

4121-3-09 Conduct of hearings before the commission and its staff and district hearing officers**Effective: April 27, 2017**

(A) Evidence and discovery.

(1) In every instance the evidence shall be of sufficient quantum and probative value to establish the jurisdiction of the commission to consider the claim and determine the rights of the injured worker to an award. Evidence may be presented by affidavit, deposition, oral testimony, written statement, document, or other forms of evidence.

(a) The parties or their representatives shall provide to each other, as soon as available and prior to hearing, a copy of the evidence the parties intend to submit at a commission proceeding.

(b) In the event a party fails to comply with paragraph (A)(1)(a) of this rule, the hearing officer has the discretion to 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.

(2) The free pre-hearing exchange of information relevant to a claim is encouraged to facilitate thorough and adequate preparation for commission proceedings. If a dispute arises between the parties regarding the exchange of information, the hearing administrator, pursuant to paragraph (B) of this rule may conduct a pre-hearing conference to consider the dispute. At the conclusion of the pre-hearing conference, the hearing administrator may issue a compliance letter, which becomes part of the claim file and which shall be adhered to by the parties.

(3) The injured worker must provide, when requested, a current signed medical release as required by division (B) of section 4123.651 of the Revised Code. Should an injured worker refuse to provide a current signed medical release as requested, then the claim shall be referred to the hearing administrator so that an order suspending the claim may be placed pursuant to division (C) of section 4123.651 of the Revised Code. Medical releases are to be executed on forms provided by the bureau of workers' compensation, the commission, or on substantially similar forms.

(4)

(a) When the injured worker has provided a current signed medical release as required by division (B) of section 4123.651 of the Revised Code, upon written request made by the employer, the injured worker shall provide a list of the medical providers that the injured worker is authorizing to release medical records that have examined or treated the injured worker for any medical, psychological and/or psychiatric conditions that are related causally or historically to the physical or psychological and/or psychiatric injuries relevant to the injured worker's claim. The medical records released to the employer pursuant to a signed medical release shall be treated as confidential medical records by the employer and the employer's authorized representatives.

(b) Should the injured worker make the assertion that the employer's request to provide a list of medical providers pursuant to paragraph (A)(4)(a) of this rule is unreasonable or not in compliance with paragraph (A)(4)(a) of this rule, the injured worker shall within three days of making the assertion provide the hearing administrator and the employer, or in claims where the employer is represented, the employer's representative, notice of the assertion. The notice of assertion shall set forth the reasons for the assertion that the request to provide a list of medical providers is unreasonable or not in compliance with paragraph (A)(4)(a) of this rule. Upon receipt of such notification, the hearing administrator shall determine whether there is good cause for the injured worker's refusal to provide a list of medical providers to the employer who have examined or treated the injured worker for any medical, psychological and/or psychiatric conditions that are related causally or historically to the physical and/or psychiatric conditions relevant to the injured worker's claim and the hearing administrator shall issue a compliance letter on whether there was good cause for the refusal to provide a list of medical providers to the employer. A party dissatisfied with the compliance letter issued under paragraph (A)(4)(a) of this rule may file an objection within

fourteen days of receipt of the compliance letter. If a party files a timely objection to a compliance letter issued under paragraph (A)(4)(a) of this rule, an expedited hearing will be held by a staff hearing officer in five business days of the commission's receipt of the objection.

(5) The commission may, at any point in the processing of an application for benefits, require the injured worker to submit to a physical examination or may refer a claim for investigation.

(6) The employer may require a medical examination of the injured worker as provided in section 4123.651 of the Revised Code under the following circumstances:

(a) In no event will the injured worker be examined more than one time at the request of the employer on any issue that is asserted by the injured worker or which is to be considered by the commission, during the time that the specific matter asserted or that is in controversy remains pending final adjudication before the bureau or commission.

The exercise of this right of an examination shall not be allowed to delay the timely payment of benefits or scheduled hearings nor be used to cause undue hardship on the injured worker. The cost of any examination initiated by employer shall be paid by the employer including any fee required by the physician, and the payment of all of the injured worker's traveling and meal expenses, in a manner and at the rates as established by the administrator from time to time. If employed, the injured worker will also be compensated for any loss of wages arising from the scheduling of an examination. All reasonable expenses shall be paid by the employer immediately upon receipt of the billing, and the employer shall provide the injured worker at the time that the employer notifies the injured worker of the time and place of the examination with a proper form to be completed by the injured worker for reimbursement of such expenses. The employer shall reimburse the injured worker for lost wages within thirty days of the submission of proof of lost wages.

