

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

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111.	SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE BEFORE THE WORKERS' COMPENSATION APPEAL BOARD	111.1

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

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Authority

The provisions of this Chapter 111 issued under the Workers' Compensation Act (77 P. S. §§ 1—1603), unless otherwise noted.

Source

The provisions of this Chapter 111 adopted January 1, 1970, unless otherwise noted.

Notes of Decisions

Issue Preclusion

Issue preclusion did not apply where the first case was heard before the Unemployment Compensation Board and the pending case is with the Workers Compensation Board because to do so would be to hold, in effect, that claimant loses both cases based on the finding of an unemployment compensation referee even though significantly different procedures apply and different policies and goals are at stake in the workers' compensation proceeding. Therefore, a fresh determination of the factual issue by a Workers' Compensation Judge is warranted. *Verbilla v. Workmen's Compensation Appeal Board*, 668 A.2d 601 (Pa. Cmwlth. 1995).

Subchapter A. GENERAL PROVISIONS

Sec.	
111.1.	Scope.
111.2.	Applicability of General Rules of Administrative Practice and Procedure.
111.3.	Definitions.

§ 111.1. Scope.

(a) This chapter applies to proceedings before the Board under the act and the Disease Law.

(b) Subsection (a) supersedes 1 Pa. Code § 31.1 (relating to scope of part).

Authority

The provisions of this § 111.1 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); 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).

Source

The provisions of this § 111.1 adopted January 1, 1970; amended April 7, 1989, effective April 8, 1989, 19 Pa.B. 1631; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (228508).

§ 111.2. Applicability of General Rules of Administrative Practice and Procedure.

(a) This chapter is intended to supersede 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure). The General Rules of Administrative Practice and Procedure are not applicable to activities of and proceedings before the Board.

(b) Subsection (a) supersedes 1 Pa. Code § 31.4 (relating to information and special instructions).

Authority

The provisions of this § 111.2 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); 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).

Source

The provisions of this § 111.2 adopted January 1, 1970; amended April 7, 1989, effective April 8, 1989, 19 Pa.B. 1631; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (228508) to (228510).

§ 111.3. Definitions.

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

Act—The Workers' Compensation Act (77 P. S. §§ 1—1041.4 and 2501—2708).

Appeal—A proceeding to review a ruling or decision by a judge.

Board—The Workers' Compensation Appeal Board.

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

Filing—Filing is deemed complete upon one of the following:

- (i) Delivery in person.
- (ii) If by electronic submission, upon receipt and in a format as prescribed by the Department and published in the *Pennsylvania Bulletin* or the Department's web site located at www.dli.state.pa.us.
- (iii) If by mail, upon deposit in the United States mail, properly addressed, postage or charges prepaid, as evidenced by one of the following:
 - (A) United States Postal Service postmark.
 - (B) United States Postal Service Certificate of Mailing (USPS Form 3817 or other similar United States Postal Service form from which the date of deposit can be verified), enclosed with the filing or submitted separately to the Department.
- (iv) An appeal may be delivered by a common carrier of property which is subject to the authority of the Pennsylvania Public Utility Commission or the United States National Surface Transportation Board. 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 documents in the record, the date of filing will be the date of its receipt by the Board.

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.

Office of Adjudication—The Office of the Department created under section 1401(a) of the act (77 P. S. § 2501(a)).

Party—A petitioner or respondent. 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.

Petitioner—Anyone seeking to review a ruling or decision by a judge or the moving party in a petition filed under Subchapter D (relating to other petitions).

Respondent—Anyone in whose favor the matter was decided by the judge or other than the moving party in any petition filed under Subchapter D.

Service—Delivery in person, by mail or electronics. If service is by mail, it 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.

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

- (b) Subsection (a) supersedes 1 Pa. Code §§ 31.3, 31.11 and 33.34 (relating to definitions; timely filing required; and date of service).

Authority

The provisions of this § 111.3 amended under sections 401.1, 435(a) and (c) and 1608 of the Workers' Compensation 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).

Source

The provisions of this § 111.3 adopted April 7, 1989, effective April 8, 1989, 19 Pa.B. 1631; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043; amended October 16, 2009, effective October 17, 2009, 39 Pa.B. 6038; amended December 19, 2014, effective December 20, 2014, 44 Pa.B. 7837. Immediately preceding text appears at serial pages (345964) to (345965).

Notes of Decisions*Postmark as Evidence of Filing Date*

A United States postmark will constitute sufficient evidence of the mailing date of an appeal, in order to determine whether the appeal was timely filed, when the appeal is properly stamped and addressed but not received by the Appeal Board within the 20 days allowed for appeal. *Sellers v. Workers' Compensation Appeal Board*, 713 A.2d 87 (Pa. 1998).

A postmark is the necessary form of evidence as to the filing date, and the courts have held that an official United States postmark is the most reliable evidence of the precise time of mailing. Therefore, where the envelope containing a workers' compensation appeal does not have an official United States postmark, the appeal must be deemed filed when received by the Workers' Compensation Appeal Board. Because the employer's appeal was not received by the Board until after the 20 day period and expired, the appeal was not timely, and the Board was without jurisdiction to consider the issues raised therein. *Sellers v. Workmen's Compensation Appeal Board (HMT Constr. Servs.)* 687 A.2d 413 (Pa. Cmwlth. 1996); affirmed 713 A.2d 87 (Pa. 1998).

