

# \*\*\*Proposed Amendment\*\*\*

## 4121-3-15 Percentage of permanent partial disability.

### (A) Definitions

- (1) For purpose of this rule, both an application for the determination of percentage of permanent partial disability and an application for an increase in the percentage of permanent partial disability will be referred to as an "application."
- (2) For purpose of this rule, a substantial disparity means fifteen per cent or more difference.

### (B) Procedure upon filing of objection to a tentative order issued by the bureau of workers' compensation under section 4123.57 of the Revised Code as a result of the filing of an application as defined in paragraph (A)(1) of this rule or in a claim where the administrator determines that there is a conflict of evidence, the matter is to be referred to the commission.

- (1) Upon receipt of a written notification of an objection to a tentative order (filed within twenty days after receipt of the notice of a tentative order) issued by the bureau of workers' compensation pursuant to section 4123.57 of the Revised Code, or in a claim where the administrator determines that there is a conflict of evidence, the matter is to be referred to the commission. The commission will set the application for hearing before a district hearing officer. The party filing the objection shall also provide a copy of the objection to the opposing party if the opposing party is unrepresented, or in cases where the opposing party is represented, to the opposing party's representative, at the time that the written objection is filed from the tentative order issued by the bureau of workers' compensation.
- (2) Notices of the hearing shall be mailed to the injured worker, employer, and their representatives and to the administrator at least two weeks in advance of the hearing date, except as provided in paragraph (C)(6) of rule 4121-3-09 of the Administrative Code.

### (C) Procedures upon referral to a district hearing officer

- (1) Should the employer file an objection to a tentative order and the employer desires to obtain a medical examination of the injured worker, the employer shall provide written notice at the time of the filing of the objection to the hearing administrator, and to the injured worker if the injured worker is unrepresented, or to the injured worker's representative, if the injured worker is represented, of the employer's intent to schedule a medical examination of the injured worker. The examination shall be conducted and the report of the medical examination submitted to the commission and to the injured worker if the injured worker is unrepresented, or to the injured worker's representative if the injured worker is represented within forty-five days of the date of the filing of the employer's objection to the tentative order.
- (2) If the injured worker is the only party that files an objection to a tentative order and the injured worker intends to submit medical evidence not previously submitted in support of the injured worker's objection, copies of the medical evidence are to be provided to the employer in accordance with paragraphs (C)(4) and (C)(5) of this rule. Upon the employer's receipt of the medical evidence submitted by the injured worker, should the employer desire to obtain a medical examination of the injured worker, the employer shall schedule the examination within fourteen days of its receipt of the medical evidence submitted by the injured worker. The employer shall provide written notice of the employer's intent to

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schedule a medical examination of the injured worker to the hearing administrator and to the injured worker in cases where the injured worker is not represented, or to the injured worker's representative if the injured worker is represented. The medical examination shall be conducted and the report of the examination submitted to the commission and the injured worker if the injured worker is unrepresented, or to the injured worker's representative if the injured worker is represented within forty-five days from the date of the employer's receipt of the injured worker's medical evidence.

- (3) Upon request and for good cause shown, the hearing administrator, or at hearing, the hearing officer may provide an extension of time, not to exceed thirty days, to allow submission of the employer's medical report described in paragraphs (C)(1) and (C)(2) of this rule.
  - (4) The parties or their representatives shall provide to each other, as soon as available and prior to the district hearing officer hearing, a copy of all the evidence the parties intend to submit at the district hearing officer hearing.
  - (5) In the event a party fails to comply with paragraph (C)(4) of this rule, the hearing officer may continue the claim to the end of the hearing docket, or to a future date with instructions to the parties or their representatives to comply with the rule.
- (D) Procedure for obtaining the oral deposition, or submitting written interrogatories, to a commission or a bureau of workers' compensation physician who examined an injured or disabled injured worker or reviewed the claim file and issued an opinion as a result of an injured or disabled injured worker filing an application as defined in paragraph (A)(1) of this rule.
- (1) If either the injured worker or the employer believe that the oral deposition, or the submission of written interrogatories, of the bureau of workers' compensation or the commission physician who examined the injured worker in connection with the application for the determination of the percentage of permanent partial disability, or who has submitted a report on the application for an increase in the percentage of permanent partial disability pursuant to a medical review or examination, is necessary for the proper determination of the percentage of permanent partial disability and there exists a substantial disparity as defined in paragraph (A)(2) of this rule between the report of the physician selected by the bureau of workers' compensation or the commission who is to be deposed and another medical report on file submitted on the issue of percentage of permanent partial disability that is to be adjudicated, or it appears that the estimate of disability made by the physician to be deposed was based, in part, on disability for which the claim has not been allowed, or an allowed disability was inadvertently omitted from consideration, such party shall make such request, in writing, to the hearing administrator, within ten days from the receipt of the examining or reviewing physician's report.
  - (2) In a claim where the injured worker or employer requests an oral deposition or the submission of written interrogatories to a bureau or commission physician as described in the paragraph (D)(1) of this rule but such party failed to receive a copy of the bureau or commission physician's medical report prior to the receipt of the notice of hearing, said party shall immediately after the receipt of the notice of hearing, request, in writing, to the hearing administrator that the hearing be continued and the deposition of the physician or the submission of interrogatories be taken prior thereto.
  - (3) Additional procedures on taking an oral deposition or submitting written interrogatories to a physician who performed an examination or a review on behalf of the bureau of workers' compensation or commission are set forth in paragraph (A)(7) of rule 4121-3-09 of the Administrative Code.

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- (E) Hearing officer guidelines for the adjudication of applications for the determination of the percentage of permanent partial disability and applications for an increase in the percentage of permanent partial disability:
- (1) In the determination of percentage of permanent partial disability under division (A) of section 4123.57 of the Revised Code, hearing officers are to base a percentage of permanent partial disability award on medical or clinical findings reasonably demonstrable.
  - (2) If the hearing officer determines that the bureau of workers' compensation's medical examination and/or medical review is legally insufficient, the hearing officer may return the claim file to the bureau of workers' compensation for a second medical examination or medical review. If the hearing officer returns the claim file to the bureau of workers' compensation the hearing officer shall state in an interlocutory order the reason the claim file is being returned to the bureau of workers' compensation. The hearing officer shall also instruct the bureau of workers' compensation to return the claim to the commission for hearing upon completion of the medical examination or medical review. After the claim file is returned to the commission from the bureau of workers' compensation, the hearing officer shall proceed with the hearing and render a decision based upon competent medical evidence submitted to the claim file, regardless of the legal sufficiency of the second bureau medical examination or review.
  - (3) An application for reconsideration, review, or modification which is filed within ten days of receipt of the decision of a district hearing officer issued under division (A) of section 4123.57 of the Revised Code shall be heard by a staff hearing officer and the decision of the staff hearing officer shall be final. At a hearing on reconsideration of a decision of a district hearing officer on the initial application for the determination of the percentage of permanent partial disability, the staff hearing officer may consider evidence that was not on file at the time of the district hearing officer hearing.
- (F) This rule shall apply to the adjudication of an application as defined in paragraph (A)(1) of this rule filed on or after the effective date of this rule.