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Sequence Number: 09-25-23  
 Rule ID(s): 9940  
 File Date: 9/22/2023  
 Effective Date: 12/21/2023

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

**Agency/Board/Commission:** Department of Labor and Workforce Development  
**Division:** Bureau of Workers' Compensation  
**Contact Person:** Amanda Terry  
**Address:** 220 French Landing Drive, Nashville, TN  
**Zip:** 37243  
**Phone:** 615-253-1847  
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**Revision Type (check all that apply):**

- Amendment  Content based on previous emergency rule filed on \_\_\_\_\_  
 New  Content is identical to the emergency rule  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0800-02-22	Workers' Compensation Appeals Board
Rule Number	Rule Title
0800-02-22-.01	Filing of Notice of Appeal
0800-02-22-.02	Record on Appeal
0800-02-22-.03	Judicial Economy; Representation; Signing of Papers; Recusal; Prohibition of Ex Parte Communications; Suspension of Rules
0800-02-22-.04	Motions
0800-02-22-.05	Appeal of an Interlocutory Order
0800-02-22-.06	Appeal of a Compensation Hearing Order
0800-02-22-.07	Contents of Briefs
0800-02-22-.08	Oral Argument
0800-02-22-.09	Costs on Appeal; Settlement During Appeal; Frivolous Appeals; Obtaining certified Copies of Appeals Board Orders and Opinions

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Rule 0800-02-22-.01 FILING OF NOTICE OF APPEAL shall be amended by amending the language in paragraph (1) as follows; deleting language from paragraph (4) and adding language to paragraph (4) subparagraph (b); and amending the language in paragraph (5), so the rule reads as follows:

- (1) Any party may appeal any order of a workers' compensation judge by filing a notice of appeal, on a form approved by the Bureau, with the clerk of the court of workers' compensation claims, in accordance with Chapter 0800-02-21. The notice of appeal must be filed:
- (4) The appealing party is responsible for payment of a filing fee in an amount set by the administrator.
  - (a) Within ten (10) calendar days after the filing of a notice of appeal, payment must be received by check, money order, or credit card. Payments can be made in person at any Bureau office or by United States mail, hand-delivery, or other delivery service.
  - (b) In the alternative, the appealing party may file an affidavit of indigency, on a form prescribed by the Bureau, seeking a waiver of the filing fee. The affidavit of indigency may be filed contemporaneously with the notice of appeal or must be filed within ten (10) calendar days thereafter. The appeals board will consider the affidavit of indigency and issue an order granting or denying the request for a waiver of the filing fee as soon thereafter as is practicable. The affidavit must be notarized or signed under penalty of perjury consistent with Rule 72 of the Tennessee Rules of Civil Procedure.
  - (c) Failure to timely pay the filing fee or file the affidavit of indigency in accordance with this section may result in dismissal of the appeal.
- (5) Upon the filing of a notice of appeal, the court of workers' compensation claims no longer has jurisdiction over the case, absent a remand, until a decision is filed by the appeals board, except, after a notice of appeal has been filed, the court of workers' compensation claims retains jurisdiction to rule on motions filed in accordance with these rules or any applicable rule of the Tennessee Rules of Civil Procedure.

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

Rule 0800-02-22-.02 RECORD ON APPEAL shall be amended by amending the language in paragraph (1) and deleting subparagraphs (a) and (b); amending the language in paragraph (2) as follows; adding a new paragraph (3); renumbering paragraph (3) to (4); and renumbering paragraph (4) to (5), so the rules reads as follows:

- (1) The parties to an appeal have the responsibility to ensure the completeness of the record on appeal. The record on appeal shall consist of: (1) all pleadings, responses to pleadings, Bureau forms, position statements, and orders of the court filed with the clerk of the court of workers' compensation claims prior to the filing of the notice of appeal; (2) all exhibits, whether admitted into evidence or marked for identification purposes only; (3) a transcript or, in the alternative, a statement of the evidence, if any; (4) briefs filed before or after the filing of the notice of appeal; and (5) any other document(s) designated by a party and approved by the court of workers' compensation claims pertaining to the issues decided in that court and pertinent to an issue on appeal. The parties will make reasonable efforts to ensure no paper is included in the record more than once.
- (2) If necessary, the appeals board may direct that a supplemental record be submitted to the appeals board. Documents, testimony, or other evidence not contained in the record on appeal shall not be considered by the appeals board.

- (3) If a dispute arises regarding the contents of the technical record, the exhibits, the transcript, or a statement of the evidence prior to the date the appeals board issues a docketing notice, either party may file a motion with the trial court, and the trial court may resolve any such dispute without remand. If a dispute arises regarding the contents of the technical record, the exhibits, the transcript, or a statement of the evidence after the date the appeals board issues a docketing notice, a motion must be filed with the appeals board requesting a remand.
- (4) All pleadings, forms, transcripts, depositions, briefs, motions, other writings, and all exhibits, shall be maintained by the clerk of the appeals board during the pendency of the appeal.
- (5) After final determination of any case, the parties shall have one hundred eighty (180) days after entry of the decision on appeal to withdraw exhibits or depositions. The clerk may destroy or dispose of any exhibits or depositions not so withdrawn in accordance with the Records Disposition Authorization of the Bureau.