Sufficient Particularity

The employer did not waive its appeal to the Workers' Compensation Appeal Board of the Worker's Compensation Judge's award of attorney fees, where the appeal document cited the particular findings of fact, which the employer alleged to be in error or not supported by substantial evidence and noted the conclusions of law and the sections of the order, which were in error. *Ramich v. Workers' Compensation Appeal Board*, 734 A.2d 39 (Pa. Cmwlth. 1999); appeal granted in part, 746 A.2d 1108 (Pa. 2000); reversed 770 A.2d 318 (Pa. 2001).

Timely Appeals

An appeal to the Board of Worker's Compensation Appeal Board which is received beyond the twenty days allowed by Section 423 of the Act cannot be considered timely in the absence of evidence that the appeal was mailed on or before the last day allowed for filing. *Sellers v. Workmen's Compensation Board (HMT Constr. Servs.)* 687 A.2d 413 (Pa. Cmwlth. 1996); appeal granted 699 A.2d 737 (Pa. 1997); affirmed 713 A.2d 87 (Pa. 1998).

Subchapter B. APPEALS

- Sec.
 111.11. Content and form.
 111.12. Filing, service and proof of service.
 111.13. Processing of appeals and cross appeals.
 111.14. Motions to quash.

- 111.15. No other pleadings allowed.
- 111.16. Briefs: content and form and time for filing.
- 111.17. Oral argument.
- 111.18. Decisions of the Board.

§ 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 prescribed 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, insurance carrier and circulation date of the decision at issue. An appeal from a workers' compensation judge's decision is deemed to include all claim numbers, dispute numbers and petition numbers referenced in the decision and order which are the subject of the appeal. This paragraph does not supersede the other requirements of this section.

(2) A statement of the particular grounds upon which the appeal is based, including reference to the specific findings of fact which are challenged and the errors of the law which are alleged. General allegations which do not specifically bring to the attention of the Board the issues decided are insufficient.

(3) A statement of the relief which is requested.

(4) A statement whether the petitioner seeks an opportunity to file a brief or present oral argument or whether the case should be heard on the record without brief or oral argument.

(5) Identification of the judge whose decision is in question, including as an attachment, a copy of that judge's decision.

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

(b) An appeal or a cross appeal shall be served on all parties and the judge.

(c) A request for supersedeas, if desired, shall be indicated on the appeal and conform to § 111.21 (relating to content and form).

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 31.5, 33.1—33.4, 33.11, 33.12, 35.17 and 35.20.

Authority

The provisions of this § 111.11 amended under sections 401.1, 435(a) and (c) and 1608 of the Workers' Compensation 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).

Source

The provisions of this § 111.11 adopted January 1, 1970; amended April 7, 1989, effective April 8, 1989, 19 Pa.B. 1631; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043; amended October 16, 2009, effective October 17, 2009, 39 Pa.B. 6038; amended December 19, 2014, effective December 20, 2014, 44 Pa.B. 7837. Immediately preceding text appears at serial pages (345966) to (345968).

Notes of Decisions*Referee's Decision*

Failure to attach a copy of the referee's decision to an appeal will not provide the basis to strike an appeal to a Workmen's Compensation Appeal Board when, due to clerical error, a copy of the decision was not available and the employer's attorney attached letter stating the same. *Smith v. Workmen's Compensation Appeal Board*, 632 A.2d 1033 (Pa. Cmwlth. 1993); appeal denied 644 A.2d 1205 (Pa. 1994).

Specificity

Appeals before the Workmen's Compensation Appeal Board are governed by this regulation; therefore, employer could not succeed in framing its credit issue for the Workmen's Compensation Appeal Board where employer made absolutely no mention of that issue in questioning the Workmen Compensation Judge's conclusions. The employer waived its right to challenge that issue. *Lewistown Hospital v. Workmen's Compensation Appeal Board*, 683 A.2d 702 (Pa. Cmwlth. 1996).

The employer's notice of appeal to the Workers' Compensation Appeal Board utterly failed to raise the claims of error with any degree of specificity and thus the claims have been waived for purposes of appeal, where the employer merely stated "2-10" on the appeal form to the Board, and such a cryptic assertion clearly does not specify the errors of law committed by the Workers' Compensation Judge or why his decision does not conform to the provisions of the Workers' Compensation Act. *Jonathan Sheppard Stables v. Workers' Compensation Appeal Board*, 739 A.2d 1084 (Pa. Cmwlth. 1999).

Sufficient Particularity

Original counsel's petition filed with the Workers' Compensation Appeal Board for appeal nunc pro tunc for reinstatement of counsel fees challenging the Workers' Compensation Judge's fee award to subsequent counsel was raised at the at the appropriate time with appropriate sufficiency to preserve the issue before the Board; while the petition filed by counsel was not the typical appeal document, the procedural posture of this case was, itself, not typical as he was not a party to the WCJ's decision. *Hendricks v. Workers' Compensation Appeal Board (Phoenix Pipe and Tube)*, 909 A.2d 445, N. 12 (Pa. Cmwlth. 2006).

