

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), (c) and 34:16-64.

Source and Effective Date

R.2001 d.118, effective March 9, 2001.
See: 33 N.J.R. 170(a), 33 N.J.R. 1113(a).

Executive Order No. 66(1978) Expiration Date

Chapter 235, Rules of the Division of Workers Compensation, expires on March 9, 2006.

Chapter Historical Note

Chapter 235, Rules of the Division of Workers' Compensation, was adopted and became effective prior to September 1, 1969.

Chapter 235, Rules of the Division of Workers' Compensation, was repealed and a new Chapter 235, Rules of the Division of Workers' Compensation, was adopted as R.1986 d.144, effective May 5, 1986. See: 17 N.J.R. 2081(a), 18 N.J.R. 987(a).

Subchapter 13, Surcharge Collection Procedures, was adopted as R.1988 d.586, effective December 19, 1988. See: 20 N.J.R. 2522(a), 20 N.J.R. 3139(a).

Subchapter 14, Uninsured Employer's Fund, was adopted as R.1990 d.338, effective July 2, 1990. See: 22 N.J.R. 3852(a), 22 N.J.R. 2023(a).

Pursuant to Executive Order No. 66(1978), Chapter 235, Rules of the Division of Workers' Compensation, was readopted by R.1991 d.275, effective May 3, 1991. See: 23 N.J.R. 834(a), 23 N.J.R. 1819(a).

Pursuant to Executive Order No. 66(1978), Chapter 235, Rules of the Division of Workers' Compensation, was readopted as R.1996 d.184, effective March 11, 1996. See: 28 N.J.R. 790(a), 28 N.J.R. 1859(a).

Subchapter 13, Enforcement and Collection of Non-Insurance Penalties, was adopted as new rules, and Subchapter 13, Surcharge Collection Procedures, was recodified to N.J.A.C. 12:235-11, and Subchapter 11, Standard Forms, was recodified to N.J.A.C. 12:235-14, and Subchapter 14, Uninsured Employer's Fund, was recodified to N.J.A.C. 12:235-12, and Subchapter 12, Documents Referred to in This Chapter, was repealed by R.1997 d.110, effective March 3, 1997. See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

Petition for Rulemaking. See: 32 N.J.R. 4147(a), 32 N.J.R. 4314(b).

Pursuant to Executive Order No. 66(1978), Chapter 235, Rules of the Division of Workers' Compensation, was readopted as R.2001 d.118, effective March 9, 2001. See: Source and Effective Date.

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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. 34:15-7 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.

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), amended N.J.S.A. reference.

Case Notes

Dismissal of clarification of workers' compensation settlement due to lack of jurisdiction affirmed. *Basile v. Board of Education of the Borough of Roselle Park, Union County*, 97 N.J.A.R.2d (EDU) 429.

Off duty officer's injury at police gym non-compensable. *Hill v. Middletown Township*, 97 N.J.A.R.2d (WCC) 54.

Workers' Compensation Court lacked jurisdiction to act on cases where petitioners were covered under Longshore and Harbor Workers' Act. *Morin v. Universal Maritime*, 96 N.J.A.R.2d (WCC) 46.

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.

Case Notes

Penalty for late filing of unemployment compensation returns was warranted on basis of postmark found on envelope. *Star Crest v. Department of Labor*, 95 N.J.A.R.2d (LBR) 17.

12:235-1.3 Certification in lieu of oath

Claim petitions and answers shall be notarized and filed under oath as set forth in N.J.S.A. 34:15-51 and 34:15-52. Certifications in lieu of oath as provided in the Rules of Court may be used for motions and any other supporting documents filed with the Court.

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

12:235-1.4 through 12:235-1.5 (Reserved)**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 \$629.00 per week.

(b) The maximum compensation shall be effective as to injuries occurring in the calendar year 2002.

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).

Amended by R.1995 d.627, effective December 4, 1995.

See: 27 N.J.R. 3762(a), 27 N.J.R. 4898(b).

Amended by R.1996 d.516, effective November 4, 1996.

See: 28 N.J.R. 4077(a), 28 N.J.R. 4794(a).

Amended by R.1997 d.469, effective November 3, 1997.

See: 29 N.J.R. 3770(a), 29 N.J.R. 4704(a).

In (a), changed the benefit rate; and in (b), substituted "1998" for "1997".

Amended by R.1998 d.549, effective November 16, 1998.

See: 30 N.J.R. 3154(a), 30 N.J.R. 4054(a).

In (a), raised benefit rate for temporary disability from \$516.00 to \$539.00 per week; and in (b), changed calendar year to 1999.

Amended by R.1999 d.441, effective December 20, 1999.

See: 31 N.J.R. 3039(a), 31 N.J.R. 4286(a).

In (a), increased the maximum rate; and in (b), substituted a reference to 2000 for a reference to 1999.

Amended by R.2000 d.490, effective December 4, 2000.

See: 32 N.J.R. 3381(a), 32 N.J.R. 4259(b).

In (a), substituted "\$591.00" for "\$568.00"; and in (b), substituted "2001" for "2000".

Amended by R.2001 d.407, effective November 5, 2001.

See: 33 N.J.R. 2946(a), 33 N.J.R. 3752(b).

In (a), substituted "\$629.00" for "\$591.00"; in (b), substituted "2002" for "2001".

12:235-1.7 through 12:235-1.8 (Reserved)**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. 34:15-7 et seq.

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

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

"Director" means Director/Chief Judge of the division.

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

"Judge" means Judge of Compensation.

"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, PO Box 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.

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

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

Added "Judge" and amended "Act", "Chief Judge", and "Director".

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 political party funds;
5. Make public endorsements of candidates for political office;
6. Participate in political party conventions of any level or attend political functions; or
7. Accept or retain any position on a political 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.

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

In (b)4, (b)6, and (b)7, inserted "political" preceding "party".

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 neither solicit nor accept any gifts, favors, or gratuities of any form or pecuniary value from:

1. Litigants, attorneys, physicians, or witnesses 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.

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

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 on Judicial Performance is established.

1. The Commission shall consist of nine members. The Director shall designate one member to serve as Chairperson and another member to serve as Vice Chairperson. 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 laypersons 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 reprimand, 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 Chairperson of the Commission may establish and designate three-member panels to conduct any investigation or any hearing contemplated by this subchapter. At the conclusion, 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 and/or the Commissioner.

(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;
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; or
8. Any conduct which would subject a Judge to disciplinary action.

(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.

(g) 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.

(h) Whenever the Commission concludes from the preliminary investigation that the circumstances may call for reprimand, public or private, 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.

Repeal and New Rule, R.1989 d.24, effective January 3, 1989.
See: 20 N.J.R. 2442(c), 21 N.J.R. 23(a).

Section was "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).
 Repeal and New Rule, R.1991 d.466, effective September 3, 1991.
 See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Section was "Commission of Judicial Performance".
 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)2, substituted "reprimand" for "censure"; in (a)4, inserted reference to Commissioner; added (a)8; recodified former (i) and (g) as (g) and (h); in (h), substituted "reprimand, public or private," for "censure"; and deleted (h)1, relating to recommendations by the Director to the Commissioner.

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 by final decision of the Commissioner if it is found beyond a reasonable doubt that:

1. They have been convicted of an indictable offense;
2. They have committed one or more of the enumerated acts set forth in N.J.A.C. 12:235-3.11(b); 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.

Repeal and New Rule, R.1989 d.24, effective January 3, 1989.
 See: 20 N.J.R. 2442(c), 21 N.J.R. 23(a).

Section was "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).
 Repeal and New Rule, R.1991 d.466, effective September 3, 1991.
 See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Section was "Physical capacity to preside".
 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), inserted "by final decision of the Commissioner"; and rewrote (a)2.

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).

12:235-3.13 Prosecution of removal proceedings

The Commissioner may select the Attorney General, with the express consent of the Attorney General or may utilize a designated representative to prosecute removal proceedings.

Repeal and New Rule, R.1989 d.24, effective January 3, 1989.
 See: 20 N.J.R. 2442(c), 21 N.J.R. 23(a).

Section was "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).

Repeal and New Rule, R.1991 d.466, effective September 3, 1991.
 See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Section was "Removal from office".

Recodified from 12:235-3.14 and amended by R.1997 d.110, effective March 3, 1997.

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

Rewrote section. Section was "Institution of removal proceedings".

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).

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 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, or without pay in accordance with applicable Department of Personnel rules.

Repeal and New Rule, R.1989 d.24, effective January 3, 1989.
 See: 20 N.J.R. 2442(c), 21 N.J.R. 23(a).

Section was "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).

Repeal and New Rule, R.1991 d.466, effective September 3, 1991.
 See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Section was "Institution of removal proceedings".
 Recodified from 12:235-3.15 and amended by R.1997 d.110, effective March 3, 1997.

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

Inserted "without pay" provision. Former section recodified to N.J.A.C. 12:235-3.13.

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).

12:235-3.15 Right to counsel

(a) The accused in a formal hearing for removal, suspension or reprimand, public or private, shall be given a reason-

able 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.

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

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

Section was "Suspension pending determination".

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).

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

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

Section was "Prosecution of removal proceedings".

Recodified from 12:235-3.16 and amended by R.1997 d.110, effective March 3, 1997.

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

Substituted "reprimand, public or private," for "censure". Former section recodified to N.J.A.C. 12:235-3.14.

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).

12:235-3.16 Formal proceedings for removal, suspension or reprimand, public or private

(a) Upon receipt of a recommendation from the Commission or upon the Director or Commissioner's own motion that formal proceedings for removal should be instituted, a hearing shall be scheduled before the Commissioner.

(b) Upon receipt of a recommendation from the Commission or upon the Director or Commissioner's own motion that formal proceedings for suspension or reprimand should be instituted, a hearing shall be scheduled before the Director.

(c) 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.

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

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

Section was "Right to counsel, production of witnesses and evidence".

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).

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

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

Section was "Suspension pending resolution of the proceeding".

Recodified from 12:235-3.17 and amended by R.1997 d.110, effective March 3, 1997.

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

Substantially amended (a); inserted new (b); and recodified former (b) as (c). Former section recodified to N.J.A.C. 12:235-3.15.

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).

12:235-3.17 Informal proceedings for minor discipline

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

1. In matters not reviewed by the Commission on Judicial Performance, 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.

(b) The Director or Supervising Judge, 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 Division has been violated. Such a proceeding shall be considered an informal hearing and may be conducted in person, in writing or by telephone in the discretion of the Director or Supervising Judge.

(c) The decision of the Director or Supervising Judge following an informal hearing shall be final.

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

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

Section was "Formal hearing for suspension or removal".

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).

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

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

Section was "Right to counsel".

