

STATE OF NEW JERSEY
DEPARTMENT OF LABOR AND INDUSTRY
DIVISION OF WORKMEN'S COMPENSATION

RULES
OF THE
DIVISION OF WORKMEN'S COMPENSATION
(MARCH, 1975)

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SECTION 1

DEFINITIONS AND GENERAL PROVISIONS

1A: Definitions

The following words and terms used herein shall have the following meaning, unless the context clearly indicates otherwise:

1. Answer means answer to claim petition, or answer to dependency claim petition, or answer to application to review or modify a formal award.
2. Attorney means an attorney at law licensed to practice in the State of New Jersey.
3. Attorney General means the Attorney General of the State of New Jersey or his deputies.
4. Claimant means a person who has filed an informal or formal claim with the Division of Workmen's Compensation.
5. Claim Petition means an inter vivos or dependency claim petition.
6. Commissioner means Commissioner of Labor and Industry of the State of New Jersey.
7. Continuance means an adjournment or a postponement of a hearing.
8. Court means an informal or formal proceeding.
9. Counsel means an attorney at law licensed to practice in the State of New Jersey, representing a claimant, an employer, a carrier, a self-insured, or the Second Injury Fund.
10. Director means the Director of the Division of Workmen's Compensation, Department of Labor and Industry, State of New Jersey.
11. District means a geographical area designated by the Director wherein a single judge exercises supervisory duties.
12. Division means the Division of Workmen's Compensation, Department of Labor and Industry, State of New Jersey.
13. Formal Hearings means the processing and adjudication of a claim subsequent to the filing of a formal claim petition.
14. He means any person of whatever gender.
15. Hearing Official means a judge of compensation or workmen's compensation referee.
16. Informal Hearings means the processing of a claim subsequent to the filing of an application for informal hearing.
17. Judge means a judge of compensation.
18. Referee means a hearing referee of the Division of Workmen's Compensation
19. Second Injury Fund means the fund created and administered pursuant to N.J.S.A. 34:15-94 and N.J.S.A. 34:15-95.
20. State Physician means a physician employed and paid by the State of New Jersey on a full-time or per diem basis.
21. Supervising Judge means a judge of compensation assigned to supervisory duties pursuant to Rule 2B:4.1.
22. Worker's Compensation means workmen's compensation as stated in N.J.S.A. 34:15 et seq.

SECTION 2

RULES GOVERNING CONDUCT OF HEARING OFFICIALS

2A Directory Regulations

2A:1.1 Avoidance of Impropriety

A hearing official's conduct should be free from impropriety and the appearance of impropriety. His personal demeanor, not only on the bench and in the performance of his judicial duties, but also in his everyday life, should be beyond reproach. He should be temperate, attentive, patient, and impartial.

2B Mandatory Regulations

2B:1.1 Promptness

A hearing official must be prompt in the performance of all his duties, including:

- (a) convening hearings at the time scheduled by the Director;
- (b) final disposition of cases; and
- (c) completing and forwarding to the Director at regular intervals, established by the Director, a performance record, Form WC S-2 and its amendments as prescribed by the Director.

2B:1.2 Courtesy and Civility

A hearing official must be impartial and courteous to parties, counsel, and all others appearing or concerned with the administration of justice in the court. He must also require, so far as his power extends, that those individuals assisting him 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.

2B:1.3 Conduct of Attorneys

A hearing official has a duty to correct unprofessional conduct by attorneys and report all instances of unethical or illegal practices by attorneys to the Supervising Judge and the Director.

2B:1.4 Conduct of Witnesses and Others Having Business with the Court

A hearing official has a duty to report all instances of unethical or

who becomes an active promoter of the interests of a political party. Therefore, a hearing official shall not:

- (a) hold any elective office; or
- (b) be a candidate for any elective office; or
- (c) make political speeches on behalf of any candidate seeking political office; or
- (d) solicit contributions to party funds; or
- (e) make public endorsements of candidates for political office; or
- (f) participate in party conventions of any level; or
- (g) accept or retain any position on a party committee, or subdivision thereof.

2B:1.10 Self Interest

A hearing official must abstain from performing or taking part in an official act by which his personal interests would be affected.

2B:1.11 Gifts and Favors

A hearing official must not solicit or accept any gifts, favors, or gratuities of any form or pecuniary value from:

- (a) litigants, attorneys, physicians, or witnesses regularly appearing before the Division; or
- (b) insurance carriers, self-insureds, or their agents, servants, or employees.

2B:1.12 Medical Reports

Any hearing official 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 forthwith notify the Director of such activity.

