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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

May 23, 2002

Honorable Johnny J. Butler, Secretary
Department of Labor and Industry
1700 Labor and Industry Building
Harrisburg, PA 17120

Re: Regulation #12-61 (IRRC #2259)
Department of Labor and Industry
Special Rules of Administrative Practice and Procedures Before the Workers'
Compensation Appeal Board and the Workers' Compensation Judges

Dear Secretary Butler:

Enclosed are the Commission's Comments which list objections and suggestions for consideration when you prepare the final version of this regulation. These Comments are not a formal approval or disapproval; however, they specify the regulatory criteria which have not been met.

The Comments will soon be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce / kns".

Robert E. Nyce
Executive Director
wbg

Enclosure

cc: Honorable Robert J. Flick, Majority Chairman, House Labor Relations Committee
Honorable Robert E. Belfanti, Jr., Democratic Chairman, House Labor Relations Committee
Honorable Gibson E. Armstrong, Chairman, Senate Labor and Industry Committee
Honorable Christine M. Tartaglione, Minority Chairman, Senate Labor and Industry Committee

Comments of the Independent Regulatory Review Commission

on

Department of Labor and Industry Regulation No. 12-61

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

May 23, 2002

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Department of Labor and Industry must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. General. – Clarity.

Section titles

Section titles throughout the regulation are inconsistent. For example, Section 111.11, relating to content and form, Section 111.16, relating to briefs: time for filing and content and Section 121.21, relating to form/content, all deal with similar subject matter, but have very different naming conventions. For clarity, the Board should make the section titles uniform in the final-form regulation.

2. Section 111.3. Definitions. – Reasonableness; Clarity.

Forms

A number of sections in this regulation, including Section 111.11, relating to content and form, Section 111.12, relating to filing and proof of service, Section 131.32, relating to petitions except petitions for joinder and challenge proceedings, Section 131.33, relating to answers except answers to petitions for joinder and challenge proceedings, Section 131.36, relating to joinder, Section 131.50, relating to return to work-modification or suspension, Section 131.57, relating to compromise and release agreements, and Section 131.58, relating to informal conferences, all contain similar language regarding bureau files. These sections refer to forms provided or prescribed by the Board.

Information regarding these forms should be clarified. The regulation makes no reference to the form numbers, how the forms are to be ordered or received, and what occurs if the Bureau does not have a certain form at the time of a party's request. Lack of this information could be very confusing to the affected parties. The final-form regulation should contain, at the very least, form numbers, how the forms are catalogued, how they can be received or ordered, and what occurs if the Board does not have copies of a specific form at the time of request. The Board

could also make reference to either the form number or the form title, whichever is changed least often.

3. Section 111.16. Briefs: time for filing and content. – Clarity.

Subsection (c)

This subsection allows the Board to extend or shorten the time for filing a party's brief "Upon request of a party." We have two questions. First, to whom is the request made? The Department should clarify this in the final-form regulation.

Second, what is the procedure for making a request? Is it required to be in writing? The Department should explain.

4. Section 111.18. Decisions of the Board. – Clarity.

Subsection (a)

This subsection states, "The decision of the Board on an appeal and a cross appeal shall be issued *as promptly as possible....*" (Emphasis added.) The phrase "as promptly as possible" is vague. The Board should include a time limit for Board decisions in the final-form regulation.

5. Section 111.22. Filing. – Clarity.

Subsection (a)

This subsection states, "A request for supersedeas shall be filed with the Board within *the time allowed by law....*" (Emphasis added.) The phrase "the time allowed by law" is unclear. The Board should either provide the time limit allowed for the supersedeas to be filed, or a statutory citation where that time period can be found.

6. Section 131.5. Definitions. – Clarity.

Insurer

The definition of "insurer" states, "A workers' compensation insurance carrier or self-insured employer, as applicable." This definition differs from the one found in the Workers' Compensation Act (Act) (77 P.S. §109). The definition in the Act states, "'insurer' means an entity subject to the act of May 17, 1921 known as the 'Insurance Company Law of 1921,' including the State Workmen's Insurance Fund, with which an employer has insured liability under this act pursuant to section 305 or a self-insured employer or a fund exempted by the Department of Labor and Industry pursuant to section 305."

The definition in the act and in the regulation should be verbatim. Therefore, the Board should delete the definition of "insurer" and replace it with a citation to the act in the final-form regulation.

7. Section 131.21. Identifying number. – Reasonableness; Clarity.

Subsection (a)

This subsection states that the claimant's social security number, or "another identifying number" will identify pleadings, submittals and other documents. We have two questions.

