

CHAPTER 235

RULES OF THE DIVISION OF WORKERS
COMPENSATION

Authority

N.J.S.A. 34:1-20, 34:1A-3(e), 34:1A-12(b) and (c), and 34:15-64.

Source and Effective Date

R.1991 d.275, effective May 3, 1991.
See: 23 N.J.R. 834(a), 23 N.J.R. 1819(a).

Executive Order No. 66(1978) Expiration Date

Chapter 235, Rules of the Division of Workers Compensation, expires on May 3, 1996.

Chapter Historical Note

All provisions of this chapter became effective prior to September 1, 1969.

1971 Revisions: Amendments became effective January 1, 1971 as R.1970 d.99. See: 2 N.J.R. 75(c).

1972 Revisions: Amendments became effective January 1, 1972 as R.1971 d.140. See: 3 N.J.R. 180(a).

1973 Revisions: Amendments became effective January 1, 1973 as R.1972 d.159. See: 4 N.J.R. 222(a).

1974 Revisions: Amendments became effective January 1, 1974 as R.1973 d.218. See: 5 N.J.R. 316(b).

1975 Revisions: Amendments became effective January 1, 1975 as R.1974 d.235. See: 6 N.J.R. 352(c). Further amendments became effective March 24, 1975 as R.1975 d.43. See: 7 N.J.R. 61(b), 7 N.J.R. 169(a).

1976 Revisions: Amendments became effective January 1, 1976 as R.1975 d.252. See: 7 N.J.R. 433(a).

1977 Revisions: Amendments became effective January 1, 1977 as R.1976 d.256. See: 8 N.J.R. 424(a). Further amendments became effective October 26, 1977 as R.1977 d.406. See: 9 N.J.R. 537(b).

1978 Revisions: Amendments became effective January 1, 1978 as R.1977 d.296. See: 9 N.J.R. 439(a).

1979 Revisions: Amendments became effective January 1, 1979 as R.1978 d.283. See: 10 N.J.R. 400(c).

1980 Revisions: Amendments became effective January 1, 1980 as R.1979 d.319. See: 11 N.J.R. 449(b).

1981 Revisions: Amendments became effective January 1, 1981 as R.1980 d.357. See: 12 N.J.R. 543(d).

1982 Revisions: Amendments became effective January 1, 1982 as R.1981 d.420. See: 13 N.J.R. 604(c), 13 N.J.R. 777(d). Further amendments became effective November 1, 1982 (operative January 1, 1983) as R.1982 d.380. See: 14 N.J.R. 970(b), 14 N.J.R. 1219(c).

1983 Revisions: Amendments became effective November 21, 1983 (operative January 1, 1984) as R.1983 d.520. See: 15 N.J.R. 1437(a), 15 N.J.R. 1945(a). Further amendments became effective November 21, 1983 (operative January 1, 1984) as R.1983 d.520. See: 15 N.J.R. 1437(a), 15 N.J.R. 1945(a).

1984 Revisions: Amendments became effective November 5, 1984 as R.1984 d.522. See: 16 N.J.R. 2346(a), 16 N.J.R. 3054(a).

1985 Revisions: Amendments became effective November 4, 1985 (operative January 1, 1986) as R.1985 d.541. See: 17 N.J.R. 2090(a), 17 N.J.R. 2668(b).

1986 Revisions: This chapter was repealed and a new chapter adopted effective May 5, 1986 as R.1986 d.144. See: 17 N.J.R. 2081(a), 18 N.J.R. 987(a). Amendments became effective November 17, 1986 as R.1986 d.455. See: 18 N.J.R. 1788(b), 18 N.J.R. 2331(d).

1987 Revisions: Amendments became effective November 16, 1987 as R.1987 d.472. See: 19 N.J.R. 1624(a), 19 N.J.R. 2197(a).

1989 Revisions: Sections 3.11 through 3.18 were repealed and new rules were adopted for sections 3.11 through 3.23, effective January 3, 1989 as R.1989 d.24. See: 20 N.J.R. 2442(c), 21 N.J.R. 23(a).

1990 Revisions: N.J.A.C. 12:235-3.11 through 3.23 were invalidated by the N.J. Superior Court, Appellate Division (see 23 N.J.R. 207(a)).

1991 Revisions: Pursuant to Executive Order No. 66(1978), Chapter 235 was readopted by R.1991 d.275. See: Source and Effective Date.

See: Subchapter and section level annotations for specific rulemaking activity.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 12:235-1.1 Purpose; scope
- 12:235-1.2 Construction
- 12:235-1.3 through 12:235-1.5 (Reserved)
- 12:235-1.6 Maximum workers' compensation benefit rates
- 12:235-1.7 through 12:235-1.8 (Reserved)

SUBCHAPTER 2. DEFINITIONS

- 12:235-2.1 Definitions

SUBCHAPTER 3. CONDUCT OF JUDGES OF
COMPENSATION

- 12:235-3.1 Promptness
- 12:235-3.2 Courtesy and civility
- 12:235-3.3 Conduct of attorneys
- 12:235-3.4 Conduct of witnesses and others having business before the court
- 12:235-3.5 Kinship or influence: disqualification
- 12:235-3.6 Conflict of interest
- 12:235-3.7 Partisan politics
- 12:235-3.8 Self-interest
- 12:235-3.9 Gifts and favors
- 12:235-3.10 Medical reports
- 12:235-3.11 Commission on Judicial Performance
- 12:235-3.12 Removal from office
- 12:235-3.13 Institution of removal proceedings
- 12:235-3.14 Prosecution of removal proceedings
- 12:235-3.15 Suspension pending resolution of the proceeding
- 12:235-3.16 Right to counsel
- 12:235-3.17 Formal proceedings for removal, suspension or censure
- 12:235-3.18 Informal hearings
- 12:235-3.19 Forms of discipline
- 12:235-3.20 Confidentiality
- 12:235-3.21 through 12:235-3.23 (Reserved)

SUBCHAPTER 4. SUPERVISION OF JUDGES OF
COMPENSATION

- 12:235-4.1 Assignment to supervisory positions
- 12:235-4.2 Personnel functions

SUBCHAPTER 5. FORMAL CLAIMS

- 12:235-5.1 Initial pleadings

- 12:235-5.2 Motions for temporary disability and/or medical benefits
- 12:235-5.3 Other motions
- 12:235-5.4 Third party joinder by respondent
- 12:235-5.5 Conditions allowable for discovery
- 12:235-5.6 Discovery
- 12:235-5.7 Testimony of injured or ill petitioner by depositions
- 12:235-5.8 Certification of pre-existing conditions
- 12:235-5.9 Pre-trial conference
- 12:235-5.10 Conduct of formal hearings

SUBCHAPTER 6. INFORMAL HEARINGS

- 12:235-6.1 Purpose of informal hearings
- 12:235-6.2 Filing of an application for an informal hearing
- 12:235-6.3 Contents of the application
- 12:235-6.4 Scheduling of informal hearings
- 12:235-6.5 Attendance at hearing
- 12:235-6.6 Representative of employer or carrier
- 12:235-6.7 Registration of representatives for employers or carriers
- 12:235-6.8 Representation of claimant
- 12:235-6.9 Solicitation of compensation claims
- 12:235-6.10 Procedure where employer has no insurance
- 12:235-6.11 Allowance of attorney fees
- 12:235-6.12 Commencement of informal hearings
- 12:235-6.13 Determination of issues
- 12:235-6.14 Acceptance of settlement recommendations and entry of informal award
- 12:235-6.15 Fee for service of physician
- 12:235-6.16 Denial of compensability or refusal to accept findings of informal hearings
- 12:235-6.17 Failure of employer or carrier to appear
- 12:235-6.18 Adjournment
- 12:235-6.19 (Reserved)

SUBCHAPTER 7. SECOND INJURY FUND CASES

- 12:235-7.1 General procedure
- 12:235-7.2 Hearing
- 12:235-7.3 Payment of benefits
- 12:235-7.4 Filing

SUBCHAPTER 8. COMMUTATION OF AWARD

- 12:235-8.1 Application for commutation
- 12:235-8.2 Application form for commutation
- 12:235-8.3 Approval or disapproval of application for commutation

SUBCHAPTER 9. DISCRIMINATION COMPLAINTS

- 12:235-9.1 Filing discrimination complaints
- 12:235-9.2 Contents of discrimination complaints
- 12:235-9.3 Attachments to discrimination complaints
- 12:235-9.4 Investigation of discrimination complaints; appeal procedures
- 12:235-9.5 Action by the Commissioner

SUBCHAPTER 10. ACCIDENT REPORTS

- 12:235-10.1 Employer's first report of accidental injury or occupational disease
- 12:235-10.2 Employer's report of accidental injury or occupational disease
- 12:235-10.3 Insurer's initial notice of accident
- 12:235-10.4 Insurer's final report of accident
- 12:235-10.5 Report of death
- 12:235-10.6 Compliance with N.J.S.A. 34:15-96 through N.J.S.A. 34:15-102

SUBCHAPTER 11. STANDARD FORMS

- 12:235-11.1 Listing of forms
- 12:235-11.2 Sample forms

SUBCHAPTER 12. DOCUMENTS REFERRED TO IN THIS CHAPTER

- 12:235-12.1 Documents referred to by reference
- 12:235-12.2 Availability of documents for inspection
- 12:235-12.3 Availability of documents from issuing agency

SUBCHAPTER 13. SURCHARGE COLLECTION PROCEDURES

- 12:235-13.1 Purpose and scope
- 12:235-13.2 Definitions
- 12:235-13.3 Reporting compensation paid
- 12:235-13.4 Calculation and notification of surcharge
- 12:235-13.5 Surcharge collection procedure
- 12:235-13.6 Verification and audit procedures
- 12:235-13.7 Earned premium notification
- 12:235-13.8 Forms
- 12:235-13.9 Penalties

SUBCHAPTER 14. UNINSURED EMPLOYER'S FUND

- 12:235-14.1 Purpose; scope
- 12:235-14.2 Filing notice of an uninsured claim; personal service; subpoena duces tecum; third party joinder
- 12:235-14.3 Certification
- 12:235-14.4 Medical bills; physician's examination
- 12:235-14.5 Assignment of cases; schedules
- 12:235-14.6 Payments from the Fund
- 12:235-14.7 Attorney fees

SUBCHAPTER 1. GENERAL PROVISIONS

12:235-1.1 Purpose; scope

(a) The purpose of this chapter is to establish rules to carry out the responsibilities of the Division of Workers' Compensation under the Act.

(b) This chapter shall apply to all persons subject to Workers' Compensation Law, N.J.S.A. 34:15-1 et seq.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Title and citation repealed; purpose recodified from 1.3; scope recodified from 1.4.

Case Notes

Employee's continuing psychiatric treatment for pre-existing mental condition aggravated by work-related injury. *Flaherty v. Monmouth Sailing Center, Inc.*, 93 N.J.A.R.2d (WCC) 166.

Lumbosacral strain and left lumbar radiculopathy resulting from compensable accident equaled 40% of permanent partial disability, and claimant suffered from anxiety reaction to extent of 10% of permanent partial disability. *Wielgosz v. Ortho Diagnostics*, 93 N.J.A.R.2d (WCC) 163.

Mechanic was employee of owner of repair shop. *Breeden v. Dawson Automotive, Inc.*, 93 N.J.A.R.2d (WCC) 156.

Cancer and death were caused by exposure to carcinogens during the course of employment. *Rodriguez v. Sherwin Williams Paint Co.*, 93 N.J.A.R.2d (WCC) 153.

Receptionist/bookkeeper was entitled to psychiatric treatment, temporary disability benefits, and permanent disability as result of derisive and abusive language and behavior by owners. *Erhard v. Dee Rose Furniture of Brick Town Inc.*, 93 N.J.A.R.2d (WCC) 146.

Drywall finisher was employee rather than an independent contractor and accident arose out of and in course of employment. *Lopez v. P & B Partitions*, 93 N.J.A.R.2d (WCC) 143.

Temporarily disabled employee could not receive both unemployment benefits and disability compensation at the same time. *Khalil v. Revlon, Incorporated*, 93 N.J.A.R.2d (WCC) 135.

12:235-1.2 Construction

The rules contained in this chapter shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. Unless otherwise stated, any rule may be relaxed or dispensed with if strict adherence would cause an injustice.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Authority deleted; construction recodified from 1.5.

12:235-1.3 (Reserved)

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Purpose recodified to 1.1(a).

12:235-1.4 (Reserved)

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Scope recodified to 1.1(b).

12:235-1.5 (Reserved)

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Construction recodified to 1.2.

12:235-1.6 Maximum workers' compensation benefit rates

(a) In accordance with the provisions of N.J.S.A. 34:15-12(a), the maximum workers' compensation benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency is hereby promulgated as being \$469.00 per week.

(b) This maximum compensation shall be effective as to injuries occurring in the calendar year 1995.

Amended by R.1986 d.455, effective November 17, 1986.
See: 18 N.J.R. 1788(b), 18 N.J.R. 2331(d).
Benefit rates raised.

Amended by R.1987 d.472, effective November 16, 1987.
See: 19 N.J.R. 1624(a), 19 N.J.R. 2197(a).

Benefit rate raised from \$302.00 to \$320.00.

Amended by R.1988 d.536, effective November 7, 1988.
See: 20 N.J.R. 2188(a), 20 N.J.R. 2786(b).

Benefit rate raised from \$320.00 to \$342.00.

Amended by R.1989 d.563, effective November 6, 1989.
See: 21 N.J.R. 2700(a), 21 N.J.R. 3535(a).

