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Sequence
Number: 10-15-19
Notice ID(s): 3023
File Date: 10/16/19

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission: Department of Labor and Workforce Development
Division: Bureau of Workers' Compensation
Contact Person: Troy Haley
Address: 220 French Landing Dr. 1-B, Nashville, TN 37243
Phone: 615-532-0179
Email: troy.haley@tn.gov

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) and require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact: Troy Haley
Address: 220 French Landing Dr. 1-B, Nashville, TN 37243
Phone: 615-532-0179
Email: troy.haley@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	TOSHA Hearing Room		
Address 2:	220 French Landing Drive, 1-A, Nashville, TN 37243		
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	12/17/19		
Hearing Time:	1:00 p.m.	<input checked="" type="checkbox"/> <u>X</u> CST/CDT	
		<input type="checkbox"/> EST/EDT	

Additional Hearing Information:

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Revision Type (check all that apply):

☒ Amendment
☐ New
☐ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0800-02-22	Workers' Compensation Appeals Board
Rule Number	Rule Title
0800-02-22-.01	Filing of Notice of Appeal
0800-02-22-.02	Record on Appeal
0800-02-22-.03	Miscellaneous
0800-02-22-.04	Motions
0800-02-22-.05	Appeal of an Interlocutory Order
0800-02-22-.06	Appeal of a Compensation Order
0800-02-22-.07	Briefs
0800-02-22-.08	Oral Argument
0800-02-22-.09	Costs on Appeal; Settlement During Appeal
0800-02-22-.10	Appeal of Workers' Compensation Cases Filed Against the State: Notice to Attorney General

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Amended Rules

Chapter 0800-02-22 Workers' Compensation Appeals Board

The present Rule 0800-02-22 Workers' Compensation Appeals Board is being amended by deleting the prior rule and replacing it with the following:

0800-02-22-.01 Filing of Notice of Appeal

- (1) Any party may appeal any order of a workers' compensation judge by filing a notice of appeal, on a form approved by the Bureau, with the clerk of the court of workers' compensation claims, in accordance with Chapter 0800-02-21. Pursuant to Tennessee Code Annotated section 50-6-217(a)(2), the notice of appeal must be filed:
 - (a) Within seven (7) business days of the date an interlocutory order was filed by the workers' compensation judge; or
 - (b) Within thirty (30) calendar days of the date a compensation order was filed by the workers' compensation judge.
- (2) The appealing party shall serve a copy of the notice of appeal upon the opposing party or parties by any means as set forth in Chapter 0800-02-21.
- (3) Any appeal in which the notice of appeal is not received by the clerk of the court of workers' compensation claims within the time provided by paragraph (1) shall be dismissed.
- (4) The appealing party is responsible for payment of a filing fee in an amount set by the administrator pursuant to Tennessee Code Annotated section 50-6-217(d)(2).
 - (a) Within ten (10) calendar days after the filing of a notice of appeal, payment must be received by check, money order, or credit card. Payments can be made in person at any Bureau office or by United States mail, hand-delivery, or other delivery service.

- (b) In the alternative, the appealing party may file an affidavit of indigency, on a form prescribed by the Bureau, seeking a waiver of the filing fee. The affidavit of indigency may be filed contemporaneously with the notice of appeal or must be filed within ten (10) calendar days thereafter. The appeals board will consider the affidavit of indigency and issue an order granting or denying the request for a waiver of the filing fee as soon thereafter as is practicable.
- (c) Failure to timely pay the filing fee or file the affidavit of indigency in accordance with this section may result in dismissal of the appeal.
- (5) Upon the filing of a notice of appeal, the court of workers' compensation claims no longer has jurisdiction over the case, absent a remand, until a decision is filed by the appeals board; except, after a notice of appeal has been filed, the court of workers' compensation claims retains jurisdiction to rule on certain motions in accordance with these rules or any applicable rule of the Tennessee Rules of Civil Procedure.

Authority: T.C.A. §§ 4-3-1409, 50-6-217, 50-6-225, 50-6-233, and 50-6-237.

0800-02-22-.02 Record on Appeal

- (1) The parties to an appeal have the responsibility to ensure a complete record on appeal. The record on appeal shall consist of: (1) all papers filed in the trial court except as hereafter provided; (2) exhibits; (3) a transcript or statement of the evidence, if any; (4) briefs filed before or after the filing of the notice of appeal; and (5) any other document(s) designated by a party and approved by the court of workers' compensation claims pertaining to the issues decided in that court and pertinent to an issue on appeal.
 - (a) The following papers filed in the court of workers' compensation claims are excluded from the record: (1) subpoenas or summonses for a party or witness unless admitted into evidence and pertinent to an issue on appeal; (2) papers relating to discovery unless admitted into evidence and pertinent to an issue on appeal; and (3) notices, motions, and orders relating thereto, unless pertinent to an issue decided by the court of workers' compensation claims.
 - (b) No paper shall be included in the record more than once.
- (2) Any dispute regarding the contents of a joint statement of the evidence submitted in lieu of a transcript or regarding whether the record accurately discloses what occurred in the court of workers' compensation claims shall be submitted to and settled by the court of workers' compensation claims. The party requesting correction or modification of the record shall file a motion with the appeals board requesting that the case be remanded to the court of workers' compensation claims for resolution of the dispute. If necessary, the appeals board may direct that a supplemental record be submitted to the appeals board.
- (3) All pleadings, forms, transcripts, depositions, briefs, motions, other writings, and all exhibits, shall be maintained by the Clerk of the Appeals Board during the pendency of the appeal.
- (4) After final determination of any case, the parties shall have one hundred eighty (180) days after entry of the decision on appeal to withdraw exhibits or depositions. The clerk may destroy or dispose of any exhibits or depositions not so withdrawn in accordance with the Records Disposition Authorization of the Bureau.