Recodified from 12:235-3.18 and 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 "reprimand, public or private," for "censure"; recodified former (b), (c), and (d) as (a)1, (b), and (c), respectively; in (a)1, inserted "In matters not reviewed by the Commission on Judicial Performance,"; in (b), inserted "or Supervising Judge", substituted "directive of the Division" for "directive of the Director", deleted provision that response could be in writing or by phone; and in (c), substituted reference to Supervising Judge for reference to Commissioner. Former section recodified to N.J.A.C. 12:235-3.16.

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).

12:235-3.18 Forms of discipline other than removal

(a) The Commissioner or Director may dispense the following discipline after any formal hearing where it has been determined by the preponderance of the evidence, that the Judge has committed one or more of the enumerated acts set forth in N.J.A.C. 12:235-3.11(b):

1. Suspension;
2. Written reprimand, public or private; or
3. Oral reprimand.

(b) The Director may dispense the following discipline after any informal hearing:

1. Written reprimand, public or private; or
2. Oral reprimand.

(c) A Supervising Judge may dispense the following discipline after any informal hearing:

1. Private written reprimand; or
2. Oral reprimand.

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).

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

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

Section was "Formal hearing for suspension or removal".

Recodified from 12:235-3.19 and 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), inserted "or Director" and added "where it has been determined... set forth in N.J.A.C. 12:235-3.11(b)"; deleted (a)1, providing for removal from office and recodified former (a)2 through (a)4 as (a)1 through (a)3; in (a)2, inserted "public or private;"; deleted (b), providing disciplinary actions by the Commissioner after informal hearings; recodified former (c) as (b); in (b)1, inserted "public or private;"; and added new (c). Former section recodified to N.J.A.C. 12:235-3.17.

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).

12:235-3.19 Confidentiality

The record before the Commission on Judicial Performance shall be confidential and shall not be available to any person except in the proper discharge of official duties, unless the judge requests that the charge, proceedings, or action shall be made public. If a public reprimand is imposed by the Director, the written reprimand shall be made public. Upon the issuance of a complaint or disciplinary charges, the complaint and/or charges shall be made public. The entire record shall, unless the Director otherwise orders, be made public upon the entry of a final

decision imposing a public reprimand, 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).

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

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

Section was "Minor discipline".

Recodified from 12:235-3.20 and amended by R.1997 d.110, effective March 3, 1997.

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

Rewrote section. Former section recodified to N.J.A.C. 12:235-3.18.

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).

12:235-3.20 Judicial independence

The methods used by a judge, but not the result arrived at by the judge in any case, may be the cause for discipline of the judge. In order to foster and encourage judicial independence, claims of error shall be left to appellate review and not be subject to discipline.

New Rule, R.1997 d.110, effective March 3, 1997.

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

Former section recodified to N.J.A.C. 12:235-3.19.

SUBCHAPTER 4. ASSIGNMENT AND SUPERVISION OF JUDGES OF COMPENSATION

12:235-4.1 Assignment of judges

It shall be within the sole discretion of the Director to assign judges throughout the State as he or she shall deem appropriate for the effective administration of the Division.

New Rule, R.1997 d.110, effective March 3, 1997.

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

Former section recodified to N.J.A.C. 12:235-4.2.

12:235-4.2 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) The Director may at his or her discretion:

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.

Recodified from 12:235-4.1 and amended by R.1997 d.110, effective March 3, 1997.

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

Former section recodified to N.J.A.C. 12:235-4.3.

12:235-4.3 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.

Recodified from 12:235-4.2 by R.1997 d.110, effective March 3, 1997.

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

SUBCHAPTER 5. FORMAL CLAIMS

12:235-5.1 Initial pleadings

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

1. The claim petition shall be verified by the claimant and include the date of the signature and verification. 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. 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.

2. Except as provided in (a)1 above, pleadings, motions and briefs shall be signed by the attorney of record, or the attorney's associate or by the party if pro se. Signatures of a firm may be typed, followed by the signature of an attorney of the firm. Signatures on any duplicate original or carbon copy required to be filed may be typed. Every paper to be filed shall bear the date on which it was signed.

3. The signature of an attorney or party pro se constitutes a certification that the signatory has read the pleading or motion; that to the best of the signatory's knowledge, information and belief there is good ground to support it.

4. Material allegations, if known, shall be stated. Material allegations include a description of the accident or occupational exposure, the nature of the injury, the date and place of the occurrence, the wage, compensation benefits provided to date, a description of all other claims made for this injury and all other information requested on the prescribed form.

5. Claim petitions by or on behalf of a worker seeking compensation for injury caused by an accident shall describe the date, place and description of the accident, the injury, the name and address of the employer, the name and address of the treating provider, the name of the compensation insurer and all other pertinent information required by the Act and these rules.

6. Claim petitions filed by dependents for benefits provided by N.J.S.A. 34:15-13 shall set forth the identity, address, relationship and date of birth of all dependents, the social security number of the decedent, the date and cause of death, whether compensation benefits were paid or claimed during the deceased's lifetime, and the type and amount of benefits claimed. To the extent applicable, the petitioner shall comply with the information required for accidental injury claims or occupational disease claims. Multiple claims arising from one decedent shall be consolidated for disposition.

7. All known multiple occupational claims by a worker or dependent against the same respondent employer shall be joined in one petition. Claim petitions for occupational disease as defined by N.J.S.A. 34:15-31 which are filed on behalf of a worker shall describe the dates, place and description of the exposure and the injury or illness claimed to have occurred as a result of the exposure. The occupational disease petition shall include the name and address of the employer(s) and the identity of its compensation insurer for the pertinent period of time as well as all other information required in filing a claim petition required by this section. The Division shall notify all parties of disposition.

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).

Employee on light-duty work due to compensable injury entitled to temporary disability benefits after termination. *Jones v. Harris Contracting Company*, 97 N.J.A.R.2d (WCC) 55.

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 and motions to suppress defenses 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".

Amended by R.1999 d.285, effective August 16, 1999.

See: 31 N.J.R. 737(a), 31 N.J.R. 923(a), 31 N.J.R. 2393(a).

In (c), inserted a reference to motions to suppress defenses in the first sentence.

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

An individual alleging to be joint or special employer may intervene in proceeding before Division of Workers' Compensation as matter of right based on assertion of employment relationship, and such individual can also be joined as a party to pending proceedings in Division according to Division's third-party practice. *Kristiansen v. Morgan*, 153 N.J. 298, 708 A.2d 1173 (N.J. 1998).

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 within 180 days from the filing of respondent's answer or from petitioner's last authorized medical treatment, whichever date is later. A Judge of Compensation may extend or reopen discovery on his or her own motion or on application of a party for good cause appearing.

Amended by R.1999 d.285, effective August 16, 1999.

See: 31 N.J.R. 737(a), 31 N.J.R. 923(a), 31 N.J.R. 2393(a).

Rewrote (b).

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 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 with 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) In occupational disease cases, a party may propound interrogatories only by demanding in the initial pleading that the opposing party answer the standard form interrogatories as listed in N.J.A.C. 12:235-14.1. The demand shall

be stated in the claim petition by the petitioner and in the answer by the respondent immediately following signature. Interrogatory answers shall be served by all parties within 90 days from the filing of respondent's answer to the claim petition. A Judge of Compensation upon motion for good cause may extend 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.

(i) If timely response to a discovery demand has not been provided under this rule and no motion for an extension has been made, the party entitled to the discovery may move, on notice, for an order dismissing the claim petition for lack of prosecution or suppressing the defenses of the delinquent party which are pertinent to the unanswered interrogatories. See N.J.A.C. 12:235-5.3. Such noncompliance may also be the subject of an enforcement action under N.J.A.C. 12:235-5.12. Failure to move to dismiss the claim petition or suppress defenses, as appropriate, prior to the first trial date shall be deemed a waiver of a discovery demand.

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.

Amended by R.1999 d.285, effective August 16, 1999.

See: 31 N.J.R. 737(a), 31 N.J.R. 923(a), 31 N.J.R. 2393(a).

Deleted a former (e); recodified former (f) as (e); inserted a new (f); and added (i).

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.

(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.

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

(f) All formal hearings or applications shall be conducted in open court, except:

1. The Judge of Compensation to whom the case is assigned may deem the matter so delicate that the hearing of a party or witness in camera is warranted. When this occurs, a stenographic record shall be made.

2. The telephonic testimony of a witness may be permitted for good cause by the Judge of Compensation to whom the case is assigned and with the consent of the parties. When this occurs, a stenographic record shall be made.

3. Deposition testimony of a witness in lieu of an appearance other than that provided under N.J.A.C. 12:235-5.7 may be permitted by the Judge of Compensation to whom the case is assigned and with the consent of the parties.

4. Testimony of expert witnesses by video teleconferencing procedures may be permitted for good cause by the Judge of Compensation to whom the case is assigned. When this occurs, a stenographic record shall be made and all costs associated with the use of video teleconferencing shall be borne by the requesting party.

(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 expo-

tures, 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 or the Judge of Compensation 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, 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) When a party has unreasonably failed to present its case in a timely fashion, the Judge of Compensation may, upon 21 days notice, close the proofs as to that party.

(t) 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.

(u) 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.

(v) A judgment or an order shall be deemed entered as of the date the judgment or order is signed by the Judge.

(w) (Reserved)

(x) A party proposing the form of judgment or order may forward the original thereof to the Judge who heard the matter and shall serve a copy thereof on every other party together with a notice advising said party that unless they notify the Judge and the proponent of the judgment or order in writing of their specific objection thereto within 10 days after such service, the judgment or order may be signed in the Judge's discretion. If no such objection is timely made, the Judge may forthwith sign the judgment or order. If objection is made, the matter may be listed for hearing in the discretion of the Court.

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.

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

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

In (h), inserted reference to the Judge of Compensation; inserted new (s); recodified former (s) through (u) as (t) through (v); in (v), inserted references to an order and deleted reference that judgment be final; and added (x).

Amended by R.1999 d.285, effective August 16, 1999.

See: 31 N.J.R. 737(a), 31 N.J.R. 923(a), 31 N.J.R. 2393(a).

In (e), added 1; and rewrote (f).

Case Notes

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

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).

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).

Employer awarded counsel fee from workers' compensation carrier which denied coverage for compensable injury. *Kensler v. Mt. Hope Trucking Co., Inc.*, 97 N.J.A.R.2d (WCC) 60.

Employee compensated for work-related injury which aggravated preexisting pathology. *Drumme v. Highland Packaging Lab*, 97 N.J.A.R.2d (WCC) 57.

Application for overall permanent disability from work-related injury dismissed. *Navarrete v. Joyce Molding Company*, 97 N.J.A.R.2d (WCC) 47.