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

Rule 0800-02-22-.03 JUDICIAL ECONOMY; REPRESENTATION; SIGNING OF PAPERS; RECUSAL; PROHIBITION OF EX PARTE COMMUNICATIONS; SUSPENSION OF RULES shall be amended by adding a new paragraph (2); renumbering paragraph (2) to paragraph (3); adding a new paragraph (4) with subparagraph (a), (b), and (c); renumbering paragraph (3) to paragraph (5) and amending language; renumbering paragraph (4) to paragraph (6) and amending language; renumbering paragraph (5) to paragraph (7); renumbering paragraph (6) to paragraph (8) and amending language; and by adding paragraph (9), so the rule reads as follows:

- (1) The appeals board may, in an effort to secure a just and speedy determination of matters on appeal and with the concurrence of all judges, decide an appeal by an abbreviated order or by memorandum opinion, whichever the appeals board deems appropriate, in cases that are not legally and/or factually novel or complex.
- (2) In circumstances where a party timely files a notice of appeal of an order addressing a motion for a continuance of a hearing, an order addressing a motion to amend a scheduling order, or an order entering a scheduling order, a party may file a motion asking the appeals board to shorten or suspend any or all appeal deadlines and summarily act on the appeal through an abbreviated order as provided in these rules.
- (3) In any appeal pending before the appeals board, any party may be represented by a Tennessee licensed attorney in good standing. An attorney licensed outside of Tennessee may apply for admission pro hac vice in accordance with Tennessee Supreme Court Rule 19. Any party that is a natural person may represent himself or herself in any proceeding before the appeals board. Any corporation or other artificial person must be represented by counsel in all proceedings before the appeals board. Any substitution or withdrawal of any attorney shall comply with Chapter 0800-02-21.
- (4) In cases where an attorney has entered an appearance on behalf of one or more parties, representation continues during the pendency of any appeal unless the appeals board, upon the filing of a motion to withdraw and a showing of good cause, grants a motion to withdraw.
  - (a) An attorney seeking to withdraw during the pendency of an appeal must file a motion with the appeals board showing good cause for the withdrawal and provide notice of the motion to withdraw to all the parties. An affidavit from the attorney must accompany the motion and contain the party's last-known mailing address, email address, telephone number, and a declaration that the attorney notified the represented party of both the effects of the attorney's withdrawal from the case and any appeal deadlines and/or scheduled arguments.
  - (b) Any party, including the party whose attorney is seeking to withdraw, shall have ten (10) business days after the filing of the motion to file any objections or responses thereto.
  - (c) If the appeals board grants the motion to withdraw, the appeal shall be held in abeyance

and the unrepresented party shall have fifteen (15) business days to retain new counsel or indicate in writing to the appeals board that no counsel will be retained. If no counsel enters an appearance within the fifteen (15) business day period, the appeal will proceed in due course.

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

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

Rule 0800-02-22-.04 MOTIONS shall be amended by adding language to paragraph (1) as follows; deleting language from paragraph (3); and adding a new paragraph (4):

- (1) Any motion seeking to extend any time limit during the pendency of an appeal must be filed prior to the expiration of the applicable time limit. The motion may be decided per curiam or by one appeals board judge. An order will be issued as soon as practicable after the motion is filed. The appeals board cannot extend the time for filing a notice of appeal. If a notice of appeal is not timely filed, the appeals board is without jurisdiction to review the case.
- (2) Any motion seeking to extend any time limit during the pendency of an appeal must show good cause in support of the motion sufficient to establish exceptional circumstances. The existence of good cause and/or exceptional circumstances shall be determined in the discretion of the appeals board.

- (3) With the exception of the filing of a notice of appeal, the appeals board may extend deadlines during the appeals process upon motion filed by a party or its own motion as provided in Tennessee Code Annotated section 50-6-217.
- (4) Any motion other than for an extension of time shall include a clear, concise statement of the relief sought and citation(s) to any controlling or persuasive authority supporting the motion. Any other party shall have five (5) business days to file a response, if any, to such motion.

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

Rule 0800-02-22-.05 APPEAL OF AN INTERLOCUTORY ORDER shall be amended by amending the language in paragraph (1) as follows and adding subparagraphs (a), (b), and (c) to paragraph (1), amending the language in paragraph (2) as follows; deleting paragraph (3) in its entirety; renumbering the remaining paragraphs (4), (5), and (6) respectively to (3), (4), and (5); and adding a new paragraph (6) as follows:

- (1) A party or parties may have a transcript of any hearing pertinent to the appeal of an interlocutory order prepared by a licensed court reporter and filed with the clerk of the court of workers' compensation claims within ten (10) business days of the filing of the notice of appeal. Alternatively, any appealing party may prepare a statement of the evidence summarizing the live witness testimony presented at the hearing and file it within ten (10) business days of the filing of the notice of appeal. Any other party shall have five (5) business days after the filing of the proposed statement of the evidence to file objections, amendments, or an alternative statement of the evidence.
  - (a) The trial judge will resolve any disputes regarding the contents of the statement of the evidence consistent with these rules.
  - (b) A statement of the evidence must be certified by the trial judge as a fair and accurate summary of the testimony presented at the hearing before the record is submitted to the appeals board.
  - (c) If, after reasonable efforts to resolve any disputes regarding a statement of the evidence have been made, the trial judge determines it cannot certify a statement of the evidence as fair and accurate, it will direct the trial court clerk to forward the record to the appeals board without a statement of the evidence.
- (2) The appellant shall file a brief with the clerk of the court of workers' compensation claims within ten (10) business days of the filing of a transcript or statement of the evidence. If no transcript or statement of the evidence is filed or if a dispute regarding a statement of the evidence or the contents of the record is submitted to the trial court, the appellant shall file a brief within ten (10) business days of the expiration of the time to file a transcript or statement of the evidence or within ten (10) business days of the date the trial court resolves any dispute concerning the contents of the record or statement of the evidence, whichever is later. The appellee shall file a responsive brief with the clerk of the court of workers' compensation claims within ten (10) business days of the filing of the appellant's brief or the expiration of the time for the filing of the appellant's brief, whichever is earlier. No reply brief shall be filed unless the appellee raises an issue or issues on appeal not previously addressed in the appellant's brief. Under such circumstances, the appellant may file a reply brief within five (5) business days addressing only the issue or issues not previously addressed. If both parties appeal, each party shall file its brief as an appellant and as an appellee consistent with the above briefing schedule.
- (3) The clerk of the workers' compensation appeals board shall docket the appeal upon receipt of the record from the clerk of the court of workers' compensation claims and send a docketing notice to all parties.
- (4) If the appeals board affirms an interlocutory order awarding temporary disability or medical benefits, the employer shall begin making payments of benefits within five (5) business days from the date the decision affirming the interlocutory order is filed by the appeals board. Failure to begin benefit payments within five (5) business days may result in the assessment of a civil

penalty pursuant to Tennessee Code Annotated section 50-6-118. Upon the filing of a decision on an interlocutory appeal, the clerk of the appeals board shall transmit a copy of the decision to the parties by regular and/or electronic mail and to the clerk of the court of workers' compensation claims. Petitions to rehear or reconsider the decision of the appeals board are disfavored. However, a party may petition the appeals board to rehear or reconsider its decision. Such petitions will be heard consistent with Rule 39 of the Tennessee Rules of Appellate Procedure.