Weekly benefit rates increased to \$370.00 for the 1990 calendar year.
Amended by R.1990 d.596, effective December 3, 1990.
See: 22 N.J.R. 2886(a), 22 N.J.R. 3628(a).

Weekly benefit rates increased to \$385.00 for the 1991 calendar year.
Repealed by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Section was "Workers' compensation benefits rates".
New Rule, R.1991 d.574, effective December 16, 1991.
See: 23 N.J.R. 2612(a), 23 N.J.R. 3818(a).

Amended by R.1992 d.467, effective November 16, 1992.
See: 24 N.J.R. 3015(a), 24 N.J.R. 4270(a).

Revised text.

Amended by R.1993 d.591, effective November 15, 1993.
See: 25 N.J.R. 3925(a), 25 N.J.R. 5352(b).

Amended by R.1994 d.553, effective November 7, 1994.
See: 26 N.J.R. 3594(b), 26 N.J.R. 4410(b).

12:235-1.7 (Reserved)

Repealed by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Section was "Documents referred to by references".

12:235-1.8 (Reserved)

Repealed by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Section was "Validity".

SUBCHAPTER 2. DEFINITIONS

12:235-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means Workers' Compensation Law, N.J.S.A. 34:15-1 et seq., 43:21-30 and 43:21-41.

"Division" means the Division of Workers' Compensation, CN 381, Trenton, New Jersey 08625-0381.

"Chief Judge" means the Chief Judge of the Division.

"Commissioner" means the Commissioner of Labor or his or her designee.

"Director" means director of the division.

"N.J.A.C." means New Jersey Administrative Code.

"N.J.S.A." means New Jersey Statutes Annotated.

"Office of Safety Compliance" means the Office of Safety Compliance, in the Division of Workplace Standards, New Jersey Department of Labor, CN 386, Trenton, New Jersey 08625-0386.

"Respondent," "employer" or "insurance carrier" are used interchangeably.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Definition of Chief Judge added; definition of "shall" deleted.

SUBCHAPTER 3. CONDUCT OF JUDGES OF COMPENSATION

12:235-3.1 Promptness

(a) Judges of Compensation shall be prompt in the performance of all duties, including, but not limited to:

1. Convening hearings at the time and in the manner established by the Director.
2. Completing final disposition of cases; and
3. Completing and forwarding to the Director at regular intervals performance records and other data relating to judicial performance in a manner established by the Director.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Manner of hearing and submission of data to be specified by the Director.

12:235-3.2 Courtesy and civility

(a) Judges of Compensation shall be impartial and courteous to parties, counsel, and all others appearing or concerned with the administration of justice in the court.

(b) Judges of Compensation shall require, so far as their power extends, that those individuals assisting the Judge in the administration of the function of the court extend the same civility and courtesy to counsel and all others having business in the court.

(c) The conduct of a Judge of Compensation shall be free from impropriety and the appearance of impropriety. Their personal demeanor, not only on the bench and in the performance of their judicial duties, but also in their everyday life, shall be beyond reproach. Judges shall be temperate, attentive, patient, and impartial.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-3.3 Conduct of attorneys

(a) Attorneys shall conduct themselves in a professional manner at all times, as defined by the Rules of Professional Conduct.

(b) Judges of Compensation shall report to the Supervising Judge and Director all instances of attorney conduct in contravention of the Rules of Professional Conduct.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Reference to Rules of Professional Conduct added.

12:235-3.4 Conduct of witnesses and others having business before the court

(a) Witnesses and others having business before the court shall conduct themselves in a proper manner.

(b) Judges of Compensation shall report to the Supervising Judge and Director all instances of improper, unethical or illegal practices by any expert witness, interpreter, court reporter, or party before the Judge.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Conduct of witnesses and others specified.

12:235-3.5 Kinship or influence: disqualification

(a) Judges of Compensation shall not act upon or hear a controversy, or a portion thereof where a relative of the Judge or the Judge's spouse within the third degree of relationship to either is a party before the Judge.

(b) If a relative of the Judge or the Judge's spouse within the third degree of relationship to either, former partner, business associate, or personal friend is scheduled to appear before a Judge of Compensation, the Judge shall disqualify himself or herself from hearing the matter and promptly notify the Supervising Judge and the Director for rescheduling of the matter.

(c) Judges of Compensation shall disqualify themselves from all other matters in which they are unable to conduct a fair and unbiased hearing.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-3.6 Conflict of interest

(a) Judges of Compensation shall not:

1. Engage in any activity which requires the performance of duties inconsistent with their position of authority; or
2. Incur any obligation, pecuniary or otherwise, which would in any way interfere or appear to interfere with their duty to effectuate the proper administration of their official functions.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-3.7 Partisan politics

(a) Judges of Compensation shall be entitled to entertain personal views of political questions, and while they are not required to surrender their rights or opinions as citizens, it is inevitable that suspicions of being influenced by political bias will attach to an individual who becomes an active promoter of the interests of a political party.

(b) Judges of Compensation shall not:

1. Hold any elective office;
2. Be a candidate for any elective office;

3. Make political speeches on behalf of any candidate seeking political office;
4. Solicit contributions for party funds;
5. Make public endorsements of candidates for political office;
6. Participate in party conventions of any level or attend political functions; or
7. Accept or retain any position on a party committee, or subdivision.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-3.8 Self-interest

Judges of Compensation shall abstain from performing or taking part in an official act by which their personal interests would be affected.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-3.9 Gifts and favors

(a) Judges of Compensation shall not solicit or accept any gifts, favors, or gratuities of any form or pecuniary value from:

1. Litigants, attorneys, physicians, or witnesses regularly appearing before the Division; or
2. Insurance carriers, self-insureds, or their agents, servants, or employees.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-3.10 Medical reports

Any Judge of Compensation who has reason to believe that a medical report, medical bill for services, or medical finding has been altered, falsified, or withheld by a licensed physician, dentist, chiropractor, osteopath, optometrist, physical therapist, medical technician, attorney, or a representative of an insurance carrier or self-insured shall notify the Director.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-3.11 Commission on Judicial Performance

(a) Pursuant to this subchapter, a Commission of Judicial Performance (Commission) is established.

1. The Commission shall consist of nine members. The Director shall designate one member to serve as Chairman and another member to serve as Vice Chairman. At least two members shall be retired Judges of

Compensation, not less than three members shall be members of the Bar, and not more than four members shall be laymen who do not hold public office of any nature. The members shall be appointed by the Director for terms of two years and may be reappointed for such additional term or terms as the Director shall determine. Membership on the Commission shall terminate if a member is appointed or elected to public office or to any position considered by the Director to be incompatible with such service.

2. A quorum shall consist of five members of the Commission. No action of the Commission shall be valid unless concurred in by a majority of its membership; provided, however, that if the Commission finds sufficient cause therefore, and recommends to the Director the institution of formal proceedings which may lead to censure, suspension, or removal of the Judge of Compensation, such recommendation shall be made only on the affirmative vote of five members of the Commission who have considered the record and at least three of whom were present at any hearing at which oral testimony was produced.

3. Whenever in the judgment of the Commission it shall appear necessary or expedient to do so, the Chairman of the Commission may establish and designate three-member panels to conduct any investigation or any hearing contemplated by this subchapter. At the conclusion thereof, the panel shall make a report or recommendation to the Commission, which shall review the report or recommendation in accordance with (a)2 above.

4. The function of the Commission shall be to give advisory opinions, recommendations and reports to the Director.

(b) The Commission shall make a preliminary investigation to determine what, if any, action should be taken, upon receiving a written statement or criticism or complaint, not obviously unfounded or frivolous, or relating to a matter solely subject to an appeal from the criticized conduct or action, alleging facts indicating that a Judge of Compensation is guilty of:

1. Misconduct in office;
2. Willful failure to perform judicial duties;
3. Incompetence;
4. Habitual intemperance;
5. Engagement in partisan politics;
6. Conduct prejudicial to the administration of justice that brings the judicial office into disrepute; or
7. May be suffering from a mental or physical disability which is disabling the Judge and may continue to disable the Judge indefinitely or permanently from the performance of judicial duties.

(c) If the preliminary investigation does not disclose sufficient cause to warrant further proceedings, the person submitting the statement, criticism or complaint shall be so notified.

1. If the Judge of Compensation involved is aware of the statement, criticism or complaint, he or she should be notified of the Commission's findings and action;

2. If the Judge has not been made aware of the statement, criticism or complaint, the Commission, in the exercise of its discretion in the particular circumstances, may furnish information to the Judge or withhold information from the Judge as to the action taken.

(d) If the preliminary investigation indicates that further inquiry into the matter is necessary, the Commission shall:

1. Require the complainant to file a verified complaint against the Judge unless the circumstances render it unnecessary;

2. Notify the Judge of the nature of the charge, the name of the person making it, and that the Judge has the opportunity to present within such reasonable time as the Commission shall fix, such matters as he or she may choose with respect to it, including, on his or her request, the right to appear before the Commission, on notice to the complaining party, and to make such statement under oath as he or she deems appropriate. If the Judge does make a statement before the Commission, on request, the complainant shall be permitted to make further statement as he or she deems material. Such statements may be taken stenographically or by a sound recording device.

i. The notice to the Judge referred to in (d)2 above shall specify in ordinary and concise language the charges against the Judge and the alleged facts upon which they are based.

(e) All Department personnel shall cooperate fully with the investigation and shall provide all such information to the Commission as may be deemed necessary by the Director.

(f) Upon completion of the preliminary investigation, the Commission may:

1. Dismiss the charges and notify the parties of the action taken if it finds that the charges are without merit. If the matter has been made public, the Commission may, at the request of the Judge involved, issue a short statement of clarification and correction;

2. Issue a short explanatory statement, if a Judge is publicly charged with having engaged in grievous reprehensible conduct or having committed a serious offense, and if after the preliminary investigation it is decided that there is no basis for further proceedings or recommendation respecting the issuance of a formal complaint;

3. Request a Judge to appear at a time and place designated for an informal discussion of the matter if the investigation reveals some departures by the Judge from common standards of judicial propriety, such as discourtesy, rudeness, disparagement of witnesses or attorneys and the like, or other conduct or demeanor which would reflect unfavorably upon the functions of the Division and administration of justice if persisted in or were to become habitual or more substantial in character. After making the Judge aware of the objectionable conduct, and becoming satisfied that it was temporary in nature and not likely to become habitual, the Commission may dismiss the complaint, and advise the parties of the action taken, and the reasons for the dismissal of the complaint.

i. Conferences shall be recorded by a qualified reporter or by a sound recording device and a transcribed record and all papers in the proceeding shall be filed with the Commission.

(g) Whenever the Commission concludes from the preliminary investigation that the circumstances may call for censure, suspension or removal of the Judge, and that formal proceedings to that end should be instituted, the Commission shall promptly file a copy of the recommendation and the record of the Commission with the Director. The Commission shall issue also without delay and serve upon the Judge a notice advising him or her that it has filed such a recommendation with the Director.

1. After the Director has received reports and recommendations from the Commission, the Director shall recommend such action as is deemed appropriate to the Commissioner, who shall render a final agency determination.

New Rule, R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

"Commission of Judicial Performance" repealed and replaced with "Commission on Judicial Performance." Prior annotations on "Commission of Judicial Performance":

New Rule, R.1989 d.24, effective January 3, 1989.

See: 20 N.J.R. 2442(c), 21 N.J.R. 23(a).

Rule on "Physical capacity to preside" repealed and replaced with new rule "Commission of Judicial Performance".

INVALIDITY ANNOTATION: See 23 N.J.R. 207(a).

N.J.A.C. 12:235-3.11 held invalid. In the Matter of the Adoption of Rules Concerning Conduct of Judges of Compensation, N.J.A.C. 12:235-3.11 through 3.23, 244 N.J.Super. 683, Dkt. No. A-2946-88T2 (App. Div. December 11, 1990).

Case Notes

Commissioner of Labor regulations concerning conduct of judges of compensation were invalid due to failure to sufficiently publicize proposed regulations prior to adoption. Matter of Adoption of Rules Concerning Conduct of Judges of Compensation, N.J.A.C. 12:235-3.11 Through 3.23, 244 N.J.Super. 683, 583 A.2d 403 (A.D.1990).

12:235-3.12 Removal from office

(a) Judges of Compensation may be removed from office if it is found beyond a reasonable doubt that:

1. They have been convicted of an indictable offense;

2. They have been found to be incapable of executing the duties of their office; or

3. They have committed an enumerated offense pursuant to N.J.S.A. 2C:51-2, which details the circumstances for forfeiture of public office.

New Rule, R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

"Physical capacity to preside" repealed and replaced with "Removal from office." Prior annotations on "Physical capacity to preside": New Rule, R.1989 d.24, effective January 3, 1989.

See: 20 N.J.R. 2442(c), 21 N.J.R. 23(a).

Rule on "Mental competency to preside" repealed and replaced with new rule "Physical capacity to preside".

INVALIDITY ANNOTATION: See 23 N.J.R. 207(a).

N.J.A.C. 12:235-3.11 held invalid. In the Matter of the Adoption of Rules Concerning Conduct of Judges of Compensation, N.J.A.C. 12:235-3.11 through 3.23, 244 N.J.Super. 683, Dkt. No. A-2946-88T2 (App. Div. December 11, 1990).

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12:235-3.13 Institution of removal proceedings

A proceeding for removal for cause may be instituted by the filing of a misconduct complaint with the Commissioner by the Director.

New Rule, R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

"Mental competency to preside" repealed and replaced with "Institution of removal proceedings". Prior annotations on "Mental capacity to preside":

New Rule, R.1989 d.24, effective January 3, 1989.