The employer shall promptly inform the commission, as well as the injured worker's representative, as to the time and place of the examination, and the questions and information provided to the doctor. A copy of the examination report shall be submitted to the commission and to the injured worker's representative upon the employer's receipt of the report from the doctor.

The procedure set forth in paragraph (A)(6)(a) of this rule shall be applicable to claims where the date of injury or the date of disability in occupational disease claims occur on or after August 22, 1986.

Emergency treatment does not constitute an employer's examination for the purpose of this rule. Treatment by a physician whom the employer has selected does not constitute an employer's examination for this rule. However, if following an examination the physician whom the employer has selected renders, at the request of the employer, an opinion as to causation, extent of disability, or other medical opinion on a workers' compensation matter that is asserted by the injured worker, or which is to be considered by the commission, then that examination does constitute an examination for purposes of this rule, and the employer would not be entitled to a second examination on the same issue excepted as provided by this rule.

(b) If after a medical examination of the injured worker under paragraph (A)(6)(a) of this rule on an issue that remains in controversy and has not been finally adjudicated, an employer asserts that an additional medical examination by a doctor of the employer's choice is essential in the defense of the claim by the employer, the employer shall promptly inform the injured worker, and in claims where the injured worker is represented, the injured worker's representative as to the time and place of the examination. Upon request by the injured worker, or the injured worker's authorized representative in claims where the injured worker is represented, the questions and information provided to the physician and the reasoning for such additional examination shall be provided to the injured worker or the injured worker's authorized representative in claims where the injured worker is represented. A written request for such an examination shall be submitted to the hearing administrator only in cases where there is a dispute as to the request for additional examination. Written request for such an examination in a claim which has been set for a hearing with notice must be filed immediately upon the receipt of the notice or within such time as will be adequate for

notification of the parties of the continuance of the hearing. The request shall state the date of the last examination of the injured worker by a doctor of employer's choice on the question pending and the reasoning for such additional examination.

Upon receipt of such written request of the employer, the hearing administrator shall contact the parties to the claim and determine whether the second medical examination is essential to the defense of the claim by the employer. The hearing administrator will thereafter issue a compliance letter advising the parties of whether the medical examination scheduled pursuant to this section is permitted. A party dissatisfied with the compliance letter issued under paragraph (A)(6) of this rule may file an objection within fourteen days of receipt of the compliance letter. If a party files a timely objection to a compliance letter issued under paragraph (A)(6) of this rule, an expedited hearing will be held by a staff hearing officer in five business days of the commission's receipt of the objection.

All reasonable expenses of such examination, including any travel expense shall be paid by the employer within thirty days of the receipt of the billing. Payment for traveling expenses shall not require an order of the bureau or commission, unless there is a dispute. The employer shall provide the injured worker with a proper form to be completed by the claimant for reimbursement for traveling expenses. The employer shall reimburse the injured worker for lost wages within thirty days of the submission of proof of lost wages.

(7) Representatives of the parties may not be present at the medical examination conducted at the request of the commission under the provisions of Chapter 4121. or 4123. of the Revised Code, or at a medical examination conducted pursuant to division (A) of section 4123.651 of the Revised Code. Injured workers may have a relative present at such medical examinations if the injured worker desires to have a relative present. Examinations should be conducted with a chaperone present where appropriate. No person or party other than a commission employee shall communicate with the physician examining or reviewing on behalf of the commission. The preceding prohibition applies both prior to and subsequent to the medical examination, other than to the injured worker during the medical examination itself. Representatives of the parties may not be present at the medical examination conducted by the treating or consulting physician of the injured worker without the approval of the injured worker or, in claims where the injured worker is represented, the injured worker's authorized representative.