2B:1.13 Physical Capacity to Preside

A hearing official must necessarily be in good health to execute the rigorous duties of his office. Therefore, when a hearing official is unable to carry out the duties of his office for an indefinite period because of:

- (a) a severe, incapacitating disease; or
 - (b) a severe, incapacitating injury
- the Commissioner may grant an indefinite leave, with or without pay, until the individual is capable of resuming his duties.

2B:2.5 Right to Counsel, Production of Witnesses and Evidence

The accused in a hearing for removal shall be given a reasonable time to prepare his defense and he shall be entitled to counsel retained and paid for by the accused. 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.

2B:2.6 Formal Hearing for Suspension or Removal of a Judge

A formal hearing shall be conducted before the Commissioner or a representative designated by the Commissioner.

2B:3.1 Proceedings to Remove or Discipline a Referee

A Referee shall be removed from office or disciplined in accordance with applicable Civil Service and Department of Labor and Industry rules and regulations:

- (a) if there is probable cause that he has violated any rule enumerated in subsection 1 of this section 2B of Rules of the Division; or
- (b) if there is probable cause that he has been convicted for the commission of a misdemeanor or high misdemeanor; or
- (c) he has been found to be incompetent to execute the duties of a Referee.

2B:3.2 Applicability of other Rules and Regulations New Jersey Civil Service and Department of Labor and Industry

Notwithstanding the provisions of Rule 2B:3.1, all Referees shall be subject to the existing and applicable Civil Service and Department of Labor and Industry rules and regulations governing the conduct of State Employees.

2B:4.1 Assignment and Removal

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 Rules 2B:4.3, 2B:4.4, and 2B:4.5 for the districts he may designate. The Director in his discretion may:

- (a) determine the number of Judges needed to provide the necessary supervision, and
- (b) evaluate the performance of all Judges for the purpose of determining the assignment and removal of individuals to serve as Supervising Judges.

SECTION 3

REGULATIONS GOVERNING CONDUCT OF STATE PHYSICIANS

3A Duties of State Physicians

The assumption of the position of State Physician casts upon the incumbent duties with respect to his personal conduct which concerns:

- (1) his relation to the State;
- (2) his relation to the citizenry of the State, especially the claimants within the Division; and
- (3) the proper and efficient functioning of the Division.

Therefore, it is necessary that a State Physician maintain high standards in both his personal and professional conduct.

3A:1 Promptness

A State Physician must be prompt in the performance of all his duties, including:

- (a) examination of petitioners at the time scheduled by the Director; and,
- (b) performing consultative services as directed by the Supervising Judge of the District to which he is assigned.

3A:2 Courtesy and Civility

A State Physician must be impartial and courteous to parties, counsel, and all others appearing or concerned with the administration of justice within the Division.

3A:3 Conflict of Interest

No State Physician shall treat any individual for any accidental injury or occupational injury or disease at the request of an insurance company or any employer or self-insured, except in an emergency. If any individual is so treated, the State Physician shall promptly report the name and address of the injured person, his diagnosis and his fee charged, to the Director. Under no circumstances shall any State Physician examine any individual for any accidental injury or any occupational injury or disease at the request of an insurance company or any employer or self-insured for the purpose of evaluating the nature or extent of the disability, except in his official capacity in his services for the State of New Jersey.

3A:4 Informal Hearings

When a State Physician is assigned to informal hearings, he shall be

3A:4.7 Medical Reports

Any State Physician who has reason to believe that a medical report, bill for services, or 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 forthwith notify the Director of such activity.

3A:5 Removal from Office

A State Physician shall be removed from office for:

- (a) conviction for the commission of a misdemeanor or high misdemeanor; or,
- (b) any willful negligence of duty, especially repeated absence from or tardiness for hearings without good cause; or
- (c) any conduct evidencing unfitness for office as determined by the Commissioner.

3A:6 Procedure for Removal

A State Physician shall be removed from office in accordance with the applicable rules and regulations of the Department of Labor and Industry and Civil Service.

forth in Form WC S4-1 or WC S4-2 and their amendments as prescribed by the Director.

4A:1.3 Penalty for Attorney Filing Incomplete, Inaccurate Petition

If an attorney for the petitioner knowingly files an incomplete or inaccurate petition;

- (a) which is served upon the wrong party or parties by the Division as a result of misinformation provided by the attorney filing the claim petition; or
- (b) which must be returned to the attorney for additional information before the Division can take any action on the claim, said attorney shall have a reduction of 15% of any fee he may be awarded; providing however that if said petition was returned to the attorney more than once to acquire the information required, said attorney shall have a reduction of 25% of any fee he may be awarded.

4A:1.4 Service of Petitions

The Division shall serve the formal petition indicating the district office to which the petition has been assigned, upon an employer or carrier within 5 days after receipt of the petition by the Division, except where the petition fails to supply the required information, or contains otherwise incomplete or inaccurate information.