The employer sufficiently specified issues upon which it based its notice of appeal by listing by number only, the findings of fact and conclusion of law at issue and no error of law was committed by Workmen's Compensation Appeal Board in hearing the appeal. *Garnett v. Workmen's Compensation Appeal Board (Equitable Gas Co.)*, 631 A.2d 705 (Pa. Cmwlth. 1993); appeal denied 641 A.2d 312 (Pa. 1994).

Notice of appeal which identified findings of fact and law by number alone provided sufficient notice of the issues on appeal. *Garnett v. Workmen's Compensation Board of Appeal*, 631 A.2d 705 (Pa. Cmwlth. 1993).

Timely Appeal

Workers' compensation claimant did not file timely appeal and did not properly mail appeal of workers' compensation judge's decision when he sent appeal documents to the Bureau of Workers' Compensation rather than to the Workers' Compensation Appeal Board; appeal form instructed claimant to send appeal to the Board and Board's mailing address was listed on top of the form. *Lud-wikowski v. Workers' Compensation Appeal Board (Dubin Paper Co.)*, 910 A.2d 99, 101—102 (Pa. Cmwlth. 2006).

Waiver of Issue

It is clear that where none of the challenged findings of fact or conclusions of law referred to the employer's first terminated petition, let alone the doctrine of res judicata, the claimant waived the res judicata issue. *Williams v. Workmen's Compensation Appeal Board*, 687 A.2d 428 (Pa. Cmwlth. 1997).

Cross References

This section cited in 34 Pa. Code § 111.12 (relating to filing, service and proof of service); and 34 Pa. Code § 111.15 (relating to no other pleadings allowed).

§ 111.12. Filing, service and proof of service.

(a) When filing other than electronically, an original of each appeal or cross appeal shall be filed. 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 petitioner shall follow the online procedures established by the Department on its web site located at www.dli.state.pa.us.

(c) The petitioner shall serve a copy of any appeal upon all parties and the judge.

(d) The respondent shall serve a copy of any cross appeal upon all parties and the judge.

(e) The petitioner or respondent shall, concurrently with the filing of an appeal or cross appeal, on a form prescribed by the Board or in substantial compliance therewith, file a proof of service with the Board containing:

- (1) A statement of the date of service.
- (2) The names of parties and judge served.
- (3) The mailing address, the applicable zip code and the manner of service on the parties and judge served.

(f) Subsections (a)—(e) supersede 1 Pa. Code §§ 31.26, 33.15, 33.32, 33.33 and 33.35—33.37.

Authority

The provisions of this § 111.12 amended under sections 401.1, 435(a) and (c) and 1608 of the Workers' Compensation 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).

Source

The provisions of this § 111.12 adopted January 1, 1970; amended April 7, 1989, effective April 8, 1989, 19 Pa.B. 1631; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043; amended October 16, 2009, effective October 17, 2009, 39 Pa.B. 6038; amended December 19, 2014, effective December 20, 2014, 44 Pa.B. 7837. Immediately preceding text appears at serial pages (345968) to (345969).

Cross References

This section cited in 34 Pa. Code § 111.11 (relating to content and form); 34 Pa. Code § 111.14 (relating to motions to quash); 34 Pa. Code § 111.16 (relating to briefs: content and form and time for filing); 34 Pa. Code § 111.21 (relating to content and form); 34 Pa. Code § 111.22 (relating to filing); 34 Pa. Code § 111.23 (relating to answers); 34 Pa. Code § 111.32 (relating to form/content); and 34 Pa. Code § 111.34 (relating to answers to petitions).

§ 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.

(b) The Board will, in addition to acknowledging receipt of the appeal or the cross appeal, establish the briefing schedule and indicate that the appeal and the cross appeal will be scheduled for oral argument unless all parties agree to submission of the case on only briefs or record.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 33.31 (relating to service by the agency).

Authority

The provisions of this § 111.13 amended under sections 401.1, 435(a) and (c) and 1608 of the Workers' Compensation 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).

Source

The provisions of this § 111.13 adopted January 1, 1970; amended April 7, 1989, effective April 8, 1989, 19 Pa.B. 1631; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043; amended December 19, 2014, effective December 20, 2014, 44 Pa.B. 7837. Immediately preceding text appears at serial pages (345969) and (337205).

Cross References

This section cited in 34 Pa. Code § 111.16 (relating to briefs: content and form and time for filing); and 34 Pa. Code § 111.17 (relating to oral argument).

§ 111.14. Motions to quash.

(a) A party may submit a motion to quash an appeal or a cross appeal within 20 days of service of the appeal or the cross appeal.

(b) A motion to quash shall be served on all parties.

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

(d) The Board shall dispose of a motion to quash in conformity with the procedures set forth in § 111.35 (relating to dispositions of petitions).

(e) An original motion to quash shall be filed.

(f) Subsections (a)—(e) supersede 1 Pa. Code §§ 31.26, 33.15, 33.32, 33.33, 33.35—33.37, 35.54 and 35.55 and also supersede 1 Pa. Code Chapter 35, Subchapter D (relating to motions).

Authority

The provisions of this § 111.14 amended under sections 401.1, 435(a) and (c) and 1608 of the Workers' Compensation 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).

