

# PROPOSED RULEMAKING

## DEPARTMENT OF LABOR AND INDUSTRY

[ 34 PA. CODE CHS. 111 AND 131 ]

### Special Rules of Administrative Practice and Procedure Before the Workers' Compensation Appeal Board and Workers' Compensation Judges

The Department of Labor and Industry (Department), Workers' Compensation Appeal Board (Board) and Office of Adjudication (Office) proposes to amend Chapters 111 and 131 (relating to special rules of administrative practice and procedure before the Workers' Compensation Appeal Board; and special rules of administrative practice and procedure before workers' compensation judges) to provide additional guidance for the litigation of matters before the Board, the Office and workers' compensation judges (judges), and to refine the regulations governing practices and procedures before the Board, the Office and judges.

#### *Statutory Authority*

This rulemaking is proposed under the authority in sections 401.1, 435(a) and (c) and 1608 of the Workers' Compensation Act (act) (77 P. S. §§ 710, 991(a) and (c) and 2708), section 2205 of The Administrative Code of 1929 (71 P. S. § 565) and section 414 of The Pennsylvania Occupational Disease Act (77 P. S. § 1514).

#### *Background*

In 1980, the Secretary of the Department established a Rules Committee (Committee) to develop rules and procedures for the workers' compensation system. The Committee is comprised of Board representatives, judges, equal numbers of representatives of the claimant and defense bar and Department representatives. From time to time, this Committee reconvenes to review Chapters 111 and 131 and to consider whether amendments are necessary in light of changes in existing workers' compensation law, practice or procedures.

Chapters 111 and 131 have been amended in 1989, 1991, 2002 and 2009. Most recently, the Committee reconvened on November 18, 2011, for the purpose of reviewing Chapters 111 and 131 in light of recent appellate decisions and the advent of the Department's new computer system, Workers' Compensation Automation and Information System (WCAIS). The Committee also considered comments received from various stakeholders since the last amendments took effect in 2009. Additionally, the Committee discussed the need for rules to address issues raised by the creation of the Uninsured Employers Guaranty Fund (UEGF) in 2007.

After several meetings between 2011 and 2012, the Committee created a draft proposed rulemaking. In fall 2012, the draft was widely circulated throughout the workers' compensation community for the purpose of receiving additional comment. The Committee conducted interactive meetings with various groups, including the Pennsylvania Bar Association at the Workers' Compensation Fall Section Meeting, the Philadelphia Bar Association, the Allegheny County Bar Association and the Lancaster Bar Association to discuss the proposed changes and solicit comments. Additionally, the Commit-

tee presented the suggested amendments to the Pennsylvania Self-Insurers Association and the Workers' Compensation Advisory Council.

Following these meetings and presentations, the Committee circulated the comments and suggestions it received among the Committee members. Several meetings were conducted for the purpose of reviewing the suggestions and revising the proposed changes. The Committee reached a final consensus regarding the proposed revisions to Chapters 111 and 131 at a meeting conducted on May 2, 2013.

#### *Purpose*

This proposed rulemaking updates Chapters 111 and 131 to promote efficiency and to address new technological and statutory changes. Chapters 111 and 131 have not been updated since 2009. Since that time, the Department has been working on implementing WCAIS, an online workers' compensation claims information system encompassing the processes handled by the Bureau of Workers' Compensation (Bureau), the Office and Board. Also, during these years, the Department has monitored proceedings involving the UEGF and discovered inefficiencies and increased costs for the parties under the current system. The proposed rulemaking addresses these issues and ensures that parties will continue to be advised of up-to-date rules for practice and procedures before the Board, Office and judges.

#### *Affected Persons*

Those affected by this proposed rulemaking include the Board Commissioners and officials, employees of the Department, the Office and judges, as well as attorneys and litigants in the workers' compensation system in this Commonwealth.

#### *Fiscal Impact*

There is no significant fiscal impact associated with this proposed rulemaking. However, the proposed rulemaking may provide savings to the regulated community through: (1) reduced copying and mailing costs, as the number of copies of filings has been reduced and documents may be filed electronically; and (2) reduced overall litigation expenses for all parties to claim proceedings involving the UEGF due to better coordination and handling of the litigation process in these matters.

#### *Summary of Proposed Rulemaking*

This proposed rulemaking clarifies and provides detailed guidance for practice and procedure before the Board, the Office and judges.

#### *Chapter 111. Special rules of administrative practice and procedure before the Workers' Compensation Appeal Board*

The Department proposes to amend Chapter 111 to delete requirements that multiple copies of documents shall be filed with the Board.

Section 111.3 (relating to definitions) is proposed to be amended to clarify filing dates if filing by mail, common carrier, electronically or by hand-delivery. The definition of "common carrier" is proposed to be added.

