

## TO BE RESCINDED

4121-3-18 **Administrative appeals.**

## (A) Administrative appeals.

- (1) The claimant, the employer or the administrator may appeal from decisions of district hearing officers and regional boards of review, as provided in section 4123.516 of the Revised Code. Appeals from decisions of staff hearing officers are governed by sections 4121.35 and 4123.343 of the Revised Code.
  - (a) The claimant and the employer may appeal to court from decisions of staff hearing officers - other than decisions as to the extent of disability - rendered on appeals from orders of regional boards of review. Such decisions are not appealable to the industrial commission. There is no appeal from a decision of a staff hearing officer on reconsideration of a percentage of permanent partial disability award. Such a decision is final.
  - (b) The claimant and the employer may appeal to the industrial commission from a decision of a staff hearing officer on a matter listed in divisions (B)(1) to (B)(4) of section 4121.35 of the Revised Code, provided that such a decision was rendered by the staff hearing officer in its own name. If, however, the staff hearing officer acted as a deputy of the industrial commission under section 4121.06 of the Revised Code and its order was approved and confirmed in writing by the majority of the members of the industrial commission, there is no appeal to the industrial commission from such an order.
  - (c) Section 4123.343 of the Revised Code specifically provides for appeals by the administrator to the commission from orders of staff hearing officers on handicap reimbursement. The employer may also appeal to the industrial commission from such orders of staff hearing officers (paragraph (H) of rule 4121-3-28 of the Administrative Code). The administrator may appeal from decisions of district hearing officers and regional boards of review, as provided in section 4123.516 of the Revised Code, and from a decision of a staff hearing officer, as provided by statute.
  - (d) Appeals to the regional boards must be disposed of upon the merits, or if not timely filed, or improperly completed, then on a jurisdictional basis.
  - (e) The industrial commission has discretion to hear appeals from orders of regional boards of review or to refuse such appeals.

- (2) Appeals should be made on "Form I-12"; in lieu thereof the regional board of review, staff hearing officer or industrial commission will accept a written statement from an aggrieved party, signed in handwriting, as such an appeal, provided that the statement is filed within the period specified by law and provided that it contains the names of the claimant and the employer, the number of the claim, the date of the decision appealed from, and the fact that the appellant appeals therefrom, as provided by law.
- (3) All such applications shall be signed in handwriting by the party appealing or authorized representative on behalf of such party, including the administrator or representative. Such appeal applications may be filed with any office of the bureau of workers' compensation, any regional board of review or of the industrial commission.
- (4) The right of administrative appeal is limited to the claimant, the employer and the administrator. No appeal shall be taken by the administrator in cases where the employer was represented at the hearing where the order was adopted unless the appeal is based upon questions of law or allegations of fraud. An appeal filed by any other person shall be denied, by order, without special hearing.
- (5) Appeals from orders of a district hearing officer to a regional board of review shall be filed within the period of twenty days of receipt of the order from which the appeal is taken. The industrial commission shall assign such appeal for hearing before one of the regional boards of review. Such regional board of review shall assign such appeal for hearing in a location which will permit sufficient accessibility to the hearing for claimants, employers and other interested parties but in such location as would be most convenient to the claimant. The commission may at any time recall such appeal which it has assigned to a board and assign it to another board. A hearing with notice on such an appeal shall be at a time and place designated by the regional board of review.
- (6) The industrial commission shall notify the claimant, employer, their representatives, and the administrator of the assignment of the appeal.
- (7) The regional board of review shall render a decision within two months of the filing of any appeal unless the board demonstrates to the commission adequate grounds for a reasonable delay.
- (8) For the right to appeal a decision of a regional board of review or a staff hearing officer see paragraphs (A)(1)(a) to (A)(1)(c) of this rule. An appeal to the

industrial commission from an order of a regional board of review or a staff hearing officer shall be filed with twenty days of receipt of the order. When an appeal from an order of a regional board of review is filed it shall be submitted to the industrial commission or staff hearing officers to determine whether the appeal will be refused or allowed. The industrial commission shall forthwith notify the claimant, the employer and the administrator of its decision. If the appeal is prepared for hearing, the industrial commission shall notify the claimant, employer and administrator as to the date, time and place of the special hearing to consider the merits of the appeal.

