

**DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
Industrial Accident Board**

Statutory Authority: 19 Delaware Code, Sections 105 and 2301A (19 **Del.C.** §§105 & 2301A)
19 **DE Admin. Code** 1331

FINAL

ORDER

1331 Industrial Accident Board Regulations

SUMMARY OF THE EVIDENCE

1. Title 19, Sections 105 and 2301A of the Delaware Code authorize the Industrial Accident Board ("Board") to establish regulations in relation to the administration and enforcement of the Workers' Compensation Act ("Act") in Delaware.

2. Pursuant to 19 Del. C. §§105 and 2301A, the Board intends to amend 19 DE Admin. C. §1331, Section 9.0, to establish a new electronic format and process for the completion and filing of Pre-Trial Memorandums. When the Department of Labor ("Department") notifies parties of the date and time of the Pre-Trial Conference, the Department will also electronically send a link of the online memorandum form to petitioner's counsel. The parties will then complete their portions of the electronic form and thereafter electronically file with the Board.

3. Notice of the proposed regulation change was published in the January 1, 2023 edition of the *Delaware Register of Regulations*.

4. The Board invited a period of 30 days, until January 31, 2023, for written comment from the public.

5. No public comments were received for the proposed changes to this regulation.

6. Having solicited and requested public comment on the proposed regulations in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101, et. seq., this is the Board's Order adopting the proposed amended regulation as published.

FINDINGS OF FACT

The Board finds that it is necessary to adopt the proposed amended regulation as part of an overall modernization of the hearing process under the Act. The changed regulation will allow for electronic Pre-Trial Memorandum forms for completion and electronic filing.

DECISION AND ORDER TO AMEND THE REGULATION

For the foregoing reasons, the Board concludes that it is appropriate to modify 19 DE Admin. Code §1331, Section 9.0 and therefore the amended regulation as published and in the form attached hereto as Exhibit A shall be adopted in accordance with this Order. The regulation changes will be effective on May 11, 2023 following publication of this Order in the *Delaware Register of Regulations* on May 1, 2023.

IT IS SO ORDERED this 30th day of March, 2023 by the Industrial Accident Board.

Industrial Accident Board

/s/ Mark Murowany, Chair

/s/Vince D'Anna, Member

/s/ Charles Freeland, Member

/s/ William F. Hare, Member

/s/ Peter Hartranft, Member

/s/ Valencia Hayes, Member

/s/ Robert Mitchell, Member

/s/ Idel Wilson, Member

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

1331 Industrial Accident Board Regulations

1.0 Address of the Board: Office Hours

Unless otherwise notified, the Board's address is 4425 N. Market Street, Wilmington, Delaware, 19802. The office is open daily from 8:00 a.m. to 4:30 p.m. except Saturdays, Sundays and Legal Holidays.

1 DE Reg. 938 (01/01/98)
15 DE Reg. 854 (12/01/11)

2.0 Sessions

- 2.1 Hearings on petitions will be held during the normal work week at such locations and at such times as may be set upon notice by the Department of Labor.
- 2.2 Special sessions of the Board for the transaction of business may be held at any time and place in the State of Delaware as may be scheduled by the Board with notice as provided by law.

1 DE Reg. 938 (01/01/98)

3.0 Filing of Papers

- 3.1 The Administrator of the Office of Workers' Compensation shall have custody of the Board's seal and official records, and shall be responsible for the maintenance and custody of the docket, files and records of the Board, including the transcripts of the testimony and exhibits with all papers and requests filed in proceedings, the minutes of all action taken by the Board, and of its findings, determinations, reports, opinions, orders, rules, regulations, and approved forms.
- 3.2 All orders and other actions of the Board or a Hearing Officer shall be signed by the Board member or Hearing Officer issuing the order and authenticated by the Administrator of the Office of Workers' Compensation.
- 3.3 All pleadings or papers required to be filed with the Board shall be filed in the Department of Labor's offices in Wilmington or other location designated by the Department for that purpose, within the time limit, if any, fixed by law or Board Rule for such filing. All written communication shall contain the assigned case file number.
- 3.4 Written communications addressed to the Board and all petitions and other pleadings, all reports, exhibits, depositions, transcripts, orders, and other papers or documents, received or filed with the Department of Labor and retained by the Administrator of the Office of Workers' Compensation shall be stamped showing the date of the receipt of filing thereof.
- 3.5 All requests for information, copies of official records or the opportunity to inspect public records shall be made in writing to the Administrator of the Office of Workers' Compensation, or his or her designee.
- 3.6 All sections of the petition must be completed. The Department in its discretion, may reject a filing for incompleteness.
- 3.7 When a Petition is filed and the petitioner is aware that the respondent is represented by counsel, the petitioner shall provide the respondent's counsel with a copy of the Petition and all attachments thereto at the time it is filed with the Board.
- 3.8 Any party challenging a Utilization Review Determination shall attach a copy of the determination in dispute when filing the petition. If such Utilization Review Determination is not so attached, it shall be produced by the petitioner within 15 days of a request by a party or the Board.