Source

The provisions of this § 111.14 adopted January 1, 1970; amended April 7, 1989, effective April 8, 1989, 19 Pa.B. 1631; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043; amended December 19, 2014, effective December 20, 2014, 44 Pa.B. 7837. Immediately preceding text appears at serial pages (337205) to (337206).

Notes of Decisions*Entitlement to Benefits*

Although claimant did not prove entitlement to benefits under section cited in his petition, and even though claimant did not amend his petition, Board should not have ignored referee's finding that claimant qualified under different section of Workmen's Compensation Act. *Long v. Workmen's Compensation Appeal Board*, 505 A.2d 369 (Pa. Cmwlth. 1986).

Exceptions

Where employer had denied receipt of notice of worker's injury in answer to worker's claim petition, had examined worker on notice issue before referee and desired to pursue this issue on appeal to the Workmen's Compensation Appeal Board, employer should have included issue in its exceptions to the referee's decisions under 34 Pa. Code § 111.14(a). *Vare Brothers v. Workmen's Compensation Appeal Board*, 496 A.2d 1316 (Pa. Cmwlth. 1985).

A letter to a referee does not constitute an appeal to the Board if it is not addressed to the Board and does not state specific exceptions to the decision of the referee. *McBride Transportation Co. v. Workmen's Compensation Appeal Board*, 413 A.2d 470 (Pa. Cmwlth. 1980).

Issue

Although petitioner did not mention the issue of credit for nonservice connected disability pension payments in the statement which followed the list of challenged conclusions of law, the issue was not waived because Petitioner included the issue in that list. *Hildebrand v. Workmen's Compensation Appeal Board*, 532 A.2d 1287 (Pa. Cmwlth. 1987).

If the referees and the Workmen's Compensation Appeal Board observe the claimant's scars and the scars themselves indicate permanent disfigurement, medical evidence need not be adduced to establish the permanence of the disfigurement unless the permanence of the scars is put in issue. *Sun Shipbuilding and Dry Dock Co. v. Workmen's Compensation Appeal Board*, 398 A.2d 1111 (Pa. Cmwlth. 1979); affirmed 100 S. Ct. 2432 (U. S. 1980).

Reception of Evidence

When the claimant, who was disfigured, appealed the referee's findings to the Board which increased the award after viewing the disfigurement the reception of evidence by the Board was proper as an exception to the general rule that where the referee's findings are supported by competent evidence the Board has no power to take additional evidence or to disturb the referee's findings. *Workmen's Compensation Appeal Board v. Jones & Laughlin Steel Corp.*, 360 A.2d 854 (Pa. Cmwlth. 1976).

Timeliness

Section 423 of the Pennsylvania Workmen's Compensation Act (77 P. S. § 853) should be read in conjunction with this section to require a statement of specific grounds upon which appeal is taken, and Board, therefore, erred by considering issue raised beyond 20-day period set forth in section 423. *Fiorentino v. Workmen's Compensation Appeal Board*, 571 A.2d 554 (Pa. Cmwlth. 1990).

Cross References

This section cited in 34 Pa. Code § 111.15 (relating to no other pleadings allowed).

§ 111.15. No other pleadings allowed.

(a) Other than a motion to quash as set forth in § 111.14 (relating to motions to quash) and a cross-appeal, as set forth in § 111.11 (relating to content and form), no answer or other pleading may be filed or considered in conjunction with an appeal or a cross appeal.

(b) Subsection (a) supersedes 1 Pa. Code §§ 31.24, 31.25, 33.41, 33.42, 33.61, 35.1, 35.2, 35.5—35.7, 35.9—35.11, 35.14, 35.18, 35.19, 35.23, 35.24, 35.27—35.30, 35.35—35.41, 35.48—35.51, 35.54, 35.55, 35.211, 35.213, 35.231, 35.241 and 35.251.

Authority

The provisions of this § 111.15 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); 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).

Source

The provisions of this § 111.15 adopted January 1, 1970; amended April 7, 1989, effective April 8, 1989, 19 Pa.B. 1631; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (259547).

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

(a) A brief on behalf of a petitioner shall be filed with the Board at or before the date of oral argument. If oral argument is waived, petitioner shall file a brief within 30 days of the date of the Board's acknowledgment of receipt of the appeal as set forth in § 111.13 (relating to processing of appeals and cross appeals).

(b) A brief on behalf of a respondent shall be filed with the Board 30 days after oral argument. Otherwise, the respondent shall file a brief with the Board within 60 days of the date of the Board's acknowledgment of receipt of the appeal as set forth in § 111.13.

(c) Upon written request of a party directed to the Secretary of the Board or upon oral request at the time of oral argument, and with notice to all parties, the Board may extend or shorten the time for filing of the party's brief only for good cause shown. A party shall present a request to extend or shorten the time at or before the date set for filing that party's brief.

(d) Briefs not filed with the Board in accordance with the schedule in this section or as modified by the Board under subsection (c) will not be considered and will result in disposition of the appeal without further notice or consideration of the brief of the party failing to comply with these deadlines or schedule.

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

- (1) A short statement of the questions involved.

- (2) A statement of the facts by the petitioner, or counterstatement of the facts by the respondent.
- (3) The argument.
- (4) A short conclusion setting forth the precise relief sought.
- (5) A proof of service as specified in § 111.12(e) (relating to filing, service and proof of service) insofar as applicable.
- (f) An original brief shall be filed.
- (g) Briefs shall be served on all parties.
- (h) Subsections (a)—(g) supersede 1 Pa. Code §§ 31.15, 33.37, 35.212 and 35.221 and also supersede 1 Pa. Code Chapter 35, Subchapter F (relating to briefs).