- (5) Following the filing of a decision affirming, reversing, and/or modifying and remanding an interlocutory order, the claim shall continue in the manner provided by Tennessee Code Annotated section 50-6-239 and by these rules.
- (6) In circumstances where the appeals board reverses or vacates an order of the court of workers' compensation claims with instructions for the judge of the court of workers' compensation claims to enter a dispositive order that resolves all issues in the case, a party wishing to appeal that subsequent dispositive order may, after timely filing a notice of appeal, file a motion asking the appeals board to suspend all record and briefing requirements and summarily affirm and certify as final the order of the court of workers' compensation claims as provided in Tennessee Code Annotated section 50-6-225. In the alternative, the appeals board may, on its own motion, suspend all record and briefing requirements and summarily affirm and certify as final the order of the court of workers' compensation claims for purposes of further appellate review.

Authority: T.C.A. §§4-3-1409, 9-8-307, 9-8-402, 50-6-118, 50-6-217, 50-6-225, 50-6-233, and 50-6-237.

Rule 0800-02-22-.06 APPEAL OF A COMPENSATION HEARING ORDER shall be amended by amending the language in paragraph (1) as follows and adding subparagraphs (a), (b) and (c) to paragraph (1), deleting paragraph (4) in its entirety, and renumbering former paragraph (5) to paragraph (4) respectively:

- (1) A party or parties may have a transcript of any hearing pertinent to the appeal of a compensation order prepared by a licensed court reporter and filed with the clerk of the court of workers' compensation claims within fifteen (15) calendar days of the filing of the notice of appeal. Alternatively, any party to the appeal may prepare a statement of the evidence summarizing the testimony presented at the hearing and file it within fifteen (15) calendar days of the filing of the notice of appeal. Any other party shall have five (5) business days after the filing of the proposed statement of evidence to file objections, amendments, or an alternative statement of the evidence.
  - (a) The trial judge will resolve any disputes regarding the contents of the statement of the evidence consistent with these rules.
  - (b) A statement of the evidence must be certified by the trial judge as a fair and accurate summary of the testimony presented at the hearing before the record is submitted to the appeals board.
  - (c) If after reasonable efforts to resolve any disputes regarding a statement of the evidence have been made, the trial judge determines it cannot certify a statement of the evidence as fair and accurate, it will direct the trial court clerk to forward the record to the appeals board without a statement of the evidence.
- (4) Upon the filing of a decision on a compensation appeal, the clerk of the workers' compensation appeals board shall transmit a copy of the decision to the parties by regular or electronic mail and to the clerk of the court of workers' compensation claims. Petitions to rehear or reconsider the decision of the appeals board are disfavored. However, a party may petition the appeals board to rehear or reconsider its decision. Such petitions will be heard consistent with Rule 39 of the Tennessee Rules of Appellate Procedure.

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

Rule 0800-02-22-.07 CONTENTS OF BRIEFS shall be amended by changing the name of the rule and inserting a SS-7039 (November 2022)

new paragraph (2) and renumbering the current paragraphs (2) and (3) to (3) and (4) respectively:

- (2) Briefs filed in support of any appeal shall specify the issues presented for review and include legal argument in support thereof. All briefs shall contain: (1) a statement of the facts summarizing the facts from the evidence admitted during the trial; (2) a statement of the case summarizing the trial court's disposition of the case; (3) a statement of the issue(s) presented for review on appeal; and (4) an argument, citing relevant statutes, case law, or other legal authority. The argument section is limited to a maximum of fifteen (15) pages unless otherwise directed by the appeals board. The brief shall include a table of contents, a table of authorities, and a certificate of service. All briefs shall be signed by the attorney of record or the self-represented party filing the brief.
- (3) Any motion seeking to expand the page limit of a brief must be filed at least five business days prior to the date the brief is due. An order will be issued as soon as practicable after the motion is filed.
- (4) Issues or arguments not raised in the court of workers' compensation claims may be deemed waived on appeal.

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

Rule 0800-02-22-.08 ORAL ARGUMENT shall be amended by deleting a sentence from paragraphs (1) and changing one word in paragraph (2), and inserting a new paragraph (9) and renumbering the current paragraph (9) to paragraph (10):

- (1) The appeals board shall base its decision on the record on appeal and the arguments of the parties. Oral argument shall be allowed only upon motion of a party and/or by order of the appeals board. Any motion for oral argument filed by a party must state with specificity the reason or reasons the decision-making process would be aided by oral argument.
- (2) Oral argument may be conducted telephonically, by video conference, or in person, at the discretion of the appeals board. The clerk will advise the parties regarding the date and location of oral argument as determined by the appeals board. Once oral argument is scheduled, it shall not be continued absent a showing of exceptional circumstances.
- (9) If a case is scheduled for oral argument and is subsequently removed from the oral argument docket due to any party's failure to comply with these rules or for good cause shown, oral argument in that case will be considered to have been conducted on the date the case is removed from the docket for purposes of any remaining appeals deadlines.
- (10) If the appeals board determines that additional analysis of an issue or issues may be beneficial, the appeals board may, by order, direct the parties to submit arguments or additional briefing addressing those issues whether or not oral argument is held. Alternatively, the appeals board may correspond via email with the parties, through the clerk of the appeals board, directing that specific issues be addressed whether or not oral argument is held. Any party directed to submit arguments or additional briefing shall submit a response to the clerk by email within five (5) business days of the transmission of the questions. Any other party shall respond to the initial response by email to the clerk within five (5) business days of the transmission of the initial response. A reply to such response, if any, shall be submitted within three (3) business days of the transmission of the response. No further responses shall be permitted unless otherwise directed by the appeals board.