1 DE Reg. 938 (01/01/98)
15 DE Reg. 854 (12/01/11)
25 DE Reg. 1143 (06/01/22)

4.0 Repealed

1 DE Reg. 938 (01/01/98)
15 DE Reg. 854 (12/01/11)

5.0 Forms Provided by the Department

- 5.1 In all cases in which forms are approved by the Department, all papers filed with the Board shall be on such approved forms, and all applicable sections shall be completed.
- 5.2 Petitions shall be signed by a non-corporate party or an attorney who is a member of the Bar of the Supreme Court of Delaware.
- 5.3 Forms are approved by and adopted by the Department.

1 DE Reg. 938 (01/01/98)
15 DE Reg. 854 (12/01/11)

6.0 Formal Pleadings Not Required

- 6.1 No formal pleading or formal statement of claim or formal answer shall be required of any party to any action before the Board. However, each person making written request for a hearing shall file with the Department, on

forms to be promulgated by the Department, as referenced in Rule 5, a statement giving substantially information requested on said forms.

- 6.2 If any time after the filing of a petition, including during the progress of any hearing, it shall appear to the Board that persons other than those named or referred to in the petition are, or may be entitled to receive or may be liable to pay compensation, the Board may inquire into and ascertain the rights and liabilities of such parties upon notice to all such parties in interest. The Board may require additional information from any party appearing before the Board to assist in adequately ascertaining the rights and liabilities of such parties. In determining the rights of all such parties, the Board may amend the title of the petition in such a manner as may be right and proper. Either party may, upon motion to the Board pursuant to Rule 8, join other entities to include, but not limited to, other employers or insurance carriers.

1 DE Reg. 938 (01/01/98)

15 DE Reg. 854 (12/01/11)

7.0 Mediation

At any time prior to thirty (30) days after the pre-trial hearing, any party to a proceeding before the Board may request mediation. A request for mediation shall be filed in accordance with Board Rule No. 3(C). Mediation shall be conducted within thirty (30) days of the proper filing of the request.

15 DE Reg. 854 (12/01/11)

8.0 Motions Concerning Legal Issues

- 8.1 When a motion is filed with the Board, the motion shall contain a brief statement of the legal and factual basis for the motion and the relief sought. It shall have attached a proposed form of order, unless it is an evidentiary hearing. A copy of said motion shall be served on opposing party in the same manner and on the same day as it is filed with the Board.
- 8.2 If the motion is opposed, the matter will be scheduled for the next available motion day at which both parties may be heard. If the responding party chooses to respond to the motion in writing, such response shall state, in brief, the factual and legal basis for opposing the motion, and request the motion be denied or request an alternative proposed order. The response shall be sent not less than 4 days before the date of the motion is scheduled to be heard, to the opposing party by regular mail and by hand delivery or by fax or email at the same time as it is filed with the Department. The lack of a written response shall not be a waiver of the right to oppose the motion of the hearing. The hearing, unless there is a contrary agreement of the parties, shall take place at the same location that the hearing on the pending petition is to be heard.
- 8.3 No order involving a matter submitted under this Rule shall be issued by the Board against the non-moving party until the non-moving party has been given an opportunity to be heard on the issue.
- 8.4 Parties may submit a stipulation and proposed order for agreed upon matters. An unopposed motion stating the position of the opposing party known to the filing counsel shall be an acceptable substitute. If the Board rejects the proposed order, notice to the parties shall be given and include the reason for the rejection. The parties may re-submit a stipulation and proposed order which satisfies the Board's objection.
- 8.5 All motions filed with the Board by an unrepresented party shall be promptly scheduled for hearing on motion day with adequate notice of the date, time, and location of the hearing. The Department shall send a copy of the motion to all parties when there is an unrepresented party filing the motion.
- 8.6 Corporate entities may not appear for motions without counsel. If no attorney for the carrier or corporate self-insured employer has entered an appearance, the Board shall schedule a hearing on any motion filed by a party, with notice to the carrier or self-insured corporate employer that it must obtain counsel. If the unrepresented corporate entity appears without counsel, the Board shall enter an order granting appropriate relief.
- 8.7 If an unreported or memorandum opinion, whether of the Board or of any court, is cited or relied upon by any party, whether in a written submission or during any oral presentation, a copy thereof shall be provided to the Board and the opposing party. If, during an oral presentation, the party relying on the unreported case does not have a copy of such case immediately available, copies will be provided promptly after the hearing but in no case later than the end of the next business day following the hearing.

