

Ohio | Industrial Commission

RESOLUTION

Columbus, Ohio

December 18, 2012

WHEREAS, Section 4121.36(H)(2)(c) of the Revised Code provides that hearing administrators shall, upon a finding of good cause and without a formal hearing, issue compliance letters either granting or denying requests for continuances; and

WHEREAS, Rule 4121-3-09(C)(9) of the Administrative Code sets forth the procedure for addressing requests for continuances of hearings; and

WHEREAS, Rule 4121-3-09(C)(9)(b)(ii) of the Administrative Code provides that requests for continuances filed more than five calendar days prior to the date of hearing shall be processed by the hearing administrator, resulting in the issuance of a compliance letter either granting or denying the requested continuance based on the standard of good cause; and

WHEREAS, Rule 4121-3-09(C)(9)(b)(ii) of the Administrative Code provides that where a request for continuance is received within five calendar days of the scheduled hearing, the hearing administrator shall address the requested continuance based on the presence of extraordinary circumstances that could not have been foreseen by the requesting party; and

WHEREAS, Rule 4121-3-09(C)(9)(b)(iii) of the Administrative Code states that guidelines may be provided by the Commission for hearing administrators and hearing officers in determining whether the standard of good cause, or the standard of extraordinary circumstances that could not have been foreseen, are established; and

WHEREAS, Commission Resolution R12-1-02 sets forth guidelines for hearing administrators and hearing officers in determining whether the standard of good cause, or the standard of extraordinary circumstances that could not have been foreseen, are established and that the guidelines in Commission Resolution R12-1-02 superseded the guidelines in Commission Resolution R12-1-01; and

WHEREAS, the Commission, through Commission Resolution R12-1-02, continued in full force and effect through December 31, 2012, the portion of Commission Resolution R12-1-01 that modified paragraphs (A)(1), (C)(1), and (D) of the Docketing Policy adopted by the Commission on December 21, 2010, pending further review and evaluation by the Commission, and the Commission, having completed said further review and evaluation, finds it necessary and proper to rescind Commission Resolution R12-1-02 and adopt Commission Resolution R12-1-03; and

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

THEREFORE BE IT RESOLVED that the Commission hereby rescinds Commission Resolution R12-1-02 and hereby adopts Commission Resolution R12-1-03, setting forth the following guidelines for hearing administrators and hearing officers in determining whether the standard of good cause, or the standard of extraordinary circumstances that could not have been foreseen, are established:

(A) Authorized representatives of parties may request that the Industrial Commission not schedule hearings for particular dates, or a series of dates, as long

as the Industrial Commission receives notice at least 15 state business days prior to the requested "block out date(s)" pursuant to the following limitations:

(1) Requests for hearing blocks for half a day (i.e., the morning or afternoon only of a hearing day) will be honored for a maximum of 50 half-days per calendar year. Two half-day hearing blocks may be used together to obtain a hearing block for a given day.

(2) Requests for full-day hearing blocks will no longer be honored.

(3) Requests for partial (i.e., less than statewide), hearing blocks, also referred to as site blocks, will continue to be honored, but the site blocks will be included within the 50 half-days per calendar year.

(4) Requests for "magistrate blocks" may be submitted by an individual serving as a magistrate or prosecutor for a court of record. To be eligible, the requestor must submit a letter from the judge or mayor outlining the responsibility and schedule of the magistrate or prosecutor serving the court. Hearing block-out periods will be entered covering the schedule outlined by the judge or mayor.

(5) The Industrial Commission's docketing system will only honor a hearing block if a representative has been designated as the docketing representative on a claim.

(6) If a timely request for a hearing block is received by the Industrial Commission, the Industrial Commission will not schedule claims for hearing during the block-out period when the requesting representative is designated as the docketing representative in the claim.

(7) Representatives are encouraged to manage requests for block outs through the Industrial Commission Online Network (ICON). Representatives' calendars on ICON will set forth the block-out dates that are timely requested by the representative as described in paragraphs (A)(1) through (A)(4) above.

