

RESOLUTION

Columbus, Ohio

July 10, 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, is established; and

WHEREAS, Commission Resolution R10-1-01, 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, is established; and

WHEREAS, the Commission finds that due to the existence of a hearing spike as described in Section 4121.351 of the Revised Code that the Commission desires to revise the guidelines for continuances and the Docketing Policy previously adopted by the Commission; and

WHEREAS, the Commission finds it necessary and proper to adopt revised guidelines for a period of sixty days 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, is established, and that the revised guidelines are to supersede the guidelines in Resolution R10-1-01; and

WHEREAS, the Commission adopted a Docketing Policy on December 21, 2010, that was effective on January 17, 2011, and the Commission finds that it is necessary and proper to adopt a revised Docketing Policy for a period of sixty days; 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 adopts 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, is established:

- (A) 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 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.

- (2) 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 those dates of hearing if requested for a reason where a block out should have been utilized.
 - (3) Recent retention of an authorized representative if it is demonstrated that due diligence, as defined in paragraph (D) of this resolution, has been exercised by the requesting party.
 - (4) When a pending settlement dispositive of the docketed issue is in the negotiation stage, the Commission will cancel 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.
 - (5) When the employer has shown due diligence, as defined in paragraph (D) 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.
- (B) 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 (D) 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.
- (C) Good cause as required by Rule 4121-3-09(C)(9)(b)(ii) of the Administrative Code, and 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 do not include documented Commission hearing conflicts.

- (D) As used in paragraphs (A)(3), (A)(5), and (B)(4) of Resolution R12-1-01, 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 paragraphs (A)(1), (C)(1), and (D) of the Docketing Policy adopted by the Commission on December 21, 2010 that was effective on January 17, 2011 be modified to read as follows:

Requests for full day hearing blocks will be honored for no more than twelve days per calendar year.

Request for blocks for a half day will be honored for no more than ten half days per calendar year.

The maximum number of full hearing day blocks that the Commission will honor will not exceed a total of twenty-seven full day hearing blocks per year under the limitations set forth in paragraphs (A) through (C) of the Docketing Policy of the Commission.

BE IT FURTHER RESOLVED that representatives and employers who have previously been granted more than twelve full day hearing blocks in calendar year 2012 will not be awarded any further full day hearing blocks in that calendar year. Representatives and employers that have requested less than twelve full day hearing blocks in calendar year 2012 are limited to a maximum of twelve requests for full day hearing blocks in calendar year 2012.

BE IT FURTHER RESOLVED that representatives and employers who have previously been granted more than ten half day hearing blocks in calendar year 2012 will not be awarded any further half day hearing blocks in that calendar year. Representatives and employers that have requested less than ten half day hearing blocks in calendar year 2012 are limited to the maximum of ten requests for half day hearing blocks in calendar year 2012.

BE IT FURTHER RESOLVED that the aforementioned guidelines shall be effective for sixty days for requests for continuance of hearings filed and requests for hearing blocks made on or after July 11, 2012, and shall supersede the guidelines in Resolution R10-1-01.

This action based on a motion made by Mrs. Gillmor, seconded by Mr. DiCeglio, and voted on as follows:

Ohio | Industrial Commission

Karen L. Gillmor, Ph.D., Chairman Yes

Gary M. DiCeglio, Commissioner Yes

Jodie M. Taylor, Commissioner Yes

Attested to by:

Tim Adams, Executive Director