1 DE Reg. 938 (01/01/98)

1 DE Reg. 1621 (04/01/98)

15 DE Reg. 854 (12/01/11)

9.0 Pre-Trial Scheduling Conference and Pre-Trial Memorandum

- 9.1 Pre-Trial Scheduling Conference

- 9.1.1 In any action, including remands, a pre-trial scheduling conference shall be held. The Department shall designate an employee to arrange the time and date for the pre-trial conference. The designated employee will have discretionary power to re-schedule the pre-trial scheduling conference, if necessary. The employee designated by the Department in accord with this Rule shall be responsible for noticing such pre-trial scheduling conference.
- 9.1.2 The pre-trial scheduling conference shall be held on a date not later than 30 days after the date of the issuance of proper notice of a pre-trial scheduling conference regarding the petition at issue. The designated employee of the Department may grant a continuance of the pre-trial scheduling conference.
- 9.1.3 Such pre-trial scheduling conference may be held telephonically or by email, unless a party is unrepresented by counsel, in which case, the pre-trial scheduling conference shall be held at the Department of Labor offices servicing the county where the accident occurred.
- 9.1.4 The Department shall set a date and time for the hearing on the issues that are the subject of the petition, subject to the provisions of 19 **Del.C.** §2348.

9.2 Pre-Trial Memorandum

- 9.2.1 In any action, including remands, a ~~joint~~ Pre-Trial Memorandum shall be completed by the parties and filed with the Department. The Department will issue notice of the pre-trial scheduling conference. Along with this notice the Department will electronically send a link to the online Pre-Trial Memorandum form to counsel for the moving party (petitioner), with notice to the opposing parties.
- 9.2.2 ~~At the time the Department issues the notice of pre-trial scheduling conference, the Department will send an original Pre-Trial Memorandum form with the notice of the pre-trial scheduling conference to counsel for petitioner. Petitioner's counsel shall complete the form and send it to respondent's counsel. Respondent's counsel shall complete respondent's portion and return it to petitioner's counsel who shall file it with the Department and send a copy to respondent's counsel. Fifteen days after receipt of the link counsel for the moving party shall complete the online Pre-trial Memorandum form and provide notice of its submission to the opposing parties. The opposing or non-moving parties shall complete their forms with notice of completion to petitioner's counsel 15 days after receiving notice that the petitioner has submitted their portion of the form. Electronic signature is acceptable for submission of the form. Should any party be unrepresented, the Pre-Trial Memorandum shall be completed by that party.~~
- 9.2.3 In the event the Pre-Trial Memorandum has not been filed with the Department ~~before the pre-trial scheduling conference or within the time specified in the notice provided by the Department in the time specified in subsection 9.2.2,~~ either party may file a motion pursuant to ~~Rule 8 Section 8.0~~ seeking an Order from the Board to compel the opposing party to complete ~~and/or~~ or file a completed Pre-Trial Memorandum by a date ~~certain.~~ certain providing notice of the filing to the moving party. Should any party fail to complete a Pre-Trial Memorandum the Board may remedy the deficiency by removing witnesses, rescheduling the Hearing, striking issues or defenses, or taking any other actions deemed appropriate to remedy prejudice to an opposing party and to facilitate the fair and orderly presentation of issues.
- 9.2.4 Any party may object to any matter in the Pre-Trial Memorandum. If the parties cannot agree to resolve the objection, any party may file a motion in accordance with ~~Rule 8 Section 8.0~~. The basis for an objection may include, but is not limited to, that an item in the Pre-Trial Memorandum is not permitted, or that a matter stated in the Pre-Trial Memorandum should be dismissed, altered, supplemented or filed as another petition under ~~Rule 26 Section 26.0~~.

9.3 The Pre-Trial Memorandum shall contain:

- 9.3.1 ~~names~~ Names (and, if requested, the addresses) of prospective medical and lay witnesses;
- 9.3.2 ~~a~~ A complete statement of what the petitioner seeks and alleges. When a claimant seeks an order for payment of medical expenses either by petition or when raised as an issue at the pre-trial hearing or in the Pre-Trial Memorandum on the employer's petition, copies of the bills shall be provided to counsel with the petition or at least 30 days before the hearing;
- 9.3.3 ~~a~~ A complete statement of defenses to be used by the opposing party;
- 9.3.4 ~~a~~ A copy of the medical report upon which a petition for benefits under 19 **Del.C.** §2326 is based shall be provided;
- 9.3.5 ~~a~~ A clear statement of the basis for a petition under 19 **Del.C.** §2347;
- 9.3.6 ~~notice~~ Notice of the intent to use any movie, video or still picture and either a copy of the same or information as to where the same may be viewed;
- 9.3.7 ~~an~~ An accurate estimate of the time necessary for hearing. This requirement includes an ongoing responsibility to update to Board as to any changes in the estimated trial time that may arise before hearing.