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

Rule 0800-02-22-.09 COSTS ON APPEAL; SETTLEMENT DURING APPEAL; FRIVOLOUS APPEALS; OBTAINING CERTIFIED COPIES OF APPEALS BOARD ORDERS AND OPINIONS shall be amended by changing the name of the rule, adding language to paragraph (4) and by adding paragraph (5):

- (4) When it appears to the appeals board that an appeal was frivolous or taken solely for delay, the

appeals board may, either upon motion of a party or of its own motion, with or without remand, assess a penalty and/or award expenses, including reasonable attorney's fees, incurred by the appellee as a result of the appeal.

- (5) If a party wishes to obtain a certified copy of any decision of the appeals board or other documents contained in a record on appeal, that party may make a request as provided in Rule 0800-02-29.

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

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Bureau of Workers' Compensation (board/commission/other authority) on 6/12/2023 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 02/10/2023

Rulemaking Hearing(s) Conducted on: (add more dates). 04/14/2023

Date: 06/12/2023

Signature: 

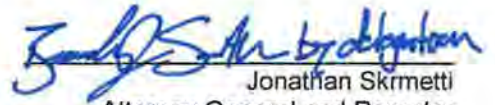
Name of Officer: Troy Haley

Title of Officer: Administrator

Agency/Board/Commission: Bureau of Workers' Compensation

Rule Chapter Number(s): 0800-02-22

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

  
Jonathan Skrametti  
Attorney General and Reporter

9-15-2023

Date

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Filed with the Department of State on: 9/22/2023

**RECEIVED**

Effective on: 12/21/2023

Sep 22 2023, 2:29 pm

Secretary of State  
Division of Publications

  
Tre Hargett  
Secretary of State

**Public Hearing Comments**

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

No comments were made.

## Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule:

The amended rules should not affect small employers that fall under the Tennessee Workers' Compensation Laws, (employers with at least five employees, or for those in the construction industry with at least one employee). There should be no additional costs associated with these rule changes.

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

There is no additional record keeping requirement or administrative cost associated with these rule changes.

3. A statement of the probable effect on impacted small businesses and consumers:

These rules should have no impact on consumers or small businesses.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business:

There are no less burdensome methods to achieve the purposes and objectives of these rules.

5. Comparison of the proposed rule with any federal or state counterparts:

None.

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule:

Exempting small businesses would be counter-productive due to due process issues.

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

These proposed rule changes will have little, if any, impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules are amended to further clarify procedural rules for the Appeals Board.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. §§ 50-6-217 & 50-6-233, which state that the Administrator shall establish an appeals board to review interlocutory and final orders of the workers' compensation court, and the power to enforce this chapter along with rule making authority to promulgate rules and regulations.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Injured workers, employers, insurance carriers and attorneys will be affected by adoption or rejection of the rules.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There is minimal, if any, fiscal impact upon state or local government.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Amanda Terry, Legal Services Director, Bureau of Workers' Compensation

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Amanda Terry, Legal Services Director, Bureau of Workers' Compensation

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

220 French Landing Drive, 1-B, Nashville, TN 37243, 615-253-1847, amanda.terry@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

**RULE  
OF THE  
TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
BUREAU OF WORKERS' COMPENSATION**

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

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

- (1) Any party may appeal any order of a workers' compensation judge by filing a notice of appeal, on a form approved by the Bureau, with the clerk of the court of workers' compensation claims, in accordance with Chapter 0800-02-21. ~~Pursuant to Tennessee Code Annotated section 50-6-217(a)(2),~~ the notice of appeal must be filed:
  - (a) Within seven (7) business days of the date an interlocutory order was filed by the workers' compensation judge; or
  - (b) Within thirty (30) calendar days of the date a compensation order was filed by the workers' compensation judge.
- (2) The appealing party shall serve a copy of the notice of appeal upon the opposing party or parties by any means as set forth in Chapter 0800-02-21.
- (3) Any appeal in which the notice of appeal is not received by the clerk of the court of workers' compensation claims within the time provided by paragraph (1) shall be dismissed.
- (4) The appealing party is responsible for payment of a filing fee in an amount set by the administrator ~~pursuant to Tennessee Code Annotated section 50-6-217(d)(2).~~
  - (a) Within ten (10) calendar days after the filing of a notice of appeal, payment must be received by check, money order, or credit card. Payments can be made in person at any Bureau office or by United States mail, hand-delivery, or other delivery service.
  - (b) In the alternative, the appealing party may file an affidavit of indigency, on a form prescribed by the Bureau, seeking a waiver of the filing fee. The affidavit of indigency may be filed contemporaneously with the notice of appeal or must be filed within ten (10) calendar days thereafter. The appeals board will consider the affidavit of indigency and issue an order granting or denying the request for a waiver of the filing fee as soon thereafter as is practicable. ~~The affidavit must be notarized or signed under penalty of perjury consistent with Rule 72 of the Tennessee Rules of Civil Procedure.~~
  - (c) Failure to timely pay the filing fee or file the affidavit of indigency in accordance with this section may result in dismissal of the appeal.
- (5) Upon the filing of a notice of appeal, the court of workers' compensation claims no longer has jurisdiction over the case, absent a remand, until a decision is filed by the appeals board; except, after a notice of appeal has been filed, the court of workers' compensation claims

WORKERS' COMPENSATION APPEALS BOARD CHAPTER 0800-02-22

(Rule 0800-02-22-.01, continued)

retains jurisdiction to rule on ~~certain~~ motions ~~filed~~ in accordance with these rules or any applicable rule of the Tennessee Rules of Civil Procedure.

**Authority:** T.C.A. §§ 4-3-1409, 50-6-217, 50-6-225, 50-6-233, and 50-6-237. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Repeal and new rule filed June 22, 2015; effective September 20, 2015. Amendments filed November 7, 2017; effective February 5, 2018. Amendments filed July 14, 2020; effective October 12, 2020.