Authority

The provisions of this § 111.16 amended under sections 401.1, 435(a) and (c) and 1608 of the Workers' Compensation 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).

Source

The provisions of this § 111.16 adopted January 1, 1970; amended April 7, 1989, effective April 8, 1989, 19 Pa.B. 1631; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043; amended December 19, 2014, effective December 20, 2014, 44 Pa.B. 7837. Immediately preceding text appears at serial pages (294645) to (294646).

Cross References

This section cited in 34 Pa. Code § 111.35 (relating to dispositions of petitions).

§ 111.17. Oral argument.

- (a) The Board will schedule oral argument in every appeal or cross appeal unless all parties to the appeal or the cross appeal, upon receiving the acknowledgment of appeal or cross appeal, indicate that no oral argument is requested, or that it is waived.
- (b) The Board will hear oral argument on appeals and cross appeals according to a schedule prepared in advance for each calendar year. Oral argument will be conducted in Harrisburg, Philadelphia and Pittsburgh and in other locations throughout this Commonwealth, as the Board may schedule, or, as is appropriate in the Board's judgment.
- (c) Oral argument will be scheduled at the earliest possible date pursuant to the schedule as established by the Secretary of the Board.
- (d) Parties shall be advised as far in advance as possible of the date of oral argument by the acknowledgment of appeal or cross appeal as specified in § 111.13(b) (relating to processing of appeals and cross appeals).
- (e) Oral argument shall consist of a presentation, including rebuttal, if necessary, by the petitioner and respondent.

(f) A petitioner or respondent represented by counsel need not be present at oral argument.

(g) Oral argument may be conducted before one or more members of the Board.

(h) Subsections (a)—(g) supersede 1 Pa. Code §§ 33.51, 35.204, 35.214 and 35.221.

Authority

The provisions of this § 111.17 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); 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).

Source

The provisions of this § 111.17 adopted January 1, 1970; amended April 7, 1989, effective April 8, 1989, 19 Pa.B. 1631; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (259549).

Notes of Decisions

Noncompliance

Where a claimant fails to follow the procedures prescribed in 34 Pa. Code § 111.17, (relating to rehearings) it is within the discretion of the Board to refuse to remand for additional testimony. *Vera-bish v. Workmen's Compensation Appeal Board*, 330 A.2d 542 (Pa. Cmwlth. 1975).

Cross References

This section cited in 34 Pa. Code § 111.35 (relating to dispositions of petitions).

§ 111.18. Decisions of the Board.

(a) The decision of the Board on an appeal and a cross appeal shall be issued as promptly as possible following oral argument or the receipt of briefs, whichever occurs later.

(b) Decisions of the Board on an appeal shall be issued under section 441 of The Administrative Code of 1929 (71 P. S. § 151).

(c) Decisions of the Board will be served on all parties and the judge from whose decision the appeal was taken.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 31.13, 31.14, 35.201—35.207 and 35.226.

Authority

The provisions of this § 111.18 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); 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).

Source

The provisions of this § 111.18 adopted April 7, 1989, effective April 8, 1989, 19 Pa.B. 1631; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (259549) to (259550).

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

Sec.	
111.21.	Content and form.
111.22.	Filing.
111.23.	Answers.
111.24.	Disposition of request for supersedeas.
111.25—111.30.	[Reserved].

§ 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.
- (2) A short statement setting forth reasons and bases for the request for supersedeas.
- (3) A specific statement as to the issues of law, if any, involved in the underlying appeal.
- (4) Information on the current employment status of the claimant, if known.
- (5) The court, if any, to which an appeal from the Board decision has been taken.
- (6) Other relevant information for the Board's consideration in determining whether the supersedeas request meets the following standards:
 - (i) The petitioner makes a strong showing that it is likely to prevail on the merits.
 - (ii) The petitioner shows that, without the requested relief, it will suffer irreparable injury.
 - (iii) The issuance of a stay will not substantially harm other interested parties in the proceeding.
 - (iv) The issuance of a stay will not adversely affect the public interest.
- (7) A proof of service as specified in § 111.12(e) (relating to filing, service and proof of service), insofar as applicable.

(b) Requests for supersedeas shall be served on all parties.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.1, 35.2, 35.17, 35.190 and 35.225.

Authority

The provisions of this § 111.21 amended under sections 401.1, 435(a) and (c) and 1608 of the Workers' Compensation 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).

Source

The provisions of this § 111.21 adopted January 1, 1970; reserved November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended April 7, 1989, effective April 8, 1989, 19 Pa.B. 1631; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043; amended December 19, 2014, effective December 20, 2014, 44 Pa.B. 7837. Immediately preceding text appears at serial pages (320248) to (320249).

Notes of Decision*Supersedeas Request*

Claimant who appealed grant of employer's second vocational interview, appealed Worker's Compensation Appeal Board's denial of his supersedeas request; claimant offered no evidence that he would suffer irreparable harm if supersedeas were denied and if claimant's benefits had been suspended for failure to attend the vocational interview and he prevailed on appeal, Claimant would be entitled to receive all compensation due from the date of the order granting employer's petition. *Linton v. W.C.A.B. (Amcast Indus. Corp.)*, 895 A.2d 677, 680 (Pa. Cmwlth 2006).