4A:1.5 Filing of Answer

A respondent or its agents, servants and employees shall, within 10 days after service of the claim petition, file its answer with the Division at the district office to which the claim petition has been assigned and serve a copy upon its adversary. The filing and service of the answer may be made by first-class mail.

4A:1.5 (a) Contents of Answer to Claim Petition

An answer to a formal claim petition shall set forth the following:

- (a) claimant's name, address, age, social security number, occupation, gross weekly wage, and applicable rate;
- (b) respondent's name and address;
- (c) carrier's name, address, and claim file number;
- (d) date the accident occurred;
- (e) succinct, accurate description of how the injury occurred;
- (f) an affirmation or denial of petitioner's employment;
- (g) an affirmation or denial that petitioner's employment was under Article 2, Title 34, Chapter 15 of the Revised Statutes;

4A:1.7 Contents of Certificates of Readiness

The Certificate of Readiness will include:

- (a) statement by the party, under oath or affirmation, or certified to by its attorney, whether or not the case is ready, factually, legally, and medically, to proceed to a hearing;
- (b) a copy of all medical reports of treating, examining, and consulted physicians, dentists, chiropractors, osteopaths, optometrists, physical therapists, and medical technicians, in the possession of the party or its attorney at that time, unless said reports were previously filed.
- (c) It is further provided that all subsequent reports received by a party or its attorney from those individuals mentioned in Rule 4A:1.7(b) shall be filed with the Division immediately upon receipt thereof by the party or its attorney;
- (d) a statement by the party or its attorney concerning all offers of payment and tenders of payment made by the respondent, bona fide or not, indicating the date, amount, purpose, and conditions upon which said offer was based;
- (e) in the case of a petitioner, a listing of all contemplated legal issues;
- (f) in the case of a respondent, a listing of all legal, factual, and medical issues and defenses to the claim petition; and
- (g) such other information as requested by Form WC S4-5 and its amendments as prescribed by the Director.

4A:1.8 Penalty for Attorney Filing Incomplete, Inaccurate, Misleading, or Untimely Certificates of Readiness

If an attorney for either party without good cause knowingly files an incomplete, inaccurate, misleading, or untimely Certificate of Readiness, or fails without good cause to supplement the Certificate of Readiness pursuant to Rule 4A:1.7(c), he will be assessed a penalty, which:

- (a) if he is the petitioner's attorney will be a reduction of 25% of any fee he may be awarded; or
- (b) if filed by the respondent or its attorney, then 80% of petitioner's counsel fee shall be paid for by the respondent or its carrier.

4A:1.9 Filing of Judgments, Orders of Discontinuance, Orders Approving Settlement, Orders for Dismissal

A statement containing the date and place of hearing together with the decision, award, determination and rule for judgment, order of discontinuance, order approving settlement, and order for dismissal shall be legibly written in ink or typewritten, and shall be filed with the Division by the hearing official hearing said case; said statements or orders shall be:

- (a) an Order for Judgment for a nonlitigated case as set forth in

4A:1.13 Penalty for Attorney or Respondent Filing Incomplete, Inaccurate, Misleading, or Untimely Answering Statement to Motion for Temporary Disability or Medical Benefits

If the respondent or its attorney knowingly files an incomplete, inaccurate, misleading, or untimely answering statement to petitioner's Notice of Motion for temporary disability or medical benefits,

- (a) the respondent shall be assessed 80% of any counsel fee which the petitioner's attorney may be entitled to on the motion; or
- (b) if the respondent fails to file said answering statement prior to the hearing on the motion, said respondent shall be assessed 100% of any counsel fee which petitioner's attorney may be entitled to on the motion.

4A:1.14 Procedure for Filing Pre-Trial Memorandum

At the time of a pre-trial conference held between petitioner and his attorney, respondents and their attorneys and a hearing official, a pre-trial memorandum, Form WC S4-13 and its amendments, as prescribed by the Director, shall be executed by the parties or their respective attorneys and the hearing official. Said memorandum shall be filed by the hearing official assigned to the pre-trial hearing and shall contain:

- (a) the name, social security number, address, age, occupation, and marital status of the petitioner or his dependents;
- (b) the name and address of the respondent and its insurance carrier and said carrier's claim file number;
- (c) statements of fact which have the effect of being a stipulation upon the record;
- (d) listings of all factual, medical, and legal issues to be tried at hearing of the matter;
- (e) a statement of the existence and amount of all medical disability liens or any other liens as prescribed for in the statutes of the State of New Jersey;
- (f) a summary of treating physicians and x-ray findings;
- (g) the number of all lay witnesses;
- (h) the names of all medical or expert witnesses and their estimates of disability to be used at the time of hearing.