(a) If an injured worker without good cause refuses to attend a medical examination scheduled under paragraph (A)(6) of this rule, or refuses to provide or execute a current signed medical release as required by section 4123.651 of the Revised Code, the right to have the injured worker's claim for compensation or benefits considered, if the claim is pending before the commission, the administrator or district or staff hearing officer or to receive any payment of compensation or benefits previously granted is suspended during the period of refusal.

(b)

(i) The employer or the administrator asserting the suspension in paragraph (A)(7)(a) of this rule shall, within three business days of the assertion, provide the hearing administrator and the injured worker or in claims where the injured worker is represented the injured worker's representative notice of the assertion. The notice shall include the reason for the assertion that there was not good cause shown for the refusal to attend a medical examination scheduled under paragraph (A)(6) of this rule or the refusal to provide or execute a current signed medical release as required by section 4123.651 of the Revised Code. Upon receipt of such notification, the hearing administrator shall contact the parties to the claim and determine whether there is a dispute concerning the asserted suspension. Promptly thereafter, a compliance letter shall be issued as set forth in paragraphs (A)(7)(c) and (A)(7)(d) of this rule.

(ii) Should the injured worker make the assertion that the medical examination scheduled pursuant to paragraph (A)(6) of this rule is being used to cause undue hardship, the injured worker will within three business days of making the assertion, provide the hearing administrator and the employer, or in cases where the employer is represented, the employer's representative, notice of the assertion. The notice shall set forth the reason for the assertion.

(c) If it is found that there was good cause for the refusal to attend a medical examination scheduled under paragraph (A)(6) of this rule and/or for the refusal to provide or execute a current signed medical release as requested under section 4123.651 of the Revised Code, a compliance letter shall issue finding that the claim is not suspended. If the compliance letter finds that payment of compensation or benefits was terminated by the administrator or by self-insuring employer without having good cause for the suspension, payments of compensation and/or benefits shall be made within fourteen days of the compliance letter.

(d) If it is found that there was not good cause for the refusal to attend a medical examination scheduled under paragraph (A)(6) of this rule, and/or for the refusal to provide or execute a current signed medical release as required by section 4123.651 of the Revised Code, a compliance letter shall issue finding that the injured worker's right to have the claim for compensation or benefits considered if the claim is pending before the administrator, commission, or district or staff hearing officer, or to receive any payment of compensation or benefits previously granted is suspended during the period of refusal.

(e) A party that is dissatisfied with a compliance letter issued under paragraph (A)(7)(c) or (A)(7)(d) of this rule may file an objection within fourteen days of the receipt of the compliance letter issued under paragraph (A)(7)(c) or (A)(7)(d) of this rule. If a party files a timely written objection to the compliance letter that is issued under paragraph (A)(7)(c) or (A)(7)(d) of this rule an expedited hearing will be held by a staff hearing officer within three business days of the commission's receipt of the objection.

(8) Procedure for obtaining the oral deposition of, or submitting interrogatories to, an industrial commission or bureau physician.

(a) A request to take the oral deposition of or submit interrogatories to an industrial commission or bureau physician who has examined an injured or disabled worker or reviewed the claim file and issued an opinion shall be submitted in writing to the hearing administrator within ten days from the receipt of the examining or reviewing physician's report and the applicant shall simultaneously mail a copy of the request to all parties, or if represented, to the representatives of the parties.

(b) The request must set out the reasons for the request and affirm that the applicant will pay all costs of the deposition or interrogatories including the payment of a reasonable fee, as defined below, to the physician and will furnish a copy of the deposition or the interrogatory to the opposing party and to the file.

(c) If the hearing administrator finds that the request is a reasonable one, the hearing administrator shall issue a compliance letter that will set forth the responsibilities of the party that makes the request. The following items shall be set forth in the compliance letter:

(i) A statement of the responsibility of the party that requests the taking of deposition or answering of interrogatories concerning payment to the commission physician of a reasonable fee as established from time to time in the commission's medical examination manual. Additionally, should a party cancel a deposition within two days of the scheduled time, a minimum cancellation fee will be charged as set by the industrial commission.

(ii) A statement of the responsibility of the party that makes the request to provide written notice of the date and time of the deposition to be provided by the requesting party to all opposing parties and their representatives, the bureau of workers' compensation and the industrial commission.