**0800-02-22-.02 RECORD ON APPEAL.**

- (1) The parties to an appeal have the responsibility to ensure ~~the completeness of the record on appeal a complete record on appeal~~. The record on appeal shall consist of: (1) all ~~papers pleadings, responses to pleadings, Bureau forms, position statements, and orders of the court filed with the clerk of the court of workers' compensation claims prior to the filing of the notice of appeal in the trial court except as hereafter provided;~~ (2) all exhibits, ~~whether admitted into evidence or marked for identification purposes only;~~ (3) a transcript or, ~~in the alternative, a statement of the evidence, if any;~~ (4) briefs filed before or after the filing of the notice of appeal; and (5) any other document(s) designated by a party and approved by the court of workers' compensation claims pertaining to the issues decided in that court and pertinent to an issue on appeal. ~~The parties will make reasonable efforts to ensure no paper is included in the record more than once.~~
  - ~~(a) The following papers filed in the court of workers' compensation claims are excluded from the record: (1) subpoenas or summonses for parties or witnesses unless admitted into evidence and pertinent to an issue on appeal; (2) papers relating to discovery unless admitted into evidence and pertinent to an issue on appeal; and (3) notices, motions, and orders relating thereto, unless pertinent to an issue decided by the court of workers' compensation claims.~~
  - ~~(b) No paper shall be included in the record more than once.~~
- (2) ~~Any dispute regarding the contents of a joint statement of the evidence submitted in lieu of a transcript or regarding whether the record accurately discloses what occurred in the court of workers' compensation claims shall be submitted to and settled by the court of workers' compensation claims. The party requesting correction or modification of the record shall file a motion with the appeals board requesting that the case be remanded to the court of workers' compensation claims for resolution of the dispute. If necessary, the appeals board may direct that a supplemental record be submitted to the appeals board. Documents, testimony, or other evidence not contained in the record on appeal shall not be considered by the appeals board.~~
- (3) If a dispute arises regarding the contents of the technical record, the exhibits, the transcript, or a statement of the evidence prior to the date the appeals board issues a docketing notice, either party may file a motion with the trial court, and the trial court may resolve any such dispute without remand. If a dispute arises regarding the contents of the technical record, the exhibits, the transcript, or a statement of the evidence after the date the appeals board issues a docketing notice, a motion must be filed with the appeals board requesting a remand.
- ~~(3)~~(4) All pleadings, forms, transcripts, depositions, briefs, motions, other writings, and all exhibits, shall be maintained by the clerk of the appeals board during the pendency of the appeal.
- ~~(4)~~(5) After final determination of any case, the parties shall have one hundred eighty (180) days after entry of the decision on appeal to withdraw exhibits or depositions. The clerk may destroy or dispose of any exhibits or depositions not so withdrawn in accordance with the Records Disposition Authorization of the Bureau.

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

**0800-02-22-.03 MISCELLANEOUS. JUDICIAL ECONOMY; REPRESENTATION; SIGNING OF PAPERS; RECUSAL; PROHIBITION OF EX PARTE COMMUNICATIONS; SUSPENSION OF RULES**

- (1) The appeals board may, in an effort to secure a just and speedy determination of matters on appeal and with the concurrence of all judges, decide an appeal by an abbreviated order or by memorandum opinion, whichever the appeals board deems appropriate, in cases that are not legally and/or factually novel or complex.
- (2) In circumstances where a party timely files a notice of appeal of an order addressing a motion for a continuance of a hearing, an order addressing a motion to amend a scheduling order, or an order entering a scheduling order, a party may file a motion asking the appeals board to shorten or suspend any or all appeal deadlines and summarily act on the appeal through an abbreviated order as provided in these rules.
- ~~(2)~~ (3) In any appeal pending before the appeals board, any party may be represented by a Tennessee licensed attorney in good standing. An attorney licensed outside of Tennessee may apply for admission pro hac vice in accordance with Tennessee Supreme Court Rule 19. Any party that is a natural person may represent himself or herself in any proceeding before the appeals board. Any corporation or other artificial person must be represented by counsel in all proceedings before the appeals board. Any substitution or withdrawal of any attorney shall comply with Chapter 0800-02-21.
- (4) In cases where an attorney has entered an appearance on behalf of one or more parties, representation continues during the pendency of any appeal unless the appeals board, upon the filing of a motion to withdraw and showing of good cause, grants a motion to withdraw.
  - (a) An attorney seeking to withdraw during the pendency of an appeal must file a motion with the appeals board showing good cause for the withdrawal and provide notice of the motion to withdraw to all parties. An affidavit from the attorney must accompany the motion and contain the party's last-known mailing address, email address, telephone number, and a declaration that the attorney noticed the represented party of both the effects of the attorney's withdrawal from the case and of any appeal deadlines and/or scheduled arguments.
  - (b) Any party, including the party whose attorney is seeking to withdraw, shall have ten (10) business days after the filing of the motion to file any objections or responses thereto.
  - (c) If the appeals board grants the motion to withdraw, the appeal shall be held in abeyance and the unrepresented party shall have fifteen (15) business days to retain new counsel or indicate in writing to the appeals board that no counsel will be retained. If no counsel enters an appearance within the fifteen (15) business day period, the appeal will proceed in due course.
- ~~(3)~~ (5) Any brief, motion, or other writing submitted on behalf of a party to the appeals board must be signed by an attorney who has entered an appearance in the case for such party or by a self-represented individual in accordance with ~~these rules section 0800-02-22-.03(2)~~. Any joint motion submitted to the appeals board involving a self-represented party must be signed by the self-represented party. An attorney may not sign an unrepresented party's name "by permission."
- ~~(4)~~ (6) Attorneys and/or parties are prohibited from ex parte communications with any appeals board ~~personnel~~ judge in any manner during the pendency of an appeal concerning or relating to the appeal. An appeal is pending from the date the notice of appeal is filed until the time a subsequent final order or judgment is entered in the case, or time for appeal of any subsequent final order or judgment has expired, whichever is later.
- ~~(5)~~ (7) Any party seeking recusal of an appeals board judge shall do so as soon as practicable by written motion supported by an affidavit under oath or a declaration made under penalty of

perjury on personal knowledge and by other appropriate materials. The motion shall state, with specificity, all factual and legal grounds supporting disqualification of the judge and shall affirmatively state that it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

- (a) Upon the filing of a motion seeking recusal, the judge in question shall act promptly by written order and either grant or deny the motion.
- (b) If the motion is denied, the judge shall state in the order the grounds upon which he or she denies the motion.

