

4121-3-18 Administrative appeals

Effective: September 7, 2017

(A) This rule applies to administrative appeals filed to district hearing officers, staff hearing officers, and the commission under section 4123.511 of the Revised Code.

(B) Filing requirements for administrative appeals.

(1) Appeals may be filed electronically with the commission. Appeals filed electronically with the commission shall only be filed online through the industrial commission online network (I.C.O.N.). Appeals electronically filed through I.C.O.N. after commission business hours or on days the commission offices are closed, are considered filed on the next state business day that the commission offices are open. The appellant filing an appeal electronically shall certify that the appellant has notified the opposing party of the appeal by U.S. mail, by facsimile, by telephone, or by e-mail.

(2) Appeals may also be filed in writing with the commission. Written appeals should be submitted on forms made available by the commission. In lieu thereof, district hearing officers, staff hearing officers and the commission will accept a written statement from a party, signed in handwriting, as such an appeal, provided that the statement is filed within the period specified by section 4123.511 of the Revised Code and provided that it contains the names of the injured worker and the employer, the number of the claim, the date of the decision appealed from, and the fact that the appellant appeals therefrom.

(a) All such written notices of appeal shall be signed in handwriting by the party appealing or authorized representative on behalf of such party. Such notices of appeal may be filed with any office of the bureau or of the commission.

(b) An appellant filing a written notice of appeal shall mail a copy of the notice of appeal to the opposing party's representative, if the opposing party is represented, or to the opposing party, if the opposing party is not represented, at the time the notice of appeal is filed with the commission and the notice of appeal shall indicate that a copy has been so mailed. An appellant filing a written notice of appeal shall certify that the appellant has mailed a copy of the notice of appeal to the opposing party.

(3) It shall be a rebuttable presumption that the order that is the subject of the appeal was received within three days of the date of mailing of the order.

(4) In claims where a party has elected to receive e-mail notification from the commission of orders issued by the commission, it shall be a rebuttable presumption that the order that is the subject of the appeal was received within three days of the date of mailing of the order, unless the day of receipt is a Saturday, Sunday, legal holiday, or a day the commission offices are closed, in which event the order will be presumed received on the next succeeding commission day of business which is not a Saturday, Sunday, legal holiday, or a day the commission offices are closed.

(5) The last day of the period for filing an appeal shall be included as part of the appeal period, unless it is a Saturday, Sunday, legal holiday, or a day the commission offices are closed, in which event the period runs until the close of business of the next day which is not a Saturday, Sunday, legal holiday, or a day the commission offices are closed.

(6) On any day that the commission is closed for the entire day or closes earlier than its usual closing time, and this day constitutes the last day for the filing of an appeal, then such filing may be performed on the next

succeeding commission business day which is not a Saturday, Sunday, legal holiday or a day the commission offices are closed.

(7) Upon application of a party who resides in an area in which an emergency or disaster has been declared, as set forth in division (O) of section 4123.511 of the Revised Code, the commission may waive the time frames within which an appeal from an order of the bureau or of the commission must be filed.

(a) Upon the application of a party for relief under division (O) of section 4123.511 of the Revised Code, a hearing officer is to determine whether the requesting party was unable to comply with the filing time frames of section 4123.511 of the Revised Code due to the existence of an emergency or disaster as described in division (O) of section 4123.511 of the Revised Code. If the hearing officer finds that a party was unable to comply with the filing deadlines set forth within section 4123.511 of the Revised Code due to an emergency or disaster as described in division (O) of section 4123.511 of the Revised Code, the hearing officer shall waive the time frames of section 4123.511 of the Revised Code within which a claim or an appeal of a claim must be filed.

(b) The party that makes application for relief under division (O) of section 4123.511 of the Revised Code shall make application for such relief no later than thirty days after the termination of the state of emergency or disaster as described within division (O) of section 4123.511 of the Revised Code that the party asserts caused the party to be unable to comply with the filing time frames of section 4123.511 of the Revised Code.