Employee compensated for employment exposure to asbestos. *Amorosa v. Schuller International*, 97 N.J.A.R.2d (WCC) 35.

Employee compensated for Lyme disease due to probable work exposure to infected ticks. *Bird v. Somerset Hills Country Club*, 97 N.J.A.R.2d (WCC) 26.

Employee compensated for partial permanent disability due to work-related injury. *Lopez v. H & H Swiss Screw Machine Prods*, 97 N.J.A.R.2d (WCC) 24.

Benefits denied for construction laborer's stroke not related to work effort. *Garvey v. Mellon Stewart, Inc.*, 97 N.J.A.R.2d (WCC) 19.

Employee compensated for occupational pulmonary disease due to exposure to irritants at work. *Carita v. Ingersoll Dresser Pump*, 97 N.J.A.R.2d (WCC) 17.

Employee indemnified for charges due to work-related injury. *Sweet v. Freehold Township Board of Education*, 97 N.J.A.R.2d (WCC) 15.

Temporary disability benefits for exaggerated complaints concerning work-related injury denied. *Williams v. Alan Health Care Service*, 97 N.J.A.R.2d (WCC) 11.

Dental technician entitled to temporary disability benefits due to compensable injury. *Jonas v. Amwell Dental Associates*, 97 N.J.A.R.2d (WCC) 8.

Claims dismissed for failure to prove casual relationship between employee's disease and occupational conditions. *Izanski v. Woodland Industries, T/A Sea Gull Lighting, and Atlas Building Systems*, 97 N.J.A.R.2d (WCC) 6.

Compensable pulmonary disease due to occupational exposure to dust and fumes. *Lanier v. Whitestone Products*, 97 N.J.A.R.2d (WCC) 1.

Video tape evidence of disabled employee's activities was inadmissible in employee's reopened workers' compensation case where tape was deemed surprise evidence and not relevant to limited issue of whether employee had incurred further measure of permanent disability with respect to his original injury. *Taylor v. North American Energy*, 96 N.J.A.R.2d (WCC) 224.

Employee failed to prove that she sustained pulmonary injury due to exposure to noxious fumes and odors in the workplace. *Chesek v. Amboy Generator Service, Inc.*, 96 N.J.A.R.2d (WCC) 222.

Employee who suffered stroke during surgery to repair work-related leg injury was entitled to compensation from employer for additional medical disabilities caused by stroke. *Whitman v. Madison Building Services*, 96 N.J.A.R.2d (WCC) 219.

Workers' compensation liability would not be apportioned between earlier and successor employers where employee provided no evidence of later traumatic event affecting injury. *Perry v. Anchor Glass*, 96 N.J.A.R.2d (WCC) 216.

Employee who failed to provide medical evidence that minor injuries sustained in industrial accident rose to level of disability was not entitled to compensation award. *Ventura v. Holland Manufacturing*, 96 N.J.A.R.2d (WCC) 212.

Injuries sustained by employee during physical altercation with co-worker at workplace was compensable where employees' assaultive conduct did not arise from personal vengeance stemming from contact between them outside of workplace. *Spiewack v. Stone Valley Dairies*, 96 N.J.A.R.2d (WCC) 211.

Employer was not liable to employee's widow for dependency benefits where widow failed to show that employee died while working during out-of-area assignment. *Provost v. Electronic Data Systems, Inc.*, 96 N.J.A.R.2d (WCC) 203.

School district employee who alleged that she suffered from psychiatric disability due to repeated exposure to a mentally stressful work environment was not entitled to award of workers' compensation benefits, absent evidence that her working conditions were objectively stressful and peculiar to her particular place of work. *Lattiere v. Lenape Regional High School*, 96 N.J.A.R.2d (WCC) 197.

Construction worker who sustained injuries in fall while intoxicated on the job was entitled to workers' compensation benefits where intoxication was not proximate cause of his injuries. *Stednick v. La Russo*, 96 N.J.A.R.2d (WCC) 193.

Store manager who sustained back injury while unloading truck was entitled to residual permanent partial disability benefits where medical evidence indicated that injury permanently limited her range of motion and her ability to continue her regular work. *Young v. Rite Aid Discount Pharmacy*, 96 N.J.A.R.2d (WCC) 189.

Employee who suffered elbow fracture when he fainted on his way to personal errand during lunch break was not entitled to award of workers' compensation benefits; despite his claim that he fainted due to lack of air conditioning at his work station, employee presented no evidence of causal relationship between workplace and his injuries. *Fodge v. S.S. Adams*, 96 N.J.A.R.2d (WCC) 187.

Employer was responsible for employee's hip replacement surgery where industrial fall exacerbated pre-accident, disease-related deterioration of hip and necessitated surgery. *Tabel v. Ship Inn*, 96 N.J.A.R.2d (WCC) 183.

Disabled public employee would receive continuing temporary disability benefits where injuries sustained in assault by co-worker continued to block meaningful employment ability. *Dolan v. City of East Orange*, 96 N.J.A.R.2d (WCC) 179.

Employee was not entitled to her examining physician's recommendation of higher orthopedic award where recommendation was based upon employee's exaggerated complaints rather than on objective medical evidence. *Nobilio v. Carriage House Manor*, 96 N.J.A.R.2d (WCC) 173.

Construction manager who suffered stroke two months after he sustained numerous compensable injuries in fall through floor at job site would be required to supply objective medical evidence proving causal relationship between fall and stroke in order to receive compensation for stroke. *La Rochelle v. Rank Ahnert, Inc.*, 96 N.J.A.R.2d (WCC) 166.

Employer was liable for medical fees and temporary total disability benefits for cashier who suffered work-related back injury which caused her to be temporarily and totally disabled. *Regan v. Home Depot*, 96 N.J.A.R.2d (WCC) 162.

Employee was not entitled to permanent disability benefits for heart attack where he failed to show that heart attack was result of excessive work-related stress and strain. *Vesey v. East Coast Warehouse & Distribution, et al.*, 96 N.J.A.R.2d (WCC) 159.

Stevedore's long exposure to airborne irritants and chemicals supported his claim for permanent partial disability benefits. *DiBari v. Sea-Land Services et al.*, 96 N.J.A.R.2d (WCC) 142.

Counselor who suffered back injury when patient struck him with chair as he attempted to break up fight was entitled to award of permanent partial disability benefits where medical evidence indicated that injury materially impaired and restricted counselor's everyday activities both in and out of workplace. *Cronin v. New Brunswick Counseling Center*, 96 N.J.A.R.2d (WCC) 139.

Employee's heart attacks were compensable work-related injuries where employee demonstrated that work effort and strain were substantially in excess of her normal daily living, and in reasonable medical probability caused cardiovascular injury. *Vanderveer v. Personal Products*, 96 N.J.A.R.2d (WCC) 132.

Employee's work-related loss of leg between knee and ankle was compensable as loss of "foot." *Hartten v. Stilo Paving Co.*, 96 N.J.A.R.2d (WCC) 124.

Summer work program participant who slipped and fell at job site was not entitled to workers' compensation benefits; worker offered no evidence to support her apparently frivolous claim. *Paige v. County of Essex*, 96 N.J.A.R.2d (WCC) 119.

School crossing guard who sustained severe injuries when she was struck by automobile was entitled to permanent and total disability benefits. *Dailey v. Edison Township*, 96 N.J.A.R.2d (WCC) 113.

Farm worker injured in attempted robbery of residence he occupied on farm owner's property was entitled to disability benefits if owner and worker derived mutual benefit from living arrangement. *Silva-Escobedo v. Columbia Fruit Farms*, 96 N.J.A.R.2d (WCC) 112.

Supervisor who injured his knee while slap-boxing and attempting to hold employee in headlock was not entitled to workers' compensation benefits where supervisor instigated "horseplay." *Adams v. Bally's Park Place*, 96 N.J.A.R.2d (WCC) 109.

Worker who was not rendered unemployable in his field of work was not totally disabled. *Carpenter v. Sears Roebuck & Company*, 96 N.J.A.R.2d (WCC) 99.

Workers' compensation carrier was not entitled to reimbursement of attorney fees and expert witness fees from third party award. *Kuhnel v. CNA Insurance Companies*, 96 N.J.A.R.2d (WCC) 94.

Employer did not establish that worker's cigarette smoking contributed to pulmonary disease caused by occupational exposure to asbestos and other irritants. *Mareenchick v. Shell Oil Co.*, 96 N.J.A.R.2d (WCC) 88.

Statutory notice requirement was met where employer was timely notified of worker's accident and authorized medical provider was notified of additional injury within 90 days. *Gonzalez v. Raritan Periodic Sales*, 96 N.J.A.R.2d (WCC) 85.

Surgery was not authorized where basic thesis of physician's unique diagnostic process and surgical technique for post-traumatic perilymph fistula lacked solid scientific basis. *Ries v. Langer Transportation Corp.*, 96 N.J.A.R.2d (WCC) 80.

Worker's cigarette smoking was major factor that contributed 50 percent to his total permanent occupational pulmonary disability. *Rhodes v. Elk Transportation & Warehouse*, 96 N.J.A.R.2d (WCC) 76.

Petitioner's ownership and operation of small pizzeria did not disprove permanent partial disability from back injuries. *Ciambrano v. Amerada Hess*, 96 N.J.A.R.2d (WCC) 72.

Percentage of permanent disability increased beyond that assessed following first employment-related accident to right knee after second accident involving same knee. *Roberts v. Cosmair, Inc.*, 96 N.J.A.R.2d (WCC) 68.

Evidence was insufficient to support workers' compensation claim of groundskeeper based on contraction of Lyme disease from tick bite where no specific time or date of bite was presented. *Shepperd v. R & M Hanson*, 96 N.J.A.R.2d (WCC) 63.

Occupational exposure to dust and dirt at sewage treatment plant, rather than cigarette smoking, was material cause of worker's pulmonary disability. *Tutt v. Passaic Valley Sewage Commission*, 96 N.J.A.R.2d (WCC) 55.

Truck driver was permanently totally disabled by shoulder and wrist injuries and by depression resulting from two work-related accidents which occurred on same day. *Stephens v. Windsor Management*, 96 N.J.A.R.2d (WCC) 50.

Occupational exposure to dust and fumes materially contributed to permanent partial disability due to sinusitis condition. *LaPointe v. Automatic Switch Company*, 96 N.J.A.R.2d (WCC) 48.

Seven percent pre-existing disability credit was applied for tear in worker's anterior cruciate ligament that predated work-related meniscus damage. *Piepszak v. City of Trenton*, 96 N.J.A.R.2d (WCC) 42.