Authority: T.C.A. §§ 4-3-1409, 50-6-217, 50-6-225, and 50-6-233.

0800-02-22-.03 Miscellaneous

- (1) The appeals board may, in an effort to secure a just and speedy determination of matters on appeal and with the concurrence of all judges, decide an appeal by an abbreviated order or by memorandum opinion, whichever the appeals board deems appropriate, in cases that are not legally and/or factually novel or complex.
- (2) In any appeal pending before the appeals board, any party may be represented by a Tennessee licensed attorney in good standing. An attorney licensed outside of Tennessee may apply for admission pro hac vice in accordance with Tennessee Supreme Court Rule 19. Any party that is a natural person may represent himself or herself in any proceeding before the appeals board. Any corporation or other artificial person must be represented by counsel in all proceedings before the appeals board. Any substitution or withdrawal of any attorney shall comply with Chapter 0800-02-21.
- (3) Any brief, motion, or other writing submitted on behalf of a party to the appeals board must be signed by an attorney who has entered an appearance in the case for such party or by a self-represented individual in accordance with section 0800-02-22-.03(2). Any joint motion submitted to the appeals board involving a self-represented party must be signed by the self-represented party. An attorney may not sign an unrepresented party's name "by permission."
- (4) Attorneys and/or parties are prohibited from contacting any appeals board judge ex parte in any manner during the pendency of an appeal concerning or relating to the appeal. An appeal is pending from the date the notice of appeal is filed until the time a subsequent final order or judgment is entered in the case, or time for appeal of any subsequent final order or judgment has expired, whichever is later.
- (5) Any party seeking recusal of an appeals board judge shall do so as soon as practicable by written motion supported by an affidavit under oath or a declaration made under penalty of perjury on personal knowledge and by other appropriate materials. The motion shall state, with specificity, all factual and legal grounds supporting disqualification of the judge and shall affirmatively state that it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
 - (a) Upon the filing of a motion seeking recusal, the judge in question shall act promptly by written order and either grant or deny the motion.
 - (b) If the motion is denied, the judge shall state in the order the grounds upon which he or she denies the motion.
- (6) If substitution of a party is necessary due to death or other reason following the filing of the notice of appeal, a motion for substitution may be made by any party or by the successor or representative of any such deceased party. If a party entitled to appeal should die before filing a notice of appeal, a notice of appeal may be filed and served by the deceased party's personal representative or, if there is no such personal representative, by the deceased party's counsel of record. After the notice of appeal is filed, substitution shall be effected in accordance with this section.

Authority: T.C.A. §§ 4-3-1409, 50-6-217, 50-6-225, and 50-6-233.

0800-02-22-.04 Motions

- (1) Any motion seeking to extend any time limit during the pendency of an appeal must be filed prior to the expiration of the applicable time limit. The motion may be decided by one

appeals board judge. An order will be issued as soon as practicable after the motion is filed. The appeals board cannot extend the time for filing a notice of appeal. If a notice of appeal is not timely filed, the appeals board is without jurisdiction to review the case.

- (2) Any motion seeking to extend any time limit during the pendency of an appeal must show good cause in support of the motion sufficient to establish exceptional circumstances. The existence of good cause and/or exceptional circumstances shall be determined in the discretion of the appeals board.
- (3) With the exception of the filing of a notice of appeal, the appeals board may extend deadlines during the appeals process upon motion filed by a party or its own motion as provided in Tennessee Code Annotated section 50-6-217(d)(1).

Authority: T.C.A. §§ 4-3-1409, 50-6-217, 50-6-225, and 50-6-233.

0800-02-22-.05 Appeal of an Interlocutory Order

- (1) A party or parties may have a transcript of any hearing pertinent to the appeal of an interlocutory order prepared by a licensed court reporter and filed with the clerk of the court of workers' compensation claims within ten (10) business days of the filing of the notice of appeal. Alternatively, the parties may file a joint statement of the evidence within ten (10) business days of the filing of the notice of appeal. The joint statement of the evidence must be approved by the trial judge before the record is submitted to the appeals board.
- (2) The appellant shall file a brief with the clerk of the court of workers' compensation claims within ten (10) business days of the filing of a transcript or joint statement of the evidence. If no transcript or statement of the evidence is filed or if a dispute regarding a statement of the evidence or the contents of the record is submitted to the trial court, the appellant shall file a brief within ten (10) business days of the expiration of the time to file a transcript or statement of the evidence or within ten (10) business days of the date the trial court enters an order resolving any dispute concerning the contents of the record or a joint statement of the evidence, whichever is later. The appellee shall file a responsive brief with the clerk of the court of workers' compensation claims within ten (10) business days of the filing of the appellant's brief or the expiration of the time for the filing of the appellant's brief, whichever is earlier. No reply brief shall be filed unless the appellee raises an issue or issues on appeal not previously addressed in the appellant's brief. Under such circumstances, the appellant may file a reply brief within five (5) business days addressing only the issue or issues not previously addressed. If both parties appeal, each party shall file its brief as an appellant and as an appellee consistent with the above briefing schedule.
- (3) Briefs filed in support of an interlocutory appeal shall specify the issues presented for review and include legal argument in support thereof. All briefs shall include: (1) a statement summarizing the facts of the case from the evidence admitted in the trial court; (2) a statement of the case summarizing the trial court's disposition of the case; (3) a statement of the issue(s) presented for review on appeal; and (4) an argument, citing relevant statutes, case law, or other legal authority. The argument section is limited to a maximum of fifteen (15) pages unless otherwise directed by the appeals board. The brief shall include a table of contents, a table of authorities, and a certificate of service. All briefs shall be signed by the attorney of record or the self-represented party filing the brief.
- (4) The clerk of the workers' compensation appeals board shall docket the appeal upon receipt of the record from the clerk of the court of workers' compensation claims and send a docketing notice to all parties.

