

Appeals

R07-1-04

Guidelines for Filing Notices of Appeals from Staff Hearing Officers orders November 27, 2007

WHEREAS, Section 4123.511(E) of the Revised Code provides that upon the filing of a timely appeal of the order of the staff hearing officer issued under division (D) of this section, the Commission or a designated staff hearing officer, on behalf of the Commission, shall determine whether the Commission will hear the appeal; and

WHEREAS, on September 1, 2005, the Industrial Commission promulgated Resolution No. R05-1-03 providing guidelines for determining whether to hear appeals filed from orders of staff hearing officers issued under Division (D) of Section 4123.511 of the Revised Code; and

WHEREAS, Section 4121.03(E)(1) of the Revised Code provides that the Commission is responsible for establishing the overall adjudicatory policy of the Industrial Commission under Chapters 4121., 4123., 4127., and 4131. of the Revised Code; and

WHEREAS, the Industrial Commission desires to adopt revised guidelines for determining whether to hear appeals from orders of staff hearing officers issued under Division (D) of Section 4123.511 of the Revised Code.

A. THEREFORE BE IT RESOLVED that the Industrial Commission will permit appeals to be heard from orders of Staff Hearing Officers issued under Division (D) of Section 4123.511 of the Ohio Revised Code in the following cases:

1. The appeal presents issues for which the Industrial Commission desires to set policy or precedent or presents an unusual legal, medical, or factual question that the Industrial Commission members desire to hear.
2. New and changed circumstances occurring subsequent to the date of the staff hearing officer hearing held under Division (D) of Section 4123.511 of the Revised Code. For example, there exists newly discovered evidence which by due diligence could not have been discovered and filed by the appellant prior to the date of the hearing held under Division (D) of Section 4123.511 of the Ohio Revised Code. Newly discovered evidence shall be relevant to the issue on appeal but shall not be merely corroborative of evidence that was submitted prior to the date of the hearing held under Division (D) of Section 4123.511 of the Ohio Revised Code.
3. There is the possible existence of fraud in the claim.
4. There is a clear mistake of fact in the order of a staff hearing officer issued under Division (D) of Section 4123.511 of the Revised Code.
5. There is a clear mistake of law of such character that remedial action would clearly follow in the staff hearing officer order issued under Division (D) of Section 4123.511 of the Revised Code.
6. There is an error in the staff hearing officer order that is issued under Division (D) of Section 4123.511 of the Revised Code.

BE IT FURTHER RESOLVED that if the Industrial Commission determines not to hear the appeal within fourteen days after the filing of the notice of appeal, the Industrial Commission shall issue an order to that effect and provide written notification to the parties and their respective representatives.

BE IT FURTHER RESOLVED that notice of appeal filed under Division (E) of Section 4123.511 of the Ohio Revised Code shall specify the reasons for the appeal.

BE IT FURTHER RESOLVED that the appellant filing notice of appeal under Division (E) of Section 4123.511 of the Ohio Revised Code shall mail a copy of the notice of appeal to the opposing party's representative, if the opposing party is represented, or to the opposing party, if the opposing party is not represented, at the time the notice of appeal is filed with the Industrial Commission.

- B. BE IT FURTHER RESOLVED that notices of appeal filed from orders of Staff Hearing Officers issued under Section 4123.511(D) of the Ohio Revised Code shall include the following:

1. Identification of all the underlying administrative orders from which the notice of appeal is filed;
 2. Identification of all relevant documents that are within the claim file and where appropriate, citation to legal authority relied upon, to support the request that the notice of appeal be accepted for hearing under Section 4123.511(E);
 3. If there exists newly discovered evidence which by due diligence could not have been discovered and filed by the appellant prior to the date of the hearing held under Division (D) of Section 4123.511 of the Ohio Revised Code that is relevant to the issue on appeal, but is not merely corroborative of evidence that was submitted prior to the date of the hearing held under Division (D) of Section 4123.511 of the Ohio Revised Code, such evidence shall be submitted with the notice of appeal.
- C. BE IT FURTHER RESOLVED that notices of appeal filed by self-insuring employers from orders issued under Section 4123.511(D) of the Revised Code shall include a statement on the face of notice of appeal that certifies whether the self-insuring employer has paid, or will timely pay, compensation and/or benefits pursuant to Section 4123.511 of the Revised Code.
- BE IT FURTHER RESOLVED that the Industrial Commission shall consider whether the self-insuring employer has paid, or will timely pay, compensation and/or benefits pursuant to Section 4123.511 of the Revised Code in deciding whether to permit an appeal filed by a self-insuring employer to be heard under Section 4123.511(E) of the Revised Code.
- BE IT FURTHER RESOLVED that the Industrial Commission shall inquire at the time of hearing held under Section 4123.511(E) as to whether the self-insuring employer continues to be in compliance with the timely payment of compensation and/or benefits pursuant to Section 4123.511 of the Revised Code.
- BE IT FURTHER RESOLVED that the Industrial Commission shall consider whether the self-insuring employer has timely paid compensation and/or benefits pursuant to Section 4123.511 of the Revised Code in deciding whether to permit an appeal set for hearing pursuant to Section 4123.511(E) to proceed to be heard on the merits.
- D. BE IT FURTHER RESOLVED that Resolution R07-1-04 shall apply to notices of appeal filed on or after December 1, 2007 from orders of staff hearing officers issued under Section 4123.511(D) of the Revised Code.

Other Guidelines for Filing Notices of Appeals from Staff Hearing Officer's Orders

R05-1-03

Guidelines for Filing Notices of Appeals from Staff Hearing Officers orders
September 1, 2005