Exertion at work was not material contributing cause of worker's fatal heart attack where autopsy revealed that worker suffered from severe coronary artery disease. *Jones v. New Jersey Turnpike Authority*, 96 N.J.A.R.2d (WCC) 38.

Injuries sustained by house painter in fall were not covered by workers' compensation portion of homeowner's policy, as painter was independent contractor and not home owner's employee. *Kain v. Shivers*, 96 N.J.A.R.2d (WCC) 35.

Partial permanent disability award denied where employee failed to show disability restricted body movement. *Johnson v. United Parcel Service*, 96 N.J.A.R.2d (WCC) 33.

Additional back surgery not warranted absent sufficient evidence that less drastic treatment methods may be appropriate. *Gero v. Olsen and Lawson, Inc.*, 96 N.J.A.R.2d (WCC) 29.

Evidence of physical and psychological injuries arising from compensable back injury supported employee's claim for total permanent disability benefits. *Mays v. Garlock Bearings, Inc.*, 96 N.J.A.R.2d (WCC) 26.

Unbroken chain of causation supports employee's temporary disability benefits claim after second fall while out of work. *Isaak v. Perimeter Insulation, Inc.*, 96 N.J.A.R.2d (WCC) 24.

Dependents' failure to show that cash advances made to them by decedent were more than gifts precludes dependency claim. *Scheuerman v. Jersey Shore Medical Center*, 96 N.J.A.R.2d (WCC) 22.

Union officer not employee of union for workers' compensation purposes. *Sines v. E. I. DuPont*, 96 N.J.A.R.2d (WCC) 20.

Security guard entitled to award of partial disability benefits for psychiatric disability caused by harassment on the job. *Curcio v. Continental Corp.*, 96 N.J.A.R.2d (WCC) 18.

Workers' compensation claim denied when claimant's cardiac problems not proven to be result of work-related conditions. *Reynolds v. Home Depot*, 96 N.J.A.R.2d (WCC) 17.

Workers' compensation benefits increased where landscaper's work-related leg and right side injuries worsened. *Runge v. New Jersey Highway Authority*, 96 N.J.A.R.2d (WCC) 10.

Bookstore worker granted only 20 percent permanent disability when complaints of pain radiating into right foot not supported by medical evidence. *Gigliotti v. Barnes & Noble*, 96 N.J.A.R.2d (WCC) 7.

Self-insured employer was required to reimburse PIP insurance carrier for benefits paid bloodmobile worker injured in automobile accident while traveling between job sites. *Brown v. American Red Cross*, 95 N.J.A.R.2d (WCC) 181.

Exposure to ticks while inspecting building during course of employment did not warrant disability rating for Lyme's disease. *Smart v. Asbersite*, 95 N.J.A.R.2d (WCC) 179.

Contusion of right kneecap in fall during course of employment as patient trainee was too minor to warrant disability rating. *Carpenter v. Yockey Enterprises*, 95 N.J.A.R.2d (WCC) 177.

Injuries to back and right arm in fall over stool during course of employment warranted 12 ½ percent partial/total permanent orthopedic disability. *Gathers v. PVC Container Corp.*, 95 N.J.A.R.2d (WCC) 173.

Lumbar injury in slip and fall while responding to emergency as hotel maintenance man warranted permanent partial disability. *Saleh v. Inn America Hospitality*, 95 N.J.A.R.2d (WCC) 169.

Burns received by waitress while attempting to burn off soiled thread from restaurant uniform arose out of and in course of employment. *Somma v. Crab's Claw Inn*, 95 N.J.A.R.2d (WCC) 167.

Injuries from slip and fall in employer's parking lot at work warranted 15 percent partial/total neurological and psychiatric disability. *Nobilio v. Carriage House*, 95 N.J.A.R.2d (WCC) 163.

Orthopedic and psychiatric conditions resulted from chest trauma to corrections officer during jail fight and warranted permanent total disability rating. *Paylor v. County of Hudson*, 95 N.J.A.R.2d (WCC) 160.

Injury to back while bending supported award for temporary disability and medical treatment, but did not support award for disc-related surgery. *Ciccolello v. Pathmark Supermarkets*, 95 N.J.A.R.2d (WCC) 155.

Back injury during course of employment was cause of overlapping orthopedic and neurological impairments warranting permanent partial disability. *Blanco v. Urethane Roofers*, 95 N.J.A.R.2d (WCC) 151.

Chiropractic treatment was not an intervening cause that broke chain of causation between work of police officer and surgically treated back injury. *Alston v. East Orange*, 95 N.J.A.R.2d (WCC) 146.

Alleged injury sustained in altercation with police officer while engaged in groundskeeping duties were not work related and were not compensable. *McClain v. City of Newark*, 95 N.J.A.R.2d (WCC) 144.

Teacher's head injury when struck by falling object in classroom caused disabling sleep disorder for which total and permanent disability was warranted. *Ferrara v. Manchester Regional High*, 95 N.J.A.R.2d (WCC) 137.

Injury while picking up a ledger at work caused persistent and debilitating back problems and warranted permanent and total disability. *Warrelmann v. Boveri*, 95 N.J.A.R.2d (WCC) 133.

Proceedings in bankruptcy against employer did not stay administrative proceedings against state uninsured fund for workers' compensation benefits. *Zentz v. St. Konstantinos, Inc.*, 95 N.J.A.R.2d (WCC) 132.

Stroke suffered by employee was not a basis for obtaining an occupational disability when no medical evidence established employment as causative factor. *Bowe v. Pettit*, 95 N.J.A.R.2d (WCC) 130.

Expert testimony was insufficient to warrant occupational disability award when employee voluntarily removed himself from work place, received a work pension, age-related social security benefits and gave every appearance of being in good health. *Hutchinson v. United Airlines*, 95 N.J.A.R.2d (WCC) 128.

Injury to clerk in family store was a compensable occupational injury notwithstanding earning of wages. *Loveatz v. Hilltop*, 95 N.J.A.R.2d (WCC) 127.

Injuries sustained by bartender when stabbed by patron arose out of personal animosity and were not compensable. *Horace v. Stokes*, 95 N.J.A.R.2d (WCC) 125.

More creditable testimony of employer's expert precluded employee's compensable disability claim arising from work accident. *Thames v. Laid Law Transit*, 95 N.J.A.R.2d (WCC) 122.

Wage reconstruction was not required absent proof that employee would have been promoted, with a pay raise, and worked overtime but for injury. *Patton v. Holiday Skating*, 95 N.J.A.R.2d (WCC) 118.

Exposure to asbestos and other irritants during employment as machinist and dyemaker materially contributed to development of obstructive and restrictive pulmonary disease. *Drozdz v. Harris Corporation*, 95 N.J.A.R.2d (WCC) 112.

Agreement by employee to forego workers' compensation payment while continuing to receive state disability payments was in accordance with state law and was not prejudicial. *Mahoney v. Marlboro Township*, 95 N.J.A.R.2d (WCC) 109.

Second accident net substantially, but only temporarily, aggravated disability from first accident was not a basis for obtaining additional benefits until original disability returned. *Caldwell v. Millville Hospital*, 95 N.J.A.R.2d (WCC) 100.

Severe burns to right foot from splash and spill of molten aluminum while operating smelting furnace warranted a 35 percent permanent partial total disability of foot for orthopedic residuals. *Batie v. Shiel-dalloy*, 95 N.J.A.R.2d (WCC) 95.

Exposure to dust and mist while grinding quartz in manufacture of eyeglasses was not a basis for obtaining occupational pulmonary disability benefits absent causative proof. *Schultz v. Esco Products*, 95 N.J.A.R.2d (WCC) 93.

Employer was entitled to a reduction in workers' compensation benefits on basis of employee's receipt of Social Security disability benefits for herself and her auxiliary. *Smith v. La Roche*, 95 N.J.A.R.2d (WCC) 89.

Nurse's physical complaints subsequent to disability award for herniated disk were purely subjective and, absent supporting objective medical testimony, were insufficient to establish an increase in disability. *Husar v. Riverview Medical*, 95 N.J.A.R.2d (WCC) 87.

Right of control made injured passenger in pick-up truck employee of landscaping service for workers' compensation purposes. *Royal Insurance v. Pohlman*, 95 N.J.A.R.2d (WCC) 83.

Injury sustained by cook when he fell in parking lot outside restaurant while bringing dirty clothes to car were sustained in course of employment. *Zucker v. Marty's Famous*, 95 N.J.A.R.2d (WCC) 79.

Exposures to chemical cleansers and glue during employment worsened preexisting pulmonary disability and warranted a 50 percent

partial total disability. *Monroe v. ISS Building Services*, 95 N.J.A.R.2d (WCC) 77.

Conditions encountered by insurance manager at work were of an orthopedic, pulmonary, cardiovascular, and psychiatric nature and warranted total disability award. *Casey v. Blue Cross*, 95 N.J.A.R.2d (WCC) 71.

Employer at time of traumatic back injury was solely responsible for permanent disability and need for medical treatment. *Reyes v. Rudco*, 95 N.J.A.R.2d (WCC) 67.

Stab wounds received by bartender while acting on behalf of her employer to prevent injury to business invitee were compensable. *Schurer v. Library II*, 95 N.J.A.R.2d (WCC) 65.

Treatment at hospital for foot was not for a work-related injury, but was for a nonwork diabetic condition and was not compensable. *Guastaferrero v. Owens Brockway*, 95 N.J.A.R.2d (WCC) 62.

Employee exposed to fumes and dust in work as a millwright was not entitled to an award for partial total pulmonary disability, but was entitled to a 5 percent disability award for vertigo. *Pinto v. Englehard Metals*, 95 N.J.A.R.2d (WCC) 57.

Medical reports so diminished employee's credibility as to preclude award of disability benefits for slip and fall in course of employment. *Kelly v. Johnson & Johnson*, 95 N.J.A.R.2d (WCC) 54.

Chronic obstructive pulmonary disease, being at least a significant condition contributing to employee's death, was a proper basis on which to award dependency benefits to employee's wife and child. *Remboske v. Homasote*, 95 N.J.A.R.2d (WCC) 48.

Increase in payments for foot disability that was recurring because of walking and standing was not warranted. *Grahl v. Kaiser*, 95 N.J.A.R.2d (WCC) 46.

Causal relationship between welding work and alleged pulmonary disabilities from chemicals was not established. *Martin v. DK Tool & Die*, 95 N.J.A.R.2d (WCC) 41.

Carpenter with his own tools, equipment, and vehicles was nevertheless an employee of contractor for unemployment and temporary disability purposes. *Anthill Construction v. Department of Labor*, 95 N.J.A.R.2d (LBR) 36.