- (5) If the appeals board affirms an interlocutory order awarding temporary disability or medical benefits, the employer shall begin making payments of benefits within five (5) business days from the date the decision affirming the interlocutory order is filed by the appeals board. Failure to begin benefit payments within five (5) business days may result in the assessment of a civil penalty pursuant to Tennessee Code Annotated section 50-6-118. Upon the filing of a decision on an interlocutory appeal, the clerk of the appeals board shall transmit a copy of the decision to the parties by regular or electronic mail and to the clerk of the court of workers' compensation claims. Petitions to rehear or reconsider the decision of the appeals board are disfavored. However, a party may petition the appeals board to rehear or reconsider its decision. Such petitions will be heard consistent with Rule 39 of the Tennessee Rules of Appellate Procedure.
- (6) Following the filing of a decision affirming, reversing, and/or modifying and remanding an interlocutory order, the claim shall continue in the manner provided by Tennessee Code Annotated section 50-6-239 and by these rules.

Authority: T.C.A. §§ 4-3-1409, 50-6-118, 50-6-217, 50-6-225, 50-6-233, and 50-6-237.

0800-02-22-.06 Appeal of a Compensation Hearing Order

- (1) A party or parties may have a transcript of any hearing pertinent to the appeal of a compensation order prepared by a licensed court reporter and filed with the clerk of the court of workers' compensation claims within fifteen (15) calendar days of the filing of the notice of appeal. Alternatively, the parties may file a joint statement of the evidence within fifteen (15) calendar days of the filing of the notice of appeal, or a notice that no transcript or statement of the evidence will be filed. A joint statement of the evidence must be approved by the trial judge before the record is submitted to the appeals board. Should there be a dispute between the parties regarding the contents of a joint statement of the evidence or the contents of the record on appeal, the parties shall file a motion with the appeals board within fifteen (15) business days of the filing of the notice of appeal asking the appeals board to remand the case to the court of workers' compensation claims to resolve any such disputes. If necessary, the appeals board may direct that a supplemental record be submitted to the appeals board.
- (2) The clerk of the workers' compensation appeals board shall docket the appeal upon receipt of the record from the clerk of the court of workers' compensation claims and send a docketing notice to all parties.
- (3) The appellant shall file a brief within fifteen (15) calendar days after the issuance of the docketing notice with the clerk of the appeals board. The appellee shall have fifteen (15) calendar days after the filing of the appellant's brief or the expiration of the time for the filing of the appellant's brief, whichever is earlier, to file a brief with the clerk of the appeals board. No reply brief shall be filed unless the appellee raises an issue or issues on appeal not previously addressed in the appellant's brief. Under such circumstances, the appellant may file a reply brief within five (5) business days addressing only the issue or issues not previously addressed.
- (4) Briefs filed in support of a compensation appeal shall specify the issues presented for review and include legal argument in support thereof. All briefs shall contain: (1) a statement of the facts summarizing the facts from the evidence admitted during the trial; (2) a statement of the case summarizing the trial court's disposition of the case; (3) a statement of the issue(s) presented for review on appeal; and (4) an argument, citing relevant statutes, case law, or other legal authority. The argument section is limited to a maximum of fifteen (15) pages unless otherwise directed by the appeals board. The brief shall include a table

of contents, a table of authorities, and a certificate of service. All briefs shall be signed by the attorney of record or the self-represented party filing the brief.

- (5) Upon the filing of a decision on a compensation appeal, the clerk of the workers' compensation appeals board shall transmit a copy of the decision to the parties by regular or electronic mail and to the clerk of the court of workers' compensation claims. Petitions to rehear or reconsider the decision of the appeals board are disfavored. However, a party may petition the appeals board to rehear or reconsider its decision. Such petitions will be heard consistent with Rule 39 of the Tennessee Rules of Appellate Procedure.

Authority: T.C.A. §§ 4-3-1409, 50-6-217, 50-6-225, 50-6-233, and 50-6-237.

0800-02-22-.07 Briefs

- (1) Briefs shall include a cover page setting forth: (1) the style of the case; (2) the designation "Brief of the Appellant" or "Brief of the Appellee;" and (3) the name and address of the attorney of record or self-represented party filing the brief.
- (2) Any motion seeking to expand the page limit of a brief must be filed at least five business days prior to the date the brief is due. An order will be issued as soon as practicable after the motion is filed.
- (3) Issues or arguments not raised in the court of workers' compensation claims may be deemed waived on appeal.

Authority: T.C.A. §§ 4-3-1409, 50-6-217, 50-6-225, and 50-6-233.

0800-02-22-.08 Oral Argument

- (1) The appeals board shall base its decision on the record on appeal and the arguments of the parties. Evidence not contained in the record on appeal shall not be considered. Oral argument shall be allowed only upon motion of a party and/or by order of the appeals board. Any motion for oral argument filed by a party must state with specificity the reason or reasons the decision-making process would be aided by oral argument.
- (2) Oral argument may be conducted telephonically, by video conference, or in person, at the direction of the appeals board. The clerk will advise the parties regarding the date and location of oral argument as determined by the appeals board. Once oral argument is scheduled, it shall not be continued absent a showing of exceptional circumstances.
- (3) Oral argument shall be conducted under the supervision of the appeals board's presiding judge or, if the presiding judge is not a member of the panel to hear oral argument, by the appeals board judge designated by the presiding judge to preside at oral argument. The judge presiding at oral argument shall regulate all procedural matters arising during the course of argument.
- (4) Unless the appeals board otherwise orders, each side shall be permitted no more than twenty-five minutes for presentation of the party's oral argument. The appellant may reserve a portion of the appellant's allotted time for rebuttal. If a party believes additional time will be necessary for the adequate presentation of the case, the party may request additional time by motion filed in advance of the date fixed for oral argument. A party is not obligated to use all of the time allowed, and the appeals board may terminate the argument when in its judgment further argument is unnecessary.