(c) "Emergency" is defined as any occasion or instance for which the governor of Ohio or the president of the United States publicly declares an emergency and orders state or federal assistance to save lives and protect property, the public health and safety, or to lessen or avert the threat of a catastrophe.

(d) "Disaster" is defined as any natural catastrophe or fire, flood, or explosion, regardless of the cause, that causes damage of sufficient magnitude that the governor of Ohio or the president of the United States, through a public declaration, orders state or federal assistance to alleviate damage, loss, hardship, or suffering that results from the occurrence.

(8) The right of administrative appeal is limited to the injured worker, the employer, and the administrator as provided in Chapters 4121. and 4123. of the Revised Code. An appeal filed by any other person shall be denied, by order, without special hearing.

(C) Appeals to district hearing officers.

(1) Appeals from orders of the administrator issued pursuant to division (B) of section 4123.511 of the Revised Code, or issued by the administrator pursuant to other provisions in Chapters 4121. and 4123. of the Revised Code that expressly provide that the administrator's order is appealable under section 4123.511 of the Revised Code to district hearing officers, shall be filed within the period of fourteen days from receipt of the order from which the appeal is taken. Once a notice of appeal is filed, the district hearing officer shall hold a hearing within forty-five days of the filing of the appeal. The district hearing officer shall then publish an order within seven days after the hearing is held.

(2) In state fund claims involving contested claims matters over which the bureau lacks original jurisdiction, the administrator shall refer the claim to the commission for hearing. Upon receipt of such a referral, the commission shall set the matter for hearing before a district hearing officer. The district hearing officer shall hear the contested claims matter within forty-five days of the referral for hearing and publish an order within seven days after the hearing on the contested matter.

(3) In contested claims other than state fund claims, the administrator shall refer the claim, within seven days of the administrator's receipt of notification of the contested claim, to the commission which shall refer the claim to a district hearing officer. The district hearing officer shall hear the contested claim within forty-five days after notification that the matter is contested. Thereafter, the district hearing officer shall publish an order within seven days after the hearing held.

When a self-insuring employer fails to respond to an application for compensation and benefits made by an injured worker within thirty days of the receipt of such application or in claims where the administrator does not forward the employer's request for a hearing to the commission, the injured worker or the employer may request that the commission schedule the contested claims matter for hearing before a district hearing officer. Upon receipt of such a request, the commission shall refer the claim for hearing before a district hearing officer, who shall hear the contested claim within forty-five days after the expiration of the thirty day period or notification of the contested claims matter, whichever is earlier, and publish an order within seven days after the hearing is held.

(D) Appeals to staff hearing officers.

Appeals from orders of district hearing officers issued pursuant to division (C) of section 4123.511 of the Revised Code to staff hearing officers shall be filed within the period of fourteen days from receipt of the order from which the appeal is taken. Once an appeal is filed, the staff hearing officers shall hold a hearing within forty-five days of the filing of the appeal. The staff hearing officers shall then publish an order within seven days after the hearing is held.

(E) Appeals to the commission under division (E) of section 4123.511 of the Revised Code.

(1) The injured worker, the employer and the administrator, as limited by division (G)(3) of section 4123.511 of the Revised Code, may appeal a decision of a staff hearing officer, issued in accordance with division (D) of section 4123.511 of the Revised Code, to the commission.

(2) A notice of appeal filed under division (E) of section 4123.511 of the Revised Code shall specify the grounds upon which the appeal is sought. Notices of appeal filed from orders of staff hearing officers issued under division (D) of section 4123.511 of the Revised Code should include the following;

(a) Identification of all the underlying administrative orders from which the notice of appeal is filed;

(b) Identification of all relevant documents that are within the claim and, where appropriate, citation to any legal authority relied upon to support the request that the notice of appeal be accepted for hearing under division (E) of section 4123.511 of the Revised Code. The failure of a notice of appeal filed under division (E) of section 4123.511 of the Revised Code to specify the grounds upon which the appeal is sought as described in paragraph (E)(2) of this rule may result in a determination not to hear the appeal;

(c) If there exists newly discovered evidence which by due diligence could not have been discovered and filed by the appellant prior to the date of the hearing held under division (D) of section 4123.511 of the Revised Code that is relevant to the issue on appeal, but is not merely corroborative of evidence that was submitted prior to the date of the hearing held under division (D) of section 4123.511 of the Revised Code, such evidence shall be submitted with the notice of appeal.