Section 111.11 (relating to content and form) is proposed to be amended to clarify that an appeal of a judge's decision is deemed to include all claims, disputes and petitions referenced in the decision being appealed.

Section 111.12 (relating to filing, service and proof of service) is proposed to be amended to clarify requirements for appeals filed with the Board.

Section 111.13 (relating to processing of appeals and cross appeals) is proposed to be amended to delete the requirement that the date of the acknowledgement is 3 days subsequent to the date the acknowledgement is mailed.

Section 111.14 (relating to motions to quash) is proposed to be amended to delete the requirement that two copies of a motion to quash shall be filed with the original motion.

Section 111.16 (relating to briefs: content, form and time for filing) is proposed to be amended to delete the requirement that two copies of a brief shall be filed with the original brief.

Section 111.22 (relating to filing) is proposed to be amended to clarify the requirements for a request for supersedeas filed with the Board.

Section 111.24 (relating to disposition of request for supersedeas) is proposed to be amended to specify that the Board will have 30 days from the date of the receipt of the request for supersedeas to rule on a request or the request will be deemed denied.

Section 111.31 (relating to applicability) is proposed to be amended to clarify that Chapter 111, Subchapter D (relating to other petitions) also applies to petitions for reconsideration under section 426 of the act (77 P. S. § 871).

Section 111.32 (relating to form/content) is proposed to be amended to delete the requirement that two copies of a petition or request shall be filed with the original petition or request.

Section 111.34 (relating to answers to petitions) is proposed to be amended to delete the requirement that two copies of an answer shall be filed with the original answer.

#### *Chapter 131. Special rules of administrative practice and procedure before workers' compensation judges*

The Department proposes to add Chapter 131, Subchapter D (relating to proceedings involving the UEGF) to provide specific guidelines concerning these proceedings.

Section 131.3 (relating to waiver and modification of rules) is proposed to be amended to specify that the judge cannot waive or modify certain provisions in Chapter 131, Subchapter D.

Section 131.5 (relating to definitions) is proposed to be amended to add definitions of "Board," "claim petition" and "UEGF claim petition." The Department proposes to add a definition of "writing" to clarify that a "writing" can include electronic communications. The Department proposes to amend the definition of "party" to include "employee." The Department proposes to add "UEGF" to the definition of "Uninsured Employers Guaranty Fund."

Section 131.11 (relating to filing, service and proof of service) is proposed to be amended to clarify current filing and service requirements and to provide that a United States Postal Service Certificate of Mailing, USPS Form 3817 or similar form can be used as evidence of the filing date.

Section 131.32 (relating to petitions except petitions for joinder and challenge proceedings) is proposed to be amended to provide that a party shall file forms as prescribed by the instructions on the form. If a form is

not prescribed by the Department, the party shall file an original of the petition with the Department.

Section 131.33 (relating to answers except answers to petitions for joinder and challenge proceedings) is proposed to be amended to clarify requirements for filing answers to claim petitions and other petitions, except petitions for joinder, challenge proceedings and review of Utilization Review determinations.

Section 131.36 (relating to joinder) is proposed to be amended to specify that petitions for joinder and answers to the joinder petitions should be filed with the Department.

Section 131.52 (relating to first hearing procedures) is proposed to be amended to specify that, at the first hearing, parties shall identify Department documents that are relevant to the claim or dispute, rather than provide actual copies of those documents, to the judge.

Section 131.53a (relating to consolidated hearing procedure) is proposed to be amended to provide that 1 day trials or other consolidated hearing procedures may not apply to proceedings involving the UEGF as set out in Chapter 131, Subchapter D.

Section 131.53b (relating to bifurcation and summary disposition) is proposed to be amended to provide for and establish guidelines for handling motions for summary disposition.

Section 131.55 (relating to attorney fees and costs) is proposed to be amended to require claimant's counsel to submit a copy of the fee agreement or any other statement or claim for disbursements, costs and expenses and to obtain approval from the judge or the Board before the agreement, statement or claim will be valid.

Section 131.63 (relating to time for taking oral depositions) is proposed to be amended to provide that an oral deposition may be taken at any time subsequent to the date of the assignment, rather than the date of service, of the petition by the Department.

Section 131.81 (relating to subpoenas) is proposed to be amended to provide that objections to a request for a subpoena shall be made within 7 calendar days of the date of the request and prohibiting service of subpoenas prior to the expiration of this 7-day period, unless otherwise agreed to by the parties.

Section 131.91(b) (relating to stipulations of fact) is proposed to be amended to add a paragraph requiring stipulations to be signed by the claimant, all counsel and employer, if the employer is unrepresented. The Department further proposes to add paragraphs requiring the stipulation to expressly provide which petitions are being resolved; whether a petition is being withdrawn, granted or dismissed; and whether the parties are requesting an interlocutory order or a final order.