4A:1.15 Procedure for Filing Application for Review or Modification of Formal Award

The formal hearing process for a Review or Modification of a Formal Award, pursuant to N.J.S.A. 34:15-27, shall be initiated by the filing of an Application for Review or Modification, in duplicate, with the Division in Trenton by petitioner, petitioner's attorney, insurance carrier, employer, Second Injury Fund, or the Division. Said application must be filed within two years from the date when the petitioner last received payment upon the following grounds:

- (a) the disability of petitioner has increased; or
- (b) the disability of petitioner has diminished; or
- (c) the disability of petitioner has terminated.

4B:1.3(c) Place for Hearings

All formal hearings or applications shall be conducted in open court.

4B:1.4 Consolidation of Formal Proceedings

When two or more formal proceedings involving a common question of law or fact arising out of employment by the same employer or by 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, are pending in the Division, the Judge or the Director may, on motion or on his own initiative, order a joint hearing of any or all matters in issue in the said proceedings. He may order all said proceedings consolidated and he may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. Said order shall state the county in which the consolidated proceeding or proceedings are to be heard at formal hearing.

4B:1.5 Attendance of Parties at Hearings

Petitioner's attorneys, employers, insurance carriers, and self-insureds shall provide for the prompt attendance of personnel in sufficient numbers to handle all lists expeditiously.

4B:1.6 Stenographic Records

All hearings, including motions where a record is required, shall be recorded stenographically by a certified shorthand reporter, duly certified under the Laws of the State of New Jersey, subject to such limitation as provided by statute. Deviation from strict application of this Rule shall only be permitted by the express written authority of the Commissioner or the Director.

4B:1.7 Cost for Attendance and Transcripts of Shorthand Reporters

Upon the determination reached at the conclusion of all hearings, including motions, the cost for the attendance of the certified shorthand reporter may be assessed at the discretion of the hearing official for that case. Transcripts of the testimony may be obtained from the certified shorthand reporter at the official scheduled rates.

4B:1.8 Unauthorized Deductions From Petitioner's Compensation Award

If a complaint is presented that an attorney, hearing official, employer,

time of formal hearing, unless it is otherwise stated in the rules of the Division, to bring to the attention of the hearing official and the Division all unpaid bills for medical examinations, treatment, hospitalization, and for any other expenses incidental to the case in his possession at that time.

4B:1.11(c) Appearances By Persons Convicted of Crime

No person convicted of a crime involving moral turpitude shall be permitted to appear in a representative capacity in the Division of Workmen's Compensation.

4B:1.12 Applicability of the Soldiers and Sailors Civil Relief Act

In a motion to dismiss against the petitioner, for lack of prosecution or on any other grounds, the hearing official shall require the filing of an affidavit or letter by the petitioner's attorney that the petitioner is not in the armed forces of the United States, or after diligent search the petitioner cannot be located, in which event the order of dismissal shall contain a provision that, if it subsequently develops that the petitioner was in the armed forces of the United States at the time of signing such order, said order becomes null and void.

4B:1.13 Payment of Compensation to Petitioners

All payments of compensation by an employer, insurance carrier, or self-insured pursuant to any agreement, settlement, or award shall be made directly to the petitioner and a statement of disbursements in a form as approved by the Division shall be forwarded to petitioner with the first payment pursuant thereto.

4B:1.14 Payment of Allowances Against Petitioner Where Payment Will Be a Hardship

Where it appears upon the entry of an award that the accrued compensation is insufficient to defray payment of allowances against petitioner and where payment will be a hardship, the hearing official may on the record and in the Judgment, Order Approving Settlement, or Order of Discontinuance direct payment from the unaccrued amounts with discount unless waived by written consent or consent in the record being mandatory.

4B:1.15 Refusal of Petitioner to be Examined

If consent is refused by petitioner or his counsel to an examination

tion when:

- (a) petitioner is unemployable;
- (b) petitioner is employed and working on a job which requires substantially less skill and at a substantially lower salary than before the injury occurred;
- (c) the individual disability is relatively severe and there is evidence that he is having difficulty performing his present job;
- (d) petitioner's present employment may tend to aggravate the disability, or constitute a hazard to the petitioner, or jeopardize the health and safety of others;
- (e) the petitioner or hearing official wants the need for functional restoration to be evaluated.

4B:1.20 Penalty for No Insurance

In any hearing where it shall come to the attention of a hearing official hearing the matter that the provisions of N.J.S.A. 34:15-120.1 are applicable, the hearing official shall make a specific finding of fact to this effect and recommend to the Director the amount of the assessment which he feels ought to be imposed in accordance with this statute. A copy of the judgment with such recommendation should be forwarded to the Director's office. Nothing contained herein shall alter petitioner's right to proceed with a civil action against the employer.