The grant or denial of supersedeas is at the discretion of the Worker's Compensation Appeal Board. *Linton v. W.C.A.B. (Amcast Indus. Corp.)*, 895 A.2d 677, 680 (Pa. Cmwlth. 2006).

Cross References

This section cited in 34 Pa. Code § 111.11 (relating to content and form).

§ 111.22. Filing.

(a) A request for supersedeas from the judge's decision shall be filed with the Board within the time specified in section 423 of the act (77 P. S. § 853).

(b) A request for supersedeas from a Board order shall be filed under the applicable Pennsylvania Rules of Appellate Procedure.

(c) An original request for supersedeas shall be filed. 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(e) (relating to filing, service and proof of service).

(e) Subsections (a)—(d) supersede 1 Pa. Code § 33.15 (relating to number of copies).

Authority

The provisions of this § 111.22 amended under sections 401.1, 435(a) and (c) and 1608 of the Workers' Compensation 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).

Source

The provisions of this § 111.22 adopted January 1, 1970; reserved November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended April 7, 1989, effective April 8, 1989, 19 Pa.B. 1631; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043; amended December 19, 2014, effective December 20, 2014, 44 Pa.B. 7837. Immediately preceding text appears at serial page (330011).

Notes of Decisions*Penalties*

Employer was not in violation of the Workers' Compensation Act by not making payment on compromise and release agreement pending appeal of workers' compensation judge's decision upholding the agreement; employer complied with the Act by timely filing a petition for supersedeas and therefore was not subject to penalty for failure to make payment after its supersedeas petition was granted by the Workers' Compensation Appeal Board. *Gregory v. W.C.A.B. (Narvon Builders)*, 926 A.2d 564, (Pa. Cmwlth. 2007).

When the Pennsylvania Workers' Compensation Act and the Board's supersedeas regulations are read together, the conclusion is that an employer can be deemed in default only if it fails to seek supersedeas while pursuing additional review or refuses to make a compensation payment after its supersedeas request is denied; to hold otherwise would render the Workers' Compensation Appeal Board's supersedeas regulations and authority a nullity. *Snizaski v. W.C.A.B. (Rox Coal Co.)*, 891 A.2d 1267, 1278 (Pa. 2006).

§ 111.23. Answers.

- (a) An answer to a request for supersedeas may be filed with the Board within 10 days of service of the request for supersedeas.
- (b) An original answer shall be filed.
- (c) An answer filed under this subsection shall be served on all parties.
- (d) An answer filed under this subsection shall be accompanied by a proof of service as specified in § 111.12(e) (relating to filing, service and proof of service), insofar as applicable.
- (e) Subsections (a)—(d) supersede 1 Pa. Code §§ 33.15 and 35.35 (relating to number of copies; and answers to complaints and petitions).

Authority

The provisions of this § 111.23 amended under sections 401.1, 435(a) and (c) and 1608 of the Workers' Compensation 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).

Source

The provisions of this § 111.23 adopted January 1, 1970; reserved November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended April 7, 1989, effective April 8, 1989, 19 Pa.B. 1631; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043; amended December 19, 2014, effective December 20, 2014, 44 Pa.B. 7837. Immediately preceding text appears at serial pages (330011) to (330012).

Notes of Decisions*Penalties*

When the Pennsylvania Workers' Compensation Act and the Board's supersedeas regulations are read together, the conclusion is that an employer can be deemed in default only if it fails to seek supersedeas while pursuing additional review or refuses to make a compensation payment after its supersedeas request is denied; to hold otherwise would render the Workers' Compensation Appeal Board's supersedeas regulations and authority a nullity. *Snizaski v. W.C.A.B. (Rox Coal Co.)*, 891 A.2d 1267, 1278 (Pa. 2006).

§ 111.24. Disposition of request for supersedeas.

- (a) The Board may grant the request for supersedeas in whole or in part.
- (b) The Board will rule on requests for supersedeas within 30 days of the date of receipt by the Board of the request, or the request shall be deemed denied.
- (c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.190 and 35.225 (relating to appeals to agency head from rulings of presiding officers; and inter-locutory orders).

Authority

The provisions of this § 111.24 amended under sections 401.1, 435(a) and (c) and 1608 of the Workers' Compensation 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).

Source

The provisions of this § 111.24 adopted January 1, 1970; reserved November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended April 7, 1989, effective April 8, 1989, 19 Pa.B. 1631; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043; amended December 19, 2014, effective December 20, 2014, 44 Pa.B. 7837. Immediately preceding text appears at serial pages (330012) and (337207).

Notes of Decisions*Awards*

The Workers' Compensation Act contemplates an award of penalties only where a claimant has prevailed on the merits of the case. *Shannon v. W.C.A.B. (City of Erie—Fire Dep't)*, 691 A.2d 1010 (Pa. Cmwlth. 1997); appeal denied 702 A.2d 1062 (Pa. 1997).

