workers' compensation claims a copy of the transcript of the proceedings before the workers' compensation court or shall file notice that no transcript will be provided. The appealing party shall serve a copy of this transcript or notice upon the opposing party or parties. The party may file a statement of the evidence in lieu of a transcript.
- (2) Upon receipt of the transcript of the proceedings, statement of the evidence, or notice that no transcript will be filed, the clerk of the court of workers' compensation claims shall forward a copy of the notice of appeal and the transcript or statement of the evidence, if any, or notice that no transcript will be filed, to the workers' compensation judge that issued the order.
- (3) Within ten (10) business days after receiving a copy of the notice of appeal and the transcript, or statement of the evidence, if any, or the notice that no transcript will be provided, the workers' compensation judge shall review the record in its entirety to ensure that it is complete and that it accurately reflects the proceedings at the hearing, and shall compile the contents of the record and forward the record to the clerk of the court of workers' compensation claims.
- (4) If a transcript or statement of the evidence is not timely filed, the workers' compensation judge may certify the record or 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 shall issue an order compelling the party who filed the notice of appeal to file a transcript, a statement of the evidence, or take such other action as is necessary for the trial judge to certify the record.
- (5) Upon receipt of the record, the clerk of the workers' compensation appeals board shall docket the appeal and shall send a docketing notice to all parties. The clerk of the appeals board shall forward the record to the appeals board for review.
- (6) The party who filed the notice of appeal shall have fifteen (15) calendar days after the issuance of the docketing notice provided in paragraph (5) to submit a brief to the appeals board for consideration. Any opposing party shall have fifteen (15) calendar days after the filing of the appellant's brief to file a brief in response. No reply briefs shall be filed. Briefs shall comply with the Practice and Procedure Guidelines of the Workers' Compensation Appeals Board.
- (7) Within forty-five (45) calendar days after the period for the filing of briefs ends, the board shall issue its decision affirming, reversing or modifying the order of the workers' compensation judge and shall remand the case for further proceedings.
 - (a) If the appeals board reverses or modifies and remands the case following an appeal of a compensation order, the clerk of the court of workers' compensation claims shall send a docketing notice to the parties, by regular or electronic mail, setting forth the procedure for preparing for and scheduling any hearing, if necessary. The clerk shall also return the record to the previously assigned judge, unless otherwise directed by the Chief Judge.
 - (b) If the appeals board affirms and certifies a compensation order as final, the time for filing an appeal to the supreme court pursuant to Tennessee Code Annotated section 50-6-225 shall begin to run on the date the order is certified as final by the appeals board. If no

further appeal is filed, the compensation order shall become final and binding in thirty (30) calendar days after the decision of the appeals board is filed and any benefits provided through the compensation order shall be paid within five (5) business days after the compensation order becomes final.

- (8) Immediately upon the issuance of a decision on any 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; T.C.A. § 50-6-217; T.C.A. § 50-6-225.

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

- (1) The appeals board shall base its decision on a review of the record and the briefs or responses of the parties, if any. Evidence not contained in the record submitted to the clerk of the workers' compensation appeals board shall not be considered on appeal. No oral argument shall be allowed unless otherwise directed by the workers' compensation appeals board either upon its own motion or upon motion of a party. 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 may be filed by any party.
- (3) Costs on appeal may be assessed as ordered by the appeals board.
- (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. The clerk of the appeals board may not accept for filing any motion or other paper sought to be filed by any party following the filing of a notice of appeal to the state supreme court, unless and until the case is remanded to the workers' compensation trial court.
- (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; T.C.A. § 50-6-217; T.C.A. § 50-6-225.

Rule 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, 9-8-402; T.C.A. § 50-6-217. Administrative History: Original rule filed April 1, 2014; effective June 30, 2014.

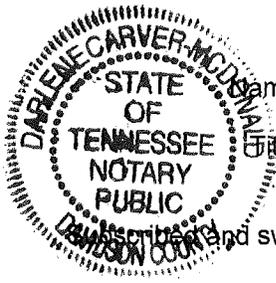
I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 11/18/14

Signature: Abigail S. Hodges

Name of Officer: Abigail S. Hodges

Title of Officer: Administrator, Workers' Compensation Division



Subscribed and sworn to before me on: November 19, 2014

Notary Public Signature: Darlene Carver-McMurry

My commission expires on: May 8, 2017

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Filed with the Department of State on: 11/19/2014

Tre Hargett
Tre Hargett
Secretary of State

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