4B:1.21 Fees For Medical Examinations, Reports, and Testimony

4B:1.21(a) Fees for Examinations and Reports

The allowance for examinations and reports made on behalf of a petitioner shall not be more than \$50.00 to be assessed against the parties in equal portions. Additional allowances may likewise be assessed against the parties in equal portions for extraordinary services performed in the course of the examination, such as laboratory tests, x-rays, electrocardiograms, etc. The proportionate assessment provision of this rule shall not apply to those matters wherein a sanction as to responsibility of medical fees has been imposed against either party.

4B:1.21(b) Fees for Testimony in Contested Cases

Allowances for appearances and testimony in contested cases may be made by the hearing official within his discretion subject to the limitations set forth in N.J.S.A. 34:15-64.

4B:1.21(c) Irregular Allowances

Allowances not in accord with the scheduled fees as enumerated in

duplicate with the Division's Office in Trenton, with a copy served upon the adversary. Upon receipt of said Notice of Motion, which includes the factual and legal basis for relief requested, the Division shall set the matter for hearing and notify counsel of the date thereof.

4B:2.2(a) Procedure for Conducting Motions

All motions shall be heard before a Judge and shall be limited only to the issues contained in the Notice of Motion. In hearing the request, the Judge shall take such testimony and evidence as is warranted in his judicial discretion.

4B:2.2(b) Order for Relief

Upon the conclusion of a hearing on the motion, the Judge shall render his decision immediately, except where the Judge has ordered the filing of the briefs or legal memorandums by counsel, in which case the decision shall be rendered within 15 days time from the date of filing briefs or memorandums. Under no circumstances shall briefs be filed subsequent to 15 days of the hearing.

4B:2.2(c) Notification of the Decision

When the Judge has reserved his decision pursuant to Rule 4B:2.2(b) and rendered his decision within 15 days of the date of filing briefs, he shall inform counsel of his decision and instruct counsel to prepare an appropriate order for signature.

4B:3 Accelerated Award Proceedings

4B:3.1 Qualifications for Accelerated Award Proceedings

- (a) When the Division, upon review of all Certificates of Readiness filed by the parties to the claim, determines that the only issue in dispute is the nature and extent of temporary or permanent disability, the claim shall be scheduled for an accelerated award proceeding as hereinafter defined.
- (b) When a pre-trial conference is held pursuant to Rule 4B:4 and it is determined that the only issue in dispute is the nature and extent of temporary or permanent disability, the claim shall be scheduled for an accelerated award proceeding as hereinafter defined.

initially and secondarily that he is not ready to proceed to hearing, subject to the exception stated in Rule 4B:3.5(a) the respondent shall file a tertiary Certificate of Readiness, Form WC S4-5 and its amendments as prescribed by the Director, within 30 days of the filing of the secondary Certificate of Readiness and respondent shall be assessed not less than 80% of any counsel fee awarded to petitioner's attorney.

4B:3.5(c)

Once the petitioner has indicated in a Certificate of Readiness that petitioner's case is ready to proceed and respondent has indicated in all preceding Certificates of Readiness filed pursuant to Rule 4B:3.5(a & b) that it is not ready to proceed to a hearing, except where respondent has exercised its prerogatives pursuant to N.J.S.A. 34:15-16, the matter shall be scheduled for trial solely on the issue of the nature and extent of petitioner's disability and respondent shall be assessed not less than 100% of any counsel fee awarded to petitioner's attorney.

4B:3.5(d)

The provisions of Rule 4B:3.5(a, b & c) shall not apply to any case in which the failure of respondent to be ready is due to petitioner's neglect or refusal to appear for medical examination, in which event the case shall be marked "Not Moved."

4B:3.5(e)

The provisions of Rule 4B:3.5(a, b & c) shall not apply to those cases in which respondent has exercised its prerogative pursuant to N.J.S.A. 34:15-16 before the 26 week period as stated in N.J.S.A. 34:15-16 has expired.

4B:3.5(f) Procedure For Scheduling Accelerated Award Proceeding When Petitioner Is Undergoing Treatment

Where the petitioner has indicated in his Certificate of Readiness that he is ready to proceed and subsequent thereto said petitioner has resumed active medical treatment for a condition alleged as compensable in the subject claim, the provisions of Rule 4B:3.5 shall be abeyed until he has been discharged from said treatment.

4B:3.5(g) Procedure For Scheduling Accelerated Award Proceeding When Respondent Is Ready and Petitioner Is Not

for a pre-trial conference, indicating the date, time, and place of its listing.