Rheumatoid arthritis and psychiatric sequelae arising from work related trauma were sufficient to cause total disability. *Bobo v. Pater-son Board*, 95 N.J.A.R.2d (WCC) 34.

Injury due to work-related accident was not compensable absent evidence as to its occurrence. *Averos v. GJ Chemical*, 95 N.J.A.R.2d (WCC) 33.

Lifting by baggage handler did not aggravate prior disability for lumbosacral strain. *Owen v. Continental*, 95 N.J.A.R.2d (WCC) 30.

Individuals soliciting mortgages from mortgage banker were not independent contractors, but employees of banker for unemployment and temporary disability purposes during period in question. *Galaxy Mortgage v. Department of Labor*, 95 N.J.A.R.2d (LBR) 27.

Work-related injury to teacher when struck by falling door warranted partial/total disability award. *Wilson v. Plainfield Board*, 95 N.J.A.R.2d (WCC) 27.

Claim of permanent disability with respect to injuries to hand and back in incidents at work was not established. *Thomas v. Magic Rental*, 95 N.J.A.R.2d (WCC) 25.

Right of estate to proceed to proof hearing upon claimant's death for reasons unrelated to disability. *Montrose v. Columbus Hospital*, 95 N.J.A.R.2d (WCC) 24.

Disk injury was compensable notwithstanding three years between work accident and surgeries. *Quinn v. Coca Cola*, 95 N.J.A.R.2d (WCC) 21.

Previous foot fracture did not preclude disability for subsequent amputation of foot. *Rice v. Modern Disposal*, 95 N.J.A.R.2d (WCC) 18.

Truck driver serving interests of employer at time of disability was employee entitled to compensation. *Fulling v. Crown*, 95 N.J.A.R.2d (WCC) 14.

Individual was not an independent contractor, but was an employee for unemployment compensation purposes when no indicia of an independent business was present. *LBK Computer v. Department of Labor*, 95 N.J.A.R.2d (LBR) 13.

Exposure to Bromine during course of employment warranted partial total disability for anxiety stress disorder. *Wegrzynek v. Exxon Chemical*, 95 N.J.A.R.2d (WCC) 12.

Transcriptionists retained by medical transcription service to transcribe and type information from recording tapes in their homes were not independent contractors, but employees of transcription service for unemployment insurance purposes. *Transcriptions Ltd. v. Department of Labor*, 95 N.J.A.R.2d (LBR) 9.

Sheetrockers and tapers performing drywall services were employees of subcontractor for unemployment insurance purposes. *Wayne Construction v. Department of Labor*, 95 N.J.A.R.2d (LBR) 7.

First employer's insurer remained liable absent aggravation of work-related injury in subsequent employment. *Heathcote v. Cape May*, 95 N.J.A.R.2d (WCC) 6.

Subsequent employers not liable for incapacity due to injury and prior employment. *Cook v. Imperial*, 95 N.J.A.R.2d (WCC) 2.

Failure to rehire employee after returning from vacation was not retaliatory as due to filing workers' compensation claim against employer. *Milleman v. Mid-Atlantic Mechanical*, 95 N.J.A.R.2d (LBR) 1.

No retaliatory discharge of employee who filed workers' compensation claim. *Milleman v. Mid-Atlantic Mechanical, Inc.*, 95 N.J.A.R.2d (LBR) 1.

Employee injured in employer's parking lot entitled to recovery; keys failed to open office. *D'Ambra v. Avco Financial Services*, 94 N.J.A.R.2d (WCC) 249.

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. *Gorrin v. Kullman Industries*, 94 N.J.A.R.2d (WCC) 98.

Award for partial/total permanent disability was appropriate. *Allgood 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.

Modification of partial permanent rating not justified in absence of medical evidence demonstrating an increased disability. *Williams v. AT & T Technologies*, 93 N.J.A.R.2d (WCC) 130.

Separate back injuries while lifting bundles of newspapers at work justified partial permanent disability rating. *Smith v. Greater Media*, 93 N.J.A.R.2d (WCC) 128.

Physical pain and depression as a result of slip and fall at work justified total and permanent disability rating. *Ferrante v. CIT Group*, 93 N.J.A.R.2d (WCC) 117.

Homeowners were not liable for disability claim absent evidence of an employment relationship with injured carpenter. *Moore v. Hetrick*, 93 N.J.A.R.2d (WCC) 113.

Inability to operate foot pedal machinery justified permanent partial disability rating following ankle fracture in work-related accident. *Stopa v. Chanel*, 93 N.J.A.R.2d (WCC) 112.

Shoulder pain preventing employee from doing previous work justified permanent disability rating. *Juliano v. United Parcel*, 93 N.J.A.R.2d (WCC) 109.

Refining and reclaiming precious metals lead to permanent disability from asbestosis as a result of job. *Caggiano v. Engelhard*, 93 N.J.A.R.2d (WCC) 106.

Scars resulting from work-related burns justified partial permanent disability rating. *Holzheimer v. Bayonne*, 93 N.J.A.R.2d (WCC) 103.

Increased disability to back over and above accumulative prior awards was not shown. *Slappy v. Newark*, 93 N.J.A.R.2d (WCC) 100.

Objective medical evidence established a compensable partial permanent disability equivocal to three work accidents. *Mintz v. Busch*, 93 N.J.A.R.2d (WCC) 98.

Firemen earned no more than a 7.5 percent disability for chronic bronchitis. *Toomey v. Hoboken*, 93 N.J.A.R.2d (WCC) 94.

Employee failed to sustain burden of proof on issue of causation with respect to cut on forehead at work. *Levine v. Mueller*, 93 N.J.A.R.2d (WCC) 93.

Results of range-of-motion tests and functional restrictions established partial total permanent disability. *Laird v. Sambol*, 93 N.J.A.R.2d (WCC) 88.

Preexisting personality disorder precluded claim for psychiatric disability arising from incident at work. *Allen v. Children's Home Society*, 93 N.J.A.R.2d (WCC) 85.

Idiopathic event causing back injury was not connected to employment. *Field v. Clayton*, 93 N.J.A.R.2d (WCC) 84.

Worker's chronic back pain entitled him to permanent partial disability benefits. *Baptista v. Witco Corporation*, 93 N.J.A.R.2d (WCC) 78.

Worker was not entitled to increase in permanent partial disability benefits. *Napolitano v. Molecu Wire Corporation*, 93 N.J.A.R.2d (WCC) 76.

Worker's increased disability did not merit increase in compensation award. *Stefanick v. Johns-Manville Products Corp.*, 93 N.J.A.R.2d (WCC) 75.

Worker was entitled to award of permanent total disability benefits. *Shaw v. Long Branch Board of Education*, 93 N.J.A.R.2d (WCC) 72.

Worker injured off employer's premises was not entitled to award of compensation benefits. *Geres v. St. Peter's Medical Center*, 93 N.J.A.R.2d (WCC) 70.

Former employer was responsible for costs of worker's medical treatment. *Metros v. General Motors Corp., Hyatt Bearings Division*, 93 N.J.A.R.2d (WCC) 68.

Injury on coffee break in adjacent trucking company's yard did not arise out of employment. *Berkery v. Freightways*, 93 N.J.A.R.2d (WCC) 60.

Poor state of health entitled wife separated from worker at time of death to dependency benefits. *Woolcott v. Roma Food*, 93 N.J.A.R.2d (WCC) 58.

Fall by visiting home health nurse rated a 22 percent partial disability. *Backof v. Medical Center*, 93 N.J.A.R.2d (WCC) 56.

Surgeries performed following multiple head and facial injuries were a reasonable, medical necessity. *Byrd v. Off The Road Tire*, 93 N.J.A.R.2d (WCC) 54.

Back injury at work was directly related to next day's hospitalization for ruptured disk. *Hersh v. Hersh & Sherman*, 93 N.J.A.R.2d (WCC) 51.

Permanent partial disability was not established without objective medical evidence showing more than only some degenerative changes to back. *Morris v. K-Mart*, 93 N.J.A.R.2d (WCC) 48.

Causal relationship between colon cancer and long asbestos exposure warranted partial total disability award. *Rosamilia v. Essex*, 93 N.J.A.R.2d (WCC) 42.

Significant injuries to face, neck and back in employee parking lot warranted permanent disability award. *Zablocki v. Maas*, 93 N.J.A.R.2d (WCC) 38.

Expenses of psychiatric treatment following suicide attempt resulting from workplace injury were compensable. *Ellison v. Concurrent Computers*, 93 N.J.A.R.2d (WCC) 34.

Temporary disability payments were appropriate for school psychologist injured when bookcase hit head. *Sweet v. Jackson Board of Education*, 93 N.J.A.R.2d (WCC) 27.

Permanent disfigurement and neurosensory changes warranted partial permanent disability award. *Goode v. Herculite*, 93 N.J.A.R.2d (WCC) 25.

Back injury sustained by security officer warranted permanent, though limited disability award. *Currey v. Ocean County*, 93 N.J.A.R.2d (WCC) 22.

Stroke which commenced while mechanic was exerting extraordinary physical activity warranted total disability award. *Manning v. Engineering*, 93 N.J.A.R.2d (WCC) 18.

Long-term occupational exposure to asbestos warranted a partial, total award for pulmonary disability. *Stelzie v. Salvesen*, 93 N.J.A.R.2d (WCC) 15.

Control test established that carpenter working on house was not independent contractor, but was employee of homeowner. *Henry v. Parks*, 93 N.J.A.R.2d (WCC) 12.

Permanent partial disability resulted from occupational exposure to asbestos. *Russomanno v. Otis Elevator*, 93 N.J.A.R.2d (WCC) 9.

Gunshot wound to head at work resulted in total and permanent disability for which special adjustment benefits was due. *Lugo v. Franklin*, 93 N.J.A.R.2d (WCC) 2.

Worker suffered permanent partial disability as result of on-the-job accident. *Van Amburgh v. Rohil Estates*, 92 N.J.A.R.2d (WCC) 188.

Employer was not entitled to credit or offset for worker's pre-existing illness. *Woolsey v. New Jersey Bell Telephone Company*, 92 N.J.A.R.2d (WCC) 180.

Worker's widow was not entitled to dependency benefits. *Petit-Clair v. New Jersey Transit*, 92 N.J.A.R.2d (WCC) 176.

Worker was "employee" entitled to worker's compensation benefits. *Ojibe v. Thomas J. Reale, Inc.*, 92 N.J.A.R.2d (WCC) 173.

Worker was entitled to 25 percent permanent partial disability benefits for pulmonary injury. *Sutera v. City of Hoboken*, 92 N.J.A.R.2d (WCC) 170.

