
Rules of Department of Labor and Industrial Relations

Division 20—Labor and Industrial Relations Commission

Chapter 3—Rules Relating to Division of Workers’ Compensation

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**Title 8—DEPARTMENT OF
LABOR AND
INDUSTRIAL RELATIONS
Division 20—Labor and Industrial
Relations Commission
Chapter 3—Rules Relating to Division
of Workers' Compensation**

8 CSR 20-3.010 Jurisdiction

PURPOSE: This rule states powers, duties and functions delegated to the division and separates jurisdiction of the division and commission in contested cases and settlements.

(1) The Division of Workers' Compensation shall have and exercise the following powers, duties and functions on behalf of the commission in the administration of the Workers' Compensation Law, section 287.410, RSMo:

(A) The receiving and filing of all reports of injury, claims for compensation, answers to claims for compensation, receipts, notices of termination of compensation and all other forms, instruments and documents required to be used or filed in connection with Workers' Compensation claims before the time of the issuance of a final award, order or decision of any administrative law judge;

(B) The receiving, filing, processing and recordkeeping of all exempted employers' acceptances of the Workers' Compensation Law and withdrawals of exempted employers' acceptances of the law;

(C) The duties and responsibilities given the commission by the legislature under section 287.280, RSMo relative to employers who carry their own insurance (self-insurers);

(D) The duties and responsibilities given the commission by the legislature under section 287.220, RSMo relative to the Second Injury Fund;

(E) The duties and responsibilities given the commission by the legislature under section 287.810, RSMo relative to a change of administrative law judge; and

(F) All documents and instruments referred to in subsections (1)(A)–(E) and required to be filed by either the employer or employee shall be filed with the division.

(2) Original Hearings—Administrative Law Judges, Authority and Power.

(A) All original hearings in contested cases shall be heard by the administrative law judges of the division. In any case which has been regularly assigned to an administrative law judge by the director of the division, that administrative law judge shall have full power, jurisdiction and authority to issue all

interlocutory orders necessary to the proper and expeditious handling of the case.

(B) Those interlocutory orders, including formal dismissal of unnecessary parties, shall be entered in the minutes of hearings and shall become final upon the issuance of a final award by the administrative law judge.

(C) An administrative law judge shall not have any authority to change or modify a final award issued by an administrative law judge after the lapse of twenty (20) days from the date of issuance of an award or after an application for review (see 8 CSR 20-3.030) has been filed with the commission in connection with any final award, order or decision of an administrative law judge.

(D) Any administrative law judge shall have authority and power to approve motions for settlement of workers' compensation claims; provided, the claim is pending in the division for adjudication. No administrative law judge shall have authority to approve settlement of workers' compensation claims pending before the commission.

(3) Original Hearings—Compromise Settlements.

(A) No original hearings in contested cases shall be heard by the commission or any member of the commission. No compromise settlement of a workers' compensation claim shall be submitted to the commission or any of its members for approval if the claim is pending in the division.

(B) All motions for settlement of claims pending before the commission shall be submitted to the commission for approval.

(C) All compromise settlements of workers' compensation claims pending in the circuit or appellate courts shall be submitted to the commission for approval. The appeal shall first be dismissed or withdrawn from the circuit or appellate court and jurisdiction restored to the commission before the commission may approve the compromise settlement.

(4) Modifying Death Benefit Awards. The commission shall have sole authority to modify final awards allowing death benefits to dependents. The commission may modify death benefit awards from time-to-time upon its own motion or upon motion by an interested party. All motions for modification of final awards shall be made to the commission and the movant shall submit proof of the change or condition or status of the parties receiving the benefits. Proof of the remarriage of the dependent surviving spouse shall be made by filing a copy of the marriage license of the remarried dependent surviving spouse or affidavit of the surviving spouse

admitting remarriage. Proof of the death of any dependent shall be made by filing a copy of the death certificate of the dependent. Evidence of the remarriage of the dependent surviving spouse or the death of dependents may be made by deposition or other evidence as the commission may specify.

(5) Lump Sum Payment of Compensation (Motion for Commutation).

(A) A motion for commutation of compensation due may be filed with the division or one of its administrative law judges at the time a hearing is held and evidence shall be heard on the motion. If payment of compensation is awarded by the administrative law judge, a decision shall be made by the administrative law judge relative to the motion for lump sum payment.

(B) A motion for commutation shall be filed with the commission in all cases in which the award of the administrative law judge has become final.