(6) (8) If substitution of a party is necessary due to death or other reason following the filing of the notice of appeal, a motion for substitution may be made by any party or by the successor or representative of any such deceased party. If a party entitled to appeal should die before filing a notice of appeal, a notice of appeal may be filed and served by the deceased party's personal representative or, if there is no such personal representative, by the deceased party's counsel of record. After the notice of appeal is filed, substitution shall be ~~made effected~~ in accordance with this section.

(9) Other than any requirements related to the filing of a notice of appeal, the appeals board may in its discretion suspend the rules set forth in this chapter in extraordinary circumstances when equity and justice so require.

**Authority:** T.C.A. §§ 4-3-1409, 50-6-217, 50-6-225, 50-6-233, and 50-6-237. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Repeal and new rule filed June 22, 2015; effective September 20, 2015. Amendments filed November 7, 2017; effective February 5, 2018. Amendments filed July 14, 2020; effective October 12, 2020.

#### 0800-02-22-.04 MOTIONS.

- (1) Any motion seeking to extend any time limit during the pendency of an appeal must be filed prior to the expiration of the applicable time limit. The motion may be decided *per curiam* or by one appeals board judge. An order will be issued as soon as practicable after the motion is filed. The appeals board cannot extend the time for filing a notice of appeal. If a notice of appeal is not timely filed, the appeals board is without jurisdiction to review the case.
- (2) Any motion seeking to extend any time limit during the pendency of an appeal must show good cause in support of the motion sufficient to establish exceptional circumstances. The existence of good cause and/or exceptional circumstances shall be determined in the discretion of the appeals board.
- (3) With the exception of the filing of a notice of appeal, the appeals board may extend deadlines during the appeals process upon motion filed by a party or its own motion as provided in Tennessee Code Annotated section 50-6-217(d)(4).
- (4) Any motion other than for an extension of time shall include a clear, concise statement of the relief sought and citation(s) to any controlling or persuasive authority supporting the motion. Any other party shall have five (5) business days to file a response, if any, to such motion.

**Authority:** T.C.A. §§ 4-3-1409, 50-6-217, 50-6-225, 50-6-233, and 50-6-237. **Administrative History:** Original rule filed June 22, 2015; effective September 20, 2015. Amendments filed November 7, 2017; effective February 5, 2018. Amendments filed July 14, 2020; effective October 12, 2020.

#### 0800-02-22-.05 APPEAL OF AN INTERLOCUTORY ORDER.

- (1) A party or parties may have a transcript of any hearing pertinent to the appeal of an interlocutory order prepared by a licensed court reporter and filed with the clerk of the court of workers' compensation claims within ten (10) business days of the filing of the notice of appeal. Alternatively, ~~the parties any appealing party~~ may prepare file a joint statement of the evidence summarizing the live witness testimony presented at the hearing and file it within ten (10) business days of the filing of the notice of appeal. Any other party shall have five (5) business days after the filing of the proposed statement of the evidence to file objections, amendments,

~~or an alternative statement of the evidence. The joint statement of the evidence must be approved by the trial judge before the record is submitted to the appeals board.~~

- (a) The trial judge will resolve any disputes regarding the contents of the statement of the evidence consistent with these rules.
  - (b) A statement of the evidence must be certified by the trial judge as a fair and accurate summary of the testimony presented at the hearing before the record is submitted to the appeals board.
  - (c) If, after reasonable efforts to resolve any disputes regarding a statement of the evidence have been made, the trial judge determines it cannot certify a statement of the evidence as fair and accurate, it will direct the trial court clerk to forward the record to the appeals board without a statement of the evidence.
- (2) The appellant shall file a brief with the clerk of the court of workers' compensation claims within ten (10) business days of the filing of a transcript or ~~joint~~ statement of the evidence. If no transcript or statement of the evidence is filed or if a dispute regarding a statement of the evidence or the contents of the record is submitted to the trial court, the appellant shall file a brief within ten (10) business days of the expiration of the time to file a transcript or statement of the evidence or within ten (10) business days of the date the trial court ~~resolves~~ ~~enters an order resolving~~ any dispute concerning the contents of the record or ~~a joint~~ statement of the evidence, whichever is later. The appellee shall file a responsive brief with the clerk of the court of workers' compensation claims within ten (10) business days of the filing of the appellant's brief or the expiration of the time for the filing of the appellant's brief, whichever is earlier. No reply brief shall be filed unless the appellee raises an issue or issues on appeal not previously addressed in the appellant's brief. Under such circumstances, the appellant may file a reply brief within five (5) business days addressing only the issue or issues not previously addressed. If both parties appeal, each party shall file its brief as an appellant and as an appellee consistent with the above briefing schedule.
- ~~(3) Briefs filed in support of an interlocutory appeal shall specify the issues presented for review and include legal argument in support thereof. All briefs shall include: (1) a statement summarizing the facts of the case from the evidence admitted in the trial court; (2) a statement of the case summarizing the trial court's disposition of the case; (3) a statement of the issue(s) presented for review on appeal; and (4) an argument, citing relevant statutes, case law, or other legal authority. The argument section is limited to a maximum of fifteen (15) pages unless otherwise directed by the appeals board. The brief shall include a table of contents, a table of authorities, and a certificate of service. All briefs shall be signed by the attorney of record or the self-represented party filing the brief.~~
- (4) (3) The clerk of the workers' compensation appeals board shall docket the appeal upon receipt of the record from the clerk of the court of workers' compensation claims and send a docketing notice to all parties.
- (5) (4) If the appeals board affirms an interlocutory order awarding temporary disability or medical benefits, the employer shall begin making payments of benefits within five (5) business days from the date the decision affirming the interlocutory order is filed by the appeals board. Failure to begin benefit payments within five (5) business days may result in the assessment of a civil penalty pursuant to Tennessee Code Annotated section 50-6-118. Upon the filing of a decision on an interlocutory appeal, the clerk of the appeals board shall transmit a copy of the decision to the parties by regular and/or electronic mail and to the clerk of the court of workers' compensation claims. Petitions to rehear or reconsider the decision of the appeals board are disfavored. However, a party may petition the appeals board to rehear or reconsider its decision. Such petitions will be heard consistent with Rule 39 of the Tennessee Rules of Appellate Procedure.
- (6) (5) Following the filing of a decision affirming, reversing, and/or modifying and remanding an interlocutory order, the claim shall continue in the manner provided by Tennessee Code Annotated section 50-6-239 and by these rules.