9.4 Amendments:

- 9.4.1 Either party may modify a Pre-Trial Memorandum at any time prior to ~~thirty (30)~~ 30 days before the hearing. Amending the Pre-Trial Memorandum by written notice to the opposing party and the designated employee of the Department of Labor may be made in accord with this ~~Rule~~ regulation. If a party objects to an amendment, the party requesting relief shall file a motion in accord with ~~Rule 8~~ Section 8.0.
- 9.4.2 If the thirtieth day prior to a hearing falls on a weekend or legal holiday, the last day to amend the Pre-Trial Memorandum shall be the next business day following that date.
- 9.4.3 Should a party wish to amend the Pre-Trial Memorandum to list additional witnesses, the party shall provide the names (and, if requested, the addresses) of such witnesses.
- 9.4.4 Notice of any modification to the Pre-Trial Memorandum shall be sent to the opposing counsel or unrepresented party in the same manner and on the same day as it is submitted to the Department.
- 9.4.5 The ~~thirty-day~~ 30-day notice requirement regarding amendments to the Pre-Trial Memorandum may be waived or modified by consent of the parties upon written stipulation, or by the Board upon written motion pursuant to ~~Rule 8~~ Section 8.0.
- 9.5 The designated employee of the Department of Labor will review the Pre-Trial Memorandum, note a time and date for the hearing, sign the form and send copies of the completed Pre-Trial Memorandum to the Parties. Such Pre-Trial Memorandum controls the subsequent course of the action unless amended by the Board to prevent manifest injustice.
- 9.6 Parties are responsible for arranging the appearance of noticed witnesses including the issuance of any subpoenas and the sending of notices of date and place of the hearing as well as the scheduled time of that witness' testimony.

1 DE Reg. 938 (01/01/98)

1 DE Reg. 1621 (04/01/98)

15 DE Reg. 854 (12/01/11)

10.0 Depositions Upon Oral Examination

- 10.1 After a petition has been filed with the Department, any party to a proceeding before the Board may obtain testimony by oral deposition of a expert witness, or a healthcare provider listed as a party pursuant to 19 **Del.C.** §2346, for use in a hearing before the Board, in lieu of personal appearance before the Board.
- 10.2 The date, time and location of oral deposition shall be agreed upon by the parties with notice of date and time served by the party taking the oral deposition.
- 10.3 The procedure for obtaining such testimony shall conform to the Rules of Civil Procedure of the Superior Court of the State of Delaware insofar as may be practicable, and not inconsistent with this Rule.
- 10.4 Any party to a proceeding objecting to obtaining such testimony by oral deposition for use in such proceeding shall object by motion, presented upon notice, showing good cause for the objection.
- 10.5 The taking of fact witness depositions may not proceed without Board approval.
- 10.6 The deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.
- 10.7 The party placing a deposition into evidence during a Board hearing, must supply the Board with the original and three copies of the deposition transcript at the time of the hearing. If the parties have agreed to allow a Hearing Officer to conduct the hearing, the party placing the deposition into evidence must supply the Hearing Officer with the original and one copy of the deposition transcript at the time of the hearing. The party placing the deposition into evidence may provide the Board or Hearing Officer a disc or other electronic format of the deposition in addition to providing the copies above.
- 10.8 Medical witness fees pursuant to 19 **Del.C.** §2322(e) shall include the costs of depositions taken pursuant to this rule. Costs shall also include the taking of videotape depositions. The amount of such fees and costs shall be consistent with guidelines established pursuant to 19 **Del.C.** §2322B(m).
- 10.9 All videotape depositions must be accompanied by written transcripts.

1 DE Reg. 938 (01/01/98)

15 DE Reg. 854 (12/01/11)

11.0 Request for the Production and Inspection of Documents And Other Evidence; Healthcare Authorizations And Copying or Photocopying

- 11.1 After a petition has been filed, a claim for workers' compensation benefits has been made, or workers' compensation benefits are being paid, any party may serve on any other party a written request for the production and/or inspection of any designated documents or other items which contain or constitute evidence

relevant to the claim or petition and which are not otherwise privileged and which are in the possession, custody or control of the party upon whom the request is served.

- 11.2 The request shall set forth the items to be inspected or produced either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner for compliance with the request.
- 11.3 The party upon whom the request is served shall serve a written response within 15 day after the service of the request. The response shall state, with respect to each item or category, that the production and/or inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to a part of an item or category, the objected part shall be specified. The party submitting the request may move for an order from the Board compelling discovery with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.
- 11.4 Any claimant receiving or seeking workers' compensation benefits under the Delaware Workers' Compensation Act shall sign a healthcare records authorization for use in Delaware Workers' Compensation cases. Healthcare records authorization must be signed and returned, or objected to in writing within fifteen (15) calendar days of its receipt.
- 11.5 If a claimant is represented by legal counsel, the employer, employer's insurance carrier or legal counsel for the employer or insurance carrier must obtain the required healthcare records authorization through the claimant's legal counsel. The employer, employer's insurance carrier or legal counsel for the employer or insurance carrier shall provide copies of all claimant's healthcare records obtained through the use of the healthcare records authorization or which are otherwise in their possession to the claimant's legal counsel upon written request. Claimant's legal counsel shall provide to the employer, carrier or the employer or carrier's legal counsel all claimant's healthcare records in their possession or control upon written request.
- 11.6 If a claimant is represented by legal counsel, legal counsel for the employer, the employer's insurance carrier or the employer may have direct contact with the claimant's healthcare provider only with the written or oral consent of the claimant's legal counsel. Legal counsel for the employer or the employer's insurance carrier may submit the healthcare records authorization to any healthcare provider for the production of existing healthcare records with notice to claimant's legal counsel.
- 11.7 Video surveillance recordings that are submitted by the parties for viewing by the Board at the time of the hearing should be limited to a total of one-half (1/2) hour of viewing time unless the Board approves an extension for valid reasons. Requests for an extension shall be made before the video is shown at the time of the hearing.
- 11.8 In the event the Board permits a video surveillance recording lasting longer than one-half (1/2) hour, the Board requires a written index to accompany the submission of such video. Said index shall specify the segments of the video which are believed to have probative value.