First, why is the Board using the claimant's social security number? For confidentiality, the Board should assign a docket number to the case.

Second, the phrase “another identifying number” is unclear. There should be some consistency in numbering document files. Using one standard number throughout the filing system would be more efficient for Bureau staff, as well as for the parties involved in proceedings. Therefore, for clarity, the Board should delete the phrase “another identifying number.”

8. Section 131.32. Petitions except petitions for joinder and challenge proceedings. – Reasonableness; Clarity.

Subsection (b)

This subsection states, “The Bureau will serve a notice of assignment specifying the judge to whom the petition is being assigned. The notice will be served on the parties named in the petition.” We have two concerns.

First, once the petition is filed, how long does the Bureau have to assign a judge? It would be reasonable for a timeline for assignment to be included in this subsection.

Second, how will the parties receive notice of the assignment? For clarity, the Board should include what will constitute notice to the parties in the final-form regulation.

9. Section 131.33. Answers except answers to petitions for joinder and challenge proceedings. – Clarity.

The phrase “challenge proceeding” should be defined.

Subsection (a)

This subsection describes the repercussions of failing to file an answer to a claim petition without adequate excuse. We have two questions.

First, what is a “claim petition”? Is the term synonymous with “petition” as used elsewhere in the regulation? If so, the Board should use the term “petition” uniformly throughout the regulation. If it is not, the Board should describe the term “claim petition” in either this section, or Section 131.5, relating to definitions.

Second, the phrase “adequate excuse” is unclear. The board should define this phrase in either this section, or Section 131.5, relating to definitions, or provide examples of what the Board would consider an “adequate excuse.”

10. Section 131.36. Joinder. – Clarity.

The term “joinder” is unclear. The Board should consider defining this term in the final-form regulation.

Subsection (f)

This subsection states “An answer to a petition for joinder...*may* be filed within 20 days.” (Emphasis added.) We understand that it is optional to file for joinder, but once a party does file for joinder, the timeline for filing is mandatory. Therefore, “may” should be changed to “shall.”

11. Section 131.40. Frivolous pleadings. – Clarity.

The phrase “or issue some other decision within the judge’s discretion” is vague. The final-form regulation should specify what other type of decision can be issued.

12. Section 131.41. Request for supersedeas or reconsideration of supersedeas. – Clarity.

The term “supersedeas” is not defined in Section 131.5, relating to definitions. The final-form regulation should explain what the term “supersedeas” means as it is used in this section.

13. Section 131.52. First hearing procedures. – Clarity.

The purpose and scope of Chapter 131 are addressed by Sections 131.1 and 131.2, respectively. Subsections (a) and (b) are redundant and should be deleted or discussed in the preamble.

Subsection (f)

This subsection requires the parties to provide the judge with “all documents required by law.” This phrase is vague. The final-form regulation should specify which documents are required to be filed with the Bureau, or provide a citation for the applicable law.

14. Section 131.53a. Consolidated hearing procedure. – Reasonableness; Clarity.

Subsections (a) and (b)

Subsection (a) allows a judge to “waive or modify these rules as may be appropriate and adopt and direct procedures which are fair and just for a determination of the issues.” We question the reasonableness of this provision.

For clarity, Subsection (a) and (b) should be consolidated into one subsection.

Additionally, the terms “trial deposition” and “medical deposition” are used in this Section. These terms are not defined. The final-form regulation should define these terms.

15. Section 131.57. Compromise and release agreements. – Clarity.

Subsection (d)

The phrase “The judge will circulate a written decision....” is vague. The final-form regulation should explain to whom the decision is distributed.

16. Section 131.58. Informal conferences. – Clarity.

Subsection (e)

This subsection states “The informal conferences will be governed by the instructions and procedures specified on the form prescribed by the Bureau and by section 402.1 of the act (77 P.S. §711.1).” For clarity, the instructions and procedures specified should be included in the final-form regulation.

17. Section 131.101. Briefs, findings of fact and close of record. – Clarity.

Subsection (c)

In this subsection, the third “evidentiary” in the last sentence is not needed and should be deleted.

18. Section 131.121. Penalty proceedings initiated by a party. – Clarity.

The final-form regulation should include a definition of “penalty proceedings.”

19. Section 131.122. Other penalty proceedings. – Clarity.

Subsection (a)

This subsection states that penalty proceedings not conducted under Section 131.121 will be conducted “in accordance with other applicable regulations of the Bureau.” The final-form regulation should provide a citation for the applicable regulations.