- (5) No party may present oral argument unless the party has filed a brief on appeal.
- (6) The appellant is entitled to open and conclude the argument. If both parties filed notices of appeal, the appeals board shall determine the order of the argument.
- (7) No more than two parties requesting the same relief will be heard except by leave of the appeals board. Divided arguments are disfavored, and care should be taken to avoid duplication of argument.
- (8) If a party fails to appear for oral argument, the appeals board may hear argument on behalf of the parties participating. If no party appears, the case will be decided on the record and the briefs unless the appeals board otherwise orders. If oral argument is granted upon motion of a party and that party fails to appear or participate in oral argument in the manner designated, the appeals board may tax costs to such party. A party represented by an attorney will be considered present at oral argument upon the appearance of the attorney.
- (9) If the appeals board determines that additional analysis of an issue or issues may be beneficial, the appeals board may, by order, direct the parties to submit arguments or additional briefing addressing those issues whether or not oral argument is held. Alternatively, the appeals board may correspond via email with the parties, through the clerk of the appeals board, directing that specific issues be addressed whether or not oral argument is held. Any party directed to submit arguments or additional briefing shall submit a response to the clerk by email within five (5) business days of the transmission of the questions. Any other party shall respond to the initial response by email to the clerk within five (5) business days of the transmission of the initial response. A reply to such response, if any, shall be submitted within three (3) business days of the transmission of the response. No further responses shall be permitted unless otherwise directed by the appeals board.

Authority: T.C.A. §§ 4-3-1409, 50-6-217, 50-6-225, and 50-6-233.

0800-02-22-.09 Costs on Appeal; Settlement During Appeal

- (1) Costs on appeal may be assessed as ordered by the appeals board. If an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the appeals board; if a judgment or order is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment or order is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated or modified, costs shall be taxed as ordered by the appeals board. Costs on appeal may include filing fees and costs associated with ensuring a complete record on appeal, among other necessary and reasonable costs.
- (2) If any party who has filed a notice of appeal elects to dismiss the appeal voluntarily, such party shall file a motion to dismiss the appeal with the clerk of the appeals board. Any party opposing the dismissal shall file a response to the motion within five (5) business days of the filing of the motion to dismiss. The appeals board will then act on the motion.
 - (a) If the motion is granted with respect to the appeal of an interlocutory order, the case shall be remanded to the court of workers' compensation claims for any further proceedings that may be necessary. If the motion is denied, the appeal shall proceed as directed by the appeals board.
 - (b) If the motion is granted with respect to the appeal of a compensation order, the appeals board shall certify the order of the court of workers' compensation claims as final and dismiss the appeal.

- (3) If the parties agree to settle the claim following the filing of the notice of appeal, the parties shall file a joint motion signed by all parties requesting the appeal be held in abeyance and the case be remanded to the workers' compensation judge to consider approval of the settlement. If the settlement is approved within thirty (30) calendar days of the filing of the order remanding the case, the parties shall file a joint motion seeking to dismiss the appeal. The motion shall provide for the assessment of costs on appeal and shall be accompanied by a copy of the order approving the settlement. If the proposed settlement is not approved within thirty (30) calendar days of the filing of the order remanding the case, the appeal shall proceed in accordance with any further order of the appeals board.
- (4) When it appears to the appeals board that an appeal was frivolous or taken solely for delay, the appeals board may, either upon motion of a party or of its own motion, award expenses, including reasonable attorney's fees, incurred by the appellee as a result of the appeal.

Authority: T.C.A. §§ 4-3-1409, 50-6-217, 50-6-225, 50-6-233, and 50-6-237.

0800-02-22-.10 Appeal of Workers' Compensation Cases Filed Against the State; Notice to the Attorney General

- (1) The workers' compensation appeals board is without jurisdiction to consider an appeal of any decision of the claims commission either awarding or denying workers' compensation benefits to a state employee.
- (2) When the validity of a statute of this state or an administrative rule or regulation of this state is drawn into question in any appeal of a matter to which the state or an officer or agency of the state is not a party, the party raising such question shall serve a copy of the party's notice of appeal, and any subsequent brief on the Attorney General of Tennessee ("Attorney General").
- (3) Proof that service has been made on the Attorney General shall be filed with the brief or position statement of the party raising such question.
- (4) The Attorney General is entitled, within the time allowed for the filing of a responsive brief by a party, to file a brief. The Attorney General is also entitled to be heard orally if oral arguments are scheduled in the case.

Authority: T.C.A. §§ 4-3-1409, 9-8-307, 9-8-402, 50-6-217, 50-6-233, and 50-6-237.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: October 10, 2019

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator

Subscribed and sworn to before me on: October 10, 2019

Notary Public Signature: Shara Hamlett

My commission expires on: 2/19/20



Department of State Use Only

Filed with the Department of State on: 10/16/19

Tre Hargett

Tre Hargett
Secretary of State

2019 OCT 16 PM 1:31
SECRETARY OF STATE
REGISTRATIONS

(Rule 0800-02-22-.04, continued)

**RULES
OF THE
TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT**

**CHAPTER 0800-02-22
WORKERS' COMPENSATION APPEALS BOARD**

TABLE OF CONTENTS

0800-02-22-.01	Filing of Notice of Appeal	0800-02-22-.04	Oral Argument; Costs on Appeal;
0800-02-22-.02	Appeal of an Interlocutory Order		Settlement During Appeal
0800-02-22-.03	Appeal of a Compensation Order	0800-02-22-.05	Appeal of Workers' Compensation Cases Filed Against the State

0800-02-22-.01 FILING OF NOTICE OF APPEAL.