1 DE Reg. 938 (01/01/98)

15 DE Reg. 854 (12/01/11)

12.0 Continuances

- 12.1 A request for continuance shall be in writing, include a proposed form of order, and provide notice that a copy was sent to the opposing party. A request for a continuance may be granted upon a showing of cause under 19 **Del.C.** §2348.

Should a party object to the decision, it may by motion seek re-argument. Upon such motion, the Department shall then set the matter for a legal hearing as expeditiously as possible before the Board or a Hearing Officer who heard the original request.

Once a hearing on the merits has begun, a continuance may only be granted should it become necessary to continue the case in order to prevent a miscarriage of justice.
- 12.2 For the purposes of determining whether a requesting party has made the required showing of "good cause" or "extraordinary circumstances" under 19 **Del.C.** §2348, the Board shall use the following definitions of those terms:
 - 12.2.1 "Good Cause" shall include:
 - 12.2.1.1 the unavailability of a previously scheduled medical or other material witness;
 - 12.2.1.2 the unavailability of an attorney for a party due to a conflicting court appearance;
 - 12.2.1.3 the illness of a party, a party's attorney, or a material witness (including, if appropriate, illness which affects the ability of necessary person to participate in the deposition of a medical or other material witness);
 - 12.2.1.4 a justifiable absence from the State of a party, a party's attorney or material witness;

- 12.2.1.5 a justifiable substitution of counsel for one party (this shall not include a transfer of files within a law firm);
 - 12.2.1.6 the unavailability of a medical witness whose deposition cannot be scheduled despite due and prompt diligence on the part of the requesting party;
 - 12.2.1.7 inadequate notice from the Department and/or the Board which would justifiably prevent a party from having a full and fair opportunity to be heard; and
 - 12.2.1.8 any other unforeseen circumstance beyond the control of the party seeking the continuance which would prevent the party from having a full and fair hearing.
- 12.2.2 "Extraordinary Circumstances" shall include:
- 12.2.2.1 the sudden unavailability of a previously scheduled medical or other material witness;
 - 12.2.2.2 an emergency mandatory court appearance which precludes the appearance of a party's attorney at the hearing;
 - 12.2.2.3 a serious personal or medical emergency on the part of a party or a party's attorney; and
 - 12.2.2.4 any other unforeseen circumstance beyond the control of the party seeking the continuance which would prevent the party from having a full and fair hearing.

1 DE Reg. 938 (01/01/98)

15 DE Reg. 854 (12/01/11)

13.0 Opening Statements and Closing Statements

- 13.1 Either party or their attorney, if represented, may make an opening statement. The petitioner or the petitioner's attorney may make an opening statement prior to any testimony being presented. The respondent or the respondent's attorney may make an opening statement either before any testimony is presented on behalf of the petitioner or at the close of the petitioner's testimony and before any testimony is offered on behalf of the respondent.
- 13.2 Opening statements shall be limited to five (5) minutes unless an extension of this time limit has been approved by the Board for a valid reason.
- 13.3 Regarding closing statements, the petitioner, or the petitioner's attorney, shall be permitted to present a closing statement and a rebuttal closing statement. The respondent, or the respondent's attorney, shall be permitted a closing statement in response to petitioner's closing statement. Both the petitioner's and the respondent's closing statements shall be limited to ten (10) minutes each unless an extension of this time limit has been approved by the Board; such approval shall not be withheld without cause. Petitioner's rebuttal closing statement shall be limited to five (5) minutes, unless an extension of this time limit has been approved by the Board; such approval shall not be withheld without cause.

15 DE Reg. 854 (12/01/11)

14.0 Evidence

- 14.1 Stipulation of Facts. At all hearings on the merits, the parties, when represented by counsel, shall submit a written stipulation of facts to the Board. The document shall be signed by the parties' counsel. An original and three (3) copies shall be submitted to the Board at the beginning of such hearing and shall become part of the record in the matter.
- 14.2 All witnesses shall be sworn in for all proceedings before the Board.
- 14.3 The rules of evidence applicable to the Superior Court of the State of Delaware shall be followed insofar as practicable; however, that evidence will be considered by the Board which, in its opinion, possesses any probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The Board may, in its discretion, disregard any customary rules of evidence and legal procedures so long as such a disregard does not amount to an abuse of its discretion.

