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Form Letter A
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2014 MAR 26 AM 11: 23

Susan E. Kelley
Workers' Compensation Judge
72 Lancaster Avenue, 2nd floor
Malvern, PA 19355
March 20, 2014

Elizabeth A. Crum
Director of Adjudication
Workers' Compensation Office of Adjudication
WCAB/WCJ Regulations-Comments
1010 North Seventh Street
Harrisburg, PA 17102

Dear Director Crum

I am respectfully submitting the following comments related to the Proposed Subchapter D of the Rules related to proceedings involving the Uninsured Employers Guarantee Fund (UEGF).

I disagree with the language of Proposed Rules 131.202 and 131.204 even though procedural rules may be appropriate to address the legitimate needs of UEGF to learn about a claim and to prepare for trial. But, Proposed Rule 131.204 (and related changes to Rules 131.3 and 131.53a(a)) prohibits any exercise of discretion on the part of the Judge. Such discretion is fundamental to any procedural system designed to promote fairness. Current Rule 131.53a(a) recognizes this and allows the judge to modify rules "as may be appropriate" and to direct procedures "which are fair and just for a determination of the issues consistent with the act." To exclude Subchapter D from this provision would cause potential unfairness and would be antithetic to first principles as stated by the Rules: "to promote, consistent with fairness and due process, the orderly and expeditious determination of proceedings before judges...." (Rule 131.1).

Under Proposed Rule 131.204 the Judge cannot waive Rules 131.201 or 131.202 unless all parties agree. This is regardless of the circumstances, which may include availability of witnesses or the parties' interest in resolving the case. For example, a party may wish to present testimony which could achieve a resolution without UEGF involvement. Under the Proposed Rule the Judge could not proceed with this testimony even though doing so would be in UEGF's interest.

In addition, the requirement that *all* parties agree to a rule waiver would subject the judge's discretion to the consent of the uninsured employer, who may be guilty of a felony of the 3rd degree under Sec. 305(b) of the Act. Not only is a potential criminal given more rights than law-abiding employers and their insurers, he or she is also given veto power over rulings by the judge, even those which may be requested by the claimant or UEGF. This cannot be the Rules' intent.

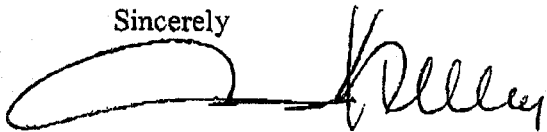
I am aware of no system-wide problems in ensuring UEGF's due process rights to participate in litigation and to present evidence. The current Rules recognize that the rights of the parties can be protected by allowing variation in case management, such as one-day trials or consolidated hearings. This system works and should not be disturbed. If there are specific concerns regarding abuse of discretion, these should be addressed through the appellate process.

I also disagree with Proposed Rule 131.202 which requires the judge to "inform the claimant on the record of the existence of the UEGF and give the claimant information about the UEGF, as provided by the Office of Adjudication." This Rule inappropriately involves the judge as an agent of the UEGF and the Department and compromises the judge's impartiality as an independent fact finder. Further, the judge's actions in this regard may become a material issue in a defense based on the claimant's failure to file within 45 days of the date the claimant became aware of the lack of insurance under Section 1603(b) of the Act. I believe that if legal notice is to be given, it should be done so by the Department acting in its administrative capacity, and not by its independent judiciary.

I suggest that the involvement of the judge in providing written legal information as provided by the Office of Adjudication is contrary to Section 1404(a) of the Act which requires the judge to avoid impropriety (1404(a)(1)), to perform duties impartially (1404(a)(2)), to abstain from expressing views on the merits of a case (1404(a)(4)), and to uphold the integrity and independence of the workers' compensation system (1404(a)(13)).

My comments express my sincere concern for the maintenance of an independent adjudicatory system for now, and in the future. They are respectfully submitted for consideration.

Sincerely



Susan E. Kelley
Workers' Compensation Judge

WORKERS' COMPENSATION JUDGE

WORKERS' COMPENSATION JUDGE

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2014 MAR 26 AM 11: 23

WCOA
East Gate Center
1010 North 7th Street, Rm 319
Harrisburg, PA 17102-1400

March 21, 2014

Elizabeth A. Crum
Director of Adjudication
Workers' Compensation Office of Adjudication
WCAB/WCJ Rēgulations-Comments
1010 North Seventh Street
Harrisburg, PA 17102

Dear Director Crum

I am respectfully submitting the following comments related to the Proposed Subchapter D of the Rules related to proceedings involving the Uninsured Employers Guarantee Fund (UEGF).