- (1) Any party may appeal any order of a workers' compensation judge by filing a notice of appeal, on a form approved by the Bureau, with the clerk of the court of workers' compensation claims, in accordance with Chapter 0800-02-21~~Rule 0800-02-21-.02(14)~~. Pursuant to Tennessee Code Annotated section 50-6-217(a)(2), the notice of appeal must be filed:
 - (a) Within seven (7) business days of the date an interlocutory order was filed by the workers' compensation judge; or
 - (b) Within thirty (30) calendar days of the date a compensation order was filed by the workers' compensation judge.
- (2) The appealing party shall serve a copy of the notice of appeal upon the opposing party or parties by any means as set forth in Chapter 0800-02-21~~Rule 0800-02-21-.0908~~.
- (3) Any appeal in which the notice of appeal is not received by the clerk of the court of workers' compensation claims within the time provided by paragraph (1) shall be dismissed.
- (4) The appealing party is responsible for payment of a filing fee in an amount of –set by the administrator pursuant to Tennessee Code Annotated section 50-6-217(d)(2).
 - (a) Within ten (10) calendar days after the filing of a notice of appeal, payment must be received by check, money order, or credit card. Payments can be made in person at any Bureau office or by United States mail, hand-delivery, or other delivery service.
 - (b) In the alternative, the appealing party may file an affidavit of indigency, on a form prescribed by the Bureau, seeking a waiver of the filing fee. The affidavit of indigency may be filed contemporaneously with the notice of appeal or must be filed within ten (10) calendar days thereafter. The appeals board will consider the affidavit of indigency and issue an order granting or denying the request for a waiver of the filing fee as soon thereafter as is practicable.
 - (a)(c) Failure to timely pay the filing fee or file the affidavit of indigency in accordance with this section may result in dismissal of the appeal.
- (3)(5) Upon the filing of a notice of appeal, the court of workers' compensation claims no longer has jurisdiction over the case, absent a remand, until a decision is filed by the appeals board; except, after a notice of appeal has been filed, the court of workers' compensation claims retains jurisdiction to rule on certain motions in accordance with these rules or any applicable rule of the Tennessee Rules of Civil Procedure.

(Rule 0800-02-22-.04, continued)

Authority: T.C.A. §§ 4-3-1409, 50-6-217, 50-6-225, 50-6-233, and 50-6-237. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Repeal and new rule filed June 22, 2015; effective September 20, 2015. Amendments filed November 7, 2017; effective February 5, 2018.

0800-02-22-.02 RECORD ON APPEAL

- (1) The parties to an appeal have the responsibility to ensure a complete record on appeal. The record on appeal shall consist of: (1) all papers filed in the trial court except as hereafter provided; (2) exhibits; (3) a transcript or statement of the evidence, if any; (4) briefs filed before or after the filing of the notice of appeal; and (5) any other document(s) designated by a party and approved by the court of workers' compensation claims pertaining to the issues decided in that court and pertinent to an issue on appeal.
 - (a) The following papers filed in the court of workers' compensation claims are excluded from the record: (1) subpoenas or summonses for a party or witness unless admitted into evidence and pertinent to an issue on appeal; (2) papers relating to discovery unless admitted into evidence and pertinent to an issue on appeal; and (3) notices, motions, and orders relating thereto, unless pertinent to an issue decided by the court of workers' compensation claims.
 - (b) No paper shall be included in the record more than once.
- (2) Any dispute regarding the contents of a joint statement of the evidence submitted in lieu of a transcript or regarding whether the record accurately discloses what occurred in the court of workers' compensation claims shall be submitted to and settled by the court of workers' compensation claims. The party requesting correction or modification of the record shall file a motion with the appeals board requesting that the case be remanded to the court of workers' compensation claims for resolution of the dispute. If necessary, the appeals board may direct that a supplemental record be submitted to the appeals board.
- (3) All pleadings, forms, transcripts, depositions, briefs, motions, other writings, and all exhibits, shall be maintained by the Clerk of the Appeals Board during the pendency of the appeal.
- (2)(4) After final determination of any case, the parties shall have one hundred eighty (180) days after entry of the decision on appeal to withdraw exhibits or depositions. The clerk may destroy or dispose of any exhibits or depositions not so withdrawn in accordance with the Records Disposition Authorization of the Bureau.

0800-02-22-.03 MISCELLANEOUS

- (1) The appeals board may, in an effort to secure a just and speedy determination of matters on appeal and with the concurrence of all judges, decide an appeal by an abbreviated order or by memorandum opinion, whichever the appeals board deems appropriate, in cases that are not legally and/or factually novel or complex.
- (2) In any appeal pending before the appeals board, any party may be represented by a Tennessee licensed attorney in good standing. An attorney licensed outside of Tennessee may apply for admission *pro hac vice* in accordance with Tennessee Supreme Court Rule 19. Any party that is a natural person may represent himself or herself in any proceeding before the appeals board. Any corporation or other artificial person must be represented by counsel in all proceedings before the appeals board. Any substitution or withdrawal of any attorney shall comply with Chapter 0800-02-21.
- (4)(3) Any brief, motion, or other writing submitted on behalf of a party to the appeals board must be signed by an attorney who has entered an appearance in the case for such party or by a self-represented individual in accordance with section 0800-02-22-.03(2). Any joint motion submitted

(Rule 0800-02-22-.04, continued)