See: 20 N.J.R. 2442(c), 21 N.J.R. 23(a).

Rule on "Removal from office" repealed and replaced with new rule "Mental competency to preside".

INVALIDITY ANNOTATION: See 23 N.J.R. 207(a).

N.J.A.C. 12:235-3.11 held invalid. In the Matter of the Adoption of Rules Concerning Conduct of Judges of Compensation, N.J.A.C. 12:235-3.11 through 3.23, 244 N.J.Super. 683, Dkt. No. A-2946-88T2 (App. Div. December 11, 1990).

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Private citizens lacked standing to institute administrative proceeding to remove or sanction director of workers' compensation and judge of compensation. Middlesex County Bar Ass'n v. Parkin, 226 N.J.Super. 387, 544 A.2d 433 (A.D.1988), certification denied 113 N.J. 380, 550 A.2d 482.

Representations of Commissioner of Labor that he was willing to investigate claims of private citizens warranted order that Commissioner carry out investigation of charges. Middlesex County Bar Ass'n v. Parkin, 226 N.J.Super. 387, 544 A.2d 433 (A.D.1988), certification denied 113 N.J. 380, 550 A.2d 482.

12:235-3.14 Prosecution of removal proceedings

The Attorney General or a designated representative shall prosecute the removal proceedings unless the Commissioner, with the express consent of the Attorney General, designates an attorney for that purpose.

New Rule, R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

"Removal from office" repealed and replaced with "Prosecution of removal proceedings." Prior annotations on "Removal from office": New Rule, R.1989 d.24, effective January 3, 1989.

See: 20 N.J.R. 2442(c), 21 N.J.R. 23(a).

Rule on "Institution of removal proceedings" repealed and replaced with new rule "Removal from office".

INVALIDITY ANNOTATION: See 23 N.J.R. 207(a).

N.J.A.C. 12:235-3.11 held invalid. In the Matter of the Adoption of Rules Concerning Conduct of Judges of Compensation, N.J.A.C. 12:235-3.11 through 3.23, 244 N.J.Super. 683, Dkt. No. A-2946-88T2 (App. Div. December 11, 1990).

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12:235-3.15 Suspension pending resolution of the proceeding

The Commissioner may suspend Judges of Compensation from office or from performing their regular duties, with pay, prior to the resolution of the proceeding.

New Rule, R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

"Institution of removal proceedings" repealed and replaced with "Suspension pending resolution of the proceeding." Prior annotations on "Institution of removal proceedings":

New Rule, R.1989 d.24, effective January 3, 1989.

See: 20 N.J.R. 2442(c), 21 N.J.R. 23(a).

Rule on "Prosecution of removal proceedings" repealed and replaced with new rule "Institution of removal proceedings".

INVALIDITY ANNOTATION: See 23 N.J.R. 207(a).

N.J.A.C. 12:235-3.11 held invalid. In the Matter of the Adoption of Rules Concerning Conduct of Judges of Compensation, N.J.A.C. 12:235-3.11 through 3.23, 244 N.J.Super. 683, Dkt. No. A-2946-88T2 (App. Div. December 11, 1990).

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Commissioner of Labor regulations concerning conduct of judges of compensation were invalid due to failure to sufficiently publicize proposed regulations prior to adoption. Matter of Adoption of Rules Concerning Conduct of Judges of Compensation, N.J.A.C. 12:235-3.11 Through 3.23, 244 N.J.Super. 683, 583 A.2d 403 (A.D.1990).

12:235-3.16 Right to counsel

(a) The accused in a formal hearing for removal, suspension or censure shall be given a reasonable time to prepare a defense and shall be entitled to counsel retained and paid for by the accused.

(b) The prosecuting attorney and the accused shall have the right to compulsory process to compel the attendance of witnesses and the production of evidence deemed necessary for the hearing.

New Rule, R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

"Prosecution of removal proceedings" repealed and replaced with "Right to counsel." Prior annotations on "Prosecution of removal proceedings":

New Rule, R.1989 d.24, effective January 3, 1989.

See: 20 N.J.R. 2442(c), 21 N.J.R. 23(a).

Rule on "Suspension pending determination" repealed and replaced with new rule "Prosecution of removal proceedings".

INVALIDITY ANNOTATION: See 23 N.J.R. 207(a).

N.J.A.C. 12:235-3.11 held invalid. In the Matter of the Adoption of Rules Concerning Conduct of Judges of Compensation, N.J.A.C. 12:235-3.11 through 3.23, 244 N.J.Super. 683, Dkt. No. A-2946-88T2 (App. Div. December 11, 1990).

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12:235-3.17 Formal proceedings for removal, suspension or censure

(a) Upon receipt of a recommendation from the Commission that formal proceedings for removal, suspension or censure should be instituted, the Director shall schedule such proceedings before the Commissioner or a representative designated by the Commissioner.

(b) The hearing shall commence within 30 days of the receipt of the Commission's recommendation by the Director and shall be tried on a continuous basis to a conclusion.

New Rule, R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

"Suspension pending resolution of the proceeding" repealed and replaced with "Formal proceedings for removal, suspension or censure." Prior annotations on "Suspension pending resolution of the proceeding":

New Rule, R.1989 d.24, effective January 3, 1989.

See: 20 N.J.R. 2442(c), 21 N.J.R. 23(a).

Rule on "Right to counsel, production of witnesses and evidence" repealed and replaced with new rule "Suspension pending resolution of the proceeding".

INVALIDITY ANNOTATION: See 23 N.J.R. 207(a).

N.J.A.C. 12:235-3.11 held invalid. In the Matter of the Adoption of Rules Concerning Conduct of Judges of Compensation, N.J.A.C. 12:235-3.11 through 3.23, 244 N.J.Super. 683, Dkt. No. A-2946-88T2 (App. Div. December 11, 1990).

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12:235-3.18 Informal hearings

(a) Upon receipt of a recommendation from the Commission that the circumstances may call for censure, but that formal proceedings to that end should not be instituted, the Director shall schedule an informal hearing before the Commissioner or a designated representative within 30 days of receipt of the recommendation.

(b) The informal hearing shall be conducted in a summary manner after the Judge has been advised of the charges in writing and has been afforded a reasonable time to prepare a defense.

(c) The Director, on his or her own motion, may require a Judge to respond to a charge that a provision of this subchapter or a directive of the Director has been violated. This response may be in person, in writing or by telephone. Such a proceeding shall be considered an informal hearing.

(d) The decision of the Commissioner, his or her designated representative or the Director, following an informal hearing, shall be final.

New Rule, R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

"Right to counsel" repealed and replaced with "Informal hearings."

Prior annotations on "Right to counsel":

New Rule, R.1989 d.24, effective January 3, 1989.

See: 20 N.J.R. 2442(c), 21 N.J.R. 23(a).

Rule on "Formal hearing for suspension or removal" repealed and replaced with new rule "Right to counsel".

INVALIDITY ANNOTATION: See 23 N.J.R. 207(a).

N.J.A.C. 12:235-3.11 held invalid. In the Matter of the Adoption of Rules Concerning Conduct of Judges of Compensation, N.J.A.C. 12:235-3.11 through 3.23, 244 N.J.Super. 683, Dkt. No. A-2946-88T2 (App. Div. December 11, 1990).

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Commissioner of Labor regulations concerning conduct of judges of compensation were invalid due to failure to sufficiently publicize proposed regulations prior to adoption. Matter of Adoption of Rules Concerning Conduct of Judges of Compensation, N.J.A.C. 12:235-3.11 Through 3.23, 244 N.J.Super. 683, 583 A.2d 403 (A.D.1990).

12:235-3.19 Forms of discipline

(a) The Commissioner may dispense the following discipline after any formal hearing:

1. Removal from office;
2. Suspension;
3. Written reprimand; or
4. Oral reprimand.

(b) The Commissioner or a designated representative may dispense the following discipline after any informal hearing conducted by the Commissioner or his or her designee:

1. Written reprimand; or
2. Oral reprimand.

(c) The Director may dispense the following discipline after any informal hearing conducted by the Director:

1. Written reprimand; or
2. Oral reprimand.

New Rule, R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

"Formal hearing for suspension or removal" repealed and replaced with "Forms of discipline." Prior annotations on "Formal hearing for suspension or removal":

New Rule, R.1989 d.24, effective January 3, 1989.

See: 20 N.J.R. 2442(c), 21 N.J.R. 23(a).

INVALIDITY ANNOTATION: See 23 N.J.R. 207(a).

N.J.A.C. 12:235-3.11 held invalid. In the Matter of the Adoption of Rules Concerning Conduct of Judges of Compensation, N.J.A.C. 12:235-3.11 through 3.23, 244 N.J.Super. 683, Dkt. No. A-2946-88T2 (App. Div. December 11, 1990).

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12:235-3.20 Confidentiality

All disciplinary proceedings concerning Judges of Compensation shall be conducted in a confidential manner. The Director shall have the sole responsibility for releasing information concerning disciplinary matters.

New Rule, R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

"Minor discipline" repealed and replaced with "Confidentiality."

Prior annotations on "Minor discipline":

New Rule, R.1989 d.24, effective January 3, 1989.

See: 20 N.J.R. 2442(c), 21 N.J.R. 23(a).

INVALIDITY ANNOTATION: See 23 N.J.R. 207(a).

N.J.A.C. 12:235-3.11 held invalid. In the Matter of the Adoption of Rules Concerning Conduct of Judges of Compensation, N.J.A.C. 12:235-3.11 through 3.23, 244 N.J.Super. 683, Dkt. No. A-2946-88T2 (App. Div. December 11, 1990).

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SUBCHAPTER 4. SUPERVISION OF JUDGES OF COMPENSATION

12:235-4.1 Assignment to supervisory positions

(a) It shall be within the power of the Director to ascertain the need to assign Judges to supervisory positions and exercise the administrative duties as set forth in this chapter for the districts the Director may designate.

(b) In the discretion of the Director, the Director may:

1. Determine the number of Judges needed to provide the necessary supervision; and
2. Appoint Judges of Compensation to supervisory positions in which the Judges shall serve at the pleasure of the Director.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Stylistic changes.

12:235-4.2 Personnel functions

(a) The Supervising Judge of a particular district shall be directly responsible for the general conduct and performance of each Judge of Compensation in that district. The Supervising Judge shall be prepared to give a periodic performance evaluation of each Judge at the request of the Director.

(b) The Supervising Judge of a particular district shall be responsible for the orderly and prompt flow of work in that district.

(c) Subject to the approval of the Director, the Supervising Judge shall determine the composition of the daily calendar and shall designate the Judge of Compensation to be responsible for each calendar list. The Supervising Judge shall be responsible for all daily changes of scheduling for all hearing personnel within each district and be available to discuss particular scheduling problems with attorneys.

(d) Each Supervising Judge shall furnish statistical reports as required by the Director.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Stylistic changes.

SUBCHAPTER 5. FORMAL CLAIMS

12:235-5.1 Initial pleadings

(a) Claim petitions shall be subject to the following:

1. The formal hearing process shall be initiated by the filing of a verified claim petition in duplicate with the

central office of the Division within the time prescribed by law on a form prescribed by the Division.

2. If an attorney for the petitioner knowingly files an incomplete or inaccurate petition any fee that may be awarded, may be reduced by 15 percent or \$200.00, whichever is greater.

(b) Answers to a claim petition shall be subject to the following:

1. The answer of the respondent to a claim petition shall be on a form prescribed by the Division. It shall be filed with the assignment clerk at the office to which the claim is assigned within 30 days of the date of service of the petition. A copy of the answer shall be served on the petitioner's attorney simultaneously. The filing and service of the answer may be made by first-class mail or its equivalent. The answer may be prepared by the attorney for the respondent based upon knowledge, information or belief and shall be regarded as his or her certification of its contents without the necessity of an affidavit.

2. If the answer is not filed as specified in (b)1 above, the Judge of Compensation to whom the case is assigned may, on motion, either suppress the defenses and permit the petitioner to prove his or her case, or permit the filing of the answer on such terms as may be fixed in the discretion of the Judge of Compensation.

3. If the respondent knowingly files an incomplete or inaccurate answer or unnecessarily delays filing an answer, such circumstances shall be considered in the apportionment of any counsel fee awarded.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Fee reduction provision at (a)2 allows \$200 or 15%.

Case Notes

Former N.J.A.C. 12:235-4.2 required a complaint to contain a complete, accurate description of each and every injury alleged; multiple, separate injuries arising out of the same accident were to be compensated cumulatively under a revised schedule of payments that increased weekly awards as the percentage of disability increased. *Poswiatowski v. Standard Chlorine Chemical Co.*, 96 N.J. 321, 475 A.2d 1257 (1984).

12:235-5.2 Motions for temporary disability and/or medical benefits

(a) In all motions by the petitioner for temporary disability or medical benefits, the original notice of motion shall be filed with the district office to which the case is assigned, and a copy of the notice of motion and claim petition served on all other parties.

(b) The notice of motion for temporary disability or medical benefits shall be on a form prescribed by the Division and shall contain:

1. A detailed account of compensable lost time claimed by the petitioner, indicating any period paid by the respondent;

2. Affidavits or certifications made in personal knowledge by the petitioner, petitioner's attorney and/or reports of the treating physicians stating the medical diagnosis and the specific type of treatment being sought, and, if available, an itemized bill and report of the treating physicians, or institutions or both for which services past, present and future, petitioner is seeking payment and such other evidence as shall relate to the petitioner's claim for temporary disability and/or medical treatment.