4B:4.3 Procedure For Conducting Pre-Trial Conference

A pre-trial conference shall be held amongst counsel for petitioner and respondent and any hearing official for the purpose of stipulating facts which will have the effect of becoming a stipulation on the record; a listing of the legal, medical, and factual issues to be tried; the witnesses to be used at the time of trial; the medical condition of the petitioner; and all liens filed; and rulings on amendments to pleadings or other applications of counsel. The pre-trial conference will result in the execution of a pre-trial memorandum as stated in Rule 4A:1.14.

4B:4.4 Procedure For Conducting a Pre-Trial Conference When Parties Are Not Ready

A pre-trial conference shall be scheduled in all cases as stated in Rule 4B:4.1 except where: (1) petitioner is undergoing active treatment for the injuries alleged in the claim; or (2) where respondent has exercised its prerogative pursuant to N.J.S.A. 34:15-16. All medical or expert reports from those expert witnesses that counsel intends upon calling at the time of trial shall be submitted no later than the pre-trial conference. Except for good cause shown, the failure of having an expert's report at the time of pre-trial will result in the barring of testimony or submission of a report from that expert at the time of trial.

4B:4.5 Procedure For Conducting Pre-Trial Conference When Either Party Is Absent

Except for good cause shown, a pre-trial conference will take place and result in the execution of a pre-trial memorandum as stated in Rule 4A:1.14 whether or not any counsel is present. The hearing official shall, in the absence of counsel, list those issues contained on counsel's Certificate of Readiness, Rule 4A:1.7, and set the matter down for trial. The procedure indicated in this rule shall apply to those pre-trial conferences wherein counsel refuses to sign the pre-trial memorandum.

4B:4.6 Procedure to be Followed When Pre-Trial Conference Results in Elimination of All Issues Except the Nature and Extent of Petitioner's Temporary or Permanent Disability

When after a pre-trial conference is held it is determined that the only issue in dispute is the nature and extent of petitioner's temporary

If no request for cross-examination of respondent's doctor has been made by the petitioner, said medical report as submitted to the respondent by its medical witness shall be submitted into evidence with cross-examination on the part of petitioner having been waived.

- (k) Motions at the close of testimony.
- (l) Closing comments, briefs, or legal memorandum:
- (m) Decision of the Judge, which shall be made within 15 days of the last day of hearing.
- (n) Motions addressed to the decision.

4B:5.4 Limited Issue Trial

Where there is only one issue before the court or where the medical testimony of an expert representing either petitioner or respondent has been requested by an adversary, the case shall be listed for a limited issue trial.

4B:5.4(a) Medical Testimony

A limited issue trial limited to medical testimony shall be conducted in only those cases wherein the cross-examination of an adversary's doctor has been requested and will concern itself with the medical report submitted by the other parties to the case and the testimony and cross-examination of the doctor requested.

4B:5.5 Conclusions of Trial

All trials shall conclude with a finding by the Judge, on the last date of trial, which will be one of the following:

- (a) judgment for the petitioner;
- (b) judgment of dismissal; or
- (c) order approving settlement.

4B:5.5(a) Reserved Decisions

All Reserved Decisions for all trials shall be rendered by a Judge within 15 days from completion of the last day of hearing or within 15 days from the date of filing of briefs as ordered by the Judge. Additional time to render a Reserved Decision may be allowed only on written application to the Director.

4B:5.5(b) Notification of Reserved Decisions

At the time of rendering his Reserved Decision, the Judge shall notify all parties by letter of his decision, indicating in whose favor it was

and shall be served between the time allowed for filing the first Certificate of Readiness and the first scheduling of trial. Answers to the interrogatories shall be served within 30 days after service of interrogatories unless the hearing official on motion and for good cause shown lengthens or shortens the time. Supplemental Interrogatories may be allowed only on motion and for good cause shown. The form for petitioner's interrogatories in occupational disease cases is as set forth in Form WGS-16-P. The form for respondent's interrogatories in occupational disease cases is as set forth in Form WC S4-16R.

4B:7 Sanctions for Failure of Petitioner to Prosecute Case

In any case listed for a trial in which no appearance is made on behalf of petitioner or which is not adjourned for good cause shall be marked "NOT MOVED" and shall not be restored to the calendar except on motion made upon five days' notice served upon respondent; provided, however, that the Judge or the Director may, for good cause and on his own motion, restore a case marked "NOT MOVED". The counsel fee normally allowed shall be reduced 20% for each time a case has been marked "NOT MOVED" when the attorney for the petitioner is responsible for such action. Where a case has been marked "NOT MOVED" because of the petitioner's failure without good cause to submit himself for a physical examination at the request of the respondent, the petitioner himself may be penalized in the apportionment of fees at the discretion of the hearing official.