- to the appeals board involving a self-represented party must be signed by the self-represented party. An attorney may not sign an unrepresented party's name "by permission."
- (4) Attorneys and/or parties are prohibited from contacting any appeals board judge ex parte in any manner during the pendency of an appeal concerning or relating to the appeal. An appeal is pending from the date the notice of appeal is filed until the time a subsequent final order or judgment is entered in the case, or time for appeal of any subsequent final order or judgment has expired, whichever is later.
- (5) Any party seeking recusal of an appeals board judge shall do so as soon as practicable by written motion supported by an affidavit under oath or a declaration made under penalty of perjury on personal knowledge and by other appropriate materials. The motion shall state, with specificity, all factual and legal grounds supporting disqualification of the judge and shall affirmatively state that it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
- (a) Upon the filing of a motion seeking recusal, the judge in question shall act promptly by written order and either grant or deny the motion.
- (a)(b) If the motion is denied, the judge shall state in the order the grounds upon which he or she denies the motion.
- ~~(2)~~(6) If substitution of a party is necessary due to death or other reason following the filing of the notice of appeal, a motion for substitution may be made by any party or by the successor or representative of any such deceased party. If a party entitled to appeal should die before filing a notice of appeal, a notice of appeal may be filed and served by the deceased party's personal representative or, if there is no such personal representative, by the deceased party's counsel of record. After the notice of appeal is filed, substitution shall be effected in accordance with this section.

0800-02-22-.04 MOTIONS

- (1) Any motion seeking to extend any time limit during the pendency of an appeal must be filed prior to the expiration of the applicable time limit. The motion may be decided by one appeals board judge. An order will be issued as soon as practicable after the motion is filed. The appeals board cannot extend the time for filing a notice of appeal. If a notice of appeal is not timely filed, the appeals board is without jurisdiction to review the case.
- (2) Any motion seeking to extend any time limit during the pendency of an appeal must show good cause in support of the motion sufficient to establish exceptional circumstances. The existence of good cause and/or exceptional circumstances shall be determined in the discretion of the appeals board.
- (3) With the exception of the filing of a notice of appeal, the appeals board may extend deadlines during the appeals process upon motion filed by a party or its own motion as provided in Tennessee Code Annotated section 50-6-217(d)(1).

0800-02-22-.025 APPEAL OF AN INTERLOCUTORY ORDER.

- (1) The parties to an appeal have the responsibility to ensure a complete record on appeal. A party or parties may have a transcript of any hearing pertinent to the appeal ~~of an interlocutory order~~ prepared by a licensed court reporter and filed with the clerk of the court of workers' compensation claims within ten (10) business days of the filing of the notice of appeal. Alternatively, the parties may file a joint statement of the evidence within ten (10) business days of the filing of the notice of appeal. The joint statement of the evidence must be approved by the

(Rule 0800-02-22-.04, continued)

- trial judge before the record is submitted to the ~~workers' compensation appeals board~~. ~~Should there be a dispute between the parties regarding the contents of a joint statement of the evidence or the contents of the record on appeal, the parties shall file a motion with the court of workers' compensation claims within ten (10) business days of the filing of the notice of appeal asking the trial court to resolve any such disputes. If necessary, the appeals board may direct that a supplemental record be submitted to the appeals board.~~
- (2) ~~The appellant shall file a brief with the clerk of the court of workers' compensation claims within ten (10) business days of the filing of a transcript or joint statement of the evidence. If no transcript or statement of the evidence is filed or if expiration of the time to file a transcript or statement of the evidence, a dispute regarding a statement of the evidence or the contents of the record is submitted to the trial court, the appellant shall file a brief within ten (10) business days of the expiration of the time to file a transcript or statement of the evidence or within ten (10) business days of the date the trial court enters an order resolving any dispute concerning the contents of the record or a joint statement of the evidence, whichever is later. The appellee~~The brief shall specify the issues presented for review and include any argument in support thereof. A party opposing the appeal shall file a responsive brief in response with the clerk of the court of workers' compensation claims within ten (10) business days of the filing of the appellant's brief or the expiration of the time for the filing of the appellant's brief, whichever is earlier. ~~No reply brief shall be filed unless the appellee raises an issue or issues on appeal not previously addressed in the appellant's brief. Under such circumstances, the appellant may file a reply brief within five (5) business days addressing only the issue or issues not previously addressed. Briefs shall comply with the Practices and Procedures of the Workers' Compensation Appeals Board. If both parties appeal, each party shall file its brief as an appellant and as an appellee consistent with the above briefing schedule.~~
- (3) ~~Briefs filed in support of an interlocutory appeal shall specify the issues presented for review and include legal argument in support thereof. All briefs shall include: (1) a statement summarizing the facts of the case from the evidence admitted in the trial court; (2) a statement of the case summarizing the trial court's disposition of the case; (3) a statement of the issue(s) presented for review on appeal; and (4) an argument, citing relevant statutes, case law, or other legal authority. The argument section is limited to a maximum of fifteen (15) pages unless otherwise directed by the appeals board. The brief shall include a table of contents, a table of authorities, and a certificate of service. All briefs shall be signed by the attorney of record or the self-represented party filing the brief.~~
- (4) ~~The clerk of the workers' compensation appeals board shall docket the appeal upon receipt of the record from the clerk of the court of workers' compensation claims and send a docketing notice to all parties.~~
- (5) ~~If the appeals board affirms an interlocutory order awarding temporary disability or medical benefits, the employer shall begin making payments of benefits within five (5) business days from the date the decision affirming the interlocutory order is filed by the appeals board. Failure to begin benefit payments within five (5) business days may result in the assessment of a civil penalty pursuant to Tennessee Code Annotated section 50-6-118. Upon the filing of a decision on an interlocutory appeal, the clerk of the workers' compensation appeals board shall forwardtransmit a copy of the decision to the parties by regular or electronic mail and to the clerk of the court of workers' compensation claims. Petitions to rehear or reconsider the decision of the appeals board are disfavored. However, a party may petition the appeals board to rehear or reconsider its decision. Such petitions will be heard consistent with Rule 39 of the Tennessee Rules of Appellate Procedure.~~
- (1)(6) ~~Following the filing of a decision affirming, reversing, and/or modifying and remanding an interlocutory order, the claim shall continue in the manner provided by Tennessee Code Annotated section 50-6-239 and by these rules.~~

(Rule 0800-02-22-.04, continued)

Authority: T.C.A. §§ 4-3-1409, 50-6-118, 50-6-217, 50-6-225, 50-6-233, and 50-6-237. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Repeal and new rule filed June 22, 2015; effective September 20, 2015. Amendments filed November 7, 2017; effective February 5, 2018.