(c) If an attorney for the petitioner knowingly files an incomplete, inaccurate or misleading notice of motion for temporary disability and/or medical benefits, the attorney may be assessed a penalty not to exceed \$200.00 which shall be deducted from any fee which may be awarded for services.

(d) When the Division has received a notice of motion for temporary disability and/or medical benefits filed in accordance with (a), (b) and (c) above, it shall list the motion for a hearing before a Judge of Compensation peremptorily within 30 days. Motions for medical and/or temporary benefits shall commence and continue in a timely manner subject to the scheduling constraints of the Division. Said scheduling may be accelerated as ordered by the Director, the Supervising Judge of the vicinage, or the Judge of Compensation to whom the case is assigned.

(e) Affidavits, certifications and/or medical reports in support of the motion shall constitute a prima facie case, and unless rebutted by reports or testimony or affidavits or certifications by the respondent or respondent's attorney setting forth the factual or legal basis of the denial, shall be sufficient basis for the issuance of an order compelling the respondent to provide the relief sought.

(f) Examination, if required by respondent, shall be completed within 30 days of receipt of the motion and shall not delay the start of the hearing of the motion.

(g) On conclusion of the hearing on the motion for temporary and/or medical benefits, the Judge of Compensation shall, within 15 days, render a final decision on the motion and notify the respective counsel of the decision via first-class mail. In computing the 15 days' time, the 15 days shall be from the last day of hearing or from the date of filing of briefs as ordered by the Judge, whichever is later. Under no circumstances shall briefs be filed later than 15 days after the hearing.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Penalty assessment increased from \$50 to \$200; Physician's reports allowed; scheduling requirements added at (d).

Case Notes

Proceeding before Division of Workers' Compensation, rather than before Law Division, was injured worker's exclusive remedy. *Cortes v. Interboro Mut. Indem. Ins. Co.*, 232 N.J.Super. 519, 557 A.2d 1019 (A.D.1988), affirmed 115 N.J. 190, 557 A.2d 1001.

Documents supporting motion for continued temporary disability and medical benefits are "rebutted" by employer's contradictory or opposing documents. *Hogan v. Garden State Sausage Co.*, 223 N.J.Super. 364, 538 A.2d 1254 (A.D.1988).

Workers' compensation claimant's motion for temporary disability or medical benefits accompanied by supporting documentation can prevail without plenary hearing only if opposing documents are facially insufficient to fairly meet, contradict, or oppose material allegations of supporting documents. *Hogan v. Garden State Sausage Co.*, 223 N.J.Super. 364, 538 A.2d 1254 (A.D.1988).

12:235-5.3 Other motions

(a) All other motions shall be in the form of a notice of motion, the original of which shall be filed with the district office to which the case is assigned with copies served on all parties. Every notice of motion shall include the factual and legal basis for the relief requested and a proposed form of order.

(b) If the notice of motion or responsive pleading relies on facts not of record, it shall be supported by affidavit made on personal knowledge setting forth facts which are admissible in evidence to which the affiant is competent to testify. The notice of motion shall be considered uncontested unless responsive papers are filed and served within 14 days of the service of the notice of motion.

(c) Motions to dismiss for lack of prosecution pursuant to N.J.S.A. 34:15-54 shall be listed for hearing. All other motions shall be disposed of on the papers, unless a Judge of Compensation directs oral argument or further proceedings, in which event a hearing shall be scheduled within 30 days from the filing of the last papers contemplated by this section. At the conclusion of any such hearing the Judge of Compensation shall render a decision and enter an appropriate order within 30 days.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Checklist requirement deleted at (b).

Case Notes

Settlement discussions did not estop insurer from seeking to dismiss workers' compensation claim. *Booker v. Booker & Booker Exterminators*, 93 N.J.A.R.2d (WCC) 136.

12:235-5.4 Third party joinder by respondent

(a) A respondent who alleges that another employer or insurance carrier may be liable for all or part of the benefits claimed by the petitioner may move to join such employer or insurance carrier as a responding party to the original claim petition by notice of motion which shall be supported by a definitive statement setting forth the factual and legal basis for the relief sought.

(b) A copy of the motion and supporting statement with a copy of the original claim petition shall be served upon the party sought to be joined and all other parties.

(c) Such motion shall be granted only where the moving party has satisfied the Judge of Compensation that there

exists a substantial likelihood that the party to be joined is or may be liable for compensation benefits to the petitioner.

(d) If the order sought is granted, the order shall be served upon the party joined forthwith who shall file an answer within 30 days of the date of service of the order.

(e) In cases where it appears that the only issue involved is which carrier or employer is liable to the petitioner for the benefits sought, the Judge of Compensation may order the moving party to pay the benefits in whole or in part as a condition of joinder subject to an order for reimbursement, if another party is held to be liable for such benefits.

(f) If a respondent knowingly files an incomplete, inaccurate or frivolous motion for third party joinder, such circumstances may be considered in the apportionment of any counsel fee awarded, in addition to a counsel fee not to exceed \$200.00 to each opposing counsel of each party sought to be joined.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Standard of substantial likelihood deleted at (c); discretionary assessment allowed at (f).

Case Notes

Employer was not entitled to implead claimant's subsequent employers. *Kirkpatrick v. National Cleaning Contractors, Inc.*, 93 N.J.A.R.2d (WCC) 151.

12:235-5.5 Conditions allowable for discovery

(a) Discovery, except a deposition for preservation of testimony, may be allowed in those contested cases where there are issues in dispute in addition to the nature and extent of petitioner's temporary or permanent disability.

(b) All discovery shall be concluded not less than 10 days prior to the first listed date for plenary trial.

12:235-5.6 Discovery

(a) Interrogatories shall be allowed without motion in fatal cases.

(b) Interrogatories shall be allowed without motion where the injured worker is treated by the employer's physician and where medical information is not available to the worker. The employer shall be required to furnish or make available for inspection and copying of all records of medical treatment, examinations and diagnostic studies authorized by the respondent. The respondent shall have the same right when the worker is treated by his or her own physician.

(c) Interrogatories shall be allowed without motion in cases of review or modification of a prior award on the grounds of increase or decrease of disability. The party seeking such review or modification shall furnish the adversary party with a chronology of the pertinent events from

the date of the last award or judgment to the filing of the petition for the increase or decrease of disability indicating the essential facts upon which the petition is grounded.

(d) Interrogatories shall be allowed without motion in occupational disease cases on standard form interrogatories as set forth in N.J.A.C. 12:235-11.2.

(e) Interrogatories in those cases allowed without motion shall be served by the petitioner not later than 30 days after service of the answer to the petition and by the respondent not later than 15 days after the service of its answer. Answers to the interrogatories shall be served within 45 days after service of the interrogatories. A Judge of Compensation upon motion for good cause may enlarge the time provided for service of answers. Supplemental interrogatories may be allowed on motion for good cause shown.

(f) Interrogatories may be allowed in other cases, upon motion, for good cause shown.

(g) Depositions of witnesses may be allowed, upon motion, for good cause shown.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Deposition of witnesses allowed.

12:235-5.7 Testimony of injured or ill petitioner by depositions

(a) A petitioner seeking compensation who is in such a physical condition that it is imperative that his or her testimony be taken by deposition, in order to preserve the person's rights or those of his or her estate or dependents, may give a deposition.

(b) The deposition may be ordered by a Judge of Compensation upon notice to the adverse party and taken before a certified shorthand reporter.

(c) The appearance by an attorney for the respondent shall not constitute a waiver of any of the rights of the respondent or its insurance carrier.

(d) A report from a physician shall be attached to the application to take depositions stating the medical basis upon which the deposition is sought.

(e) A deposition for this purpose may also be taken by consent of all parties, provided there is a report from a physician stating the medical basis upon which the deposition is sought.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Petitioner's deposition allowed if medical basis provided.

12:235-5.8 Certification of pre-existing conditions

(a) In all cases in which the petitioner claims total and permanent disability, the petitioner or petitioner's attorney shall, prior to the first hearing date, furnish to all other parties a written certification as to the existence of any condition pre-existing the last claimed compensable episode.

(b) The certification shall include the names and addresses of physicians and institutions furnishing treatment or examinations for any such pre-existing conditions.

(c) The petitioner may in lieu of furnishing actual records or reports, furnish executed authorizations for the records and reports of each such physician and institution.

(d) Copies of all records and reports so obtained by the respondent shall be furnished to the petitioner or petitioner's attorney within 10 days of receipt.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-5.9 Pre-trial conference

(a) In any formal proceeding, the Division shall schedule a pre-trial conference where the following shall be accomplished:

1. All medical reports shall be exchanged;
2. The Judge and the attorneys shall agree upon the type of examination(s) required by each party;
3. The Judge and the attorneys shall make a sincere effort to limit issues; and
4. A pre-trial memorandum on a form prescribed by the Division shall be executed; or
5. There shall be an adjournment upon good cause shown.

(b) Incomplete medical examinations by either party shall be considered good cause for the adjournment of a pre-trial conference; provided, however, that no such adjournment shall be granted unless each party requesting the adjournment shall supply to the Judge the name(s) of the examining physician(s) and the date(s) of the examination(s).

(c) Any case set down for pre-trial on more than one occasion, if not ready because of failure of respondent to comply with this section, shall be placed on the trial list, and in the event an award is made, such failure shall be considered in the apportionment of the counsel fee. This provision shall not apply in any case in which the failure to have medical examinations is due to petitioner's neglect or refusal to appear for the examinations, in which event the case shall be marked, "not moved."

(d) Any case listed pre-emptorily, in which no appearance is made on behalf of the petitioner and which is not adjourned for good cause, shall be marked "not moved" and administratively discontinued. The case shall not be restored to the calendar except on notice of motion, provided however, the Judge of Compensation may for good cause and on the Judge's own motion restore a case marked "not moved" to the trial or pre-trial calendar. The counsel fee normally allowed shall be reduced within the discretion of the official presiding for each time a case has been marked "not moved" when the attorney for the petitioner is responsible for such marking. When a case has been marked "not moved" because of the petitioner's failure without good cause to submit to a physical examination at the request of the respondent, the petitioner may be penalized in the apportionment of fees at the discretion of the official presiding.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Medical examination requirements added.

Case Notes

Workers' compensation judge must respect and ensure due process and fundamental rights of litigants. *Waters v. Island Transp. Corp.*, 229 N.J.Super. 541, 552 A.2d 205 (A.D.1989).

Compensation judge clearly abused his discretion by refusing to continue hearing on claimant's motion when counsel received copy of employer's medical expert's report moments before hearing. *Waters v. Island Transp. Corp.*, 229 N.J.Super. 541, 552 A.2d 205 (A.D.1989).

There was no waiver of cross-examination of petitioner's medical witness by failure of request in pre-trial memorandum (citing former N.J.A.C. 12:235-4.16, 5.55, 5.56 and 5.62). *Indelicato v. Town of West New York*, 170 N.J.Super. 563, 407 A.2d 837 (App.Div.1979).

12:235-5.10 Conduct of formal hearings

(a) Attorneys representing both petitioners and respondents shall provide sufficient personnel to handle all lists expeditiously.

(b) Only an attorney at law licensed to practice in the State of New Jersey shall act as attorney of record, or appear and prosecute or defend any action in any formal hearing.

(c) Hearings shall be scheduled by the Director or a designated representative of the Director.

(d) The Judge of Compensation shall, at the commencement of the day, call the list of cases in open court. No adjournment shall be granted unless there is found to be good cause. No adjournment shall be granted for medical examination unless the name of the examining physician and date of examination are supplied.

(e) Trials shall commence and continue in a timely manner subject to scheduling constraints of the Division. Said scheduling may be accelerated as ordered by the Director, the Supervising Judge of the vicinage or the Judge of Compensation to whom the case has been assigned.

(f) All formal hearings or applications shall be conducted in open court, except when the Supervising Judge of the district deems the matter to be so delicate that the hearing of a party or witness in camera is warranted. When this occurs, a stenographic record shall be made.

1. Bifurcation of any trial may be permitted by the Judge of Compensation. The order of proof shall be determined by the Judge of Compensation to whom the case is assigned.

(g) All formal hearings including motions where a record is required shall be recorded stenographically by a certified shorthand reporter subject to such limitation as may be provided by statute.

1. Upon a determination reached at the conclusion of all hearings, including motions, the cost for the attendance of the certified shorthand reporter shall be assessed by the Judge of Compensation. Transcripts of the testimony may be obtained from the certified shorthand reporter at the official scheduled rates.

(h) When there are pending in the Division two or more formal proceedings involving a common question of law or fact arising out of employment by the same employer or different employers, or out of the same accident or series of accidents, or out of the same exposure or series of exposures, to causes of occupational disease, the Judge of Compensation or the Director may, on motion, or on the Judge's own initiative, order a joint hearing of any or all matters in issue. The Director may order all such proceedings consolidated, and have such orders concerning proceedings designed to avoid unnecessary costs or delay. The order shall state the county in which the consolidated proceedings are to be heard.

(i) Upon the commencement of a formal hearing, counsel may make opening statements on behalf of their respective clients. All matters agreed upon shall be stipulated upon the record. However, this shall not bar the parties from making further stipulations as the trial proceeds, until the close of the formal hearing.

(j) Counsel may make closing statements or file post-trial briefs. Post-trial briefs, if ordered or volunteered, shall be submitted within 15 days after the conclusion of the hearing. Each party thereafter may have seven days to file a reply brief, if so desired or ordered.

(k) Prior to the testimony of an expert witness, the producing party shall provide the Judge of Compensation and opposing counsel with a written curriculum vitae of the witness.