I disagree with the language of Proposed Rules 131.202 and 131.204. Even though procedural rules may be appropriate to address the legitimate needs of UEGF to learn about a claim and to prepare for trial, proposed Rule 131.204 (and related changes to Rules 131.3 and 131.53a(a)) prohibits any exercise of discretion on the part of the Judge. Such discretion is fundamental to any procedural system designed to promote fairness. Current Rule 131.53a(a) recognizes this and allows the judge to modify rules "as may be appropriate" and to direct procedures "which are fair and just for a determination of the issues consistent with the act." To exclude Subchapter D from this provision would cause potential unfairness. I believe that such exclusion is inconsistent with the general purpose of the Rules "...to promote, consistent with fairness and due process, the orderly and expeditious determination of proceedings before judges...." (Rule 131.1).

Under Proposed Rule 131.204 the Judge cannot waive Rules 131.201 or 131.202 unless all parties agree. This is regardless of the circumstances, which may include limited availability of witnesses or the parties' interest in promptly resolving the case. For example, a party may wish to present testimony which could achieve a resolution with no liability being imposed upon the UEGF. If the UEGF, for whatever reason was not "participating" at that hearing, under the Proposed Rule, the Judge could not proceed with the testimony if counsel for the UEGF was not present for the hearing to "agree to a waiver or modification..."

In addition, the requirement that *all* parties agree to a rule waiver would subject the judge's discretion to the consent of the uninsured employer, who may be guilty of a felony of the 3rd degree under Sec. 305(b) of the Act. Not only is a potential criminal given more rights than law-abiding employers and their insurers, he or she is also given veto power over rulings by the

Judge, even those which may be requested by the claimant or UEGF. This cannot be the Rules' intent.

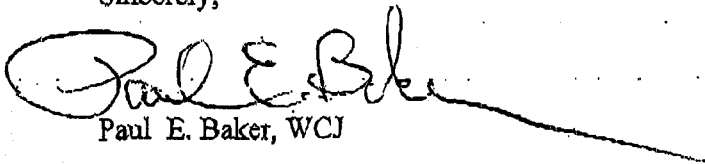
I am aware of no system-wide problems in ensuring UEGF's due process rights to participate in litigation and to present evidence. The current Rules recognize that the rights of the parties can be protected by allowing variation in case management, such as one-day trials or consolidated hearings. This system works and should not be disturbed. If there are specific concerns regarding abuse of discretion, these should be addressed through the appellate process.

I also disagree with Proposed Rule 131.202 which requires the Judge to "inform the claimant on the record of the existence of the UEGF and give the claimant information about the UEGF, as provided by the Office of Adjudication." This Rule inappropriately involves the judge as an agent of the UEGF and the Department and compromises the Judge's impartiality as an independent fact finder. Further, the Judge's actions in this regard may become a material issue in a defense based on the claimant's failure to file within 45 days of the date the claimant became aware of the lack of insurance under Section 1603(b) of the Act. I believe that if legal notice is to be given, it should be done so by the Department acting in its administrative capacity, and not by its independent judiciary.

I suggest that the involvement of the Judge in providing written legal information as provided by the Office of Adjudication is contrary to Section 1404(a) of the Act which requires the judge to avoid impropriety (1404(a)(1)), to perform duties impartially (1404(a)(2)), to abstain from expressing views on the merits of a case (1404(a)(4)), and to uphold the integrity and independence of the workers' compensation system (1404(a)(13)).

My comments express my sincere concern for the maintenance of an independent adjudicatory system for now, and in the future. They are respectfully submitted for consideration.

Sincerely,



Paul E. Baker, WCJ

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2014 MAR 26 AM 11: 23

March 18, 2014

Elizabeth A. Crum
Director of Adjudication
Workers' Compensation Office of Adjudication
WCAB/WCJ Regulations-Comments
1010 North Seventh Street
Harrisburg, PA 17102

Dear Director Crum,

I am respectfully submitting the following comments related to the Proposed Subchapter D of the Rules related to proceedings involving the Uninsured Employers Guarantee Fund (UEGF).