(3) When a notice of appeal of a self-insuring employer is filed under division (E) of section 4123.511 of the Revised Code, the self-insuring employer shall certify that compensation and medical benefits have been timely paid as mandated by divisions (H) and (I) of section 4123.511 of the Revised Code. The commission or designated staff hearing officer shall consider whether the self-insuring employer has timely paid

compensation and/or benefits pursuant to section 4123.511 of the Revised Code in deciding whether to permit an appeal filed by a self-insuring employer to be heard under division (E) of section 4123.511 of the Revised Code.

(4) Appeals from decisions of staff hearing officers to the commission shall be filed within a period of fourteen days from receipt of the staff hearing officer order. Upon the timely filing of an appeal from an order of a staff hearing officer, the commission or designated staff hearing officer shall determine whether to hear the appeal. This determination is within the discretion of the commission or designated staff hearing officer.

(5) The commission or designated staff hearing officer will permit appeals to be heard from orders of staff hearing officers issued pursuant to division (D) of section 4123.511 of the Revised Code in the following cases:

(a) The commission determines the appeal presents issues for which the commission desires to set policy or precedent or presents an unusual legal, medical or factual question that the commission members desire to hear.

(b) There exists newly discovered evidence which by due diligence could not have been discovered and filed by the appellant prior to the date of the hearing held under division (D) of section 4123.511 of the Revised Code. Newly discovered evidence shall be relevant to the issue on appeal but shall not be merely corroborative of evidence which was submitted prior to the date of the hearing held under division (D) of section 4123.511 of the Revised Code.

(c) There is the possible existence of fraud in the claim.

(d) There is a clear mistake of fact in the order of a staff hearing officer issued under division (D) of section 4123.511 of the Revised Code.

(e) There is a clear mistake of law of such character that remedial action would clearly follow in the staff hearing officer order issued under division (D) of section 4123.511 of the Revised Code.

(f) There is an error in the staff hearing officer order issued under division (D) of section 4123.511 of the Revised Code.

(6) If the commission or designated staff hearing officer determines not to hear an appeal filed under division (E) of section 4123.511 of the Revised Code, the commission or designated staff hearing officer shall issue an order to that effect and shall provide written notification to the parties and their respective representatives within fourteen days after the expiration of the period in which an appeal of the order of the staff hearing officer may be filed as provided under division (D) of section 4123.511 of the Revised Code.

(7) If the commission or designated staff hearing officer determines to hear the appeal, the commission or designated staff hearing officer shall notify the injured worker, the employer, and the administrator as to the date, time and place of the hearing to consider the merits of the appeal. That hearing shall be heard by the commission or designated deputy of the commission within forty-five days from the filing date of the appeal. The commission shall then publish an order within seven days after the hearing is held. If the hearing is held by a deputy of the commission and the order of the deputy is approved and confirmed by the majority of the members of the commission, there is no appeal to the commission from such an order.

If a self-insuring employer's appeal is set for hearing pursuant to division (E) of section 4123.511 of the Revised Code, and at hearing it is determined that the self-insuring employer has not timely paid compensation and medical benefits pursuant to divisions (H) and (I) of section 4123.511 of the Revised Code, the commission retains the discretion to determine that the self-insuring employer's appeal was

improvidently accepted for hearing and to dismiss the self-insuring employer's appeal without considering the merits of such appeal.

(F) Payments of compensation and benefits.

Payments of compensation to an injured worker or on behalf of an injured worker as a result of any order issued under Chapter 4123. of the Revised Code or the payments of medical benefits awarded under Chapter 4121., 4123., 4123., 4127., or 4131. of the Revised Code shall commence pursuant to the provisions set forth in divisions (H) and (I) of section 4123.511 of the Revised Code.