15 DE Reg. 854 (12/01/11)

15.0 Leading Questions

In accordance with Rule 14, leading questions of expert witnesses are permissible by any party.

15 DE Reg. 854 (12/01/11)

16.0 Attorneys

- 16.1 The Department shall be notified of representation by an attorney for any party on any matter pending before the Board. An attorney's appearance may be withdrawn without obtaining the Board's permission when another member of the Delaware Bar has entered an appearance as attorney of record for the party or when

there is no petition pending before the Board. Such notification of withdrawal shall be in writing to the Department stating the last known address of the client, with a copy sent to the client and to the opposing parties. Otherwise, no appearance shall be withdrawn except by Order of the Board after motion by the attorney with notice to the client and to the opposing parties.

- 16.2 When any party is represented by an attorney in a matter before the Board, only that attorney can examine or cross examine witnesses at the hearing on behalf of that party. That attorney must either be a member of the Bar of the State of Delaware and duly licensed to practice in the Courts of this State or an attorney properly admitted pro hac vice and accompanied by an attorney who is a member of the Delaware Bar.

1 DE Reg. 938 (01/01/98)

15 DE Reg. 854 (12/01/11)

17.0 Exhibits

Exhibits submitted at Board hearings are to be kept by the Department until final disposition of all appeals and/or pending petitions. After the expiration of all appeals and/or pending petitions, it is the duty of the party, or the party's attorney, who submitted the exhibits to retrieve their exhibits from the Department. The Department will dispose of all exhibits not retrieved in accordance with State of Delaware record retention policies.

1 DE Reg. 938 (01/01/98)

15 DE Reg. 854 (12/01/11)

18.0 Copies of Evidence Available to Applicants

- 18.1 A transcript of the evidence before the Board shall not be furnished to the parties, but parties may purchase a copy of the transcript from the person who transcribed the evidence.

- 18.2 When a case is appealed to the Superior Court, a transcript of the evidence shall be furnished as provided by statute.

15 DE Reg. 854 (12/01/11)

19.0 Filing of Agreement After Awards

- 19.1 In the case of an award by the Board which is not appealed or if the appeal is sustained by the Court of last appeal, the insurance carrier or self-insurer shall make payments in compliance with the provisions of said award. An award of the Board shall be considered as self-executing. For the Department to maintain accurate record keeping, the parties to an award shall file an agreement reciting the provisions of the award within 14 days. A Receipt for Compensation shall be filed with the Department when the award is paid in full.

- 19.2 In absence of the Receipt for Compensation mentioned in 21.1 above, payments of compensation shall not be ended except on an award made according to the provisions of 19 **Del.C.** §2347, as amended. A Receipt for Compensation signed by the injured employee will be accepted by the Board as prima facie evidence that the disability of such injured employee has ceased.

1 DE Reg. 938 (01/01/98)

15 DE Reg. 854 (12/01/11)

20.0 Time for Payment in Uncontested Awards

- 20.1 When an award has been made by the Board and an appeal of that award has been taken by the employer or its insurance carrier, no compensation shall be paid during the pendency of the appeal for those portions of the award that are appealed. If the final disposition of the case is adverse to the employer or its insurance carrier, first payment of compensation shall be made to the claimant not later than fourteen (14) days after the Board's award becomes final and binding, irrespective of whether an agreement has at that time been entered into between the parties pursuant to Rule No. 19.1.

1 DE Reg. 938 (01/01/98)

15 DE Reg. 854 (12/01/11)

21.0 Post Hearing Motions

- 21.1 The Board may permit additional testimony or argument after the close of a hearing. This may occur before the Board renders a decision or after the Board renders a decision. A party requesting that the Board permit additional testimony or argument shall do so by written motion.

- 21.2 If a party's motion requests additional testimony or argument after the close of a hearing and before the Board renders a decision, the nature and purpose of the evidence shall be stated. Such evidence shall not be merely cumulative. Such motion shall be filed not later than ten days after the date of the last testimony, oral argument or the filing of any brief requested by the Board. The first day shall commence on the day following such

testimony, oral argument or the filing of such brief. The date of last testimony, oral argument or the filing of any brief requested by the Board shall be stated in the motion. Such motion shall be served upon the attorney for each party and upon each unrepresented party in accordance with Rule 8.