The Department proposes to add the following sections in Chapter 131, Subchapter D to promote proper outcomes of these matters and efficient use of all parties' litigation resources through better coordination of the UEGF claim proceeding with the related claim proceeding.

Section 131.201 (relating to petitions) provides that all references to petitions in Chapter 131, Subchapter D shall be defined as under § 131.5.

Section 131.202 (relating to first hearing information and stay) directs a judge to provide information about the UEGF to a claimant when a UEGF claim petition has not been filed and there is not an insurer listed on the notice of assignment or the insurer has filed a motion for dismissal based on noncoverage. If the claimant indicates

an intention to file a UEGF claim petition, the judge is directed to stay the proceedings until 20 days after the Notice of Assignment to the UEGF. If the UEGF claim petition is not filed within 45 days, the claim petition will proceed.

Section 131.203 (relating to hearing procedures) provides that § 131.53a does not apply to UEGF claim petitions or any matter consolidated with a UEGF claim petition.

Section 131.204 (relating to waiver and modification of §§ 131.202 and 131.203) directs that a judge may not modify or waive §§ 131.202 and 131.203 unless all participating parties, including the judge and the UEGF, agree to the modification or waiver in writing or on the record.

Section 131.205 (relating to UEGF subpoenas and interrogatories) authorizes judges to issue subpoenas, order testimony and compel completion of written interrogatories concerning the uninsured employer's financial history, condition or ability to pay an award. Additionally, this section authorizes a judge to compel the attendance of the parties at mediation.

*Reporting, Recordkeeping and Paperwork Requirements*

The proposed rulemaking does not require the creation of new forms. There are no other additional reporting, recording or paperwork requirements on either the Commonwealth or the regulated community.

*Effective Date*

This proposed rulemaking will be effective on final-form publication in the *Pennsylvania Bulletin*.

*Sunset Date*

A sunset date is not necessary. The Department will continue to monitor the impact and effectiveness of the regulations.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 10, 2014, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Committee on Labor and Industry and the House Labor Relations Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

*Contact Persons and Public Comment*

The contact person for Chapter 111 is Alfonso Frioni, Workers' Compensation Appeal Board, 901 North Seventh Street, 3rd Floor South, Harrisburg PA 17102, (412) 531-2680. The contact person for Chapter 131 is Elizabeth A. Crum, Director, Workers' Compensation Office of Adjudication, 1010 North Seventh Street, Harrisburg, PA 17102, (717) 783-4151.

Interested parties may submit written comments to Elizabeth A. Crum, Director, Workers' Compensation Of-

fice of Adjudication, WCAB/WCJ Regulations—Comments, 1010 North Seventh Street, Harrisburg, PA 17102 within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Written comments received by the Department will be made available to the public.

JULIA K. HEARTHWAY,  
*Secretary*

**Fiscal Note:** 12-99. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 34. LABOR AND INDUSTRY**

**PART VII. WORKERS' COMPENSATION APPEAL BOARD**

**CHAPTER 111. SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE BEFORE THE WORKERS' COMPENSATION APPEAL BOARD**

**Subchapter A. GENERAL PROVISIONS**

**§ 111.3. Definitions.**

(a) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

[ *Bureau*—The Bureau of Workers' Compensation of the Department. ]

*Common carrier*—An entity which is subject to the authority of the Pennsylvania Public Utility Commission or the United States National Surface Transportation Board.

*Disease Law*—The Pennsylvania Occupational Disease Act (77 P. S. §§ 1201—1603).

*Filing*—[ **Delivery by mail, in person or electronically. If filing by mail, it [**

(i) **Filing** is deemed complete upon deposit in the United States mail, as evidenced by a United States Postal Service postmark, properly addressed, with postage or charges prepaid. [ **If filing by hand delivery or electronically, the filing date is the Board's date of receipt. ] A filing bearing only a private postmark is deemed filed as of the date of its receipt by the Board.**

(ii) **When filing by common carrier, the date of filing is the date the document was delivered to the common carrier, as established by a document or other record prepared by the common carrier in the normal course of business. If the date of delivery to the common carrier cannot be determined by the common carrier's records, the date of filing will be the date of its receipt by the Board.**

(iii) **If filing by hand delivery or electronically, the filing date is the Board's date of receipt.**

*Judge*—A workers' compensation judge assigned by the Office of Adjudication as provided in section 401 of the act (77 P. S. § 701) or assigned by the Office of Adjudication to determine a petition filed under the Disease Law.

\* \* \* \* \*

**Subchapter B. APPEALS**

**§ 111.11. Content and form.**

(a) An appeal or cross appeal shall be filed with the Board on a form provided by the Board. All references to forms mean paper forms or an electronic format pre-

scribed by the Board and published in the *Pennsylvania Bulletin* or the Department's web site located at www.dli.state.pa.us. All forms must contain the following information:

(1) The name and address of the claimant, name and address of the defendant, date of the injury, type of petition, [ **Bureau claim number,** ] insurance carrier and circulation date of the decision at issue. **An appeal from a workers' compensation judge's decision is deemed to include all claims, disputes and petitions referenced in the decision and order which are the subject of the appeal. This paragraph does not supersede the other requirements of this section.**

\* \* \* \* \*

(6) A proof of service as specified in [ § 111.12(d) ] § 111.12(e) (relating to filing, service and proof of service).