(C) Three (3) copies of the motion for commutation shall be filed by the moving party. A copy of the motion shall be sent by the division or the commission to all interested parties.

(D) When interested parties are notified of the motion, they may file a response with the division or the commission, depending upon where the motion is pending, within twenty (20) days of notification. If no objection is filed, the motion shall be reviewed upon the facts and evidence submitted by the movant and a decision made without a formal hearing.

(E) If objections to the commutation are filed, the commission or the division, depending upon where the motion is pending, shall hold a hearing. The commission or division shall review the evidence and render its decision.

(F) An order allowing or denying the motion shall be sent by United States mail to all interested parties.

(G) A commutation of compensation due a minor dependent shall not be approved or ordered until a legal guardian for the dependent has been appointed by the probate court of the county in which the dependent resides and proof of the appointment of a guardian and a certificate of the probate court certifying that the guardian has qualified shall be filed with the motion for commutation.

(H) No party shall settle an award for compensation due upon the basis of its commutable value without submitting a motion for approval to the commission or the division.



AUTHORITY: section 286.060, RSMo 1986.* This version of rule filed Dec. 18, 1975, effective Dec. 28, 1975. Amended: Filed July II, 1991, effective Dec. 9, 1991. Amended: Filed Sept. 30, 1992, effective April 8, 1993. Rule action notice invalidating subsection (2)(C) March 12, 1996. Rule action notice validating subsection (2)(C) Aug. 28, 1998.

*Original authority: 286.060, RSMo 1945, amended 1947, 1980.

Farm v. Barlow Truck Lines Inc., 979 SW2d 169 (Mo. banc 1998)

State ex rel. Doe Run Company v. Brown, 918 SW 2d 303 (Mo App. 1996). An administrative law judge set aside a dismissal of a claim for workers' compensation. The claim had been dismissed for the failure to prosecute. A regulation promulgated by the Labor and Industrial Relation Commission, 8 CSR 20-3.010(2)(C), implied that an administrative law judge had authority to change or modify any final award within twenty days. Twenty days is the period of time in which to file an application for review with the Labor and Industrial Relations Commission. The Doe Run Company (employer) filed a petition for writ of prohibition of mandamus in circuit court, challenging the administrative law judge's authority to set aside the dismissal of the claim for compensation. A permanent order in prohibition was denied by the circuit court and the employer sought review in the appellate court.

The Missouri Court of Appeals, Eastern District, said that section 287.610.2, RSMo (1994), provides an administrative law judge with no jurisdiction to review or authority to reopen any prior award. Another statute, section 287.655, RSMo (1994), provides that an order of dismissal for lack of prosecution is an award, subject to review the same as any other award. The appellate court held that the proper avenue for review of an order of dismissal for failure to prosecute is by filing an application for review with the Labor and Industrial Relations Commission within twenty days of the date of the dismissal. Section 287.480, RSMo (1994). The administrative law judge was without jurisdiction to reinstate the employee's compensation claim against the employer. To the extent that 8 CSR 20-3.010(2)(C) is interpreted as granting an administrative law judge with authority to reinstate a dismissed workers' compensation claim within twenty days of a dismissal order, the rule conflicts with section 287.610.2, RSMo (1994), and is invalid.

Cowick v. Gibbs Beauty Supplies, 430 SW2d 626 (Mo. App. 1968). Court of Appeals limited in review of award of Industrial Commission concerning workers' compensation claim to a determination of whether the award was supported by competent and substantial evidence and whether an award could have reasonably been made upon a consideration of all of the evidence. The commission is the sole judge of the credibility of witnesses and the weight to be given to their testimony.

Collins v. Eicher Heating Company, 319 SW2d 666 (Mo. App. 1959). Application for review by the full Industrial Commission filed by insurer and employer on form prepared by and furnished by the Industrial Commission and setting forth specific findings of administrative law judge appealed from, a request for permission to argue the case orally before the full commission because of conflicting medical evaluation of record, requesting the commission to appoint a qualified impartial physician to examine the employer and report his/her findings, court held to be in substantial compliance with the rules of the commission concerning applications for review; and therefore commission had jurisdiction to review the findings and award of the administrative law judge.

Hogue v. Wurdack, 298 SW2d 492 (Mo. App. 1957). Industrial Commission is a creature of the legislature, and its jurisdiction and the question of what persons are subject to it is to be determined from the act of legislature. Commission's jurisdiction cannot be dependent on or enlarged by estoppel, waiver, conduct or agreement.