I disagree with the language of Proposed Rules 131.202 and 131.204 even though procedural rules may be appropriate to address the legitimate needs of UEGF to learn about a claim and to prepare for trial. But, Proposed Rule 131.204 (and related changes to Rules 131.3 and 131.53a(a)) prohibits any exercise of discretion on the part of the Judge. Such discretion is fundamental to any procedural system designed to promote fairness. Current Rule 131.53a(a) recognizes this and allows the judge to modify rules "as may be appropriate" and to direct procedures "which are fair and just for a determination of the issues consistent with the act." To exclude Subchapter D from this provision would cause potential unfairness and would be antithetic to first principles as stated by the Rules: "to promote, consistent with fairness and due process, the orderly and expeditious determination of proceedings before judges...." (Rule 131.1).

Under Proposed Rule 131.204 the Judge cannot waive Rules 131.201 or 131.202 unless all parties agree. This is regardless of the circumstances, which may include availability of witnesses or the parties' interest in resolving the case. For example, a party may wish to present testimony which could achieve a resolution without UEGF involvement. Under the Proposed Rule the Judge could not proceed with this testimony even though doing so would be in UEGF's interest.

In addition, the requirement that *all* parties agree to a rule waiver would subject the judge's discretion to the consent of the uninsured employer, who may be guilty of a felony of the 3rd degree under Sec. 305(b) of the Act. Not only is a potential criminal given more rights than law-abiding employers and their insurers, he or she is also given veto power over rulings by the judge, even those which may be requested by the claimant or UEGF. This cannot be the Rules' intent.

I am aware of no system-wide problems in ensuring UEGF's due process rights to participate in litigation and to present evidence. The current Rules recognize that the rights of the parties can

be protected by allowing variation in case management, such as one-day trials or consolidated hearings. This system works and should not be disturbed. If there are specific concerns regarding abuse of discretion, these should be addressed through the appellate process.

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I suggest that the involvement of the judge in providing written legal information as provided by the Office of Adjudication is contrary to Section 1404(a) of the Act which requires the judge to avoid impropriety (1404(a)(1)), to perform duties impartially (1404(a)(2)), to abstain from expressing views on the merits of a case (1404(a)(4)), and to uphold the integrity and independence of the workers' compensation system (1404(a)(13)).

My comments express my sincere concern for the maintenance of an independent adjudicatory system for now, and in the future. They are respectfully submitted for consideration.

Sincerely,

Francis L. Lincome, WCT

VERIFIED COPY

DATE: 3/26/14
TIME: 11:10 AM

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IRRC

3047

2014 MAR 26 AM 11: 23

72 Lancaster Avenue, 2nd Floor
Malvern, Pa 19355

March 19, 2014

Elizabeth A. Crum
Director of Adjudication
Workers' Compensation Office of Adjudication
WCAB/WCJ Regulations-Comments
1010 North Seventh Street
Harrisburg, PA 17102

Dear Director Crum

I am respectfully submitting the following comments related to the Proposed Subchapter D of the Rules related to proceedings involving the Uninsured Employers Guarantee Fund (UEGF).

I disagree with the language of Proposed Rules 131.202 and 131.204 even though procedural rules may be appropriate to address the legitimate needs of UEGF to learn about a claim and to prepare for trial. But, Proposed Rule 131.204 (and related changes to Rules 131.3 and 131.53a(a)) prohibits any exercise of discretion on the part of the Judge. Such discretion is fundamental to any procedural system designed to promote fairness. Current Rule 131.53a(a) recognizes this and allows the judge to modify rules "as may be appropriate" and to direct procedures "which are fair and just for a determination of the issues consistent with the act." To exclude Subchapter D from this provision would cause potential unfairness and would be antithetic to first principles as stated by the Rules: "to promote, consistent with fairness and due process, the orderly and expeditious determination of proceedings before judges...." (Rule 131.1).

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My comments express my sincere concern for the maintenance of an independent adjudicatory system for now, and in the future. They are respectfully submitted for consideration.

Sincerely



Kelly F. Melcher

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MAY 1 2014
OFFICE OF ADJUDICATION
STATE OF MICHIGAN