\* \* \* \* \*

§ 111.12. Filing, service and proof of service.

(a) When filing [ **by mail or in person** ] other than electronically, an original [ **and two copies** ] of each appeal or cross-appeal shall be filed. [ **Only the original** ] The appeal shall have attached a copy of the judge's decision which is in question as required by § 111.11(a)(5) (relating to content and form).

(b) When filing electronically, [ **the Board will obtain a copy of the judge's decision from the Office of Adjudication** ] the petitioner shall follow the online procedures established by the Department.

\* \* \* \* \*

§ 111.13. Processing of appeals and cross appeals.

(a) Upon receipt of an appeal or a cross appeal, the Board will acknowledge receipt to all parties. [ **The date of acknowledgment will be 3 days subsequent to the date the acknowledgment is mailed.** ]

\* \* \* \* \*

§ 111.14. Motions to quash.

\* \* \* \* \*

(c) A motion to quash shall be accompanied by a proof of service conforming to [ § 111.12(d) ] § 111.12(e) (relating to filing, service and proof of service), insofar as applicable.

\* \* \* \* \*

(e) An original [ **and two copies of a** ] motion to quash shall be filed.

\* \* \* \* \*

§ 111.16. Briefs: content and form and time for filing.

\* \* \* \* \*

(e) Briefs, except as otherwise allowed, shall consist of the following items, separately and distinctly set forth:

\* \* \* \* \*

(5) A proof of service as specified in [ § 111.12(d) ] § 111.12(e) (relating to filing, service and proof of service) insofar as applicable.

(f) An original [ **and two copies of briefs** ] brief shall be filed.

\* \* \* \* \*

**Subchapter C. SUPERSEDEAS ON APPEAL TO THE BOARD AND COURTS**

§ 111.21. Content and form.

(a) A request for supersedeas shall be filed as a separate petition from the appeal and be accompanied by the following:

(1) A copy of the decision **and order** of the judge or order and opinion of the Board from which the supersedeas is requested.

\* \* \* \* \*

(7) A proof of service as specified in [ § 111.12(d) ] § 111.12(e) (relating to filing, service and proof of service), insofar as applicable.

\* \* \* \* \*

§ 111.22. Filing.

\* \* \* \* \*

(c) An original [ **and two copies of the** ] request for supersedeas shall be filed. [ **Only the original request for** ] The supersedeas request shall have attached a copy of the judge's decision **and order** or Board **opinion and order** from which the supersedeas is requested.

(d) A request for supersedeas shall be served on all the parties and be accompanied by a proof of service as specified in [ § 111.12(d) ] § 111.12(e) (relating to filing, service and proof of service).

\* \* \* \* \*

§ 111.23. Answers.

\* \* \* \* \*

(b) An original [ **and two copies of an** ] answer shall be filed.

\* \* \* \* \*

(d) An answer filed under this subsection shall be accompanied by a proof of service as specified in [ § 111.12(d) ] § 111.12(e) (relating to filing, service and proof of service), insofar as applicable.

\* \* \* \* \*

§ 111.24. Disposition of request for supersedeas.

\* \* \* \* \*

(b) The Board will rule on requests for supersedeas within [ **20 days of the date when the answer is due** ] **30 days of the date of receipt by the Board of the request**, or the request shall be deemed denied.

\* \* \* \* \*

**Subchapter D. OTHER PETITIONS**

§ 111.31. Applicability.

This subchapter applies to the following petitions or requests:

\* \* \* \* \*

(6) A petition for rehearing **or reconsideration** under section 426 of the act (77 P. S. § 871).

\* \* \* \* \*

§ 111.32. Form/content.

(a) Petitions and requests shall contain and be accompanied by the following:

\* \* \* \* \*

(6) A proof of service as specified in [ § 111.12(d) ] § 111.12(e) (relating to filing, service and proof of service), insofar as applicable.

\* \* \* \* \*

(c) An original [ and two copies of petitions and requests ] petition and request shall be filed.

\* \* \* \* \*

§ 111.34. Answers to petitions.

\* \* \* \* \*

(b) An original [ and two copies of an ] answer shall be filed.

\* \* \* \* \*

(d) An answer filed shall be accompanied by a proof of service as specified in [ § 111.12(d) ] § 111.12(e) (relating to filing, service and proof of service), insofar as applicable.

