

*****Proposed No Change Rule *****

4121-15-10 Standards of conduct for adjudicators.

- (A) Definitions. The following definitions shall apply to the adjudication of all disputes before the industrial commission:
- (1) "Claimant" means an employee as defined in division (A) of section 4121.01 and division (A) of section 4123.01 of the Revised Code, who asserts a right, demand, or claim for workers' compensation benefits.
 - (2) "Employer" shall have the same meaning as in division (C) of section 4121.01 and division (B) of section 4123.01 of the Revised Code.
 - (3) "Party" means a claimant, an employer, the bureau of workers' compensation and any other person, firm, corporation, agent, manager, or entity with an interest in a dispute before the industrial commission.
 - (4) "Adjudicator" means all hearing officers, the members of the industrial commission and their staff and any employee of the industrial commission who functions in an adjudicatory capacity in the resolution of a workers' compensation dispute or who assists in the decision making or deliberation processes in such disputes, including, but not limited to, employees of the industrial commission who participate in any alternative dispute resolution process as established by the industrial commission under the authority of division (J)(1) of section 4121.36 of the Revised Code.
 - (5) "Representative" means any person who appears before the adjudicator, prepares any document on behalf of any party for use by the adjudicator, renders any advice or performs any other related service for a party with respect to a dispute before the industrial commission.
 - (6) "To review" means to read with the intention that the knowledge gained from the reading shall be used in the decision making process with respect to the merits of:
 - (a) Deciding whether to hear a discretionary appeal filed with the members of the industrial commission pursuant to division (E) of section 4123.51 of the Revised Code;
 - (b) Deciding whether to hear a request for reconsideration filed with the members of the industrial commission; or
 - (c) Deciding any dispute before the industrial commission.
 - (7) "Ex parte communication" means any oral, written, electronic or other method of conveying information regarding the merits of a dispute before the industrial commission.

However, "ex parte communication" does not include:

 - (a) Oral, written, electronic or other methods of conveying information regarding the merits of a dispute before the industrial commission when such information is conveyed in the course of a hearing, including, but not limited to, testimony and other evidence offered at a hearing and information submitted to the claim file in the normal course of the dispute resolution process;
 - (b) Information regarding procedural aspects of the cause when such information does not include any reference to the merits;
 - (c) In the case of hearing officers, the members of the industrial commission or their staff, any information obtained by reviewing the claim file;

*****Proposed No Change Rule *****

- (d) In the case of hearing officers who participate in the decision making process regarding whether to present discretionary appeals filed pursuant to division (E) of section 4123.511 of the Revised Code and requests for reconsideration to the members of the industrial commission, any written information filed in support of an appeal or request for reconsideration with the appeals and reconsiderations section of the industrial commission which is subsequently placed in the claim file;
- (e) In the case of a hearing officer, exchanges of information with other industrial commission employees which are intended to assist the hearing officer in adjudicating a particular issue(s) in a claim; however those with whom the information is exchanged shall not act in an adjudicatory capacity in the claim with respect to the particular issue(s).
- (f) Deliberations and discussions regarding claims before the members of the commission between and among the members of the industrial commission the employees of the legal services section and other personnel designated by the members of the industrial commission to assist the members of the commission in the adjudicatory process.

(8) "Conflict" means a situation where the adjudicator is disqualified under the terms of paragraph (B) of this rule.

(B) Disqualification of the adjudicator.

- (1) An adjudicator shall disqualify himself or herself in a proceeding in which there arises the appearance of impropriety or the adjudicator's impartiality might reasonably be questioned, including but not limited to instances where:
 - (a) The adjudicator reviews a written, electronic or other ex parte communication, or participates or otherwise takes part in an oral or other ex parte communication;
 - (b) The adjudicator has a personal bias or prejudice concerning a party or representative, or personal knowledge of disputed evidentiary facts concerning the proceeding;
 - (c) The adjudicator served as a representative in the claim, or a representative with whom the adjudicator previously was associated, acted during such association, as a representative concerning the claim, or the adjudicator or such representative been a material witness concerning the claim. An employee in a governmental agency does not necessarily have an association with other employees of that agency within the meaning of this subsection; an adjudicator formerly employed by a governmental agency, however, should disqualify himself or herself in a proceeding if there arises the appearance of impropriety or his or her impartiality might reasonably be questioned because of such association;
 - (d) The adjudicator knows that, the adjudicator individually or as a fiduciary, or the adjudicator's spouse or minor child residing in the adjudicator's household, has a substantial financial interest in the subject matter in controversy or in a party to the proceeding;
 - (e) The adjudicator or the adjudicator's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
 - (i) Is a party to the proceeding, or an officer, director, or trustee of a party;
 - (ii) Is acting as a representative in the proceeding;
 - (iii) Is known by the adjudicator to have an substantial financial interest that could be affected by the

*****Proposed No Change Rule *****

outcome of the proceeding; or

(iv) Is to the adjudicator's knowledge likely to be a material witness in the proceeding.

(2) An adjudicator has a duty to be informed about his or her personal and fiduciary financial interests, and make a reasonable effort to be informed about the personal financial interests of his or her spouse and minor children residing in his or her household.

(3) For the purposes of this paragraph:

(a) The degree of relationship is calculated according to the civil law system;

(b) "Fiduciary" includes, but is not limited to, such relationships as executor, administrator, trustee and guardian;

(c) "Substantial financial interest" means more than five percent ownership of any partnership, trust, business trust, corporation or association.

(C) Disqualification procedures

(1) If a hearing officer is disqualified, the hearing officer shall:

(a) Make every practicable effort to obtain another hearing officer to hear the claim at the same date, place and time as it was originally scheduled; or

(b) In cases where another hearing officer is not available to hear the claim at the same date, place and time, issue an order which discloses that a conflict exists, briefly describes the nature of the conflict and which resets the claim for hearing before a different hearing officer.

(2) In cases where a member of the industrial commission is disqualified by a conflict:

(a) Where only one member of the industrial commission is disqualified by a conflict, the parties may:

(i) Elect to proceed with a hearing before the remaining member(s) of the industrial commission present at the hearing, and to have the claim voted upon by the two members who are not disqualified by a conflict; or

(ii) If only one member of the industrial commission who is not disqualified by a conflict is present at the hearing, elect to have the claim reset for hearing before the two remaining members of the industrial commission who are not disqualified by a conflict.

(b) Where two or more members of the industrial commission are disqualified by a conflict, the commission shall issue an order disclosing that the conflict exists, briefly describing the nature of the conflict and indicating that the decision from which the appeal(s) or request(s) for reconsideration is/are taken shall stand.

(D) Processing of written ex parte communications received by the members of the industrial commission:

(1) Any written ex parte communication received by any member of the industrial commission and/or any employee of that member's staff shall be immediately transmitted, without review, acknowledgment or comment, to the appeals and reconsiderations unit of the industrial commission or other appropriate place of filing.

*****Proposed No Change Rule *****

- (2) All written ex parte communications received by any member of the industrial commission and/or any employee of that member's staff shall be placed in the claim file.
- (E) Nothing in this rule shall require the disqualification of an adjudicator who reads a document, whether written, electronic or otherwise, or a portion thereof, to ascertain whether it pertains to the merits of a dispute before the industrial commission, so long as immediately upon ascertaining that the document pertains to the merits of a dispute before the industrial commission, the adjudicator processes the document in accordance with the provisions of this rule.