(l) Questions calling for the opinion of an expert witness need not be hypothetical in form, unless the Judge of Compensation in the Judge's discretion so requires. If the hypothetical question is submitted in written form, counsel shall provide sufficient copies for the Judge of Compensation.

tion, opposing counsel, the witness and the stenographer, and the hypothetical question may be marked as an exhibit in the proceedings in lieu of reading it to the witness.

(m) All medical experts for both parties who regularly examine petitioners to determine the nature and extent of their disability shall adhere to the vacation schedules established annually by the Director. If such medical expert is not available to testify because of an unexcused absence at any other time, the Judge of Compensation may require the party for whom such medical witness is to appear, to arrange for an examination and appearance at trial by another medical expert.

1. A medical expert who regularly examines petitioners means a medical expert who performs a minimum of 25 workers' compensation examinations per year.

(n) All exhibits shall be marked with an identifying number, the date of submission and initials of the court reporter.

1. An exhibit list shall be prepared by the Judge to be retained in the file and forwarded to the Division for microfilming and storage.

2. At the conclusion of the hearing, the Judge shall determine which exhibits are to be retained in the file and forwarded to the Division for microfilming and storage.

3. All other exhibits shall be returned to respective counsel for retention until the expiration of time for appeal or 20 years as determined by the Judge.

(o) When a deposition has been taken to preserve the testimony of an injured or ill petitioner the introduction into evidence of such deposition shall be limited to those cases where the deponent cannot appear because of medical inability to appear or death or where all parties consent to the introduction of the deposition into evidence.

(p) Judges of Compensation may refer the petitioner to the Division of Vocational Rehabilitation when warranted.

(q) Prior to testifying, a witness shall be administered an oath by the Judge of Compensation or by a certified shorthand reporter qualified to administer oaths. Because of religious beliefs, a witness may affirm in place of an oath.

(r) Forms of subpoena, bearing the seal of the Department, shall be made available at all district offices. An attorney-at-law of New Jersey may prepare a subpoena and authorize its service, in accordance with the Rules of Civil Practice of New Jersey, in the name of the Judge of Compensation assigned to the case, to compel the attendance of witnesses and the production of books and papers and such other items as shall be subject to production.

(s) All reserved decisions shall be rendered by the Judge of Compensation within 30 days from completion of the last day of hearing, or within 30 days from the date of filing of briefs. Additional time to render reserved decision may be allowed only on approval of a written application to the Director.

(t) The Judge of Compensation shall notify all parties by letter of the decision, detailing its terms and the name of: the reporter and the certified shorthand reporting firm to which it has been dictated; centralized word processing center; or other method by which the opinion is produced.

(u) A final judgment shall be deemed entered as of the date the judgment is signed by the Judge.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Moral turpitude removed as standard at (b); bifurcation of trials, accelerated scheduling allowed; post-trial brief form required; medical expert and exhibit retention requirements added; decision schedule changed.

Case Notes

Trial judge's opinion followed by finding that claimant was totally disabled, was insufficient to allow meaningful review. *Lister v. J.B. Eurell Co.*, 234 N.J.Super. 64, 560 A.2d 89 (A.D.1989).

Workers' compensation judge must respect and ensure due process and fundamental rights of litigants. *Waters v. Island Transp. Corp.*, 229 N.J.Super. 541, 552 A.2d 205 (A.D.1989).

Compensation judge clearly abused his discretion by refusing to continue hearing on claimant's motion when counsel received copy of employer's medical expert's report moments before hearing. *Waters v. Island Transp. Corp.*, 229 N.J.Super. 541, 552 A.2d 205 (A.D.1989).

There was no waiver of cross-examination of petitioner's medical witness by failure of request in pre-trial memorandum (citing former N.J.A.C. 12:235-4.16, 5.55, 5.56 and 5.62). *Indelicato v. Town of West New York*, 170 N.J.Super. 563, 407 A.2d 837 (App.Div.1979).

Under former N.J.A.C. 12:235-5.62, an employee may not, by waiving cross-examination of employer's medical expert, require the employer to present only the medical expert's report and preclude the employer from calling the expert as a witness. *Vaughn v. State (Div. of Motor Vehicles)*, 151 N.J.Super. 251, 376 A.2d 976 (App.Div.1977).

Flight attendant assaulted by co-employee; disability benefits. *Pelchat v. Continental Airlines*, 94 N.J.A.R.2d (WCC) 244.

Serious back condition; permanent partial disability. *Neves v. Cleve-Tenn Industries, Inc.*, 94 N.J.A.R.2d (WCC) 237.

Mentally handicapped employee; totally disabled; accident during employment. *Williams v. Accurate Bushing Co.*, 94 N.J.A.R.2d (WCC) 231.

Any on-the-job injury or disability; proof. *Awkward v. State of New Jersey*, 94 N.J.A.R.2d (WCC) 228.

Permanent partial disability; psychiatric and dermatological disability experienced during employment. *Gass v. Avalon Plumbing & Appliance*, 94 N.J.A.R.2d (WCC) 224.

Part-time employee; proof of partial permanent disability. *Edge v. United Parcel Services*, 94 N.J.A.R.2d (WCC) 221.

Employee exposed to asbestos; partial permanent disability. *Tiger v. Manville Sales Corp.*, 94 N.J.A.R.2d (WCC) 219.

Psychological disability; not result of employment. *Zubow v. Dean Witter Trust Co.*, 94 N.J.A.R.2d (WCC) 214.

Psychiatric injury; not result of employment. *Halpin v. Commerce Life Insurance*, 94 N.J.A.R.2d (WCC) 212.

Partial disability; exposure to asbestos during employment. *Behm v. Jersey Central Power and Light*, 94 N.J.A.R.2d (WCC) 209.

"Home friend" failed to show that she suffered from a disability permanent in quality and partial in character, and failed to establish the basis for awarding temporary disability benefits. *Mathis, Eula v. New Community Corporation*, 94 N.J.A.R.2d (WCC) 204.

Part-time clerk who tripped over construction material on the public sidewalk in front of a college-owned parking building which was controlled by a Ground Lease tenant was denied her claim against the college. *Burgos v. Essex County College*, 94 N.J.A.R.2d (WCC) 202.

Warehouse employee suffered post traumatic stress disorder and was entitled to temporary disability and partial total disability benefits. *Yaviliak v. Twin County Grocers*, 94 N.J.A.R.2d (WCC) 197.

Widow and minor children were entitled to dependency benefits when officer died from AIDS. *Laugherty v. City of Jersey City*, 94 N.J.A.R.2d (WCC) 194.

Failure to establish that there was an employer/employee relationship between the parties at the time of the accident. *Scillath v. Jed Scott Auto Parts*, 94 N.J.A.R.2d (WCC) 193.

Sewerage plant laboratory technician failed to prove that her employment was a material cause of her pulmonary disability. *Raines v. Passaic Valley Sewerage Commission*, 94 N.J.A.R.2d (WCC) 191.

Senior citizen toll collector who became disabled was entitled to have his wages reconstructed at the rate of hours worked by people doing the same type of work on a full time basis. *Sheridan v. New Jersey Highway Authority*, 94 N.J.A.R.2d (WCC) 187.

Plumber sustained a compensable partial permanent orthopedic disability and a psychiatric disability. *Abrantes v. Achieve Plumbing & Heating*, 94 N.J.A.R.2d (WCC) 185.

Employee's application for modification of prior award of benefits and claim for new injury were appropriately denied. *MacGillis v. Papa Sarris T/A La Mirage & Conair*, 94 N.J.A.R.2d (WCC) 182.

Award of benefits for partial/total disability was appropriate. *Vieira v. Arena Construction*, 94 N.J.A.R.2d (WCC) 180.

Worker's compensation benefits awarded to decedent's grandson. *Mangielle v. Lenox, Inc.*, 94 N.J.A.R.2d (WCC) 178.

Denial of additional worker's compensation benefits for an alleged additional injury was appropriate. *Drost v. Manville Foodtown Store # 2811*, 94 N.J.A.R.2d (WCC) 174.

Sanction imposed against employer; refusing injured employee disability and medical treatment benefits. *Rush v. Ocean Township Board of Education*, 94 N.J.A.R. 2d (WCC) 171.

Award appropriate; asthma exacerbated by exposure to cigarette smoke and fumes. *Nardone v. Georgia-Pacific Company*, 94 N.J.A.R.2d (WCC) 165.

Denial of additional worker's compensation benefits. *Sayres v. J. Spinelli & Sons Excavating*, 94 N.J.A.R.2d (WCC) 163.

Permanent partial disability; Lyme disease. *Salender v. Jersey Central Power and Light Company*, 94 N.J.A.R.2d (WCC) 157.

Denial of worker's compensation benefits to intoxicated volunteer member of first aid squad was appropriate. *Cuba v. Kearny Volunteer Rescue Squad, Inc.*, 94 N.J.A.R.2d (WCC) 153.

Award of worker's compensation benefits to live-in domestic employee was appropriate. *Wint v. Malien*, 94 N.J.A.R.2d (WCC) 149.

Denial of worker's compensation benefits; injury occurred during commute to work. *Flanagan v. Avis Rent-A-Car Systems*, 94 N.J.A.R.2d (WCC) 146.

Total permanent disability and medical benefits appropriate; employee unlikely to work in the future. *Fisher v. Hygrade Furniture*, 94 N.J.A.R.2d (WCC) 138.

Dismissal of claim for increased disability was appropriate. *Lanno v. Jersey Shore Medical Center and Monmouth Dental Center*, 94 N.J.A.R.2d (WCC) 129.

Award for partial/total disability; objective/demonstrable medical evidence test. *Dalfonzo v. Keansburg Ice & Fuel Co., Inc.*, 94 N.J.A.R.2d (WCC) 126.

Award to employee suffering from lung disease was appropriate. *Neiber v. Ingersoll-Rand Company*, 94 N.J.A.R.2d (WCC) 121.

Award for partial/total disability; orthopedic and neurological injuries. *Kane v. PMC Specialty Group*, 94 N.J.A.R.2d (WCC) 117.

Employee was entitled to worker's compensation benefits while engaged in a weight loss program. *Jaronko v. Bishop-Sanzari, Inc. & R. A. Hamilton*, 94 N.J.A.R.2d (WCC) 115.

No partial/permanent disability; injury did not interfere substantially with employee's life. *Intelli v. The Hose Shop*, 94 N.J.A.R.2d (WCC) 113.

Award of temporary disability payments and medical benefits was appropriate. *Keratt v. New Jersey Turnpike Authority*, 94 N.J.A.R.2d (WCC) 111.

Award made to employee with prior heart disorder who suffered partial/total disability was appropriate. *Doyle v. Highlands Borough*, 94 N.J.A.R.2d (WCC) 106.

Additional worker's compensation award to employee for the same injury was appropriate. *Landry v. Auto Life Management*, 94 N.J.A.R.2d (WCC) 104.

Award of worker's compensation benefits and finding of partial/total disability was appropriate. *Feliciano v. Wheelock Signals, Inc.*, 94 N.J.A.R.2d (WCC) 101.

Treatment and medical expenses were not compensable or reimbursable under the worker's compensation statute. *Gorin v. Kullman Industries*, 94 N.J.A.R.2d (WCC) 98.

Award for partial/total permanent disability was appropriate. *Alli-good v. Sears, Roebuck & Co.*, 94 N.J.A.R.2d (WCC) 97.

No objective medical evidence of disability. *Austin v. Fluets Corporation*, 94 N.J.A.R.2d (WCC) 94.

There was a failure to offer objective medical evidence of neuropsychological disability. *Kavanagh v. Hunterdon Developmental Center*, 94 N.J.A.R.2d (WCC) 91.

Failure to meet burden of proving permanent disability. *Ladezma v. Rebtex, Incorporated*, 94 N.J.A.R. (WCC) 90.

Cigarette-smoking asbestos worker; failure to prove that asbestos exposure contributed in material degree to lung cancer. *Gauntlett v. Johns-Manville*, 94 N.J.A.R.2d (UCC) 85.

Police officer failed to prove any ophthalmologic or orthopedic disability. *Rodriguez v. City of Newark*, 94 N.J.A.R.2d (WCC) 83.

Defendant's claim was barred when employee had accepted lump sum settlement. *Slinger v. Okonite Co., Inc.*, 94 N.J.A.R.2d (WCC) 82.

Employment accident; compensation for orthopedic injuries but not for high blood pressure. *Taylor v. Fell Corporation*, 94 N.J.A.R.2d (WCC) 78.

Multiple sclerosis; evidence established that work-related accidents aggravated dormant condition. *Toye v. Scholes Co. and S & M Electric Co.*, 94 N.J.A.R.2d (WCC) 74.

Employee did not meet his burden of proof; no objective medical evidence. *Kramer v. Level Line, Inc.*, 94 N.J.A.R.2d (WCC) 71.

Employment exposure to asbestos contributed in a material way to the development of employee's cancer. *Rustay v. Ingersoll-Rand Company*, 94 N.J.A.R.2d (WCC) 68.

Psychiatric condition allegedly due to work stress; not entitled to worker's compensation. *Bieyle v. V.R.H. Construction Co.*, 94 N.J.A.R.2d (WCC) 61.

Failure to prove that layoff was retaliation; filing workers' compensation claim. *Cosimano v. Gardner Merchant Food Services, Inc.*, 94 N.J.A.R.2d (LBR) 59.

Cough allegedly due to exposure to dust and paint fumes; not permanently disabled. *Chew v. Excell Wood Products*, 94 N.J.A.R.2d (WCC) 57.