E.B. Jones Motor Company v. Industrial Commission, Division of Employment Security, 298 SW2d 411 (1957). Industrial Commission of Missouri is an entity subject to being sued in its official name; however, it is not a "state officer" within the meaning of the constitutional provision, Art. V, Section 3, **Constitution of Missouri**; thus, Supreme Court did not have jurisdiction of an appeal from decision of the commission, because of the absence of a "state officer" as a party. Employment Security Law is not a revenue law.

8 CSR 20-3.020 Motions to Review Awards—Change in Condition

PURPOSE: This rule states the policy of the commission on reviewing awards on grounds of change in condition.

The sole issue in all proceedings under section 287.470, RSMo is whether there has been a substantial change in the employee's condition between the date of the commission's final award and the date of rehearing. On rehearing, the commission will not admit, nor will it consider, any evidence the only purpose of which is to show that the extent or duration of the employee's disability by reason of the condition existing at the time of the final award actually was either more or less in extent or longer or shorter in duration than the commission then found and declared.

AUTHORITY: section 286.060, RSMo 1986.* This version of rule filed Dec. 18, 1975, effective Dec. 28, 1975.

*Original authority: 286.060, RSMo 1945, amended 1947, 1980.

8 CSR 20-3.030 Review of Awards or Orders Issued by Administrative Law Judges

PURPOSE: This rule outlines procedures for appeals from a final award, order or decision made by an administrative law judge of the Division of Workers' Compensation.

(1) Review—Appeal. Any interested party in a contested case may appeal from a final award, order or decision made by an administrative law judge of the Division of Workers' Compensation by making an application for review within twenty (20) days from the date of the award, order or decision with the commission as provided by section 287.480, RSMo. A form to be used in making an application for review has been promulgated by the commission and is available upon request. The applicant for review is not required to use the promulgated form; provided, the application sets forth information in regard to the case and award which is sought to be reviewed and the reasons for making the application for a review of the evidence. An application for review shall be signed by the applicant or the applicant's attorney. An application filed on behalf of a corporation shall be signed by an attorney licensed in Missouri.

(2) Additional Evidence.

(A) After an application for review has been filed with the commission, any interested party may file a motion to submit additional evidence to the commission. The hearing of additional evidence by the commission shall not be granted except upon the ground of newly discovered evidence which with reasonable diligence could not have been

produced at the hearing before the administrative law judge. The motion to submit additional evidence shall set out specifically and in detail—

1. The nature and substance of the newly discovered evidence;
2. Names of witnesses to be produced;
3. Nature of the exhibits to be introduced;
4. Full and accurate statement of the reason the testimony or exhibits reasonably could not have been discovered or produced at the hearing before the administrative law judge;
5. Newly discovered medical evidence shall be supported by a medical report signed by the doctor and attached to the petition, shall contain a synopsis of the doctor's opinion, basis for the opinion and the reason for not submitting same at the hearing before the administrative law judge; and
6. Tender of merely cumulative evidence or additional medical examinations does not constitute a valid ground for the admission of additional evidence by the commission.

(B) The commission shall consider the motion to submit additional evidence and any answer of opposing parties without oral argument of the parties and enter an order either granting or denying the motion. If the motion is granted, the opposing party(ies) shall be permitted to present rebuttal evidence. As a matter of policy, the commission is opposed to the submission of additional evidence except where it furthers the interests of justice. Therefore, all available evidence shall be introduced at the hearing before the administrative law judge.

(3) Applications and Briefs.

(A) An applicant for review of any final award, order or decision of the administrative law judge shall state specifically in the application the reason the applicant believes the findings and conclusions of the administrative law judge on the controlling issues are not properly supported. It shall not be sufficient merely to state that the decision of the administrative law judge on any particular issue is not supported by competent and substantial evidence.

(B) If the applicant for review (known as the petitioner) desires to file a brief or memorandum of law in support of the application, it shall be indicated in the application. The petitioner's brief or memorandum of law shall be filed within thirty (30) days after the transmittal of the transcript of record. Parties to a claim who do not file an application for review may file reply briefs or memoranda of law within fifteen (15) days after receipt of the applicant's brief or memorandum of law.

The commission shall have discretion, after notice to the parties, to extend or accelerate the briefing schedule.