Employer failed to prove that termination of worker's benefits was warranted. *Kincade v. City of Wildwood*, 92 N.J.A.R.2d (WCC) 161.

Worker's unemployment was not compensable. *Cairns v. City of East Orange*, 92 N.J.A.R.2d (WCC) 155.

Worker's injury was causally related to employment. *Paduch v. Stony Brook Construction*, 92 N.J.A.R.2d (WCC) 152.

Mechanic was entitled to permanent partial disability benefits. *Landon v. Town & Country Motors*, 92 N.J.A.R.2d (WCC) 150.

Worker was entitled to slight increase in pulmonary disability benefits. *White v. Johns-Manville Sales Corporation*, 92 N.J.A.R.2d (WCC) 147.

Worker's settlement of his claim extinguished subsequent dependency claim. *Szikszai v. Simmons Precision*, 92 N.J.A.R.2d (WCC) 145.

Collision resulted in worker's permanent partial disability. *Reynolds v. Strober New Jersey Building Supply, Inc.*, 92 N.J.A.R.2d (WCC) 144.

Worker failed to prove that his injury occurred on the job. *McDuffie v. New Jersey Bell Telephone Company*, 92 N.J.A.R.2d (WCC) 142.

Worker was entitled to modification of previously settled claim. *Rolstad v. Tri-County Asphalt*, 92 N.J.A.R.2d (WCC) 138.

Independent contractor was not entitled to workers' compensation benefits. *Bozzolasco v. J.T. Ski Construction Co.*, 92 N.J.A.R.2d (WCC) 136.

Accidental fall rendered worker permanently and totally disabled. *Rivera v. Frank's Tree Service, Inc.*, 92 N.J.A.R.2d (WCC) 134.

Worker was entitled to increased benefits for psychiatric disability. *Woods v. CPC International, Inc./Best Foods*, 92 N.J.A.R.2d (WCC) 132.

Worker was entitled to modification of prior compensation award. *Cook v. Dollar Rent-A-Car*, 92 N.J.A.R.2d (WCC) 129.

Worker's deception did not disqualify him from receiving benefits. *Gomes v. Jose Natoli Construction Co.*, 92 N.J.A.R.2d (WCC) 127.

Worker was entitled to 17 ½ percent temporary partial disability benefits. *Yar v. Springfield Heating and Air Conditioning, Inc.*, 92 N.J.A.R.2d (WCC) 125.

Worker's disabilities were unrelated to occupational exposure. *Shannon v. State of New Jersey*, 92 N.J.A.R.2d (WCC) 120.

Worker suffered disability in trip and fall accident. *Wydner v. Caldor's*, 92 N.J.A.R.2d (WCC) 116.

Worker was entitled to have disabilities from single accident "stacked". *Kim v. Wolf*, 92 N.J.A.R.2d (WCC) 112.

Worker suffered disability due to knee injury. *Markle v. Newark Board of Education*, 92 N.J.A.R.2d (WCC) 110.

Worker's carpal tunnel syndrome was work related. *Mackenzie v. New Jersey Bell Telephone Co.*, 92 N.J.A.R.2d (WCC) 107.

Worker's preexisting condition was aggravated by workplace accident. *Gronikowski v. K-Mart Corporation*, 92 N.J.A.R.2d (WCC) 102.

Asbestos exposure caused worker's cancer. *Zematis v. Exxon Company*, 92 N.J.A.R.2d (WCC) 98.

Chemical worker's liver damage was work-related. *Dean v. Powell-Duffryn*, 92 N.J.A.R.2d (WCC) 97.

Chimney worker's permanent total disability was job-related. *Lackey v. Custodis-Ecodyne, Inc.*, 92 N.J.A.R.2d (WCC) 92.

Worker injured in a fall suffered permanent partial disability. Smith v. Borough of Stone Harbor, 92 N.J.A.R.2d (WCC) 87.

Worker's disability was caused by three separate accidents. Genovese v. McGraw-Hill, Inc., 92 N.J.A.R.2d (WCC) 83.

On-the-job exposure to chemical fumes caused worker's disability. Ostendorf v. Acme Markets, Inc., 92 N.J.A.R.2d (WCC) 81.

Bus driver was entitled to 30 percent permanent partial disability benefits. Nordaby v. Cape May County Holiday Tours, 92 N.J.A.R.2d (WCC) 76.

Worker failed to timely notify her employer of on-the-job accident. Michelotti v. CVI Services Group, 92 N.J.A.R.2d (WCC) 73.

Insurer would be assessed penalties for negligent denial of disability claim. Gianotti v. Teledyne Farris Engineering, 92 N.J.A.R.2d (WCC) 70.

Construction worker suffered permanent partial disability as result of accident. Beam v. Gianetti Excavating Co., Inc., 92 N.J.A.R.2d (WCC) 67.

Worker suffered permanent total disability due to repetitive injuries. Peterson v. Hermann Forwarding Co. 92 N.J.A.R.2d (WCC) 60.

Evidence offered by worker was insufficient to prove permanent partial disability. Crean v. Somerville Lumber Co. 92 N.J.A.R.2d (WCC) 57.

Worker's job-related chemical exposure was cause of fatal lung cancer. Lee v. Engelhard Industries. 92 N.J.A.R.2d (WCC) 56.

Worker failed to prove that he suffered from work-related asbestosis. Gile v. Jersey Central Power & Light Co. 92 N.J.A.R.2d (WCC) 53.

Worker's chronic illness was job related. Daye v. Ciba Geigy. 92 N.J.A.R.2d (WCC) 46.

Worker's lower back injury was permanently and totally disabling. Martinez v. Esselte Pendaflex. 92 N.J.A.R.2d (WCC) 42.

Worker failed to prove entitlement partial permanent disability benefits. Blackwell v. N.J. Transit Bus Operations, Inc. 92 N.J.A.R.2d (WCC) 41.

Worker suffered no pulmonary function disability. Weston v. Excelled Sheepskin & Leather Coat Corporation, 92 N.J.A.R.2d (WCC) 39.

Motor vehicle collision occurred in the course of "special mission". Martin v. Jersey Central Power & Light Company, 92 N.J.A.R.2d (WCC) 34.

Worker's employment aggravated underlying circulatory deficiency. Felix v. Elegant Lingerie, 92 N.J.A.R.2d (WCC) 32.

Workplace exposure to chemicals was material cause of worker's death. Corio v. American Cyanamid Company, 92 N.J.A.R.2d (WCC) 29.

Worker would be awarded permanent partial disability benefits. Magill v. C & K Construction Company, 92 N.J.A.R.2d (WCC) 25.

Worker would be awarded partial total disability benefits. Hobbs v. General Motors Corporation, 92 N.J.A.R.2d (WCC) 20.

Claimant failed to prove her entitlement to dependency benefits. Toms v. Dee Rose Furniture, Inc., 92 N.J.A.R.2d (WCC) 18.

Worker suffered no permanent disability as result of asbestos exposure. Boszczuk v. Johns-Manville. 92 N.J.A.R.2d (WCC) 17.

Worker's widow met burden of proving entitlement to benefits. Slack v. Johns-Manville Products Corporation. 92 N.J.A.R.2d (WCC) 13.

Worker suffered total disability as result of work place accident. Johnson v. Blue Crest Farms. 92 N.J.A.R.2d (WCC) 9.

Permanent injury to worker's leg would be offset by credit for prior condition. Flancer v. Dell Chrysler. 92 N.J.A.R.2d (WCC) 7.

Worker's compensable permanent disability had significantly worsened. Wilson v. South Jersey Port Corporation. 92 N.J.A.R.2d (WCC) 3.

Worker's psychiatric disability was not caused by work place accident. Ramon Rivera v. Egg Harbor Boat Company. 92 N.J.A.R.2d (WCC) 2.

Worker's gunshot wound did not "arise out of" his employment. Riley v. Potter-Hillman Ford. 92 N.J.A.R.2d (WCC) 1.

12:235-5.11 Orders approving settlement reached pursuant to N.J.S.A. 34:15-20

(a) A settlement agreement reached pursuant to N.J.S.A. 34:15-20 ("Section 20 settlement") may be approved by a judge of compensation when:

1. The petitioner is represented by counsel;
2. The case involves contested issues of jurisdiction, liability, causal relationship and/or dependency; and
3. The settlement is determined to be fair and just under the circumstances.

(b) A Section 20 settlement shall have the force and effect of a dismissal of the petitioner's claim and a complete surrender by the petitioner of any future right to compensation or benefits arising out of the injuries, conditions or exposures encompassed in the claim petition.

(c) A Section 20 settlement shall not be a waiver of future dependency claims in the event that the petitioner's death occurs as a result of the injuries, conditions or exposures encompassed by petitioner's claim petition unless:

1. The petitioner's dependents (as defined in N.J.S.A. 34:15-13) join in a waiver of future dependency benefits.
 - i. A parent, other than the petitioner, shall ordinarily represent the interests of petitioner's dependent minor children residing in that parent's household. The judge of compensation shall determine whether circumstances dictate that a representative other than a parent is necessary for any dependents for the purposes of a Section 20 proceeding.

(d) A petitioner's acceptance of a Section 20 settlement and a dependent's waiver of dependency benefits shall be given knowingly, intelligently and voluntarily. The judge of compensation shall explain on the record the preclusive effect the Section 20 settlement shall have on the petitioner's claim and on any future dependency claims, except as provided in (e) below.

(e) A petitioner's acceptance of a Section 20 settlement and any waiver of future dependency claims shall occur on the record of the Section 20 settlement proceeding unless the judge of compensation determines that sufficient circumstances preclude the appearance of the petitioner, a dependent and/or representative. In such case, an affidavit executed by such petitioner, dependent and/or representative shall be submitted. The affidavit must contain all of the facts to which the petitioner, dependent and/or representative would be required to testify if present in court.

(f) A Section 20 settlement shall encompass all injuries, conditions or exposures set forth in the petitioner's claim petition unless the parties amend the claim petition at the Section 20 settlement proceeding and specifically set forth any amendments to the claim petition on the settlement form. Where intended, the parties shall specifically set forth that the claim petition and settlement includes latent or unknown consequences of the alleged injuries, conditions or exposures.

New Rule, R.2000 d.128, effective March 20, 2000.
See: 31 N.J.R. 3916(a), 32 N.J.R. 1028(a).

12:235-5.12 Notice of appeal

Copies of a notice of appeal of any order or judgment shall be provided to the Division and the judge who decided the matter. See New Jersey Court Rule 2:5-1.