4B:8 Prerequisite of Sending Certain Cases to Informal Proceedings Before Filing Formal Claim Petition

In all formal cases involving disability to fingers or toes, regardless of the amount of recovery, and all cases involving disability to the foot or hand which are settled with recovery of less than \$550.00, and which cases had not been previously submitted to an informal hearing, the allowance for counsel fees in favor of the attorney representing the petitioner shall not exceed 5% of the amount of the award or settlement, regardless of whether there is a denial of accident in the answer. All cases which fall within the above category, wherein a discontinuance is filed, the counsel fee allowed on such discontinuances shall not exceed 5%.

4B:8.1 Applicability of Statute of Limitations

In those cases wherein an informal application is filed pursuant to Rule 4B:8, the question of the statute of limitations might, to the detriment of the claimant, be involved, a formal petition may be filed. After filing of the petition the claim should be handled informally. Thereafter appropriate disposition shall be made of the formal petition.

4B:9.5 Order of Dismissal

An Order of Dismissal may be entered by the hearing official when, after conclusion of a multiple issue trial pursuant to Rule 4B:5.3 or limited issue trial pursuant to Rule 4B:5.4, it has been determined that a petitioner is entitled to no relief; in those cases wherein the petitioner's case was marked "Not Moved" pursuant to Rule 4B:7 and a Notice of Motion pursuant to Rule 4B:2.2 for dismissal of the petitioner's case for lack of prosecution has been filed and served; or in those situations wherein the petitioner has, under oath requested that his case be dismissed. In hearing the application of a petitioner who requested his case be dismissed, the hearing official shall, on the record and in open court, fully explain to the petitioner his rights and the Statute of Limitations applicable to the case. In deciding whether or not to grant the Order of Dismissal the hearing official shall be informed of the reason for petitioner's request that his case be dismissed. The hearing official shall request the petitioner to sign the order and instruct the petitioner's attorney to certify that he has informed the petitioner of all of his rights under Title 34. The form for said Order of Dismissal shall be as contained in form WC S~~4~~-10 and its amendments as prescribed by the Director.

- (a) 10% of any fee he may have been awarded; providing, however,
- (b) if said petition was returned to the attorney more than once to acquire the information required, said attorney shall have a reduction of 15% of any fee he may be awarded.

5A:1.4 Service of Petitions

The Division shall serve the claim petition upon an employer or carrier within five days after receipt of the claim petition by the Division, except where the petition fails to supply the required information or contains otherwise incomplete or inaccurate information.

5A:1.5 Scheduling of Informal Hearings

The Division shall within 20 days after receiving the petition from the employer or carrier schedule an informal hearing. The Division shall notify:

- (a) the claimant; or the claimant's attorney, if any; and
- (b) the employer or carrier of the date of the hearing.

5B:1.3 Attendance of Parties at Hearing

Claimant's attorney, employer, insurance carrier, and self-insured shall provide for the prompt attendance of personnel sufficient in numbers to handle all lists expeditiously.

5B:1.3 (a) Representatives of Employer or Carrier

To expedite the processing of informal matters, an employer or carrier must be represented by an individual who has the respondent's expressed authority to represent the respondent and agree or disagree with the award recommended by the hearing official at the time of the hearing.

5B:1.3 (b) Registration of Representatives for Employers or Carriers

Each employer, carrier, or self-insured shall submit to the Director for distribution to all hearing officials a list of each individual who will represent the employer, carrier, or self-insured at informal hearings and shall indicate that said individual shall have the authority to represent and agree to settle on behalf of the respondent in informal proceedings.

5B:1.3 (c) Representatives of Claimant

Only an attorney at law licensed to practice in the state of New Jersey shall act as attorney for a claimant in any informal hearing with the Division. Deviation from this rule should be permitted only by consent of the Commissioner or the Director.

5B: 1.3 (d) 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 pay any referral fee whatsoever to any one not an attorney.

5B:1.3 (e) Submission of Medical Bills

It shall be the duty of the attorney for the claimant and the representative of the employer or carrier at the time of the informal hearing to bring to the attention of the hearing official all bills for medical examinations, treatment, hospitalization, and for any other expenses incidental to the case.

5B:2.1 Inspection of Medical Reports

The claimant, employer, or carrier shall, on demand of the hearing official, present to the state physician at the time and place of the hearing, all reports of the attending physician's, including x-rays, x-ray reports, and laboratory tests.

5B:2.2 Attendance of Representatives at Medical Examinations

No representative of the claimant, employer, or carrier shall be present when the state physician examines the claimant. An interpreter, however, may assist the state physician if his services are required.

5B:3 Order for Hearing Informal Applications

Subsequent to examination by the state physician the hearing official shall, in open court, complete the hearing for the matter. He shall, based upon the state physician's opinion, set forth a proposed agreement of settlement.