\* \* \* \* \*

PART VIII. BUREAU OF WORKERS' COMPENSATION

CHAPTER 131. SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE BEFORE WORKERS' COMPENSATION JUDGES

Subchapter A. GENERAL PROVISIONS

§ 131.3. Waiver and modification of rules.

(a) The judge may, for good cause, waive or modify a provision of this chapter, except as otherwise provided in § 131.59b(a) and Subchapter D (relating to mandatory mediation; and proceedings involving the UEGF), upon motion of a party, agreement of all parties or upon the judge's own motion.

\* \* \* \* \*

§ 131.5. Definitions.

(a) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

Adjudicating judge—A judge assigned to hold hearings and issue decisions relating to a petition or petitions.

Board—The Workers' Compensation Appeal Board.

[ Bureau—The Bureau of Workers' Compensation of the Department.

Bureau record—Official copies of documents received by the Bureau, on forms prescribed by the Bureau, if forms prescribed by the Bureau are available, or official copies of documents received by the Bureau on forms prepared by a party if no forms prescribed by the Bureau are available, which record transactions between the parties and which are determined by the judge to pertain to the case. ]

Challenge proceeding—A proceeding governed by § 131.50a (relating to employee request for special supersedeas hearing under section 413(c) and (d) of the act).

Claim petition—A petition filed with the Department under section 410 of the act (77 P. S. § 751).

Claimant—An individual who files a petition for, or otherwise receives, benefits under the act or the Disease Law.

Defendant—An employer, insurance carrier and the Commonwealth, unless specifically designated individually, and the Uninsured Employers Guaranty Fund, except for purposes of joinder, penalties or assessment of counsel fees under section 440 of the act (77 P. S. § 996).

Department—The Department of Labor and Industry of the Commonwealth.

Department record—Official copies of documents received by the Department, on forms prescribed by the Department, if forms prescribed by the Department are available, or official copies of documents received by the Department on forms prepared by a party if forms prescribed by the Department are not available, which record transactions between the parties and which are determined by the judge to pertain to the case.

Director of Adjudication—The individual specified in section 1402 of the act (77 P. S. § 2502).

\* \* \* \* \*

Party—A claimant, employee, defendant, employer, insurance carrier, additional defendant, health care provider and, if relevant, the Commonwealth and the Uninsured Employers Guaranty Fund. An act required or authorized by this chapter, to be done by or to a party, may be done by or to that party's counsel of record.

\* \* \* \* \*

Supersedeas—A temporary stay affecting a workers' compensation case.

UEGF—Uninsured Employers Guaranty Fund—The special fund established under Article XVI of the act (77 P. S. §§ 2701—2708).

UEGF claim petition—A petition filed with the Department under section 1604 of the act (77 P. S. § 2704)

Voluntary mediation—A mediation conducted by a judge under § 131.59a (relating to voluntary mediation) upon the agreement of the contending parties and the judge.

(b) Subsection (a) supersedes 1 Pa. Code §§ 31.3 and 33.33 (relating to definitions; and effect of service upon an attorney).

Writing—Includes electronic communications in a format as prescribed by the Department.

Subchapter B. TIME

§ 131.11. Filing, service and proof of service.

(a) Whenever filing is required by this chapter, it is deemed complete upon one of the following:

\* \* \* \* \*

(3) [ If by mail, upon deposit in the United States Mail, as evidenced by a United States Postal Service postmark, properly addressed, with postage or charges prepaid. ] If by mail, properly addressed, postage or charges prepaid evidenced by either of the following:

(i) Upon deposit in the United States Mail, a United States Postal Mark.

(ii) United States Postal Service Certificate of Mailing (USPS form 3817 or other similar United States Postal Service Postal Service form from

which the date of deposit can be verified), enclosed with the filing or mailed separately to the Department.

(b) Whenever service is required by this chapter, it is deemed complete upon one of the following:

\* \* \* \* \*

(3) [ If by mail, upon deposit in the United States Mail, as evidenced by a United States Postal Service postmark, properly addressed, with postage or charges prepaid, except as provided in § 131.81(b) (relating to subpoenas). ] Except as provided in § 131.81(b) (relating to subpoenas), if by mail, upon deposit in the United States Mail properly addressed, postage or charges prepaid and accompanied by proof of service.

\* \* \* \* \*

(e) Unless otherwise specifically provided in this chapter, whenever the filing or service is required to be made upon the [ Bureau ] Department, it shall be made to [ the principal office of the Bureau at: 1171 South Cameron Street, Harrisburg, Pennsylvania 17104-2501, (717) 783-5421, or another address and telephone number ] an address as may be published in the Pennsylvania Bulletin or on the Department's web site located at www.dli.state.pa.us. Electronic filing and service on the [ Bureau ] Department shall be at the electronic address and in a format as prescribed by the [ Bureau ] Department and published in the Pennsylvania Bulletin or on the Department's web site located at www.dli.state.pa.us.