New Rule, R.1997 d.110, effective March 3, 1997.
See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).
New Rule, R.1999 d.285, effective August 16, 1999.
See: 31 N.J.R. 737(a), 31 N.J.R. 923(a), 31 N.J.R. 2393(a).
Former N.J.A.C. 12:235-5.11, Interpreters, recodified to N.J.A.C. 12:235-5.12.
Recodified from N.J.A.C. 12:235-5.11 by R.2000 d.128, effective March 20, 2000.
See: 31 N.J.R. 3916(a), 32 N.J.R. 1028(a).
Former N.J.A.C. 12:235-5.12, Interpreters, recodified to N.J.A.C. 12:235-5.13.

12:235-5.13 Interpreters

In any proceeding for which the services of an interpreter are required, a professional interpreter shall be utilized unless the Judge of Compensation, with the consent of the parties, determines otherwise. An interpreter shall be sworn or make affirmation or declaration to interpret accurately.

New Rule, R.1997 d.110, effective March 3, 1997.
See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).
Recodified from N.J.A.C. 12:235-5.11 by R.1999 d.285, effective August 16, 1999.
See: 31 N.J.R. 737(a), 31 N.J.R. 923(a), 31 N.J.R. 2393(a).
Former N.J.A.C. 12:235-5.12, Enforcement of orders, recodified to N.J.A.C. 12:235-5.13.
Recodified from N.J.A.C. 12:235-5.12 by R.2000 d.128, effective March 20, 2000.
See: 31 N.J.R. 3916(a), 32 N.J.R. 1028(a).
Former N.J.A.C. 12:235-5.13, Enforcement of orders, recodified to N.J.A.C. 12:235-5.14.

12:235-5.14 Enforcement of orders

(a) For unreasonable failure to comply with any written order of a Judge of Compensation or with any requirements of this subchapter, a Judge of Compensation may:

1. Dismiss or grant the motion or application for enforcement of order;
2. Suppress a defense or claim;
3. Exclude evidence;
4. Order costs or reasonable expenses, including attorney's fees, to be paid to the Second Injury Fund of the

State of New Jersey or an aggrieved representative or party; or

5. Take other appropriate case-related action.

(b) Before taking any action under N.J.A.C. 12:235-5.13, the Judge of Compensation shall hold a hearing on the appropriateness of the action and the reasonableness of any compensatory levy or sanction.

(c) Unless a stay is obtained from the appropriate appellate court or the Judge of Compensation, the failure to obey an order of the Judge of Compensation shall constitute grounds for compensatory sanctions against the attorney, the parties, or both. Filing of an appeal does not constitute an automatic stay of the judgment or order being appealed.

New Rule, R.1997 d.110, effective March 3, 1997.
See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).
Recodified from N.J.A.C. 12:235-5.12 by R.1999 d.285, effective August 16, 1999.
See: 31 N.J.R. 737(a), 31 N.J.R. 923(a), 31 N.J.R. 2393(a).
Recodified from N.J.A.C. 12:235-5.13 and amended by R.2000 d.128, effective March 20, 2000.
See: 31 N.J.R. 3916(a), 32 N.J.R. 1028(a).
In (b), substituted a reference to N.J.A.C. 12:235-5.13 for 12:235-5.12(a).

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

For workers' compensation lump-sum settlement to be effective, regulations required that terms of settlement be entered on prescribed form, that employee, employer and compensation judge sign form, and that employee be fully advised of all rights. *Kibble v. Weeks Dredging & Construction Co.*, 161 N.J.178, 735 A.2d 1142 (N.J. 1999).

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)**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 may be listed for trial on a day when the probable responsible respondent is regularly scheduled to appear.

(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.

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

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

In (b), substituted "may be listed" for "shall be listed"; and deleted (b)i, which provided that the judge be guided by a referenced case.

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 "ap-
pointment".

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 in accordance with the provisions of N.J.S.A. 34:15-95 and subject to (a) above.

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.

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 "in accordance with" for "subject to", amended N.J.S.A. reference, and inserted reference to (a).

Case Notes

Second Injury fund entitled to offset for Social Security benefits received by disabled worker's children. *McAllister v. Resorts International*, 96 N.J.A.R.2d (WCC) 1.

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.

(c) Respondent shall provide all evaluative reports to the Second Injury Fund at the first motion 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.

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).

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;
9. The purpose(s) for which commutation is being requested; and
10. 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.

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

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

Inserted new (a)9 and recodified former (a)9 as (a)10.

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 vicinity 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.

(d) No award for total disability or dependency benefits shall be commuted.

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.

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

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

Added (d).

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).

Employee was not transferred to lower paying job in retaliation for his filing workers' compensation claim where claim was filed after transfer and transfer was effected due to employee's poor attendance record. *Dorsa v. Smurfit Plastic Packaging, Inc.*, 96 N.J.A.R.2d (LBR) 72.

Workers' compensation discrimination claim filed beyond two-year statute of limitations was dismissed as untimely. *Miller v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 96 N.J.A.R.2d (LBR) 65.

Employee was properly terminated for poor work performance, and not in retaliation for filing workers' compensation claim. *Bernard v. Port Authority of New York and New Jersey*, 96 N.J.A.R.2d (LBR) 50.

Employee was reasonably discharged due to excessive absenteeism, and not in retaliation for filing workers' compensation claim. *Montgomery v. Bayview Convalescent Center*, 96 N.J.A.R.2d (LBR) 31.

Employee had no retaliatory discharge claim where he failed to show compensable injury existed at time of discharge and where employer had cause for discharge. *Saddler v. Wood Dining Services, Inc.*, 96 N.J.A.R.2d (LBR) 19.

Warehouseman dismissed in retaliation for filing workers' compensation claim would be reinstated. *Paterson v. Lincoln Storage Warehouses*, 96 N.J.A.R.2d (LBR) 11.

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;
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.

Petition for rulemaking.

See: 33 N.J.R. 135(a).

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.

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

(a) Subject to the discretion of the Commissioner of Labor, the Director/Chief Judge shall supervise the investigation and review of discrimination complaints filed under N.J.S.A. 34:15-39.1.

(b) No discrimination complaint shall be accepted by the Division of Workers' Compensation unless filed with the Director/Chief Judge within 180 days of the date of the last act of alleged discrimination.

(c) Upon receipt of a sworn complaint alleging a violation of N.J.S.A. 34:15-39.1 the Division of Workers' Compensation shall transmit a copy of the complaint to the named employer within 14 days thereafter.

(d) The named employer shall file an answer to the complaint, under oath, with the Division of Workers' Compensation within 14 days of the employer's receipt of the complaint.

(e) The named employer, for good cause, may request from the Division of Workers' Compensation an additional period of not more than 30 days to file an answer to the discrimination charge.

(f) Upon receipt of the employer's answer, the Division will transmit a copy of the answer to the complainant. The complainant will be allowed 14 days to respond to the answer in writing. At the end of the 14 day period the record will be closed unless the Division requests additional submissions from the parties or allows additional time, for good cause shown, for the parties to respond.

(g) The Director/Chief Judge shall review the submission of the parties and determine if the complaint should be affirmed, dismissed or determined to be a contested case and forwarded to the Office of Administrative Law for hearing. The Director/Chief Judge shall render his or her decision within 90 days after the filing of a discrimination complaint or 30 days of the last evidentiary submission from the parties, whichever is later. If the complaint is affirmed, the decision will be transmitted to the Commissioner of Labor for imposition of penalties and such other relief authorized pursuant to N.J.S.A. 34:15-39.1 and 34:15-39.2.

(h) 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 Procedures 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 20 days from the date of the receipt of the Director's decision, by the party seeking the appeal.

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).

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

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

Rewrote (a) and (b); inserted new (c) through (g); recodified former (c) as (h); and in (h), amended time for requesting a formal hearing and inserted text "by the party seeking the appeal".

Petition for rulemaking.

See: 33 N.J.R. 135(a), 33 N.J.R. 331(a).

12:235-9.5 (Reserved)

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

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

Section was "Action by the commissioner".

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, telegram or by electronic transmission.

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.

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), inserted reference to electronic transmission.

12:235-10.2 Employer's second 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).

Stylistic changes.

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

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

12:235-11.1 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.

12:235-11.2 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/Chief Judge 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. As of January 1, 1999, the earned premium shall be defined as the portion of modified 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.

“Modified premium” means the earned premium after application of any experience modification and prior to the application of an approved managed care premium reduction, a premium reduction in consideration of the New Jersey Construction Classification Premium Adjustment Program, the expense constant, surcharges, premium discount, retrospective rating plans, or premium reductions for deductible coverages.

“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.

“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, retrospective rating plans or premium reductions for deductible coverages.

“Uninsured Employer’s 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.

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

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

Amended “Director” and “Standard premium”.

Amended by R.1998 d.575, effective December 7, 1998.

See: 30 N.J.R. 3374(a), 30 N.J.R. 4244(a).

In “Earned premium” added a second sentence; and inserted “Modified premium”.

12:235-11.3 Reporting compensation paid

(a) Report forms for the reporting 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.

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

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

12:235-11.4 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 Employer’s Fund, respectively, on each policyholder’s premium notice.

(b) The surcharge amounts shall be calculated by multiplying the surcharge rate by the standard premium. For quarters after December 31, 1998, the surcharge amounts shall be calculated by multiplying the surcharge by the modified 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.

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

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

Amended by R.1998 d.575, effective December 7, 1998.

See: 30 N.J.R. 3374(a), 30 N.J.R. 4244(a).

In (b), added a second sentence.

12:235-11.5 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.

12:235-11.6 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.

12:235-11.7 Earned premium notification

Until calendar year 1999, insurers are required to notify the Department of Banking and Insurance of the amount of standard earned premiums for the period of January 1 to December 31 of each calendar year by August 31 of the immediately following year. Starting with calendar year 1999 and every year thereafter, insurers are required to notify the Department of Banking and Insurance of the amount of modified premiums for the period of January 1 to December 31 of each calendar year by August 31 of the immediately following year. Such premium shall be used in the determination of the annual policyholder surcharge rate applicable during the next policy year.

Amended by R.1998 d.575, effective December 7, 1998.

See: 30 N.J.R. 3374(a), 30 N.J.R. 4244(a).

Added "Until calendar year 1999," at the beginning of the first sentence, and inserted a second sentence.

12:235-11.8 Forms

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

Office of the Controller
New Jersey Department of Labor
PO Box 078
Trenton, New Jersey 08625-0078

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

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

12:235-11.9 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 12. UNINSURED EMPLOYER'S FUND

Law Review and Journal Commentaries

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

12:235-12.1 Purpose; scope

(a) The Uninsured Employer's Fund (UEF) 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 UEF 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 UEF.

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.

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

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

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).

12:235-12.2 Filing notice of an uninsured claim; personal service; third-party joinder

(a) An injured worker or his or her attorney shall notify the UEF within 30 days after the worker or his or her attorney knew or should have known that the employer was uninsured, or receives confirmation of non-insurance from the Compensation Rating and Inspection Bureau that benefits may be sought.