(iii) A statement setting forth a date by which the transcript of the deposition or the answers to the interrogatories is to be submitted to the industrial commission for inclusion within the claim file folder and to be served upon opposing parties.

(d) Except as may be provided pursuant to paragraph (D) of rule 4121-3-15 of the Administrative Code, when determining the reasonableness of the request for deposition or interrogatories the

hearing administrator shall consider whether the alleged defect or potential problem raised by the applicant can be adequately addressed or resolved by the claims examiner, hearing administrator, or hearing officer through the adjudicatory process within the commission or the claims process within the bureau of workers' compensation.

(e) The party seeking the deposition may request that the hearing administrator issue a subpoena to secure the attendance of the physician. If the hearing administrator issues a subpoena to secure the attendance of the physician, the hearing administrator shall notify the physician that is to be deposed to bring copies of existing office notes and records concerning the medical examination or medical review to the deposition.

If a witness who has been issued a subpoena fails to appear, the hearing administrator shall certify this fact to the office of the attorney general who shall take appropriate action to compel the witness to obey the subpoena.

(f) The applicant shall furnish the opposing party and the industrial commission with a copy of the deposition or the completed interrogatories. The applicant shall also furnish the industrial commission with proof of payment of the court reporter and the physician.

(B) Prehearing conferences.

(1) At any time prior to the hearing the hearing administrator may, for good cause, hold a prehearing conference to consider matters that would tend to expedite the proceeding.

(2) At the conclusion of a prehearing conference, the hearing administrator shall prepare a compliance letter listing the subjects considered and the agreements reached at the prehearing conference. The compliance letter shall be made part of the claim file to be reviewed by the adjudicator and also be provided to the parties in attendance at the pre-hearing conference. The parties must adhere to the provisions of the compliance letter.

(3) A prehearing conference may be held by telephone conference call or in person, as determined by the hearing administrator.

(C) Hearings before the industrial commission, its staff hearing officers, and the district hearing officers, and the rendering of their decision.

(1) Contested claims matters, disputed issues or claims, and appeals under section 4123.511 of the Revised Code shall be set for hearing before the district hearing officers, staff hearing officers or the industrial commission. Contested claim matters shall be assigned to hearing officers through a system which ensures that each hearing officer hears a representative sample of the issues under contest, dispute, or appeal. Hearing officers shall review all claim files prior to hearing.

(2) Notice of the date, time and place of such hearings shall be given to the injured worker and the employer, and their respective representatives of record by mail, and to the administrator by inter-office mail, in advance of the hearing date. The mailing of the notice, unless it is an emergency hearing, shall precede the hearing date by a period of time which will reasonably afford the parties opportunity to be present and participate in the hearing. This shall not be fewer than fourteen days following the date of the mailing of the notice.

(3) Representation of injured workers and employers before the bureau and the commission is a matter of individual free choice. This includes hearings before the designated hearing officers. The commission does not require representation nor does it prohibit it. No employee of the commission shall in any way make statements tending to limit such free choice. No one, other than an attorney at law, authorized to practice in the state of Ohio, shall be permitted to represent injured workers for a fee before the commission.

(4) If no appearance is made at a hearing, with notice, the claim will be heard and disposed of upon the evidence on file, if such proof is sufficient for that purpose. If such evidence is insufficient, the hearing may

be continued to a specific date for the attendance of the parties or for the purpose of obtaining additional evidence or for any other justifiable reason.

(5) At hearings with notice, consideration shall be confined to the issues presented in the adjudication of the claim and the parties shall be prepared to fully present their respective positions in regard to such issues.

(6) In claims where a hearing with notice is required, parties may waive notice of hearing in writing, or by appearance and oral motion at the hearing, if such waiver is presented in advance of the hearing.

(7) Hearing officers of the commission and the commission itself, insofar as is practicable, may announce the decision on the issues presented in the hearing at its conclusion. Upon announcement of the decision or upon the hearing officer taking the issues under advisement, where that is required, the hearing shall be concluded.