Penalties

When the Pennsylvania Workers' Compensation Act and the Board's supersedeas regulations are read together, the conclusion is that an employer can be deemed in default only if it fails to seek supersedeas while pursuing additional review or refuses to make a compensation payment after its supersedeas request is denied; to hold otherwise would render the Workers' Compensation Appeal Board's supersedeas regulations and authority a nullity. *Snizaski v. W.C.A.B. (Rox Coal Co.)*, 891 A.2d 1267, 1278 (Pa. 2006).

Where an employer made a timely request for supersedeas, and the supersedeas was ultimately granted, it was not an abuse of discretion of the Worker's Compensation judge and the Board to deny the employee's request for penalties for nonpayment during the period the supersedeas petition was pending. To hold that an employer is liable for penalties for nonpayment when its request for super-

seedeas is pending in effect makes the employer's right to supersedeas, in most instances, a nullity. *Candito v. W.C.A.B (City of Philadelphia)*, 785 A.2d 1106 (Pa. Cmwlth. 2001); appeal denied 814 A.2d 678 (Pa. 2002).

Time for Board Ruling

Legislative directive in the Statutory Construction Act of 1972 leads to the conclusion that Saturdays, Sundays and holidays are not to be included in the computation of time periods. *Wolf v. Workers' Compensation Appeal Board (County of Berks, Office of Aging)*, 705 A.2d 483 (Pa. Cmwlth. 1997).

§§ 111.25—111.30. [Reserved].

Source

The provisions of these §§ 111.25—111.30 adopted January 1, 1970; reserved November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015. Immediately preceding text appears at serial pages (9428) to (9431). November 7, 1981, 11 Pa.B. 4015. Immediately preceding text appears at serial page (9431).

Subchapter D. OTHER PETITIONS

Sec.	
111.31.	Applicability.
111.32.	Form/content.
111.33.	Specific petitions/requirements.
111.34.	Answers to petitions.
111.35.	Dispositions of petitions.
111.41.	[Reserved].
111.42.	[Reserved].
111.43.	[Reserved].
111.44.	[Reserved].

Cross References

This subchapter cited in 34 Pa. Code § 111.3 (relating to definitions).

§ 111.31. Applicability.

This subchapter applies to the following petitions or requests:

- (1) A petition under section 306 of the act (77 P. S. § 513).
- (2) A petition for appointment of guardian under section 307 of the act (77 P. S. § 542).
- (3) A petition alleging a meretricious relationship under section 307 of the act (77 P. S. § 562).
- (4) A petition for commutation under section 316 of the act (77 P. S. § 604).
- (5) A petition under section 317 of the act (77 P. S. § 603).
- (6) A petition for rehearing or reconsideration under section 426 of the act (77 P. S. § 871).

(7) A petition for attorney's fees under section 442 or 501 of the act (77 P. S. §§ 998 and 1021).

Authority

The provisions of this § 111.31 amended under sections 401.1, 435(a) and (c) and 1608 of the Workers' Compensation 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).

Source

The provisions of this § 111.31 adopted January 1, 1970; reserved November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended April 7, 1989, effective April 8, 1989, 19 Pa.B. 1631; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043; amended December 19, 2014, effective December 20, 2014, 44 Pa.B. 7837. Immediately preceding text appears at serial pages (294651) to (294652).

§ 111.32. Form/content.

- (a) Petitions and requests shall contain and be accompanied by the following:
- (1) A short statement setting forth the reasons and basis for the petition or request.
 - (2) The facts upon which the petition or request is based.
 - (3) A specific statement as to the issues of law, if any, involved in the petition or request.
 - (4) An explanation as to the status of the case, including the status of a pending appeal or petition before a judge, the Board or a court.
 - (5) The employment status of the claimant.
 - (6) A proof of service as specified in § 111.12(e) (relating to filing, service and proof of service), insofar as applicable.
- (b) Petitions and requests shall be served on all parties and on the judge if the case is pending before a judge.
- (c) An original petition and request shall be filed.
- (d) Subsections (a)—(c) supersede 1 Pa. Code §§ 31.5, 33.1—33.4, 33.11, 33.12, 33.15, 33.21—33.23, 35.1, 35.2 and 35.17.

Authority

The provisions of this § 111.32 amended under sections 401.1, 435(a) and (c) and 1608 of the Workers' Compensation 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).

Source

The provisions of this § 111.32 adopted January 1, 1970; reserved November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended April 7, 1989, effective April 8, 1989, 19 Pa.B. 1631; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043; amended December 19, 2014, effective December 20, 2014, 44 Pa.B. 7837. Immediately preceding text appears at serial page (294652).

Cross References

This section cited in 34 Pa. Code § 111.33 (relating to specific petitions/requirements).

§ 111.33. Specific petitions/requirements.

(a) A petition for commutation under section 316 of the act (77 P. S. § 604), in addition to the information required by § 111.32(a) (relating to form/content), shall have attached to it:

(1) The decision or document evidencing the employer/insurer's or self-insurer's responsibility to make current workers' compensation payments.

(2) The affidavit of the claimant, stipulation or other agreement signed by the parties which, if approved, will form the basis of the proposed commutation.

(3) An original and one copy of an order to be made by the Board if the commutation is approved.

(b) A petition under section 317 of the act (77 P. S. § 603), in addition to the information required by § 111.32(a), shall have attached to it:

(1) The document or agreement evidencing the annuity or trust.