- (9) The industrial commission or staff hearing officers will allow appeals to be heard from orders of the regional boards of review where:
- (a) Such appeal is filed in an occupational disease claim on the question of allowance or disallowance of the claim where the inception of disability was prior to January 1, 1979.
  - (b) The decisions of the district hearing officer and the regional board of review are in conflict.
  - (c) The proof on file indicates the existence of an unusual legal, medical, or factual problem.
  - (d) One of the parties has failed or refused to supply needed material or factual proof within the knowledge of such party.
  - (e) It appears that a substantial injustice has been done to one of the parties.
  - (f) The proof on file indicates the possible existence of fraud.
- (10) Prior to the hearing on an appeal the regional board of review or the industrial commission may require the claimant, the employer and the administrator to confer in an endeavor to make such agreements and arrangements in regard to uncontroverted facts, definition of controverted issues and other matters which may expedite the determination of the appeal. If, however, the regional board of review or the industrial commission is of the opinion that a prehearing conference will serve no useful purpose, it may record such opinion (that a prehearing conference will serve no useful purpose) in the file of the claim and, thereupon, dispense with such conference.
- (11) Before making or denying an award at a hearing on an appeal the regional board of review or industrial commission shall afford the claimant, employer

and administrator an opportunity to be heard upon reasonable notice and to present the testimony of witnesses or other evidence.

- (12) The regional board of review or the industrial commission shall in its order make a concise statement of the matter decided, a notation as to the notices provided and the appearance of the parties, a description of the part of the body and the nature of the disability recognized in the claim. The order is to be signed by each regional board member participating in the hearing or such member of the industrial commission who participated in the hearing, the signatures to be verification of the vote of such person.
- (13) The decision of the regional board of review shall be the decision of the industrial commission, except where an appeal is granted by the industrial commission or by a court under section 4123.519 of the Revised Code.
- (14) Appeals and payment in a contested claim against a noncomplying employer are governed by the provisions of Chapter 4123. of the Revised Code, which generally govern appeals to the regional board, industrial commission and the courts.
- (15) In case of an application for reconsideration from a determination by a district hearing officer made under division (B) of section 4123.57 of the Revised Code, no payment shall be made to the claimant until a final decision of the staff hearing officer allows compensation.
- (16) In all other cases, if the decision of the district hearing officer is appealed by the administrator or the employer, the bureau of workers' compensation shall withhold compensation and benefits during the course of the appeal to a regional board of review, but if such regional board of review rules in favor of the claimant, compensation and benefits shall then be paid by the bureau or the self-insuring employer whether or not a further appeal is taken.
- (17) If the claim is subsequently denied, payments shall be charged to the statutory surplus fund. If the employer is a state risk such amount shall not be charged to the employer's experience. If the employer is a self-insurer such amount will be paid to the self-insurer from the surplus fund.

(B) Court appeals.

- (1) The claimant or the employer may appeal a decision of the industrial commission or of its staff hearing officer made pursuant to division (B)(6) of section 4121.35 of the Revised Code in any injury or occupational disease

case, other than a decision as to the extent of disability.

- (a) In injury claims, such appeal shall be filed with the court of common pleas of the county in which the injury was inflicted or in which the contract of employment was made, if the injury occurred without this state. Such a party may also appeal from the decision of the regional board of review from which the industrial commission or its staff hearing officer has refused to permit an appeal.
  - (b) In occupational disease claims, the appeal shall be filed with the court of common pleas of the county in which the exposure that caused the disease occurred. Such a party may also appeal from the decision of the regional board of review from which the industrial commission or its staff hearing officer has refused to permit an appeal.
- (2) Notices of appeals stating the names of the claimant and the employer, the number of the claim, the date of the decision appealed from, and the fact that the appellant appeals therefrom must be filed with the court of common pleas within sixty days after the date of receipt of such decision. If the claimant obtains a judgment on a court appeal in a case wherein the employer contested the claimant's right to participate in the fund, the statutory attorney fee for claimant's attorney shall be paid by the administrator and the employer shall then be billed for such fee by the accounts section.

Effective:

R.C. 119.032 review dates: 03/28/2011

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Certification

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Date

Promulgated Under: 119.03  
Statutory Authority: 4121.30, 4121.31  
Rule Amplifies: 4121.31, 4121.35, 4123.511, ( these statutes have been repealed 4123.515 and 4123.516, 4123.519 was amended and renumbered as 4123.51.2.)  
Prior Effective Dates: 10/17/68, 1/10/78, 12/11/78, 11/26/79