

8. Vague or evasive pleadings may be stricken or a claim petition dismissed without prejudice on motion brought by a party or the Judge of Compensation on notice. Claim petitions which merely describe the injury or illness by generic definition, such as orthopedic, internal, neuropsychiatric or similar terms without description of the particular injury shall be considered vague or evasive.

(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 and shall, if known, contain the following:

- i. The name and address of the respondent's attorney;
- ii. The name and address of the carrier;
- iii. The carrier's claim number;
- iv. The employer's State registration number;
- v. An admission or denial of employment;
- vi. An admission or denial if accident or illness arose out of and in the course of employment;
- vii. Gross weekly wage;
- viii. Benefit rates;
- ix. Medical providers;
- x. Temporary disability paid, if any; and
- xi. An admission or denial of jurisdiction.

2. The answer shall be filed with the office to which the claim is assigned within 30 days of the date of service of the petition except for good cause shown. 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.

3. If the answer is not filed as specified in (b)1 and 2 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.

4. 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.

5. Answers which put petitioner to proofs without conforming with (b)1 and 2 above may be stricken and subject to the penalties pursuant to N.J.A.C. 12:235-5.12.

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%. Amended by R.1997 d.110, effective March 3, 1997. See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

In (a)1, inserted first sentence; made former (a)2 into the last sentence of (a)1; added (a)2 through (a)8; recodified portion of (b) as (b)2 and in (b) added "and shall if known, contain the following:"; inserted (b)1i through (b)1xi; recodified former (b)2 and (b)3 as (b)3 and (b)4; in (b)2, deleted reference to filing with the assignment clerk, and inserted "except for good cause shown"; in (b)3, inserted reference to (b)2; and added (b)5.

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).

Lack of proper certification did not preclude acceptance of employee's claim petition when employer acted thereon with notice. *Michaels v. Vernon Board*, 95 N.J.A.R.2d (WCC) 1.

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 by certified mail or personal service on the attorneys of record. If the attorney of record is unknown, then service shall be made by certified mail on the respondent(s) and its carrier(s). If it is a new claim petition, then the notice of motion shall also be filed with the central office.

(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 report(s) of a physician(s) 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; and

3. If the petitioner, having received treatment, cannot secure a report of the medical provider authorized by the respondent, it shall be set forth in the affidavit in lieu of the physician's report.

(c) If an attorney for the petitioner knowingly files an incomplete, inaccurate or misleading notice of motion for temporary disability and/or medical benefits, or an attorney for the respondent files an untimely, incomplete, inaccurate

or misleading answer, the attorney may be assessed a penalty in accordance with N.J.A.C. 12:235-5.12.

(d) Except for good cause shown, respondent(s) shall file an answer within 21 days of service of the motion or within 30 days after service of claim petition whichever is later.

(e) 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 of the filing of the motion. 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.

(f) Affidavits, certifications and medical reports submitted in accordance with (b) above in support of the motion may constitute a prima facie case and may be sufficient basis for the issuance of an order compelling the respondent to provide the relief sought unless respondent files supporting affidavits or certifications to oppose said motion on a legal or factual basis, or files medical reports if there is a medical basis to oppose said motion. No order shall be issued until 30 days after service of the claim petition.

(g) Examination, if required by respondent, shall be completed within 30 days of receipt of the motion and the report issued in not more than 35 days from receipt of the motion and shall not delay the start of the hearing of the motion except for good cause shown.

(h) 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. 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).

Amended by R.1997 d.110, effective March 3, 1997.
See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

In (a), provided that service of notice and be made to the attorneys of record rather than on parties and be made by certified mail or personal service; inserted (b)3; in (c), inserted reference to filing of untimely, incomplete, inaccurate or misleading answer and amended the penalty reference; inserted new (d) and (f); deleted (e) and recodified former (d), (f), and (g) as (e), (g), and (h); and in (g), provided for issuance of report and inserted "except for good cause shown".

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 petitioner(s), respondent(s), carrier(s), or attorney(s). Every notice of motion shall include the factual and legal basis for the relief requested and a proposed form of order in triplicate.

(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).
Amended by R.1997 d.110, effective March 3, 1997.
See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

In (a), substituted "on petitioner(s), respondent(s), carrier(s), or attorney(s)" for "on all parties" and added text "in triplicate".

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) It shall be the responsibility of the moving party to give notice of any hearing of the motion to the party sought to be impleaded.

(d) 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.

(e) 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.

(f) 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.

(g) 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).

Amended by R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

Added (c) and recodified former (c) through (f) as (d) through (g).

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.

Unlikelihood of other party's liability required denial of impleader motion. *Hegel v. Dutch Country*, 93 N.J.A.R.2d (WCC) 115.

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.

(c) The employer shall be required to furnish or make available for inspection and copying 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. If either party fails to furnish said information within 30 days of receipt of demand of records, it may be responsible to reimburse its adversary for the cost of procuring the same.

(d) 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.

(e) Interrogatories shall be allowed without motion in occupational disease cases on standard form interrogatories as set forth in N.J.A.C. 12:235-14.2.

(f) 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.

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

(h) 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.

Amended by R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

In recodified portion of (b) as (c); in (c), added last sentence; recodified former (c) through (g) as (d) through (h); and in (e), amended N.J.A.C. reference.

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 Pretrial 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 Judge of Compensation 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 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).

Medical examination requirements added.

Amended by R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

In (d), substituted "Judge of Compensation" for "official presiding".

Case Notes

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).

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).

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.