\* \* \* \* \*

Subchapter C. FORMAL PROCEEDINGS

GENERAL

§ 131.21. Identifying number.

(a) Pleadings, documents and other submittals filed in a proceeding shall be identified by an identifying number assigned by the [ Bureau ] Department.

\* \* \* \* \*

PLEADINGS

§ 131.32. Petitions except petitions for joinder and challenge proceedings.

(a) Petitions shall be in the form prescribed by the [ Bureau ] Department.

(b) [ If the petition is filed on a Bureau petition form, an original and the number of copies specified on the petition form shall be filed with the Bureau. ] Any petition, filed in accordance with this chapter, shall be filed with the Department as prescribed by the form. If there is no applicable [ Bureau ] Department petition form available, an original of the petition shall be filed with the [ Bureau ] Department. The [ Bureau ] Department will serve a notice of assignment specifying the judge to whom the petition has been assigned. The notice will be served on the parties named in the petition.

(c) Concurrently with filing the petition with the [ Bureau ] Department, the moving party shall serve a copy

of the petition on all other parties, including the insurance carrier, if the insurance carrier is known, and on the attorneys of all other parties, if the attorneys are known.

\* \* \* \* \*

§ 131.33. Answers except answers to petitions for joinder and challenge proceedings.

(a) Answers to [ all petitions except petitions for joinder and challenge proceedings ] claim petitions shall be filed in accordance with section 416 of the act (77 P. S. § 821) within 20 days after the date of assignment [ by the Bureau ] to the judge. Answers to all other petitions may be filed within 20 days after the date of assignment to the judge, except petitions for joinder, challenge proceedings and review of Utilization Review determinations.

(b) [ If the answer is filed on a Bureau answer form, an original and the number of copies specified on the answer form shall be filed with the judge to whom the petition has been assigned. ] Any answer filed in accordance with this chapter shall be filed with the Department as prescribed on the answer form. If there is no applicable [ Bureau ] Department answer form available, an original of the answer shall be filed with the [ judge to whom the petition has been assigned ] Department.

(c) Concurrently with filing the answer [ with the judge ], the responding party shall serve a copy of the answer on unrepresented parties and on counsel of record.

\* \* \* \* \*

§ 131.36. Joinder.

\* \* \* \* \*

(d) [ An original and the number of copies specified on the Bureau ] The petition for joinder form shall be filed with the Department no later than 20 days after the first hearing at which evidence is received regarding the reason for which joinder is sought, unless the time is extended by the judge for good cause shown.

[ (e) The petition for joinder shall be filed with the Bureau and an original of any answer shall be filed with the office of the judge to whom the case has been assigned.

(f) [ (e) An answer to a petition for joinder shall be filed in accordance with section 416 of the act (77 P. S. § 821) within 20 days after the date of assignment by the [ Bureau ] Department to the judge and may include a motion to strike.

[ (g) (f) A party filing a petition for joinder or an answer to it shall serve unrepresented parties and counsel of record.

[ (h) (g) A proof of service shall be attached to the petition for joinder or answer.

[ (i) (h) After joinder, the original petition shall be deemed amended to assert a claim of the claimant against an additional defendant. The additional defendant is liable to any other party as the judge orders. The additional defendant shall have the same rights and responsibilities under this chapter as the original defendant.

[ (j) ] (i) The judge may strike the petition for joinder, and the judge may order the severance or separate hearing of a claim presented therein, or as a result of the joinder.

[ (k) ] (j) The judge will issue an order when the motion to strike a petition for joinder is granted.

[ (l) ] (k) An order to strike a petition for joinder does not preclude or delay further proceedings before the judge.

[ (m) ] (l) Subsections [ (a)—(l) ] (a)—(k) supersede 1 Pa. Code §§ 31.5, 33.41, 33.42, 35.11, 35.35, 35.40, 35.48—35.51, 35.54 and 35.55 and also supersede 1 Pa. Code Chapter 35, Subchapter D (relating to motions).

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**SUPERSEDEAS**

§ 131.50. Return to work—modification or suspension.

\* \* \* \* \*

(b) The insurer shall complete and file the form prescribed by the [ Bureau ] Department. The form shall be provided to the employee, employee’s counsel, if known, and the [ Bureau ] Department within 7 days of the effective date of the suspension or modification of the workers’ compensation benefits.

\* \* \* \* \*

**HEARING PROCEDURE**

§ 131.52. First hearing procedures.

\* \* \* \* \*

(e) The parties shall [ provide the judge with ] identify all documents required by law to be filed with the [ Bureau ] Department and which are relevant to issues in dispute with the same injury date and pertaining to the same claim. The judge will place those documents in evidence along with any other documents required to be filed by law with the [ Bureau ] Department or prior judges and which the judge deems relevant to the proceeding. The judge and the employee may not introduce the First Report of Injury into evidence.