- (6) In circumstances where the appeals board reverses or vacates an order of the court of workers' compensation claims with instructions for the judge of the court of workers' compensation claims to enter a dispositive order that resolves all issues in the case, a party wishing to appeal that subsequent dispositive order may, after timely filing a notice of appeal, file a motion asking the appeals board to suspend all record and briefing requirements and summarily affirm and certify as final the order of the court of workers' compensation claims as provided in Tennessee Code Annotated section 50-6-225. In the alternative, the appeals board may, on its own motion, suspend all record and briefing requirements and summarily affirm and certify as final the order of the court of workers' compensation claims for purposes of further appellate review.

**Authority:** T.C.A. §§ 4-3-1409, 9-8-307, 9-8-402, 50-6-118, 50-6-217, 50-6-225, 50-6-233, and 50-6-237.

**Administrative History:** Original rule filed June 22, 2015; effective September 20, 2015. Amendments filed November 7, 2017; effective February 5, 2018. Amendments filed July 14, 2020; effective October 12, 2020.

#### 0800-02-22-.06 APPEAL OF A COMPENSATION HEARING ORDER.

- (1) A party or parties may have a transcript of any hearing pertinent to the appeal of a compensation order prepared by a licensed court reporter and filed with the clerk of the court of workers' compensation claims within fifteen (15) calendar days of the filing of the notice of appeal. Alternatively, ~~the parties any party to the appeal may prepare a file a joint~~ statement of the evidence summarizing the testimony presented at the hearing and file it within fifteen (15) calendar days of the filing of the notice of appeal. ~~, or a notice that no transcript or statement of the evidence will be filed.~~ Any other party shall have five (5) business days after the filing of the proposed statement of the evidence to file objections, amendments, or an alternative statement of the evidence. ~~A joint statement of the evidence must be approved by the trial judge before the record is submitted to the appeals board. Should there be a dispute between the parties regarding the contents of a joint statement of the evidence or the contents of the record on appeal, the parties shall file a motion with the appeals board within fifteen (15) business days of the filing of the notice of appeal asking the appeals board to remand the case to the court of workers' compensation claims to resolve any such disputes. If necessary, the appeals board may direct that a supplemental record be submitted to the appeals board.~~
- (a) The trial judge will resolve any disputes regarding the contents of the statement of the evidence consistent with these rules.
- (b) A statement of the evidence must be certified by the trial judge as a fair and accurate summary of the testimony presented at the hearing before the record is submitted to the appeals board.
- (c) If after reasonable efforts to resolve any disputes regarding a statement of the evidence have been made, the trial judge determines it cannot certify a statement of the evidence as fair and accurate, it will direct the trial court clerk to forward the record to the appeals board without a statement of the evidence.
- (2) The clerk of the workers' compensation appeals board shall docket the appeal upon receipt of the record from the clerk of the court of workers' compensation claims and send a docketing notice to all parties.
- (3) The appellant shall file a brief within fifteen (15) calendar days after the issuance of the docketing notice with the clerk of the appeals board. The appellee shall have fifteen (15) calendar days after the filing of the appellant's brief or the expiration of the time for the filing of the appellant's brief, whichever is earlier, to file a brief with the clerk of the appeals board. No reply brief shall be filed unless the appellee raises an issue or issues on appeal not previously addressed in the appellant's brief. Under such circumstances, the appellant may file a reply brief within five (5) business days addressing only the issue or issues not previously addressed.
- ~~(4) Briefs filed in support of a compensation appeal shall specify the issues presented for review and include legal argument in support thereof. All briefs shall contain: (1) a statement of the~~

~~facts summarizing the facts from the evidence admitted during the trial; (2) a statement of the case summarizing the trial court's disposition of the case; (3) a statement of the issue(s) presented for review on appeal; and (4) an argument, citing relevant statutes, case law, or other legal authority. The argument section is limited to a maximum of fifteen (15) pages unless otherwise directed by the appeals board. The brief shall include a table of contents, a table of authorities, and a certificate of service. All briefs shall be signed by the attorney of record or the self-represented party filing the brief.~~

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

**Authority:** T.C.A. §§ 4-3-1409, 50-6-217, 50-6-225, 50-6-233, and 50-6-237. **Administrative History:** Original rules filed July 14, 2020; effective October 12, 2020.

#### 0800-02-22-07 CONTENTS OF BRIEFS.

- (1) Briefs shall include a cover page setting forth: (1) the style of the case; (2) the designation "Brief of the Appellant" or "Brief of the Appellee;" and (3) the name and address of the attorney of record or self-represented party filing the brief.
- (2) Briefs filed in support of any appeal shall specify the issues presented for review and include legal argument in support thereof. All briefs shall contain: (1) a statement of the facts summarizing the facts from the evidence admitted during the trial; (2) a statement of the case summarizing the trial court's disposition of the case; (3) a statement of the issue(s) presented for review on appeal; and (4) an argument, citing relevant statutes, case law, or other legal authority. The argument section is limited to a maximum of fifteen (15) pages unless otherwise directed by the appeals board. The brief shall include a table of contents, a table of authorities, and a certificate of service. All briefs shall be signed by the attorney of record or the self-represented party filing the brief.
- (2)(3) Any motion seeking to expand the page limit of a brief must be filed at least five business days prior to the date the brief is due. An order will be issued as soon as practicable after the motion is filed.
- (3)(4) Issues or arguments not raised in the court of workers' compensation claims may be deemed waived on appeal.