(B) Good cause, as required by Rule 4121-3-09(C)(9)(b)(ii) of the Administrative Code, shall include, but is not limited to, the following examples:

(1) When the requesting party or representative has a documented Commission hearing conflict which exceeds the concurrent hearing level assigned to that party or representative at the time that the Commission docketed the claim for hearing and established a hearing date, so long as the representative had been designated as the docketing representative in the conflicting claims at the time of docketing.

(2) When the requesting party or representative has a documented court conflict, which was either scheduled prior to the date that the Commission issued the notice of hearing for the claim in question, or where the court activity that created the conflict was scheduled by another party without the input of the requesting party, subsequent to the time that the notice of hearing was issued by the Commission.

(3) If the Commission receives notice of a valid block-out period pursuant to Commission docketing policy at least fifteen state business days prior to the date of hearing in question, the Commission shall not schedule a hearing on that date. If a party does not obtain a valid block out pursuant to Commission

docketing policy, a continuance shall not be granted for good cause for those dates of hearing if requested for a reason where a hearing block should have been utilized.

(4) Recent retention of an authorized representative if it is demonstrated that due diligence, as defined in paragraphs (B) and (C) of this resolution, has been exercised by the requesting party.

(5) When a pending settlement dispositive of the docketed issue is in the negotiation stage, the Commission will continue the hearing and issue an interlocutory order referring the claim file to the Bureau of Workers' Compensation, pending settlement negotiations. The assertion of a pending settlement agreement must be made by both parties and must include a waiver of the time frames set forth in Section 4123.511 of the Revised Code. This provision shall not apply to the settlement of claims where a permanent and total disability application is being processed pursuant to Rule 4121-3-34 of the Administrative Code, or to the settlement of alleged violations of specific safety requirements being processed pursuant to Rule 4121-3-20 of the Administrative Code.

(6) When the employer has shown due diligence, as defined in paragraphs (B) and (C) of this resolution, in requesting a signed medical release or in scheduling an examination under Section 4123.651 of the Revised Code, the employer shall be afforded a reasonable period of time in which to obtain medical records or receive the examination report.

(7) That the parties have mutually agreed to a request for a continuance is a factor that shall be considered in the determination of whether good cause is shown.

(C) The standard for extraordinary circumstances that could not have been foreseen, as required by Rule 4121-3-09(C)(9)(b)(ii) of the Administrative Code, shall include, but is not limited to, the following examples:

(1) Hospitalizations and medical emergencies, deaths in immediate family, automobile accidents, and weather emergencies, etc.

(2) The failure to properly set forth the names and addresses of the parties and their representatives clearly discernable on the face of the notice of hearing or the processing of a discovery request that was not foreseeable and could not have been filed earlier.

(3) If a party or its representative receives notice of a court date that was not foreseeable, such as a common pleas domestic related emergency custody hearing.

(4) Recent retention of an authorized representative is an extraordinary circumstance that could not have been foreseen if it is demonstrated that the requesting party exercised due diligence, as defined in paragraph (C) of this resolution, in determining whether to obtain counsel.

(5) The ability to rebut new opposing evidence only justifies a continuance in situations where unforeseeable issues are raised by the new evidence or the volume of new evidence precludes the ability to conduct a proper hearing.

(D) As used in paragraphs (B)(4), (B)(6), and (C)(4) above, the evaluation of due diligence will be made on case-by-case basis and is to include consideration of several factors, including, but not limited to, sophistication of the requesting party and that party's representatives, familiarity of the requesting party and that party's representatives with the Ohio workers' compensation system, the issue to be adjudicated by the Commission, the stage of the claim in the administrative appeal process, and whether there were prior continuances in the claim.

BE IT FURTHER RESOLVED that the aforementioned guidelines shall be effective for requests for hearing blocks and motions to continue hearings filed on or after December 31, 2012, and shall supersede the guidelines in Resolution R12-1-02.

This action based on a motion made by Commissioner Taylor, seconded by Commissioner DiCeglio, and voted on as follows:

Ohio | Industrial Commission

Karen L. Gillmor, Ph.D., Chairman/CEO YES

Gary M. DiCeglio, Commissioner YES

Jodie M. Taylor, Commissioner YES

Attested to by:

Tim Adams, Executive Director