- 21.3 If the motion requests additional testimony or argument after the close of a hearing and after the Board renders a decision, the matter claimed to have been erroneously decided must be specified and the alleged errors stated. Such motion must be filed with the Board not later than ten days after receipt of the Board's decision. The first day shall commence on the day following receipt of the Board's decision. The date the party received the Board's decision shall be set forth in the motion. Such motion, properly filed, will toll the period for perfecting appeals under 19 **Del.C.** §2349 and the time under §2349 will begin anew after the subsequent decision is received by the parties. Such motion shall be served upon the attorney for each party and upon each unrepresented party in accordance with Rule 8.
- 21.4 When a motion is filed under Section (B) or (C) of this Rule, the non-moving party may file an answer not later than ten days after receipt of the motion and serve a copy of the answer upon the attorney for each party and upon each unrepresented party in accordance with Rule 8. The first day shall commence on the day following receipt of the motion. The date of receipt of the motion shall be set forth in the answer.

1 DE Reg. 938 (01/01/98)

15 DE Reg. 854 (12/01/11)

22.0 Commutation of Compensation

- 22.1 Commutation of compensation pursuant to 19 **Del.C.** §2358 is to be favorably considered by the Board where there are sound and convincing reasons substantiated by evidence and such commutation will be in the best interests of the injured employee or the dependents of a deceased employee.
- 22.2 The Board may set guidelines and impose such conditions as it may deem advisable for the disbursement of all funds commuted.
- 22.3 The Board or a Hearing Officer may approve a commutation by a hearing with live testimony, by teleconference or by consideration of an appropriate stipulation and order, with an accompanying affidavit in support of request for commutation, at the discretion of the Board or Hearing Officer.

1 DE Reg. 938 (01/01/98)

15 DE Reg. 854 (12/01/11)

23.0 Attorney's Fees

- 23.1 The claimant's attorney shall file with the Board and serve upon the other party in the same manner and at the same time as filing with the Board, a completed affidavit regarding attorney's fees, with a copy of the attorney's fee agreement attached. Said affidavit and fee agreement shall be reviewed by the Board, so as to assist in awarding a reasonable attorney's fee in those cases when an attorney's fee may be awarded to the claimant. Objections, if any, to the contents of the affidavit shall be heard by the Board during closing arguments.

1 DE Reg. 938 (01/01/98)

15 DE Reg. 854 (12/01/11)

24.0 Reimbursement From the Workers' Compensation Fund

- 24.1 No petition of an employer or its insurance carrier for reimbursement from the Workers' Compensation Fund as provided in 19 **Del.C.** §2327 will be accepted by the Department unless the employer or its insurance carrier first notified by certified mail the Deputy Attorney General assigned to defend said fund, of its intention to seek reimbursement from said Fund, and supply the Department with proof of compliance when its petition is filed. Any application for reimbursement from said Fund shall be by petition with supporting medical documentation attached. The petition shall identify with specificity, by dates of injury and part(s) of the body affected, all prior and subsequent injuries for which reimbursement under 19 **Del.C.** §2327 is claimed.

1 DE Reg. 938 (01/01/98)

15 DE Reg. 854 (12/01/11)

25.0 Expedited Hearings Pursuant to 19 Del.C. §2348(g)

- 25.1 If a claimant who is receiving no wages or benefits, or is out of work without income or substantial income, desires to have his/her petition heard at the earliest possible time he/she may file with the petition which, in addition to the benefits being sought also requests an expedited hearing, and shall be accompanied by the following:
- 25.1.1 A copy of the Department standard Pre-Trial Memorandum, filled out as completely as possible with regard to the Claimant's case.

- 25.1.2 A copy of a medical report, hospital record, or similar documentation, which fairly describes the nature of claimant's injury and disability and the cause thereof; if such documentation is unavailable, or incomplete, claimant shall submit a supplementary statement describing, to the best of his/her knowledge and understanding, the nature of his/her injury and disability and the cause thereof.
- 25.1.3 A statement identifying: (a) the name and address of employer's insurer, if known; and (b) the name of the person, if known, who denied the claimant and his/her office address and telephone number.
- 25.2 Upon filing of a petition requesting an expedited hearing, it shall be reviewed for completeness by the Department. Unless substantially lacking in compliance with the requirements of 25.1, a copy of the Request and supporting papers shall promptly be sent by certified mail, return receipt requested, to the employer and its insurance carrier, if known, together with a copy of this Rule (or a summary of its requirements) and a notice as to the name and telephone number of the Department.
- If the filed petition does not fully comply with the requirements of 25.1, the Department may direct the claimant to submit further information or documentation before the petition will be sent to employer or its insurer, or the Department personnel may direct Claimant to submit the additional material directly to the employer, its insurer, and the Department.
- 25.3 Within five (5) business days after receipt of a petition requesting an expedited hearing, the employer or its insurer shall notify the Department writing delivered within the allowed time, the following:
- 25.3.1 Whether the request for expedited hearing is opposed and, if so, the reasons therefore:
- 25.3.2 The name and address of the lawyer who will represent it.
- 25.3.3 The name and address of each physician or other expert being engaged to examine or test claimant and the dates of appointments. If additional time for scheduling appointments is requested, the Department may, for good cause, allow up to ten (10) additional days for submission of this information, and shall notify claimant if this is done.
- 25.3.4 Whether a formal pre-trial conference is requested.
- 25.4 If a formal pre-trial conference is requested, it shall be scheduled as promptly as practicable. Otherwise, the Pre-Trial Memorandum shall be completed, served on claimant, and filed with the Department within ten (10) business days after the deadline for the response under section 25.3.1.
- 25.5 As soon as it is determined that a case will have an Expedited Hearing, the Department shall confer with the parties to set a date and time for hearing. Should it appear to the Department that undue delay is threatened, due to difficulty in securing pertinent records or a timely appointment for examination or other cause, the Department may endeavor to resolve the cause for delay by direct communication with any person responsible, and both parties shall cooperate in supporting efforts to secure an early hearing date. As soon as the Department is satisfied that all responsible efforts to secure an early date have been completed, the Department shall schedule a hearing and notify both parties.