\* \* \* \* \*

§ 131.53a. Consolidated hearing procedure.

(a) [ One day ] Except as otherwise provided in Subchapter D (relating to proceedings involving the UEGF), one-day trials or other consolidated hearing procedures may be scheduled and conducted pursuant to this chapter to the extent practical. The judge may waive or modify this chapter as may be appropriate and adopt and direct procedures which are fair and just for a determination of the issues consistent with the act.

\* \* \* \* \*

§ 131.53b. Bifurcation and summary disposition.

\* \* \* \* \*

[ (b) Subsection (a) supersedes 1 Pa. Code §§ 35.180 and 35.225 (relating to action on motions; and interlocutory orders). ]

(b) A motion which may result in summary disposition of the claim may be filed at any time. The judge will issue an order granting or denying the motion, or will provide reasons why the motion will not be ruled upon, within 45 days of the motion’s

filing. If the motion will not be ruled upon, the judge will articulate in writing or on the record the substantial and compelling reasons for not ruling on the motion. Pendency of the motion will not operate as a stay.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.54, 35.55, 35.177—35.180 and 35.225.

§ 131.55. Attorney fees and costs.

(a) In all cases, claimant’s counsel shall submit a copy of the fee agreement or claim, and a copy of any statement or claim for disbursements, costs and expenses. No agreement or claim for fees or other disbursements, costs or expenses, by claimant’s counsel shall be valid, and no payments shall be made pursuant thereto, unless approved for payment by the judge before whom the matter is heard or by the Board as provided by law. Except as otherwise approved, no further fee, cost or expense is to be charged.

[ (a) ] (b) Under section 440 of the act (77 P. S. § 996), in a disputed claim under the act when the employer or insurer has contested liability in whole or in part, the employee or a dependent, in whose favor the proceeding has been finally decided, will be awarded attorney fees and costs against the employer or insurer, unless the employer or insurer had a reasonable basis for contesting the petition.

[ (b) ] (c) Claimant’s counsel may file an application for quantum meruit fees at or before the filing of proposed findings of fact, proposed conclusions of law and briefs, and if there are no proposed findings of fact, proposed conclusions of law or briefs requested, at or before the close of the record. The application shall detail the calculation of the fee requested, shall itemize the services rendered and time expended and shall address all factors enumerated in section 440 of the act [ (77 P. S. § 996) ] in support of the application.

[ (c) ] (d) Within 15 days after service of the application for quantum meruit fees, an opposing party may file a response to the application detailing the objections to the fee requested.

[ (d) ] (e) A decision on the fee award will be made based on the record of the case and, if filed, the application and response. If deemed appropriate by the judge, a hearing may be held and evidence presented.

[ (e) ] (f) The application and response will be made exhibits of record and shall be served on unrepresented parties and counsel of record as provided in § 131.34(a) (relating to other filings).

[ (f) ] (g) Subsections [ (a)—(e) ] (a)—(f) supersede 1 Pa. Code §§ 35.1 and 35.2 (relating to applications generally; and contents of applications).

§ 131.57. Compromise and release agreements.

\* \* \* \* \*

(b) Proposed compromise and release agreements, including the stipulations of the parties, shall be recorded on a form prescribed by the [ Bureau ] Department. The parties may attach additional information to the form if circumstances so require.

\* \* \* \* \*

§ 131.58. Informal conferences.

\* \* \* \* \*

(c) The request for the informal conference shall be recorded on a form prescribed by the [ Bureau ] Department and filed with the judge to whom the pending petition has been assigned.

(d) If no petition is pending, a petition and corresponding request for the informal conference shall be filed with the [ Bureau ] Department on a form prescribed by the [ Bureau ] Department.

(e) The informal conference will be governed by the instructions and procedures specified on the form prescribed by the [ Bureau ] Department and by section 402.1 of the act [ (77 P. S. § 711.1) ].

\* \* \* \* \*

§ 131.60. Resolution hearings.

\* \* \* \* \*

(g) The judge conducting the resolution hearing will require proof that a petition has been filed with the [ Bureau ] Department under § 131.11 (relating to filing, service and proof of service), and will make the proof a part of the record. Upon receiving the proof, the judge shall proceed with the hearing and circulate a final decision within 5 business days of the hearing.

\* \* \* \* \*

EXCHANGE OF INFORMATION AND DEPOSITIONS OF DISCOVERY

§ 131.63. Time for taking oral depositions.

(a) An oral deposition may be taken at any time subsequent to 30 days after the date of [ service ] assignment of the petition by the [ Bureau ] Department.

\* \* \* \* \*

SUBPOENAS

§ 131.81. Subpoenas.