(8) Hearings with notice before the district hearing officers on contested claims matters, disputed issues or claims, and appeals from a decision of the administrator shall be conducted in the industrial commission service office that is closest to the injured worker's residence, unless all parties agree that the hearing is to be held in another commission service office. Hearings for out-of-state injured workers who live more than one hundred -fifty miles from an industrial commission service office will be in Columbus, unless otherwise determined by agreement of the parties. If within one hundred-fifty miles, then the hearing will be at the nearest industrial commission service office. Other hearings before the commission or its deputies, shall be at the places designated by the commission in the notices of hearing.

(9) Continuances.

(a)

(i) Requests for continuances shall be addressed to the hearing administrator. The party that requests a continuance must state the reason for the request. The requesting party must also state that the other parties' representatives or, if there is no representative, the opposing parties, have been informed prior to filing the request with the commission that the request is being made and the reason therefore. Requests for continuances shall be in writing except in extraordinary circumstances where time does not permit a written request, and should be submitted on the "request for continuance" form available from the commission.

(ii) In the absence of a hearing administrator, due to extended illness or vacancy, the regional manager or the regional manager's designee shall be assigned the responsibility placed on the hearing administrator for granting or denying requests for continuances.

(b)

(i) If a representative of a party requests a continuance, the representative shall certify that the representative has informed representative's client of the time frames set forth within section 4123.511 of the Revised Code and that representative's client has agreed to waive the time frames for hearing and issuance of an order set forth in section 4123.511 of the Revised Code.

(ii) Requests for continuance 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. 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. Where a request for continuance is granted and the parties had mutually agreed to the continuance and the parties and/or their representatives have certified that the parties have agreed to waive the time frames set forth within section 4123.511 of the Revised Code, the case will not be identified as a claim that has not met

the time limits set forth within section 4123.511 of the Revised Code in the reports required to be prepared pursuant to division (H)(2)(a) of section 4121.36 of the Revised Code.

(iii) 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.

(iv) If a request for continuance is received on the day of the scheduled hearing, the adjudicator assigned to hold the hearing shall publish an order either granting or denying the request for continuance based on the presence of extraordinary circumstances that could not have been foreseen by the requesting party. If the adjudicator determines to grant the continuance, the order shall list the party that requested the continuance and set forth the unforeseen extraordinary circumstances that justify the continuance. If a request for continuance was made through the hearing administrator, and it was found that the party making the request had not met the requisite standard to grant the request for continuance, similar reasons asserted at the hearing to justify the request will not be found to be sufficient by the adjudicator. If the adjudicator grants a request for continuance, the order shall be interlocutory in nature and is not subject to appeal. Such claims shall remain subject to the reporting provisions under division (H)(2)(a) of section 4121.36 of the Revised Code, as well as the requirement of the timely hearing and issuance of an order under section 4123.511 of the Revised Code.

(v) If the adjudicator denies the requested continuance, the hearing shall proceed on the merits and the adjudicator shall reference in the order on the merits that the continuance was denied along with the reasons therefore.

(c) No hearing will be continued for purposes of discovery unless the requisite standard for granting the continuance has been met and the requesting party demonstrates that it has exercised due diligence in attempting to complete discovery prior to hearing.

(d) In cases where the hearing is to be scheduled before the members of the industrial commission, requests for continuances will be considered and determined by a majority of the members of the industrial commission.

(10) All final decisions of the district hearing officers, staff hearing officers, or commission upon hearing with notice shall be reduced to writing and copies sent to the parties and to all authorized representatives of record of each party, and to the administrator. Copies of decisions shall be sent by regular U.S. mail, unless the party or the party's authorized representative has opted not to receive decisions through the mail and elected to receive decisions electronically. It will be a rebuttable presumption that copies of decisions sent by the commission under paragraph (C)(10) of this rule were sent on the mailed date listed on the record of proceedings issued by the commission, both in claims where decisions are mailed to the parties and to the party's representatives by regular U.S. mail or where the record of proceedings is sent electronically to the parties or to the authorized representatives of the parties that have elected to receive copies of decisions electronically and opted not to receive decisions by regular U.S. mail.

Written decisions, shall be signed by the adjudicator(s) who conducted the hearing. When schedules or traveling do not permit a hearing officer to sign his orders, another hearing officer will be designated to sign the order. The designated signer should ensure that the order conforms to the hearing worksheet of the hearing officer that made the decision. If a designated signer has a question regarding the contents of the order, the order must be returned to the hearing officer that made the decision prior to its publication.