0800-02-22-.036 APPEAL OF A COMPENSATION ORDER.

- (1) ~~The parties to an appeal have the responsibility to ensure a complete record on appeal.~~ A party or parties may have a transcript of any hearing pertinent to the appeal of a compensation order prepared by a licensed court reporter and filed with the clerk of the court of workers' compensation claims within fifteen (15) calendar days of the filing of the notice of appeal. Alternatively, the parties may file a joint statement of the evidence within fifteen (15) calendar days of the filing of the notice of appeal, or a notice that no transcript or statement of the evidence will be filed. A joint statement of the evidence must be approved by the trial judge before the record is submitted to the ~~workers' compensation~~ appeals board. Should there be a dispute between the parties regarding the contents of a joint statement of the evidence or the contents of the record on appeal, the parties shall file a motion with the appeals board within fifteen (15) business days of the filing of the notice of appeal asking the appeals board to remand the case to the court of workers' compensation claims ~~within fifteen (15) business days of the filing of the notice of appeal asking the trial court~~ to resolve any such disputes. If necessary, the appeals board may direct that a supplemental record be submitted to the appeals board.
- (2) The clerk of the workers' compensation appeals board shall docket the appeal upon receipt of the record from the clerk of the court of workers' compensation claims and send a docketing notice to all parties.
- (3) ~~The appellant shall file a brief within fifteen (15) calendar days after the issuance of the docketing notice with the clerk of the appeals board. Any opposing party~~ The appellee shall have fifteen (15) calendar days after the filing of the appellant's brief or the expiration of the time for the filing of the appellant's brief, whichever is earlier, to file a brief with the clerk of the appeals board. No reply brief shall be filed unless the appellee raises an issue or issues on appeal not previously addressed in the appellant's brief. Under such circumstances, the appellant may file a reply brief within five (5) business days addressing only the issue or issues not previously addressed.
- (3)(4) ~~Briefs filed in support of a compensation appeal shall specify the issues presented for review and include legal argument in support thereof. All briefs shall contain: (1) a statement of the facts summarizing the facts from the evidence admitted during the trial; (2) a statement of the case summarizing the trial court's disposition of the case; (3) a statement of the issue(s) presented for review on appeal; and (4) an argument, citing relevant statutes, case law, or other legal authority. The argument section is limited to a maximum of fifteen (15) pages unless otherwise directed by the appeals board. The brief shall include a table of contents, a table of authorities, and a certificate of service. All briefs shall be signed by the attorney of record or the self-represented party filing the brief. Briefs shall comply with the Practices and Procedures of the Workers' Compensation Appeals Board.~~
- (4)(5) Upon the filing of a decision on a compensation appeal, the clerk of the workers' compensation appeals board shall ~~forward/transmit~~ a copy of the decision to the parties by regular or electronic mail and to the clerk of the court of workers' compensation claims. Petitions to rehear or reconsider the decision of the appeals board are disfavored. However, a party may petition the appeals board to rehear or reconsider its decision. Such petitions will be heard consistent with Rule 39 of the Tennessee Rules of Appellate Procedure.

Authority: T.C.A. §§ 4-3-1409, 50-6-217, 50-6-225, 50-6-233, and 50-6-237. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Repeal and new rule filed June 22, 2015; effective September 20, 2015. Amendments filed November 7, 2017; effective February 5, 2018.

(Rule 0800-02-22-.04, continued)

0800-02-22-.07 BRIEF~~S of the case legal~~~~(1) — legal.~~~~(2)(1) Briefs shall include a cover page setting forth: (1) the style of the case; (2) the designation "Brief of the Appellant" or "Brief of the Appellee;" and (3) the name and address of the attorney of record or self-represented party filing the brief.~~~~(3)(2) Any motion seeking to expand the page limit of a brief must be filed at least five business days prior to the date the brief is due. An order will be issued as soon as practicable after the motion is filed.~~~~(3) Issues or arguments not raised in the court of workers' compensation claims may be deemed waived on appeal.~~**0800-02-22-.048 ORAL ARGUMENT; COSTS ON APPEAL; SETTLEMENT DURING APPEAL.**~~(1) The appeals board shall base its decision on the record on appeal and the arguments of the parties. Evidence not contained in the record on appeal shall not be considered. Oral argument shall be allowed only upon motion of a party and/or by order of the appeals board. Any motion for oral argument filed by a party must state with specificity the reason or reasons the decision-making process would be aided by oral argument.~~~~(4)(2) Oral argument may be conducted telephonically, by video conference, or in person, at the direction of the appeals board. The clerk will advise the parties regarding the date and location of oral argument as determined by the appeals board. Once oral argument is scheduled, it shall not be continued absent a showing of exceptional circumstances.~~~~(2)(3) Oral argument shall be conducted under the supervision of the appeals board's presiding judge or, if the presiding judge is not a member of the panel to hear oral argument, by the appeals board judge designated by the presiding judge to preside at oral argument. The judge presiding at oral argument shall regulate all procedural matters arising during the course of argument.~~~~(3)(4) Unless the appeals board otherwise orders, each side shall be permitted no more than twenty minutes for presentation of the party's oral argument. The appellant may reserve a portion of the appellant's allotted time for rebuttal. If a party believes additional time will be necessary for the adequate presentation of the case, the party may request additional time by motion filed in advance of the date fixed for oral argument. A party is not obligated to use all of the time allowed, and the appeals board may terminate the argument when in its judgment further argument is unnecessary.~~~~(4)(5) No party may present oral argument unless the party has filed a brief on appeal.~~~~(5)(6) The appellant is entitled to open and conclude the argument. If both parties filed notices of appeal, the appeals board shall determine the order of the argument.~~~~(6)(7) No more than two parties requesting the same relief will be heard except by leave of the appeals board. Divided arguments are disfavored, and care should be taken to avoid duplication of argument.~~~~(7)(8) If a party fails to appear for oral argument, the appeals board may hear argument on behalf of the parties participating. If no party appears, the case will be decided on the record and the briefs unless the appeals board otherwise orders. If oral argument is granted upon motion of a party and that party fails to appear or participate in oral argument in the manner designated, the appeals board may tax costs to such party. A party represented by an attorney will be considered present at oral argument upon the appearance of the attorney.~~