Discharged employee injured in a car accident during the course of his employment; temporary disability and medical benefits. *Fouler v. Altenheim*, 94 N.J.A.R.2d (WCC) 52.

Travelling for business; worker's compensation. *Novis v. Rosenbluth Travel*, 94 N.J.A.R.2d (WCC) 51.

Inhalation of chlorine gas caused serious pulmonary impairment. *Eccles v. town of Kearny*, 94 N.J.A.R.2d (WCC) 45.

Award of disability benefits and payment of medical treatment by employer was proper. *Moytzoirellhs v. Greenbrook Nursing Home*, 94 N.J.A.R.2d (WCC) 41.

Employee's work-related injury was minor and did not affect his working ability. *Calvopina v. Menlo Building Maintenance Co.*, 94 N.J.A.R.2d (WCC) 40.

Failure to sustain burden of proof of occupational pulmonary disease and of work-related heart attack. *Yuzuik v. Union Carbide Corporation*, 94 N.J.A.R.2d (WCC) 36.

Employee failed to sustain burden of proving her condition substantially worsened. *Giordano v. Visiting Homemakers of Ocean County*, 94 N.J.A.R.2d (WCC) 31.

Dismissal; failure to appear and complete case. *McCoy v. Witco*, 94 N.J.A.R.2d (WCC) 30.

Sales consultant failed to demonstrate a compensable partial permanent disability. *Branch v. Macy's*, 94 N.J.A.R.2d (WCC) 26.

Award in excess of award offered by employer was proper failure to demonstrate a preexisting percentage of disability. *Traberman v. Brio Sanditoy Corp.*, 94 N.J.A.R.2d (WCC) 24.

Temporary disability benefits; abdominal pain from morbid obesity. *Oliver v. Vineland Developmental Center*, 94 N.J.A.R.2d (WCC) 22.

Dependency benefits properly awarded to children of deceased firefighter; lung cancer. *LeFurge v. City of Plainfield*, 94 N.J.A.R.2d (WCC) 20.

Employee suffering from multiple sclerosis proved aggravation by work-related injury. *Cooney v. Terminex*, 94 N.J.A.R.2d (WCC) 16.

Worker sustained burden of proof in demonstrating a causal link. *Vaccarelle v. Exxon U.S.A.*, 94 N.J.A.R.2d (WCC) 11.

Dispatcher failed to sustain his burden of proof demonstrating a causal link between exposure to chemicals and lymphoma/leukemia. *Trucke v. Coastal Industries*, 94 N.J.A.R.2d (WCC) 9.

Auto worker; compensable partial permanent disability. *Blain v. Premier auto Body, Inc.*, 94 N.J.A.R.2d (WCC) 7.

Failure to sustain burden of proof of permanent partial disability. *Velez v. Difeo Auto Mart*, 94 N.J.A.R.2d (WCC) 3.

Landlord failed to prove that tenant was a causal employee. *Martin v. Pollard*, 94 N.J.A.R.2d (WCC) 1.

Claimant with orthopedic and pulmonary disabilities failed to show occupational disease. *White v. E.R. Squibb*, 93 N.J.A.R.2d (WCC) 158.

Claimant was not entitled to modification of award. *DeGennaro v. Greater New York Box Co.*, 93 N.J.A.R.2d (WCC) 150.

No entitlement to benefits where subjective evidence was supported only by minimal physical evidence. *Daly v. Owens-Brockway Glass Containers*, 93 N.J.A.R.2d (WCC) 141.

Machine operator failed to show partial permanent disability. *Merant v. Superwear Corporation*, 93 N.J.A.R.2d (WCC) 139.

Claimant failed to establish necessity or authorization for medical treatment or change in circumstances. *Jackson v. Clara Maas Memorial Hospital*, 93 N.J.A.R.2d (WCC) 138.

SUBCHAPTER 6. INFORMAL HEARINGS

12:235-6.1 Purpose of informal hearings

(a) The informal hearing process is a service provided by the Division to effectuate the amicable adjustment of controversies between injured workers and their employers involving their respective rights under the Act.

(b) The informal hearing procedure is not expressly contained within the provisions of the Act.

(c) The filing of an application for an informal hearing will not toll the time limitation periods for the filing of a formal claim petition or a dependency claim petition as provided by the Act.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-6.2 Filing of an application for an informal hearing

(a) The informal process is initiated by the filing of an application in duplicate with the Division.

(b) The filing for informal hearing may be made by any party of interest including the injured worker, petitioner's attorney, the employer, the employer's representative or insurance carrier, or the Division.

(c) The application shall be filed within the time periods prescribed for the filing of a formal claim petition.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-6.3 Contents of the application

(a) The application for an informal hearing shall contain:

1. The worker's name, address, age, and social security number;
2. The employer's name and address;
3. The name of the employer's insurance carrier, if any;

4. The date of the accident;
5. A brief description of how the accident occurred;
6. A brief description of the injury.

12:235-6.4 Scheduling of informal hearings

(a) Upon receipt of the completed application the Division shall schedule the matter as soon as practicable.

(b) The Division shall give written notice of the time, place and name of the assigned Judge of Compensation to all parties involved in the controversy.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-6.5 Attendance at hearing

The worker's attorney, employer, insurance carrier, or self-insured shall provide sufficient personnel to insure prompt attendance at the scheduled time and place of the hearing to expeditiously handle all listed cases.

12:235-6.6 Representative of employer or carrier

An employer or carrier shall be represented by an individual expressly empowered with authority to act on its behalf to agree or disagree with the recommendations made by the Judge of Compensation at the time of the hearing.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-6.7 Registration of representatives for employers or carriers

(a) Each employer, carrier, or self-insured shall submit to the Director for distribution to all Judges of Compensation a list of each individual who will represent them at informal hearings.

(b) Each employer, carrier, or self-insured shall indicate that such individuals shall have the authority to represent and agree to settle on behalf of the respondent at informal proceedings.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-6.8 Representation of claimant

(a) Only an attorney at law licensed to practice in the State of New Jersey shall act as attorney for a worker in any informal hearing.

(b) Deviation from (a) above shall only be permitted by consent of the Director.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-6.9 Solicitation of compensation claims

No attorney nor any other person at the instance of an attorney shall solicit or cause to be solicited any compensation claim, nor shall any referral fee be paid to anyone not an attorney.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-6.10 Procedure where employer has no insurance

Where it is brought to the attention of the Judge of Compensation that the employer has failed to comply with N.J.S.A. 34:15-71, written notice of such violation shall be given to the Director for appropriate action.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Text on appearance by persons convicted of crime deleted; text on procedure when employer has no insurance recodified from 6.11.

12:235-6.11 Allowance of attorney fees

(a) A Judge of Compensation conducting informal hearings may allow counsel a fee, where warranted, for services rendered on behalf of the worker, in an amount not to exceed 10 percent of the worker's award.

(b) The fee in (a) above shall be payable by the worker.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Text on procedure when employer has no insurance recodified to 6.10; text on allowance of attorney fees recodified from 6.12.

12:235-6.12 Commencement of informal hearings

(a) Hearings shall be conducted by a Judge of Compensation designated by the Director.

(b) Hearings shall commence promptly at the time and place designated in the notice of informal hearing by a call of the daily court to ascertain the presence of all parties to the controversy and to identify those cases ready for disposition.

(c) Upon completion of the daily call, the Judge of Compensation shall inform all parties present of the order for hearing the ready cases and commence hearings, excusing those persons whose presence will not be required and granting those adjournments the Judge feels are warranted.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Text on allowance of attorney fees recodified to 6.11; text on commencement of informal hearings recodified from 6.13.

12:235-6.13 Determination of issues

(a) Upon a review of the application for the informal hearing and any supporting documents, the Judge of Compensation shall ascertain the areas of dispute and make recommendations to the parties to resolve any controversy

as to unpaid temporary disability benefits and/or medical expenses.

(b) After a review of medical records or evaluation reports or both submitted by the parties and having personally inquired of the worker as to all present complaints, the Judge of Compensation shall make recommendations regarding permanent disability.

(c) In cases where there is insufficient factual or medical information upon which a recommendation can be made, the Judge of Compensation shall require either party to provide such information and shall adjourn the hearing until such time as the information is available.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Text on commencement of informal hearings recodified to 6.12; text on determination of issues recodified from 6.14.

12:235-6.14 Acceptance of settlement recommendations and entry of informal award

(a) When agreement has been reached by all parties and approved by the Judge of Compensation, the terms of such settlement shall be entered in the "Statement of Award," on a form prescribed by the Division.

(b) The claimant shall be fully advised of all rights under the Act.

(c) The "Statement of Award" shall be signed by the claimant, the employer or the employer's representative, and by the Judge of Compensation.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Text on determination of issues recodified to 6.13; text on acceptance of settlement recommendations and entry of informal award recodified from 6.15.

Case Notes

Pursuit of claim that was known but not disclosed during prior settlement hearing. *Hawkins v. RCA*, 94 N.J.A.R.2d (WCC) 235.

12:235-6.15 Fee for service of physician

A Judge of Compensation conducting an informal hearing may allow a fee to a physician for medical services rendered to a claimant for the term of a compensable injury, unless such treatment was not ordered or authorized by the employer or carrier.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Text on acceptance of settlement recommendations and entry of informal award recodified to 6.14; text on fee for service of physician recodified from 6.16.

Case Notes

Proper forum for medical provider's suit against worker, was Division of Workers' Compensation. *Kinley Physical Therapy Services, Inc. v. Kramer*, 256 N.J.Super. 355, 606 A.2d 1163 (L.1992).

12:235-6.16 Denial of compensability or refusal to accept findings of informal hearings

In cases where the employer or the representative denies compensability under the Act or where either party refuses to accept the recommendations made by the Judge of Compensation, the claimant shall be made aware of all statutory rights, including the right to obtain counsel, to file a formal claim petition, and the applicable time period within which a claim petition must be filed.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Text on fee for service of physician recodified to 6.15; text on denial of compensability or refusal to accept findings of informal hearings recodified from 6.17.

12:235-6.17 Failure of employer or carrier to appear

(a) If a worker is present and the employer or its carrier fails to appear, the Judge of Compensation shall inform the worker of:

1. The procedure and time limit relating to rescheduling for a rehearing;
2. The approximate date of rescheduling; and
3. The worker's statutory rights as stated at N.J.A.C. 12:235-6.16.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Text on denial of compensability or refusal to accept findings of informal hearings recodified to 6.16; text on failure of employer or carrier to appear recodified from 6.18.

12:235-6.18 Adjournment

When it appears that certain cases cannot be resolved at the first hearing, due to lack of notice or knowledge of any injury, incomplete reports, or for any good cause, the Judge of Compensation shall be promptly informed so that the Judge may have an opportunity to notify the parties and arrange for rescheduling.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Text on failure of employer or carrier to appear recodified to 6.17; text on adjournment recodified from 6.19.

12:235-6.19 (Reserved)

Recodified by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Text on adjournment recodified to 6.18.

SUBCHAPTER 7. SECOND INJURY FUND CASES

12:235-7.1 General procedure

(a) Upon the filing of a verified petition for Second Injury Fund (Fund) benefits a settlement conference shall be scheduled before a Judge of Compensation where representatives of the employee, employer(s) and the Fund are noticed to attend.

1. The settlement conference may be adjourned by a Judge of Compensation for good cause.

(b) If a settlement cannot be effectuated at the settlement conference, the matter shall be listed for trial on a day when the probable responsible respondent is regularly scheduled to appear.

i. The Judge of Compensation, when determining the probable responsible respondent, shall be guided by the principles stated in *Bond v. Rose Ribbon*, 78 N.J.Super. 505 (App.Div.1963) *aff'd* 42 N.J. 308 (1964).

(c) If the Judge of Compensation finds that the petitioner is not totally and permanently disabled, the Fund petition shall be dismissed.

(d) If the Judge of Compensation finds that the petitioner is totally and permanently disabled and the total and permanent disability is the result of the last compensable accident, the Fund application shall be dismissed.

(e) If the Judge of Compensation finds that the petitioner is totally and permanently disabled and the total and permanent disability is the result of the effects of the last compensable accident and subsequent conditions, the Fund application shall be dismissed.

(f) If the Judge of Compensation finds that the petitioner is totally and permanently disabled and the total and permanent disability is the result of the last compensable accident together with pre-existing conditions, the Judge of Compensation shall schedule a hearing upon the application for Fund benefits on a day when the Deputy Attorney General representing the Fund regularly appears.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Procedures used when settlement cannot be effected; how trial is listed; and manner of dealing with a Second Injury Fund application specified.

12:235-7.2 Hearing

(a) The hearing to determine whether the petitioner is entitled to Fund benefits shall be upon the transcript of the hearing for benefits previously heard, supplemented by oral and documentary evidence as may be required in the discretion of the Judge of Compensation for a full and true disclosure of the facts as to Fund responsibility and where applicable, as to an apportionment of the responsibility of the Fund.

Correction: The word "apportionment" has been corrected from "appointment".

See: 18 N.J.R. 1201(a).

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Stylistic changes.

Case Notes

Claimant could not be denied compensation for any retroactively due payments. *Gulick v. H.M. Enoch, Inc.*, 280 N.J.Super. 96, 654 A.2d 987 (A.D.1995).

Former N.J.A.C. 12:235-8 provided for the consolidation of a Second Injury Fund matter with the compensation case and the conducting of formal hearings pursuant to former N.J.A.C. 12:235-4. *Lewicki v. New Jersey Art Foundry*, 88 N.J. 75, 438 A.2d 544 (1981).