5B:3.1 Record of Informal Hearings Where Settlement Is Awarded

If the parties agree to a settlement that is approved by the hearing official, the terms of the agreement together with other pertinent data shall be entered in the informal record in the following order:

- (a) the name, address, age, and social security number of the claimant;
- (b) the name, address, I.R.S. identification number of the claimant's attorney;
- (c) name and address of the employer and its carrier;
- (d) the final determination of the extent of the disability;
- (e) a succinct description of the nature of the injury;
- (f) a succinct description of when and how the injury occurred;
- (g) any attorney or medical fees awarded;
- (h) a description of any penalties or fees assessed against counsel, carrier, or employer;
- (i) the amount of temporary disability received by claimant.

5B:3.2 Allowance of Fees

The hearing official shall indicate on the informal record and inform the parties in open court of the amount of counsel fee, medical fees, and other legal disbursement and deductions chargeable to the claimant and employer.

SECTION 6

FILING AND PROCEDURE FOR SECOND INJURY FUND APPLICATIONS

In any Workers' Compensation case wherein it appears that the Second Injury Fund, N.J.S.A.34:15-95 et seq, may be answerable for a portion of the injury payable to petitioner by virtue of his alleged or indicated permanent total disability, the petitioner, the respondent, or the Hearing Official may make application for joinder of the Commissioner as a party to the proceeding as the custodian of the Second Injury Fund.

6A Procedure for Filing Application for Second Injury Fund

The application for joining the Second Injury Fund, pursuant to N.J.S.A.34:15-95 et seq and Rule 6, shall be in the form of a Notice of Motion, accompanied by a verified petition as set forth in Rule 6A:2, filed in duplicate with the Division with a copy served upon the Attorney General, all adverse parties, and the Commissioner.

6A:1 Contents of Notice of Motion to Join Second Injury Fund

The Notice of Motion to join the Second Injury Fund shall include a statement of the applicant's basis for joining the Second Injury Fund and shall be accompanied by a verified petition and its attachments as stated in Rule 6A:2.

6A:2 Contents of Verified Petition

The verified petition shall include a succinct and accurate description of all medical, legal, and factual basis upon which petitioner alleges his eligibility for Second Injury 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 his attorney. Specifically, the verified petition shall include the following:

- (a) name and address of petitioner;
- (b) social security number of petitioner;
- (c) age and date of birth of petitioner;
- (d) marital status and educational background of petitioner;
- (e) a summary of petitioner's employment history;
- (f) a description of disabilities which existed prior to the date of the last compensable injury, and the date of onset of each;
- (g) 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;

be submitted to the Commissioner via the Supervisor of the Second Injury Fund.

6B:3.1 Service of Advisory Opinions

A copy of the advisory opinion of the Judge shall be submitted by the Judge to: petitioner, petitioner's attorney, respondent's attorney, and Attorney General.

6B:3.2 Exceptions to Advisory Opinions

Within seven days of service of the advisory opinion of the Judge, the Attorney General, petitioner's attorney, or respondent's attorney may file exception to the advisory opinion with the supervisor of the Second Injury Fund for submission to and consideration by the Commissioner.

6B:4 Post-Hearing Procedure

6B:4.1 Beneficiary's Personal Data

On receiving his first payment, each beneficiary of the Second Injury Fund shall file with the supervisor of the Second Injury Fund his biography, history of injury, and other pertinent data, together with three bust photographs of at least three inches by three inches square, with three specimen signatures of endorsement of checks.

6B:4.2 Information

Beneficiaries of the Second Injury Fund, except those under Chapter 364, P.L.1947, as amended or supplemented shall be visited by a representative of the Department of Labor and Industry at such intervals as may be required by the Commissioner.

SECTION 9

DISCRIMINATION COMPLAINTS

9A Procedure for Filing Discrimination Complaints

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

9A:1 Contents of Discrimination Complaint

The complaint alleging discrimination shall be under the oath or affirmation of the complainant and shall include the following:

- (a) complainant's name, address, social security number, and claim petition number, if he has filed a claim for formal hearing;
- (b) the name and address of the insurance carrier for the employer;
- (c) the date of complainant's accident;
- (d) complainant's occupation and wages;
- (e) complainant's current employment and wages;
- (f) complainant's occupational duties and indication as to whether or not he is able to perform those duties;
- (g) the date and reason for complainant's termination of employment;
- (h) his factual and legal reasons for alleging discrimination;
- (i) such other information as requested in Form WC S9 and its amendments as prescribed by the Director.

9A:2 Attachments to Discrimination Complaint

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

9B Procedure for Investigation of Discrimination Complaints

Upon receipt of a complaint for discrimination as set forth in Rule 9A et seq, the Division shall conduct an investigation and forward the complaint and results of investigation to the Commissioner, or his designated representative, within 30 days.

9B:1 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, et seq, as he deems necessary.

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