(11) All hearings before a district hearing officer, staff hearing officer and the industrial commission shall be public.

(12) The hearing administrator, hearing officer, or industrial commission may compel the attendance or testimony of witnesses on their own motion or at the request of any party.

(13) The assignment of a staff hearing officer or district hearing officer to a hearing shall be made by the regional manager.

(D) Final decisions of the district hearing officer, staff hearing officer or the industrial commission shall be in writing and shall include:

- (1) Description of the part of the body and the nature of the disability recognized in the claim.
- (2) A concise statement of the order or award.
- (3) A notation as to the notice furnished and as to the appearances of the parties.
- (4) Signatures of each commissioner participating in the hearing, shall be affixed to the original order verifying each commissioner's vote.
- (5) Signatures of each hearing officer participating in the hearing shall be affixed to the original order verifying the hearing officer's vote, which will be made part of the claim file.

(E) All matters which at the request of one of the parties or on the initiative of the administrator and any commissioner are to be expedited, shall require at least forty-eight hours notice of a public hearing and a statement of such order of the circumstances that justified such expeditious hearing.

(F) All original memoranda, orders and decisions of the commission shall be compiled in a journal to be made available to the public with sufficient indexing to allow orderly review of documents. The journal shall indicate the vote of each commissioner.

(G) All orders, rules, memoranda and decisions of the commission shall contain the signature of two of the three commissioners and shall state whether adopted at a meeting of the commission or by circulation to individual commissioners. Any facsimile or secretarial signature, initials of commissioners and delegated hearing officers and any printed record of "yes" and "no" vote of a district or staff hearing officer, or commission member is invalid.

(H) Claim inquiries.

- (1) The industrial commission shall maintain a public information section, which will be charged with the responsibility of handling claim inquiries by or on behalf of injured workers, employers and their respective representatives.
- (2) Requests, whether in writing, in person, or by telephone, concerning the status of a claim and/or any action necessary to maintain the claim shall be directed to the public information section.
- (3) The public information section shall promptly answer such request(s) or may refer the matter for response to the office or section before which the matter is currently pending. If the matter is so referred, the public information section shall follow-up the inquiry to ensure that it has been expeditiously answered.
- (4) Should the filing of a supplemental application, affidavit or other form(s) be necessary, it shall be forwarded by the office answering the inquiry.
- (5) The public information section shall maintain a record of all inquiries received in order that statistics be developed to indicate problem areas and to serve as a basis for appropriate measures.

(I) Processing claims in an orderly, uniform and timely fashion.

- (1) Each section of the industrial commission shall perform the tasks necessary to discharge its responsibilities for the processing of claims in accordance with the procedures adopted by such section and approved by the industrial commission.

(2) The discharge of these responsibilities, whether involving claims pertaining to state fund, self-insured or other employers shall be accomplished within the reasonable time parameters as set forth by the procedures of each section.

(3) It shall be the responsibility of the regional manager and hearing administrator to monitor the performance of tasks being carried on within their jurisdiction and to ensure that such assigned tasks are being performed in an orderly, uniform and timely manner, as established by the procedures of that section.

(4) Should it be determined that the assigned tasks were not being performed according to the adopted procedures, it shall be the responsibility of the regional manager and hearing administrator to adopt such corrective measures as may be indicated under the circumstances.

(J) In the absence of the hearing administrator, due to extended illness or vacancy, the regional manager or the regional manager's designee shall assume the responsibilities placed on the hearing administrator by this rule.

(K) Publication of a docket.

(1) The daily docket of each hearing room shall be in writing and shall be posted in the lobbies adjacent to the hearing rooms.

(2) The daily docket sheets shall include:

(a) A notation as to the type of docket that will be heard in the hearing room.

(b) A notation of the date, time, and place of the scheduled hearings as well as the amount of time allotted for each hearing.

(c) The claim number, position control number, employer's risk number, and the representatives' identification numbers.

(d) The names of the employer, the employer's representative(s), and the injured worker's representative(s).

(e) The appeal and/or description of the request for action that is set for hearing.

(f) Notice of the continuance or cancellation of a hearing.

(3) The docket sheets shall not include the name of the injured worker.