Fundamental considerations of due process require construction of former N.J.A.C. 12:235-5.62 which would permit the Second Injury Fund to request cross-examination of petitioner's medical experts in the same manner as employer-respondent's. *Lewicki v. New Jersey Art Foundry*, 176 N.J.Super. 358, 423 A.2d 645 (App.Div.1980), *affirmed in part, reversed in part* 88 N.J. 75, 438 A.2d 544 (1981).

Obese employee; benefits under Second Injury Fund. *Smithbower v. Fieldville Farms*, 94 N.J.A.R.2d (WCC) 216.

12:235-7.3 Payment of benefits

(a) Pending determination of the application for Fund benefits, the employer previously found liable shall commence payments at the applicable rate for permanent total disability.

(b) Upon approval of an application for benefits from the Fund, the Judge of Compensation shall enter an order requiring payment from the Fund from the date when the final payment of compensation by the employer is or was payable for the last compensable injury following which the employee became totally and permanently disabled. No payment from the Fund shall be made for any period prior to the date of filing the verified petition for Fund benefits.

1. If the employer has paid in excess of the amount for which it is responsible, the employer shall be reimbursed by the Fund.

(c) The payment from the Fund may be made to the employer as reimbursement for a period where the payments have been made by the employer to the employee beyond the time period for which the employer is determined to be liable.

(d) Such payments shall be made from the Fund directly to the employee for such periods to which the employee may be entitled subject to the provisions of N.J.S.A. 34:15-12(b).

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Employer payment to and from the Fund specified.

Case Notes

Award of disability benefits pending Second Injury Fund final hearing disposition was appropriate. *Reed v. Brookdale College*, 94 N.J.A.R.2d (WCC) 34.

12:235-7.4 Filing

(a) The verified petition for benefits shall be filed in accordance with N.J.S.A. 34:15-95.1 and shall include a succinct and accurate description of all medical, legal and factual basis upon which the petitioner alleges eligibility for Fund benefits pursuant to N.J.S.A. 34:15-95. The verified petition shall be under oath or affirmation and be accompanied by all physician's reports in possession of the applicant or the applicant's attorney.

(b) The verified petition shall also include the following:

1. Name and address of petitioner;
2. Social security number of petitioner;
3. Age and date of birth of petitioner;
4. Marital status and educational background of petitioner;
5. A summary of petitioner's employment history;
6. A description of disabilities which existed prior to the date of the last compensable injury, and the date of onset of each;
7. The last compensable injury, indicating the date and a description of the occurrence; a description of the injury; brief description of the medical treatment for the injury; a description of permanent injury; name and address of employer and its insurance carrier; petitioner's wages and compensation rate; and a listing of all compensation paid to date for this injury;
8. An indication as to whether a third party tort claim has been made as to the last compensable injury, stating the name and address of the third party and the status of the claim;
9. A copy of all reports which are in the possession or control of the party filing the applications from all proposed expert witnesses and all treating physicians;
10. A description of all wage replacements presently being received by the petitioner;
11. References to all prior allowances and awards in workers' compensation matters concerning the petitioner, including the date of the accident and the extent of the allowance or award.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

Law Review and Journal Commentaries

Workers' Compensation. P.R. Chenoweth, 137 N.J.L.J. No. 16, 52 (1994).

Case Notes

Misrepresentation on employment application as to physical health did not bar recovery of benefits. *Akef v. BASF Corp.*, 275 N.J.Super. 30, 645 A.2d 158 (A.D.1994), certification granted 139 N.J. 186, 652 A.2d 174, affirmed 140 N.J. 408, 658 A.2d 1252.

SUBCHAPTER 8. COMMUTATION OF AWARD**12:235-8.1 Application for commutation**

(a) All applications for commutation of compensation payments pursuant to N.J.S.A. 34:15-25 shall be filed with the Director.

(b) Applications for commutation of compensation shall be made only after the entry of an award.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-8.2 Application form for commutation

(a) The application for commutation shall be made on a form prescribed by the Division which shall include:

1. The applicant's name, address, and social security number;
2. The name and address of the employer;
3. The name, address, and file number of the employer's insurance carrier;
4. The date of award;
5. The Judge of Compensation and the place wherein the award was rendered;
6. The amount of the award;
7. The amount of balance due on the award;
8. The amount requested for commutation; applicant's marital, employment, and economic status; and
9. Such other information as prescribed by the Director.

(b) The application for commutation shall be under oath or affirmation of the applicant.

(c) The application for commutation shall include, or have attached thereto, all documents upon which the applicant is relying in the application.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-8.3 Approval or disapproval of application for commutation

(a) Upon receipt of the application for commutation, the matter shall be forwarded for hearing to the Judge of Compensation who entered the award which is sought to be commuted.

1. If that Judge is not available, then any Judge in the vicinage may hear the application.

(b) After hearing the application, the Judge of Compensation shall enter an order either granting or denying the application and shall state the reasons therefor, pursuant to N.J.S.A. 34:15-25.

(c) The disbursement of all funds commuted shall be under the supervision of the Director.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Process for hearing of applications for commutation specified.

6. Complainant's occupational duties and indication as to whether he or she is able to perform those duties;

7. The date and reason for complainant's termination of employment;

8. The factual and legal reasons for alleging discrimination;

9. Such other information as requested by the Director.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-9.3 Attachments to discrimination complaints

The complaint for discrimination shall include, or have attached thereto, all documents upon which the complainant is relying on in the application.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

SUBCHAPTER 9. DISCRIMINATION COMPLAINTS

12:235-9.1 Filing discrimination complaints

All complaints alleging discrimination pursuant to N.J.S.A. 34:15-39.1 shall be filed with the Director.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

Case Notes

Employee claiming retaliatory discrimination by employer may pursue either judicial or administrative remedy. (citing former N.J.A.C. 12:235-11). *Lally v. Copygraphics*, 173 N.J.Super. 162, 413 A.2d 960 (App.Div.1980), affirmed 85 N.J. 668, 428 A.2d 1317 (1981).

12:235-9.2 Contents of discrimination complaints

(a) The complaint alleging discrimination shall be under the oath or affirmation of the complainant, and shall be on a form prescribed by the Division.

(b) The complaint alleging discrimination shall include the following:

1. Complainant's name, address, Social Security number, and claim petition number, if a claim for formal hearing has been filed;
2. The name and address of the insurance carrier for the employer;
3. The date of complainant's accident;
4. Complainant's occupation and wages;
5. Complainant's current employment and wages;

12:235-9.4 Investigation of discrimination complaints; appeal procedures

(a) Upon receipt of a complaint for discrimination, the Division shall conduct an investigation and forward the complaint and results of the investigation to the Director within 90 days.

(b) The Director or his or her designee, upon review of the investigative report, shall make a determination as to whether discrimination exists. This determination shall be forwarded to the complainant and the employer within 30 days by certified mail of the receipt of the investigative report.

(c) Any individual who disagrees with the decision of the Director may submit to the Division a written request for a formal hearing to be held in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., N.J.S.A. 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, within 10 days from the date of the receipt of the Director's decision.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Investigation to be forwarded in 90 days.
Amended by R.1993 d.51, effective January 19, 1993.
See: 24 N.J.R. 1684(a), 24 N.J.R. 3090(a), 25 N.J.R. 313(b).
Added new (b)-(d); revised section heading.
Amended by R.1994 d.431, effective August 15, 1994.
See: 26 N.J.R. 1591(b), 26 N.J.R. 3459(a).

12:235-9.5 Action by the Commissioner

Upon receipt of the complaint and results of investigation from the Division, the Commissioner may take such action pursuant to N.J.S.A. 34:15-39.1 as the Commissioner deems appropriate.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

Stylistic changes.

SUBCHAPTER 10. ACCIDENT REPORTS

12:235-10.1 Employer's first report of accidental injury or occupational disease

(a) The employer's first report of accidental injury or occupational disease shall be filed by all employers no later than the start of the second work day after the injury occurred when:

1. The injury causes a loss of time from regular duties beyond the working day or shift on which the accident occurred; or
2. Medical treatment beyond ordinary first aid is required; or
3. Occupational disease exists whether or not time is lost.

(b) The form for the first report of accidental injury or occupational disease shall be Form L&I 1 and its amendments.

(c) The first report of accident or occupational disease shall be filed with the Division, with the first copy being forwarded to the insurance carrier and the second copy being retained by the employer.

(d) In the event of a serious injury which requires hospitalization or the event of a fatality, the form shall be filed immediately with the Office of Safety Compliance and notice of the injury shall be given immediately to the Office of Safety Compliance by telephone or telegram.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-10.2 Employer's first report of accidental injury or occupational disease

(a) The employer shall report to the Division all accidental injuries causing disability beyond seven days or permanent injury or occupational disease. The form for this report shall be as prescribed by the Division.

(b) The employer's report to the Division of an accidental injury or occupational disease shall be filed with the Division, with a copy being forwarded to the insurance carrier and a copy retained by the employer, as soon as it is reasonably known or expected that such disability, permanent injury, or occupational disease has occurred.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

12:235-10.3 Insurer's initial notice of accident

(a) The insurance carrier of self-insured shall, within 21 days after the happening of an accidental injury or knowledge of an occupational disease, file an initial notice of accident, statement of wages, and agreement to care for case.

(b) The notice shall be as prescribed by the Division. The original of the insurer's initial notice of accident shall be filed via first-class mail with the Division, with a copy retained by the carrier.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-10.4 Insurer's final report of accident

(a) A final report of accident shall be filed by the insurance carrier or the self-insured at the close of the temporary disability, or as soon thereafter as the extent of permanent injury can be determined, whichever is later.

(b) The final report of accident shall be filed with the Division, with a copy to be sent to the employer, employee, and a copy retained by the insurance carrier or self-insured.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-10.5 Report of death

In the event that death results due to an accidental injury subsequent to the filing of a final report of accident, a report of death shall be filed with the Division and a copy sent to those recipients as named in N.J.A.C. 12:235-10.4.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-10.6 Compliance with N.J.S.A. 34:15-96 through N.J.S.A. 34:15-102

The filing of the reports as required by this subchapter shall constitute compliance with N.J.S.A. 34:15-96 through N.J.S.A. 34:15-102.

SUBCHAPTER 11. STANDARD FORMS

12:235-11.1 Listing of forms

(a) Listed below are the titles and numerical designations of the standard forms utilized for workers' compensation:

1. Employee Claim Petition, WC4-1;
2. Dependency Claim Petition, WC4-2;

3. Application for Review or Modification of Formal Award, WC4-14;
4. Notice of Motion for Temporary and Medical Benefits;
5. Respondent's Answer to Claim Petition, WCC-70;
6. Respondent's Answer to Dependency Claim Petition, WCS-4-4;
7. Answer to Application for Review or Modification of Formal Award, WCC-77;
8. Answering Statement to Motion for Temporary and Medical Benefits, WCS-4-12;
9. Standard Respondent's Interrogatories: Occupational Diseases;
10. Standard Respondent's Interrogatories: Occupational Diseases;
11. Pre-Trial Memorandum, WCS-4-13;
12. Order Approving Settlement, WC(DO)-370;
13. No Insurance Case, WC(DO)-399;
14. Bench Referral from Division of Workers' Compensation to New Jersey Division of Vocational Rehabilitation Services;
15. Application for Informal Hearing, WC(CF)-66;
16. Central Office Record of Informal Proceedings, WC(CF)-11;
17. Second Injury Fund Application and Verified Petition;
18. Decision of Eligibility, WC-48;
19. Application for Commutation, WC(1)-60;
20. Decision of Dismissal, WC-47;
21. Discrimination Complaint, WCS-9;
22. Employer's First Report of Accidental Injury or Occupational Illness, WC-1;
23. Employer's First Report to Division of Workers' Compensation of Accidental Injury or Occupational Disease, WC-1;
24. Insurer's Initial Notice of Accident and Insurer's and Self-Insurer's Statement of Wages and Agreement to Care for Case, WC-2;
25. Report of Death, WC-3A;
26. Final Report of Accident, WC-5;
27. Final Report of Accident, WC-3;
28. Final Report of Accident, WC-6;
29. Final Report of Accident, WC-4.

12:235-11.2 Sample forms

Samples of the standard forms listed in N.J.A.C. 12:235-11.1 follow:

OFFICE OF ADMINISTRATIVE LAW NOTE: The Division of Workers' Compensation submitted 29 sample forms as part of the adoption. These forms are not reproduced herein but may be inspected at:

Office of Administrative Law
Building 9
Quakerbridge Plaza, Quakerbridge Road
Trenton, New Jersey 08625
and

Department of Labor
Division of Workers' Compensation
Room 1203
John Fitch Plaza
Trenton, New Jersey 08625.

SUBCHAPTER 12. DOCUMENTS REFERRED TO IN THIS CHAPTER**12:235-12.1 Documents referred to by reference**

(a) The titles of the documents, except forms, referred to in this chapter, are as follows:

1. N.J.S.A. 34:1A et seq., Department of Labor.
2. N.J.S.A. 34:15-1 et seq., Workers' Compensation Law.
3. N.J.S.A. 43:21-30, Nonduplication of benefits.
4. N.J.S.A. 43:21-41, Requirements for entitlement.

12:235-12.2 Availability of documents for inspection

A copy of each of the documents referred to in this chapter is on file and can be inspected at the following office of the Division of Workers' Compensation between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

New Jersey Department of Labor
Division of Workers' Compensation
Labor and Industry Building
Room 1203
John Fitch Plaza
Trenton, New Jersey

12:235-12.3 Availability of documents from issuing agency

Copies of the documents referred to in this chapter may be obtained from the agency listed below. The abbreviation preceding these documents has the following meaning and is

the organization issuing the documents listed in N.J.A.C. 12:235-12.1.