(2) The stipulation or agreement, if any, entered into by the party which, if approved, would form the basis of the approval of the annuity or trust.

(3) An original and one copy of an order to be made by the Board if the annuity or trust is approved.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 33.15, 35.17 and 35.155 (relating to number of copies; petitions generally; and presentation and effect of stipulations).

Authority

The provisions of this § 111.33 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); 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).

Source

The provisions of this § 111.33 adopted January 1, 1970; reserved November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended April 7, 1989, effective April 8, 1989, 19 Pa.B. 1631; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (228523).

§ 111.34. Answers to petitions.

(a) An answer to a petition or request may be filed with the Board within 20 days of service of the petition or request.

(b) An original answer shall be filed.

(c) An answer filed shall be served on all parties.

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

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 33.15 and 35.35 (relating to number of copies; and answers to complaints and petitions).

Authority

The provisions of this § 111.34 amended under sections 401.1, 435(a) and (c) and 1608 of the Workers' Compensation 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).

Source

The provisions of this § 111.34 adopted January 1, 1970; reserved November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended April 7, 1989, effective April 8, 1989, 19 Pa.B. 1631; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043; amended December 19, 2014, effective December 20, 2014, 44 Pa.B. 7837. Immediately preceding text appears at serial pages (294653) to (294654).

§ 111.35. Dispositions of petitions.

(a) The Board will allow and consider briefs which are submitted simultaneously with the petition or request or answer thereto. A brief which is not submitted simultaneously with the petition, request or answer thereto, will not be considered by the Board and the petition or request may be determined on the petition or request and answer thereto without further argument or brief.

(b) A brief submitted with a petition, request or answer thereto shall conform to the requirements of § 111.16(e)—(g) (relating to briefs: content and form and time for filing).

(c) Oral argument on a petition may be scheduled at the discretion of the Board. Parties will be notified of the scheduling of oral argument as far in advance of the argument date as possible. The scheduling and conduct of oral argument will conform to the requirements of § 111.17 (relating to oral argument).

(d) The Board may, if appropriate, or will, if required by law, refer a petition or request to a judge for conducting hearings, preparing findings or proposed orders. Thereafter, the petition or request shall, if appropriate or required, be returned to the Board.

(e) Subsections (a)—(d) supersede 1 Pa. Code Chapter 35, Subchapters B, C, E and I.

Authority

The provisions of this § 111.35 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); 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).

Source

The provisions of this § 111.35 adopted January 1, 1970; reserved November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended April 7, 1989, effective April 8, 1989, 19 Pa.B. 1631; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (228524) and (259553).

Cross References

This section cited in 34 Pa. Code § 111.14 (relating to motions to quash).

§ 111.41. [Reserved].**Source**

The provisions of this § 111.41 adopted January 1, 1970; reserved November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015. Immediately preceding text appears at serial page (52280).

§ 111.42. [Reserved].**Source**

The provisions of this § 111.42 adopted January 1, 1970; reserved November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015. Immediately preceding text appears at serial pages (52280) to (52281).

§ 111.43. [Reserved].**Source**

The provisions of this § 111.43 adopted January 1, 1970; reserved November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015. Immediately preceding text appears at serial page (52281).

Notes of Decisions*Referral*

Because the referee failed to obey the directions of the Workers' Compensation Board and this disability determination has been pending for over 6 years, this matter was remanded with instructions to the Board to make findings of fact through the use of a worker's compensation judge as the Board's hearing officer who will report testimony taken back to the Board. The Board is then ordered to make a final adjudication pursuant to this regulation. *Benjamin v. Workmen's Compensation Appeal Board*, 672 A.2d 364 (Pa. Cmwlth. 1996).

The referee and the Board are not compelled to find as facts allegations in a claim petition which are not specifically denied, and therefore failure to find as facts allegations of an accident when they are not specifically denied does not constitute error. *Isherwood v. Township of Penn Hills*, 318 A.2d 767 (Pa. Cmwlth. 1974).

This section was invalidated by the act of February 8, 1972 (P. L. 23) which repealed the act of July 21, 1919 (77 P. S. § 112), under which this section was promulgated. *St. Denis v. Workmen's Compensation Appeal Board*, 371 A.2d 252 (Pa. Cmwlth. 1977).

§ 111.44. [Reserved].**Source**

The provisions of this § 111.44 adopted January 1, 1970; reserved November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015. Immediately preceding text appears at serial page (113055).

Notes of Decisions*Authority*

Although claimant had filed his claim without showing that the incidence of the condition complained of was greater in his occupation than in the general population, the referee was authorized under 34 Pa. Code § 111.44(c) to grant relief. *Rightly v. Workmen's Compensation Appeal Board*, 509 A.2d 905 (Pa. Cmwlt. 1986).

Remand

Case remanded where Workmen's Compensation Appeal Board had failed to act on claimant's request for leave to amend his claim petition to come within section 301(c) of the Pennsylvania Workmen's Compensation Act and where referee had found that work-related gases and dust had aggravated pre-existing lung condition to point of total disability. *Sandusky v. Workmen's Compensation Appeal Board*, 487 A.2d 1019 (Pa. Cmwlt. 1985).

[Next page is 121-1.]