**Authority:** T.C.A. §§ 4-3-1409, 50-6-217, 50-6-225, and 50-6-233. **Administrative History:** Original rules filed July 14, 2020; effective October 12, 2020.

#### 0800-02-22-08 ORAL ARGUMENT.

- (1) The appeals board shall base its decision on the record on appeal and the arguments of the parties. ~~Evidence not contained in the record on appeal shall not be considered.~~ Oral argument shall be allowed only upon motion of a party and/or by order of the appeals board. Any motion for oral argument filed by a party must state with specificity the reason or reasons the decision-making process would be aided by oral argument.
- (2) Oral argument may be conducted telephonically, by video conference, or in person, at the ~~discretion~~ ~~direction~~ of the appeals board. The clerk will advise the parties regarding the date and location of oral argument as determined by the appeals board. Once oral argument is scheduled, it shall not be continued absent a showing of exceptional circumstances.
- (3) Oral argument shall be conducted under the supervision of the appeals board's presiding judge or, if the presiding judge is not a member of the panel to hear oral argument, by the appeals board judge designated by the presiding judge to preside at oral argument. The judge presiding at oral argument shall regulate all procedural matters arising during the course of argument.

- (4) Unless the appeals board otherwise orders, each side shall be permitted no more than twenty-five minutes for presentation of the party's oral argument. The appellant may reserve a portion of the appellant's allotted time for rebuttal. If a party believes additional time will be necessary for the adequate presentation of the case, the party may request additional time by motion filed in advance of the date fixed for oral argument. A party is not obligated to use all of the time allowed, and the appeals board may terminate the argument when in its judgment further argument is unnecessary.
- (5) No party may present oral argument unless the party has filed a brief on appeal.
- (6) The appellant is entitled to open and conclude the argument. If both parties filed notices of appeal, the appeals board shall determine the order of the argument.
- (7) No more than two parties requesting the same relief will be heard except by leave of the appeals board. Divided arguments are disfavored, and care should be taken to avoid duplication of argument.
- (8) If a party fails to appear for oral argument, the appeals board may hear argument on behalf of the parties participating. If no party appears, the case will be decided on the record and the briefs unless the appeals board otherwise orders. If oral argument is granted upon motion of a party and that party fails to appear or participate in oral argument in the manner designated, the appeals board may tax costs to such party. A party represented by an attorney will be considered present at oral argument upon the appearance of the attorney.
- (9) If a case is scheduled for oral argument and is subsequently removed from the oral argument docket due to any party's failure to comply with these rules or for good cause shown, oral argument in that case will be considered to have been conducted on the date the case is removed from the docket for purposes of any remaining appeals deadlines.
- (9)(10) If the appeals board determines that additional analysis of an issue or issues may be beneficial, the appeals board may, by order, direct the parties to submit arguments or additional briefing addressing those issues whether or not oral argument is held. Alternatively, the appeals board may correspond via email with the parties, through the clerk of the appeals board, directing that specific issues be addressed whether or not oral argument is held. Any party directed to submit arguments or additional briefing shall submit a response to the clerk by email within five (5) business days of the transmission of the questions. Any other party shall respond to the initial response by email to the clerk within five (5) business days of the transmission of the initial response. A reply to such response, if any, shall be submitted within three (3) business days of the transmission of the response. No further responses shall be permitted unless otherwise directed by the appeals board.

**Authority:** T.C.A. §§ 4-3-1409, 50-6-217, 50-6-225, and 50-6-233. **Administrative History:** Original rules filed July 14, 2020; effective October 12, 2020.

**0800-02-22-.09 COSTS ON APPEAL; SETTLEMENT DURING APPEAL; FRIVOLOUS APPEALS; OBTAINING CERTIFIED COPIES OF APPEALS BOARD ORDERS AND OPINIONS.**

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

- (a) If the motion is granted with respect to the appeal of an interlocutory order, the case shall be remanded to the court of workers' compensation claims for any further proceedings that may be necessary. If the motion is denied, the appeal shall proceed as directed by the appeals board.
  - (b) If the motion is granted with respect to the appeal of a compensation order, the appeals board shall certify the order of the court of workers' compensation claims as final and dismiss the appeal.
- (3) If the parties agree to settle the claim following the filing of the notice of appeal, the parties shall file a joint motion signed by all parties requesting the appeal be held in abeyance and the case be remanded to the workers' compensation judge to consider approval of the settlement. If the settlement is approved within thirty (30) calendar days of the filing of the order remanding the case, the parties shall file a joint motion seeking to dismiss the appeal. The motion shall provide for the assessment of costs on appeal and shall be accompanied by a copy of the order approving the settlement. If the proposed settlement is not approved within thirty (30) calendar days of the filing of the order remanding the case, the appeal shall proceed in accordance with any further order of the appeals board.
- (4) When it appears to the appeals board that an appeal was frivolous or taken solely for delay, the appeals board may, either upon motion of a party or of its own motion, **with or without remand, assess a penalty and/or** award expenses, including reasonable attorney's fees, incurred by the appellee as a result of the appeal.
- (5) **If a party wishes to obtain a certified copy of any decision of the appeals board or other documents contained in a record on appeal, that party may make a request as provided in Rule 0800-02-29.**

**Authority:** T.C.A. §§ 4-3-1409, 50-6-217, 50-6-225, 50-6-233, and 50-6-237. **Administrative History:** Original rules filed July 14, 2020; effective October 12, 2020.