1 DE Reg. 938 (01/01/98)

15 DE Reg. 854 (12/01/11)

26.0 Additional Issues

- 26.1 When a petition is pending before the Board, either party may assert an additional issue or file an additional petition for consideration by the Board. The following issues shall be added to a pending petition through a letter request, timely filed with the Department and sent to opposing counsel in the same manner as service is made upon the Department:
- 26.1.1 A request for the payment of medical expenses.
- 26.1.2 A request for reimbursement of travel expenses; or
- 26.1.3 A request for partial disability benefits if the pending petition is claimant's petition for an ongoing period of total disability benefits or the employer's request for the review of an open agreement as to compensation.
- 26.2 When a petition is pending before the Board, either party may assert an additional issue but a party wishing to assert one or more of the following issues must file a formal petition and serve the same in accordance with the statute unless otherwise permitted by the Board pursuant to Rule 8.
- 26.2.1 A request to review an open compensation agreement.
- 26.2.2 A claim for permanent impairment benefits.
- 26.2.3 A claim for a recurrence of temporary, total and/or partial disability.
- 26.2.4 A claim for disfigurement benefits; or
- 26.2.5 a forfeiture of the right to compensation pursuant to 19 **Del.C.** §2353.
- 26.3 A subsequently filed petition may be consolidated with a pending petition only upon:
- 26.4.1 The agreement of the parties; or

26.4.2 A motion by the party seeking to consolidate the petitions approved by the Board after due notice to opposing counsel and the opportunity for counsel to be heard under Rule 8.

1 DE Reg. 938 (01/01/98)

15 DE Reg. 854 (12/01/11)

27.0 Form of Orders

Any party seeking relief from the Industrial Accident Board shall present the Board or Hearing Officer with a proposed form of Order, suitable for immediate signature.

1 DE Reg. 938 (01/01/98)

15 DE Reg. 854 (12/01/11)

28.0 Time

The Department of Labor and the Industrial Accident Board shall follow the provisions of Superior Court Civil Rule 6 unless otherwise specified in the statute, 19 **Del.C.** §2301 et. seq. or the Administrative Procedures Act, 29 **Del.C.** §10001 et. seq.

1 DE Reg. 938 (01/01/98)

15 DE Reg. 854 (12/01/11)

29.0 Legal Hearings/Motion Day

29.1 The Board shall hold Motion Day at each location where the Board hears matters. The Board may hear testimony and make rulings upon miscellaneous matters including, but not limited to, legal hearings, motions, uncontested matters, commutations, and other matters contemplated by these Rules.

29.2 Any matter brought before the Board at Motion Day shall comply with the provisions of Rule No. 8, although the Department and Board shall give due consideration to requests for expedited relief which will affect a hearing close in time to the request. In such event, the Department or Board shall make reasonable effort to schedule the matter at the next available Motion Day.

1 DE Reg. 938 (01/01/98)

15 DE Reg. 854 (12/01/11)

30.0 Interpreters

In any proceeding before the Board where the claimant, or the claimant's witness(es), require the services of an interpreter, the claimant shall request a list of Department approved court interpreters or approved telephonic interpretation services to provide interpretation services for the claimant. The claimant shall be responsible for arranging all service of the court interpreter or telephonic interpretation service. The Department will be responsible for the payment of all reasonable fees for usage of its approved interpreters.

1 DE Reg. 1621 (04/01/98)

15 DE Reg. 854 (12/01/11)

31.0 Timely Notification of Settlement

Attorneys for all parties shall appear on the date and at the time of the hearing scheduled before the Board unless notification of settlement has been received by the Office of Workers' Compensation from the petitioning attorney by 12:00 p.m. on the last work day preceding the hearing date. Failure to provide timely notification of settlement shall require the appearance of the attorneys for all parties as scheduled unless excused by the Board. Timely notification of settlement will automatically excuse the appearance of the attorneys and the cases will be removed from the calendar.

1 DE Reg. 938 (01/01/98)

1 DE Reg. 1621 (04/01/98)

15 DE Reg. 854 (12/01/11)

25 DE Reg. 1143 (06/01/22)

26 DE Reg. 966 (05/01/23) (Final)