(a) Upon written or electronic request of a party or counsel of record in a pending proceeding, the judge will issue a subpoena to compel the attendance of a witness or require the production of books, documents, records, CD ROMs, diskettes, other digital recordings or other things relevant to the proceeding at a scheduled hearing or deposition within the scope of, and scheduled under, this chapter. The party requesting a subpoena shall complete the subpoena and serve the judge with the original written request and shall serve a copy of the written request on unrepresented parties and counsel of record as provided in § 131.34(a) (relating to other filings).

(b) Any objections to a request for a subpoena shall be made within 7 calendar days of the date of the request. Subpoenas may not be served until the expiration of the 7 calendar day period unless waived by agreement of the parties.

[ (b) ] (c) The party, counsel of record or their respective agents requesting a subpoena shall serve the subpoena upon the witness or person subpoenaed and upon opposing counsel.

\* \* \* \* \*

[ (c) ] (d) Upon the filing of written objections by a person served with a subpoena or a party, the judge may, after notice to counsel of record and unrepresented parties, promptly quash or limit the scope of a subpoena issued or served.

[ (d) ] (e) If the person fails to appear, or has given notice of the intention not to appear, as required by a subpoena duly served, the judge will upon request of a party, communicate to the witness the requirements of the act that the person so appear and advise the person of the enforcement provisions under section 436 of the act (77 P. S. § 992).

[ (e) ] (f) Subsections [ (a)—(d) ] (a)—(e) supersede 1 Pa. Code §§ 35.139 and 35.142 (relating to fees of witnesses; and subpoenas).

STIPULATIONS

§ 131.91. Stipulations of fact.

\* \* \* \* \*

(b) The judge may issue a decision based on stipulations of fact, if the judge is satisfied that:

(1) The stipulations of fact are fair and equitable to the parties involved.

(2) The claimant understands the stipulations of fact and the effect of the stipulations of fact on future payments of compensation and medical expenses.

(3) A stipulation, which is dispositive of the case, shall be signed and dated by the claimant, all counsel participating in the agreement and the employer, when unrepresented.

(4) The stipulation states which petitions are being resolved and which petitions are not being resolved.

(5) The stipulation states whether each petition should be withdrawn, granted or dismissed, and whether the parties are requesting an interlocutory or a final order.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.155 (relating to presentation and effect of stipulations).

(Editor's Note: The following subchapter is new and printed in regular type to enhance readability.)

Subchapter D. PROCEEDINGS INVOLVING THE UEGF

- Sec. 131.201. Petitions. 131.202. First hearing information and stay. 131.203. Hearing procedures. 131.204. Waiver and modification of §§ 131.202 and 131.203. 131.205. UEGF subpoenas and interrogatories.

§ 131.201. Petitions.

(a) All references to petitions in this subchapter are as defined under § 131.5 (relating to definitions).

(b) Subsection (a) supersedes 1 Pa. Code § 31.3 (relating to definitions).

§ 131.202. First hearing information and stay.

(a) At the first hearing on a claim petition where no UEGF claim petition has been filed and there is either no insurer listed on the notice of assignment or the listed insurer files a motion to dismiss for lack of coverage, the judge will inform the claimant on the record of the existence of the UEGF and give the claimant information about the UEGF, as provided by the Office of Adjudication.

(b) If the claimant informs the judge on the record that he may wish to file a UEGF claim petition, the judge will stay the proceeding in the claim petition until 20 days after the assignment of the UEGF claim petition. The



stay may not apply to the exchange of information referenced in § 131.61 (relating to exchange of information).

(c) If no UEGF claim petition is filed within 45 days of the first hearing, the claim petition will proceed against the uninsured employer.

(d) If the claimant informs the judge on the record that he does not wish to file a UEGF claim petition, testimony may be taken as directed by the judge.

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.123—35.128, 35.187 and 35.188.

**§ 131.203. Hearing procedures.**

Section 131.53a (relating to consolidated hearing procedure) does not apply to UEGF claim petitions or any petitions consolidated with UEGF claim petitions under § 131.30 (relating to consolidation).

**§ 131.204. Waiver and modification of §§ 131.202 and 131.203.**

(a) Sections 131.202 and 131.203 (relating to first hearing information and stay; and hearing procedures) cannot be waived or modified, as otherwise provided in

§ 131.3 (relating to waiver and modification of rules), unless the judge and all participating parties, including the UEGF, agree to a waiver or modification in writing or on the record.

(b) Subsection (a) supersedes 1 Pa. Code §§ 33.61 and 35.18 (relating to applications for waiver of formal requirements; and petitions for issuance, amendment, waiver or deletion of regulations).

**§ 131.205. UEGF subpoenas and interrogatories.**

(a) The judge may issue subpoenas, order testimony or compel the completion of written interrogatories with respect to the alleged uninsured employer's financial history, condition or ability to pay an award.

(b) The judge may compel the attendance of all parties at mediation.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.111—35.116, 35.137—35.147, 35.150, 35.161, 35.162, 35.187 and 35.188.

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