(Rule 0800-02-22-.04, continued)

- ~~(8)(9)~~ If the appeals board determines that additional analysis of an issue or issues may be beneficial, the appeals board may, by order, direct the parties to submit arguments or additional briefing addressing those issues whether or not oral argument is held. Alternatively, the appeals board may correspond via email with the parties, through the clerk of the appeals board, directing that specific issues be addressed whether or not oral argument is held. Any party directed to submit arguments or additional briefing shall submit a response to the clerk by email within five (5) business days of the transmission of the questions. Any other party shall respond to the initial response by email to the clerk within five (5) business days of the transmission of the initial response. A reply to such response, if any, shall be submitted within three (3) business days of the transmission of the response. No further responses shall be permitted unless otherwise directed by the appeals board.

~~No request to rehear or reconsider the decision of the appeals board will be granted.~~

0800-02-22-.09 COSTS ON APPEAL; SETTLEMENT DURING APPEAL

- ~~(1)~~ Costs on appeal may be assessed as ordered by the appeals board. If an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the appeals board; if a judgment or order is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment or order is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated or modified, costs shall be ~~allowed~~taxed as ordered by the appeals board. Costs on appeal may include filing fees and costs associated with ensuring a complete record on appeal, among other necessary and reasonable costs.
- ~~(2)~~ If any party who has filed a notice of appeal elects to dismiss the appeal voluntarily, such party shall file a motion to dismiss the appeal with the clerk of the appeals board. Any party opposing the dismissal shall file a response to the motion within five (5) business days of the filing of the motion to dismiss. The appeals board will then act on the motion.
- ~~(a)~~ If the motion is granted with respect the appeal of an interlocutory order, the case shall be remanded to the court of workers' compensation claims for any further proceedings that may be necessary. If the motion is denied, the appeal shall proceed as directed by the appeals board.
- ~~(a)(b)~~ If the motion is granted with respect to the appeal of a compensation order, the appeals board shall certify the order of the court of workers' compensation claims as final and dismiss the appeal.
- ~~(2)(3)~~ If the parties agree to settle the claim following the filing of the notice of appeal, the parties shall file a joint motion signed by all parties requesting the appeal be held in abeyance and the case be remanded to the workers' compensation judge to consider approval of the settlement. If the settlement is approved within thirty (30) calendar days of the filing of the order remanding the case, the parties shall file a joint motion seeking to dismiss the appeal. The motion shall provide for the assessment of costs on appeal and shall be accompanied by a copy of the order approving the settlement. If the proposed settlement is not approved within thirty (30) calendar days of the filing of the order remanding the case, the appeal shall proceed in accordance with any further order of the appeals board.
- ~~(3)~~ Once a notice of appeal has been filed with the state supreme court, the appeals board no longer has jurisdiction to rule on any issue absent a remand.

(Rule 0800-02-22-.04, continued)

- (4) When it appears to the appeals board that an appeal was frivolous or taken solely for delay, the appeals board may, either upon motion of a party or of its own motion, award expenses, including reasonable attorney's fees, incurred by the appellee as a result of the appeal.

Authority: T.C.A. §§ 4-3-1409, 50-6-217, 50-6-225, 50-6-233, and 50-6-237. **Administrative History:** Original rule filed June 22, 2015; effective September 20, 2015. Amendments filed November 7, 2017; effective February 5, 2018.

**0800-02-22-.0510 APPEAL OF WORKERS' COMPENSATION CASES FILED AGAINST THE STATE;
NOTICE TO ATTORNEY GENERAL.**

- (1) The workers' compensation appeals board is without jurisdiction to consider an appeal of any decision of the claims commission either awarding or denying workers' compensation benefits to a state employee.
- (2) When the validity of a statute of this state or an administrative rule or regulation of this state is drawn into question in any appeal of a matter to which the state or an officer or agency of the state is not a party, the party raising such question shall serve a copy of the party's notice of appeal, and any subsequent brief on the Attorney General of Tennessee ("Attorney General").
- (3) Proof that service has been made on the Attorney General shall be filed with the brief or position statement of the party raising such question.
- (4) The Attorney General is entitled, within the time allowed for the filing of a responsive brief by a party, to file a brief. The Attorney General is also entitled to be heard orally if oral arguments are scheduled in the case.

Authority: T.C.A. §§ 4-3-1409, 9-8-307, 9-8-402, 50-6-217, 50-6-233, and 50-6-237. **Administrative History:** Original rule filed June 22, 2015; effective September 20, 2015. Amendments filed November 7, 2017; effective February 5, 2018.