

9. 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 may be filed electronically or on paper 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. 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.

i. If the answer is filed on paper, it shall be filed with the office to which the claim is assigned. A copy of the answer shall be forwarded to the petitioner's attorney by first class mail, or its equivalent.

ii. If an answer is filed electronically with the Division and the petitioner's attorney is a duly authorized electronic filer with the Division, the Division shall cause the answer to be forwarded to the petitioner's attorney in electronic format which will constitute service under the rules.

iii. If an answer is filed electronically with the Division and the petitioner's attorney is not a duly authorized electronic filer with the Division, the respondent's attorney shall serve a copy of the answer on paper with the petitioner's attorney by first class mail, or its equivalent.

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. 12:235-3.14.

(c) Petitions and answers filed electronically shall be accepted by the Division in lieu of paper pleadings provided:

1. The filer is an attorney licensed in the State of New Jersey and duly authorized by the Division to file pleadings electronically.

2. The filer submits the pleading in the format approved by the Division.

3. The filer makes an identical paper copy of the electronically submitted pleading and obtains thereon a verification by oath, affirmation or certification of the petitioner or respondent, as applicable, as to the accuracy of the information set forth therein.

4. The filer shall retain, as an officer of the court, the duly verified pleading and shall make available to the Division and/or his or her adversary upon request.

5. Failure to maintain the paper copy of said pleadings and make it available within a reasonable time upon proper request shall constitute grounds for the revocation of the privilege of electronic filing in addition to whatever other sanction may be deemed appropriate under the law.

(d) Upon receipt of an electronically filed pleading, the Division shall send an electronic copy of same to the insurance carrier, third party administrator or designated legal representative of the respondent provided that the insurance carrier, third party administrator or designated legal representative has requested to be and has been approved by the Division to receive such pleadings. Notification of the electronic pleading to the electronic address of the approved recipient shall constitute valid service of process.

(e) Claim petitions filed electronically where the insurance carrier, third party administrator or designated legal representative is not approved to receive service of an electronic pleading shall be sent by the Division to the addressee specified in the claim petition, by regular mail together with a request for Acknowledgment of Service in accordance with N.J.S.A. 34:15-51 and 34:15-52. Answers shall likewise be submitted by regular mail in accordance with (b)2i above.

(f) Claim petitions will be assigned in the following priority order: the vicinage for the county where the petitioner resides; the vicinage for the county where the respondent is situated; or the vicinage for the county where the accident or exposure occurred.

(g) A copy of the claim petition shall be forwarded by the Division to the respondent either electronically for electronic filers, by regular mail, or by registered mail return receipt requested if served pursuant to N.J.S.A. 34:15-55.1. Where a motion for default has been filed, the petitioner must provide proof that the claim petition and motion for default have also been served personally on the respondent, its agents, and/or corporate officers as applicable, pursuant to R. 4:4-4 of the New Jersey Rules of Court.

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.

Amended by R.2002 d.340, effective October 21, 2002.

See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d).

Rewrote (a); in (b), substituted "may be filed electronically or on paper" for "shall be" in the introductory paragraph, rewrote 2 and amended the N.J.A.C. reference in 5; added (c) through (f).

Amended by R.2004 d.263, effective July 6, 2004.

See: 36 N.J.R. 1350(a), 36 N.J.R. 3294(a).

In (c), substituted "of" for "or" following "accuracy" in 3, inserted "and/" preceding "or" in 4; rewrote (f); added (g).

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.

12:235-3.2 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 and it is a claim petition filed on paper, then the notice of motion shall also be filed with the central office. Motions for temporary disability and/or medical benefits shall evidence that petitioner is currently temporarily totally disabled and/or in need of current medical treatment. Where only past periods of temporary total disability and/or medical expenses are claimed by petitioner, such issues should be presented at pretrial for resolution or trial and not by motion under this section.

(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. 12:235-3.14.

(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) For motions where it appears the only issue involved is which carrier or employer is liable to petitioner for the benefits sought, a judge of compensation may order one carrier or employer to pay benefits without prejudice and subject to an order of reimbursement if another party is later held liable for such benefits.

(i) 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.

(j) Every carrier and self-insured employer shall designate a contact person who is responsible for responding to issues concerning medical and temporary disability benefits where no claim petition has been filed or where a claim petition has not been answered. The full name, telephone number, address, e-mail address, and fax number of the contact person shall be submitted to the Division. Whenever any of this information about the contact person needs to be updated, such updated information shall be submitted to the Division. After an answer is filed with the Division, the attorney of record for the respondent shall act as the contact person in the case.

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".

Amended by R.2002 d.340, effective October 21, 2002.

See: 34 N.J.R. 2257(a), 34 N.J.R. 2549(a), 34 N.J.R. 3641(d).

Rewrote (a); in (c), amended the N.J.A.C. reference.

Amended by R.2004 d.263, effective July 6, 2004.

See: 36 N.J.R. 1350(a), 36 N.J.R. 3294(a).

Added a new (h); recodified former (h) as (i); added (j).

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.

12:235-3.3 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.

12:235-3.4 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.

12:235-3.5 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).

12:235-3.6 Discovery

(a) Interrogatories shall be allowed without motion in dependency 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.