(b) Petitioner's attorney shall contact the Compensation Rating and Inspection Bureau within 15 days 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 UEF.

(c) In order to secure reimbursement of a petitioner's temporary disability benefits from the Uninsured Employers Fund, the petitioner shall file a motion to join the UEF in an action brought by or against the uninsured employer.

1. Petitioner's attorney, or the petitioner shall file a motion to join the UEF. When filing a motion to join the UEF, the petitioner's attorney or petitioner shall attach a copy of the inquiry and response of the Compensation Rating and Inspection Bureau.

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

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

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

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

2. If respondent is unable to be served, petitioner's attorney shall make a motion with the Judge of Compensation for substituted service pursuant to Rules of Civil Practice. The motion shall be supported by convincing evidence that the petitioner has made all reasonable attempts to serve respondent.

(e) The UEF 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.

(f) In reviewing claims submitted to the Uninsured Employer's Fund for payment pursuant to N.J.S.A. 34:15-120.4, the Commissioner may consider the extent of delay in notification to the Uninsured Employer's Fund by the petitioner and/or his or her attorney from the time they knew or reasonably should have known the respondent employer was uninsured.

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.

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

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

Rewrote (a); inserted new (c); recodified former (c) and (d) as (d) and (e); in (d)2, substituted "Judge of Compensation" for "Director"; and added (f).

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).

12:235-12.3 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.

12:235-12.4 Medical bills; physician's examination

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

(b) The UEF may order an independent medical examination of a petitioner by a physician at any time when the UEF is involved or when it appears the UEF 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;
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 independent medical evaluation shall be paid by the UEF.

(d) If it appears that the petitioner may be entitled to benefits from the UEF, then the UEF 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 UEF shall be deemed to be unauthorized treatment, and costs for such treatment shall not be chargeable to the UEF.

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

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

12:235-12.5 Assignment of cases; schedules

(a) The Director shall sign the UEF 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.

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

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

12:235-12.6 Payments from the UEF

Payments from the UEF 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.

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

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

12:235-12.7 Attorney fees

(a) An attorney fee may be payable from the UEF to the petitioner's attorney when the petitioner is found eligible for UEF 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).
 Amended by R.1997 d.110, effective March 3, 1997.
 See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

SUBCHAPTER 13. ENFORCEMENT AND COLLECTION OF NON-INSURANCE PENALTIES

12:235-13.1 General

The Director/Chief Judge or his or her designee may, upon finding that an employer has failed for a period of not less than 10 consecutive days to make provision for payment of compensation as required by N.J.S.A. 34:15-71 and 34:15-72, and subsequent to notice and demand for proof of such provision pursuant to N.J.A.C. 12:235-13.2, impose upon that employer, in addition to all other penalties, fines or assessments provided for in the New Jersey Workers' Compensation Law (N.J.S.A. 34:15-7 et seq.) an assessment up to an amount of \$1,000 and when the period exceeds 20 days, an additional assessment of up to \$1,000 for each period of 10 days thereafter. All such assessments shall be collectible in a court of competent jurisdiction in a summary civil proceeding and shall be paid into the "Uninsured Employers Fund."

12:235-13.2 Notice and demand for proof of coverage

In the event the Division determines that a business entity is or may be operating as an employer in the State of New Jersey without the required workers' compensation coverage, the Division shall issue a notice, by regular and certified mail, to the business entity. Notice shall include a statement of the allegation, penalties to be assessed for such failure, a demand for proof of required coverage to be submitted within 20 calendar days and procedure for the business entity to request a hearing on the allegation.

12:235-13.3 Acceptable proofs

(a) In response to a notice issued pursuant to N.J.A.C. 12:235-13.2, acceptable preliminary proof of the required workers' compensation insurance coverage shall include a copy of a current certificate of insurance issued by a mutual association or stock company authorized to write on such risks in the State of New Jersey, a sworn affidavit by the agent of such mutual association or stock company stating the policy number(s) and the effective date(s) of coverage, documentation evidencing application for required coverage through the Compensation Rating and Inspection Bureau (CRIB), or a copy of the certificate of approval issued by the Commissioner of Insurance for self-insurance privilege under N.J.S.A. 34:15-77. Where a CRIB application is provided as proof of coverage, the Division shall issue a preliminary acceptance notice to the business entity with a copy to CRIB, requiring submittal by the business entity of a certificate of insurance within 60 calendar days from the date of the mailing of such notice.

(b) All proofs of coverage submitted in the form of insurance certificate or agent affidavit are subject to verification by the Division with the named mutual association or stock company. Proofs of coverage submitted in the form of certificates of self-insurance shall likewise be subject to verification with the Department of Insurance.

(c) Where proofs of coverage as submitted by the business entity are found to be invalid on their face or through the process of verification, a second notice shall be issued to the business entity stating such findings and the current amount of assessment to be imposed, and providing procedures for the business entity to request a hearing on the allegation within 20 calendar days following the date of the second notice.

(d) All notices prescribed hereunder shall be served by the Division by certified and regular mail and shall be deemed satisfactory if not returned as undeliverable.

12:235-13.4 Failure to respond

Where the business entity fails to respond to either the initial or second notice and demand for proof of coverage within the period allowed, the amount of assessment stated in the last notice issued to the business entity shall become the final administrative order with respect to the imposition of such penalties.

12:235-13.5 Hearings

(a) A hearing will be conducted by the Director/Chief Judge or designee if requested pursuant to N.J.A.C. 12:235-13.2.

(b) The employer shall have the opportunity to present any and all relevant evidence but the Director/Chief Judge or designee conducting the hearing shall not be bound by the Rules of Evidence.

(c) Penalties assessed against an employer will be dismissed upon a finding by a preponderance of the credible proof that the requirements of Article 5 and related sections of the Workers' Compensation Act were met as of the date of the issuance of the initial notice of violation.

(d) If, upon finding that the employer was in violation of N.J.S.A. 34:15-7 et seq., a portion or all of the administrative penalty assessed in the initial notice of violation may be abated by the Director/Chief Judge or designee based on the following factors:

1. Length of time the employer was without workers' compensation coverage;
2. An occurrence of a compensable injury while the employer was uninsured;
3. Past history of violations by the employer or an entity in which the violator was an owner, officer or principal shareholder;

4. Good faith of the employer;

5. Size of the employer's business; and

6. Any other material factors which the Director/Chief Judge or designee deems appropriate.

(e) If, as the result of a hearing, pursuant to this subchapter, an initial penalty amount is abated in part upon condition of timely payment, in whole or by installment, said employer shall make payment in strict accordance with the schedule of payments set forth by the Director/Chief Judge or designee. If the conditions of the penalty abatement order are not met, the abatement shall, upon further order of the Director/Chief Judge or designee, and without further hearing, be rescinded and the full amount of the initial assessment shall be due and owing.

(f) The Director/Chief Judge or designee shall issue a final administrative order within a reasonable time following the conclusion of the hearing.

12:235-13.6 Payments

(a) All penalties shall be paid in compliance with the final administrative order. Failure to pay such penalties when due shall result in a judgment being obtained in a court of competent jurisdiction.

(b) All sums shall be made payable to the "Uninsured Employers Fund" in the form of a certified check, money order or such other form authorized by the Director/Chief Judge or designee.

SUBCHAPTER 14. STANDARD FORMS

12:235-14.1 Listing of forms

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

1. Employee Claim Petition, WC 365;
2. Dependency Claim Petition, WC 366;
3. Application for Review or Modification of Formal Award, WC 368;
4. Notice of Motion for Temporary and/or Medical Disability Benefits, WC 101;
5. Respondent's Answer to Claim Petition, WC 367;
6. Respondent's Answer to Dependency Claim Petition, WC 171;
7. Answer to Application for Review or Modification of Formal Award, WC 369;
8. Answering Statement to Motion for Temporary and Medical Benefits, WC 102;

9. Standard Respondent's Interrogatories: Occupational Diseases, WC 22;

10. Standard Petitioner's Interrogatories: Occupational Diseases, WC 23;

11. Pre-Trial Memorandum, WC(DO) 31;

12. Order Approving Settlement WC(DO) 370;

13. No Insurance Case, WC(DO) 339;

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 Verified Petition (SCF-161);

18. Decision of Eligibility, WC-48;

19. Application for Commutation, WC(1)-60;

20. Decision of Dismissal, WC-47;

21. Discrimination Complaint SCF 4;

22. Employer's First Report of Accidental Injury of Occupational Illness, L&I 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, WC3;

27. Final Report of Accident, WC4;

28. Final Report of Accident, WC5;

29. Final Report of Accident, WC-6;

30. Substitution of Attorney, WC-10.

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

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

Amended form references throughout section; rewrote (a)10.

Amended by R.1998 d.152, effective March 16, 1998.

See: 30 N.J.R. 18(a), 30 N.J.R. 1047(b).

In (a)4, substituted "and/or Medical Disability" for "and Medical"; in (a)9, added "WC 22"; and in (a)10, added "WC 23".

Amended by R.1998 d.550, effective November 16, 1998.

See: 30 N.J.R. 3155(a), 30 N.J.R. 4055(a).

In (a), deleted "Application and" and inserted "(SCF-161);" in 17.

Amended by R.1998 d.576, effective December 7, 1998.

See: 30 N.J.R. 3588(a), 30 N.J.R. 4244(b).

In (a), added 30.

12:235-14.2 Sample forms

Samples of the standard forms listed in N.J.A.C. 12:235-14.1 follow:

OFFICE OF ADMINISTRATIVE LAW NOTE: The Division of Workers' Compensation submitted 29 sample forms as part of R.1997 d.110. These forms are not reproduced herein but may be inspected at:

Office of Administrative Law
Building 9
Quakerbridge Plaza, Quakerbridge Road
PO Box 049
Trenton, NJ 08625-0049

and

Department of Labor
Division of Workers' Compensation
Sixth Floor
John Fitch Plaza
PO Box 399
Trenton, NJ 08625-0399

Amended by R.1997 d.110, effective March 3, 1997.
See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).
Amended by R.1998 d.152, effective March 16, 1998.
See: 30 N.J.R. 18(a), 30 N.J.R. 1047(b).
Administrative correction.
See: 30 N.J.R. 1417(b).
Amended by R.1998 d.550, effective November 16, 1998.
See: 30 N.J.R. 3155(a), 30 N.J.R. 4055(a).
Updated the addresses.
Amended by R.2000 d.260, effective June 19, 2000.
See: 32 N.J.R. 1144(a), 32 N.J.R. 2245(a).