NJSA—New Jersey Statutes Annotated
Copies available from:
Division of Workers' Compensation
New Jersey Department of Labor
CN 381
Trenton, N.J. 08625-0381

“Report of compensation paid” is a report of the total amount of workers' compensation paid pursuant to N.J.S.A. 34:15-1 et seq., adjusted for the amounts paid for funeral expenses and for the compromise of disputed claims pursuant to N.J.S.A. 34:15-20.

“Second Injury Fund” means a fund established pursuant to N.J.S.A. 34:15-94 which is designed to provide funds for workers who have experienced two disability injuries.

“Self-insured employer” means an employer which is authorized to self-insure for workers' compensation or employer's liability pursuant to N.J.S.A. 34:15-77.

“Standard premium” means the premium earned after application of any experience modification and prior to the application of the expense constant, premium discounts, or retrospective rating plans.

“Uninsured Employers' Fund” means a fund to provide for the payment of awards against uninsured defaulting employers pursuant to N.J.S.A. 34:15-120.1 et seq.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

SUBCHAPTER 13. SURCHARGE COLLECTION PROCEDURES

Authority

N.J.S.A. 34:1-20, 34:1A-3(e), 34:15-94, 34:15-120.1 et seq., specifically 34:15-120.7, P.L. 1988, c.25 and P.L. 1988, c.26.

Source and Effective Date

R.1988 d.586, effective December 19, 1988.
See: 20 N.J.R. 2522(a), 20 N.J.R. 3139(a).

12:235-13.1 Purpose and scope

(a) The purpose of this subchapter is to establish surcharge collection procedures to fund the Uninsured Employers' Fund and the Second Injury Fund.

(b) The surcharges shall be levied against all workers' compensation and employer's liability insurance policyholders and self-insured employers.

12:235-13.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

“Department” means the New Jersey Department of Labor.

“Director” means the Director of the Division of Workers' Compensation.

“Earned premium” means the portion of the standard premium that was earned on a pro-rata basis of the policy term.

“Insurer” means a domestic, foreign, or alien mutual association or stock company writing workers' compensation or employer's liability insurance on risks located in this State who is subject to premium taxes pursuant to N.J.S.A. 54:18A-1 et seq.

“Policyholder” means a holder of a policy of workers' compensation and employer's liability insurance issued by an insurer, exclusive of any workers' compensation endorsement requirement pursuant to N.J.S.A. 17:36-5.29.

12:235-13.3 Reporting compensation paid

(a) Report forms for the report of compensation paid shall be mailed by the Department to the respective insurers or self-insured employers by June 15 of each calendar year.

(b) Insurers and self-insured employers shall file the report of compensation paid for the calendar period July 1 to June 30 with the Department by July 31 following the end of the report year to be filed.

12:235-13.4 Calculation and notification of surcharge

(a) Insurers shall include the surcharge percentages as provided by the Department of Insurance, for both the Second Injury Fund and the Uninsured Employers' Fund, respectively, on each policyholder's premium notice.

(b) The surcharge amounts shall be calculated by multiplying the surcharge rate by the standard premium.

(c) The resulting surcharge amounts shall be stated by the insurer separately on the premium notice.

(d) The surcharge shall be remitted to the insurer in accordance with the payment schedule established by the insurer for the policyholder, for the annual policy term.

(e) Self-insured employers shall be notified of their share of the surcharge by September 15 of the calendar year that precedes the year for which the surcharge applies.

12:235-13.5 Surcharge collection procedure

(a) The Department shall provide each insurer and self-insured employer with the appropriate form for calculating the surcharge remittance. The form shall contain express instructions for the completion of the items pertaining to the calculation of the surcharge remittance.

1. For insurers, the following apply:

i. The amount of the remittance shall be proportionate to the earned premium at the end of the calendar quarter of remittance, less any supplemental benefits and special adjustments that have been paid;

ii. The quarterly calculation of the surcharge amount due shall be adjusted for changes in prior quarter earned premiums, if any. For example, in 1989, the maximum number of prior quarters that may need earned premium adjustment will be three. In 1993, the maximum number of prior quarters that may need earned premium adjustment will be 19. In 1994, and thereafter, the maximum number of quarters that may need earned premium adjustment will vary from 16 to 19; and

iii. Surcharges collected shall be remitted within 30 days following the end of each calendar quarter ending March 31, June 30, September 30, and December 31.

2. For self-insured employers, the following apply:

i. The amount of the remittance shall be equal to one-quarter of the annual surcharge, adjusted for supplemental benefits and special adjustments paid during the calendar quarter of remittance; and

ii. One-quarter of the annual surcharge shall be remitted within 30 days of the end of each calendar quarter ending March 31, June 30, September 30, and December 31.

(b) The surcharge remittance form shall be returned with the surcharge remitted to the Department.

12:235-13.6 Verification and audit procedures

(a) Insurers and self-insured employers shall submit a quarterly detailed report that supports the amount of credits, supplemental benefits and special adjustment payments claimed on the quarterly remittance.

1. The form and manner of completion shall be as directed by the Director.

(b) Claims for credits for supplemental benefits and special adjustment payments made pursuant to N.J.S.A. 34:15-94 are subject to review and approval by the Director.

1. Any credits claimed that are not approved by the Director shall result in the insurer or self-insured employer being liable for the surcharge in the amount of the disallowed claim for credit.

(c) Insurers and self-insured employers that fail to submit the support of the credits claimed on their quarterly remittance shall be liable for the total amount of the quarterly surcharge due without credit for the amount of supplemental benefits and special adjustment payments.

(d) Earned premiums and reports of compensation paid are subject to audit and verification by the Department.

1. Adjustments resulting from incorrectly reported earned premiums or reports of compensation paid shall result in a recalculation of the surcharge due from the insurer or self-insured employer who filed the incorrect information.

(e) Any amounts of surcharges due as the result of disallowed claims for credit or incorrect reports of earned premiums or reports of compensation paid shall be subject to interest on the portion of the surcharge that is due as the result of the disallowance or adjustment made by the Department.

12:235-13.7 Earned premium notification

Insurers are required to notify the Department of Insurance of the amount of standard earned premiums for the period January 1 to December 31 of each calendar year by August 31 of the immediately following year. Such premiums shall be used in the determination of the annual policyholder surcharge rate applicable during the next policy year.

12:235-13.8 Forms

Forms referred to in this subchapter are available from the Department, and may be requested in writing from:

Office of the Controller
Trust Fund Accounting
New Jersey Department of Labor
CN 394
Trenton, New Jersey 08625-0394

12:235-13.9 Penalties

(a) Any insurer or self-insured employer who fails to submit a completed report of compensation paid by July 31 of any calendar year shall be subject to a penalty of \$100.00 for each 30 day period that the report is delinquent, up to a maximum of \$500.00.

(b) Any insurer or self-insured employer who fails to remit a quarterly surcharge by the due date shall be subject to a penalty of one-half of one percent (0.5%) of the surcharge remittance amount for each 30 day period, or portion thereof, that the remittance is delinquent, up to a maximum of five percent.

(c) Surcharges and penalties which are delinquent are subject to collection proceedings pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1.

SUBCHAPTER 14. UNINSURED EMPLOYER'S FUND

Authority

N.J.S.A. 34:1-20, 34:1A-3(e), 34:15-120.1 et seq., specifically 34:15-120.7.

Source and Effective Date

R.1990 d.338, effective July 2, 1990.
See: 22 N.J.R. 3852(a), 22 N.J.R. 2023(a).

Law Review and Journal Commentaries

Workers' Compensation. Steven P. Bann, 138 N.J.L.J. No. 2, 56 (1994).

12:235-14.1 Purpose; scope

(a) The uninsured employers' fund ("Fund") has been established pursuant to N.J.S.A. 34:15-120.1 to provide for the payment of certain awards of medical and temporary benefits entered against uninsured defaulting employers. This subchapter sets forth the procedures by which the Fund will be operated.

(b) Benefits for temporary disability and medical costs shall be provided in accordance with N.J.S.A. 34:15-120.1 et seq.

(c) No judgment or order for the payment of benefits shall be entered against the Fund.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Judgments to be entered specifically against uninsured employers, not the Fund.

Case Notes

Workers' Compensation Act did not bar provider from suing employee for unpaid bill resulting from work-related injury. *West Jersey Health System v. Croneberger*, 275 N.J.Super. 303, 645 A.2d 1282 (A.D.1994).

12:235-14.2 Filing notice of an uninsured claim; personal service; subpoena duces tecum; third-party joinder

(a) The petitioner's attorney shall notify the Fund that benefits will be sought from the Fund within 45 days of the date either petitioner or his or her attorney knows or should have known that the employer is uninsured. This time period may be extended for good cause shown.

1. Petitioner's attorney shall notify the Fund by the filing of a motion to join the Fund.

2. The motion to join the Fund shall be filed in the vicinage in which the case is assigned.

3. A copy of the motion to join the Fund shall be served upon the Fund in the Office of Special Compensation Funds, CN-399, Trenton, New Jersey 08625-0399.

(b) Petitioner's attorney shall contact the Compensation Rating and Inspection Bureau in writing to receive confirmation that the employer is uninsured. A copy of the Rating Bureau's response shall be included in the motion to join the Fund.

(c) Petitioner's attorney may make personal service of the claim petition and the motion to join the Fund on respondent.

1. Proof of service shall be filed with the Division and with the attorney representing the Fund.

2. If respondent is unable to be served, petitioner's attorney shall make a motion with the Director for substituted service pursuant to Civil Practice Rule 4:4-4(e). The motion shall be supported by convincing evidence that the petitioner has made all reasonable attempts to serve respondent.

(d) The Fund shall have the authority to join a third-party and the third-party's insurance carrier when it appears that such party is or may be liable for the benefits sought.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Procedure to join the Fund specified.

Case Notes

Workers' Compensation Act did not bar provider from suing employee for unpaid bill resulting from work-related injury. *West Jersey Health System v. Croneberger*, 275 N.J.Super. 303, 645 A.2d 1282 (A.D.1994).

12:235-14.3 Certification

(a) Petitioner's attorney shall submit a certification when filing a motion for an uninsured claim. The certification shall be specific, and shall contain the following information:

1. The date of hire;

2. The length of employment: If not continuous, list all dates of employment;

3. Copies of petitioner's W-2 for all dates of employment during the year in which the accident occurred;

4. Pay stubs for all salary received from respondent for previous six months;

5. The total wages received from respondent for 12 months preceding the accident;

6. The name, address (business and personal) and phone number of the respondent and any officer or manager of the company;

7. Any documents relating to the employer/employee relationship or lack thereof;

8. A statement of facts which establish the employer-employee relationship;

9. The name, address and phone number of all persons with knowledge of the existence of an employer/employee relationship between petitioner and respondent;

10. The place where the injury occurred, including the name of the owner of the property and the reason why the employee was at the location where the injury occurred;

11. The name, address and phone number of all witnesses to the accident, and whereabouts of respondent when the accident occurred;

12. The name, address and phone number of all persons with any knowledge of the accident;

13. How soon after the accident was a physician contacted;

14. The name and address of all treating physicians and the name and address of any hospital, laboratory or other facility where treatment was received;

15. Copies of all medical reports from the hospitals and treating physicians;

16. Medical insurance coverage for employee and/or spouse, and if available, the name and address of the company and the policy number;

17. If medical expenses have been paid;

18. Who paid the medical expenses; and

19. Whether the petitioner is receiving Social Security benefits.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Petitioner's attorney to advise Fund on benefits received; (b) and (c) deleted.

12:235-14.4 Medical bills; physician's examination

(a) The Fund shall have the opportunity to review all medical bills and charges to determine if the costs incurred were reasonable and necessary.

(b) The Fund may order an independent medical examination of a petitioner by a physician at any time when the Fund is involved or when it appears the Fund may become involved in a case. The examining physician will be asked to offer an opinion on:

1. The appropriateness of petitioner's current medical treatment; and

2. The prognosis for the petitioner.

3. Whether petitioner is able to return to work; and

4. Whether petitioner requires further treatment.

(c) Fees for the independent medical evaluation shall be paid by the Fund.

(d) If it appears that the petitioner may be entitled to benefits from the Fund, then the Fund may direct the petitioner to the appropriate authorized treating physician for treatment.

1. Treatment obtained by petitioner from any physician other than the one authorized by the Fund shall be deemed to be unauthorized treatment, and costs for such treatment shall not be chargeable to the Fund.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Text at (a)1 and 2, (e) deleted; physician's opinion specified at (b).

12:235-14.5 Assignment of cases; schedules

(a) The Director shall assign the Fund cases for hearing.

(b) The Director shall establish the vicinages in which the cases shall be heard.

(c) The Director shall establish the hearing dates and schedules for all uninsured employer cases.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Stylistic changes.

12:235-14.6 Payments from the Fund

Payments from the Fund shall be made only in accordance with N.J.S.A. 34:15-120.4.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Attorney fee provisions deleted; Fund payment provisions added.

12:235-14.7 Attorney fees

(a) An attorney fee may be payable from the Fund to the petitioner's attorney when the petitioner is found eligible for Fund benefits by the Commissioner.

(b) An attorney shall make an application to the Commissioner for payment of the attorney fee awarded by the Judge of Compensation for obtaining the medical and/or temporary benefits assessed against the respondent.

1. The application shall be supported by an affidavit of services in a form and manner as prescribed by the Director.

New Rule, R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 834(a), 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).