(4) Answers and Briefs.

(A) An opposing party (known as the respondent) may file an answer to the petitioner's application for review, concisely addressing each of the contentions set forth in the application. The answer(s) shall be filed within ten (10) days after the filing of the application for review. The commission shall have discretion to extend the time for filing an answer.

(B) If the petitioner does not include a request for a briefing schedule in the application for review and the respondent desires to file a brief or memorandum of law, that request shall be included in the answer. If the petitioner has requested a briefing schedule, but fails to file a timely brief after that, the respondent may file a brief or memorandum of law only if the respondent included a request to file a brief or memorandum of law in the answer.

(5) Briefs, Typewritten. Briefs filed in any case pending before the commission shall be typewritten. The original and two (2) copies shall be filed with the commission and a copy served upon the opposing party(ies).

(A) All briefs shall be subject to the following requirements:

1. Be on paper of size eight and one-half inches by eleven inches (8 1/2" × 11");
2. Be on paper weighing not less than nine (9) pounds to the ream;
3. Be typed on one (1) side of the paper;
4. Have a left, right, bottom, and top margin of not less than one inch (1"). Page numbers may appear in the bottom margin, but no other text may appear in the margins;
5. Have all pages consecutively numbered;
6. Use characters throughout the briefs, including footnotes that are not smaller than thirteen (13) font, Times New Roman on Microsoft Word;
7. Be double-spaced, except the cover, if any, certificate of service and signature block may be single-spaced.

(B) The brief of the petitioner shall not exceed thirty (30) pages. A respondent's brief shall not exceed twenty-five (25) pages. A reply brief is not required or suggested but if the petitioner believes it is necessary to file a reply, it shall not exceed eight (8) pages. A reply brief must be filed within ten (10) days of receipt of the respondent's brief. A cover sheet or index to the brief need not be counted in the page limitation but any attachments,

exhibits or appendices to the brief will be considered as pages of the brief and subject to the page limitation for the entire brief. (Parties should note that the commission file contains the award and decision of the administrative law judge along with a complete transcript of the record. It is unnecessary to attach any of these materials to the brief. Any other attachment would not be of record and not subject to consideration, which is limited to the record or transcript of the hearing.) Any brief submitted which is not in compliance with the above may not be considered.

(C) The brief of the party requesting the application for review shall contain a fair and concise statement of facts without argument. The respondent may supplement the statement of facts if necessary. No jurisdictional statement is necessary unless jurisdiction is at issue. (Parties are advised that recitations of basic legal principles of workers' compensation law are not necessary and are discouraged. The commission is aware of principles such as that the burden of proof is on the employee, the law is to be liberally interpreted in favor of the employee, and that the commission may make its own determination of the facts, and credibility of the witnesses including experts.) The briefs shall identify the issues in dispute and address those issues only. The briefs should state concisely the factual or legal support for the party's positions. Lengthy recitation of facts or cases without identifying how they relate to the party's position will not be considered. Briefs of all parties should clearly outline and explain the issues in dispute and contain a conclusion in detail as to the decision, award or action requested from the Labor and Industrial Relations Commission.

(6) Oral Argument. Oral argument may be granted by the commission; provided, the request to present oral argument is made in the application for review or in the answer and includes the reason the argument cannot be made adequately by brief. Untimely requests for leave to present oral argument shall not be entertained nor will any request to present oral argument in lieu of a brief be allowed.

(7) Hardship Setting. If the claimant for workers' compensation requests a hardship setting before the commission, an accelerated briefing schedule may be set and oral argument may be denied. The request for a hardship setting shall be made in the application for review, in an answer to the application or in a separate motion to the commission and shall set forth the reason expedited review is



necessary. The commission shall have discretion to designate a cause as a hardship case.

AUTHORITY: section 286.060, RSMo 2000. This version of rule filed Dec. 18, 1975, effective Dec. 28, 1975. Amended: Filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed March 16, 1992, effective Sept. 6, 1992. Amended: Filed Nov. 17, 1998, effective April 30, 1999. Amended: Filed Jan. 15, 2003, effective Aug. 30, 2003.*

**Original authority: 286.060, RSMo 1945, amended 1947, 1980, 1995.*

8 CSR 20-3.040 Temporary or Partial Awards

PURPOSE: This rule specifies when an application to review a temporary or partial award may be filed.

(1) Whenever an administrative law judge issues a temporary or partial award under section 287.510, RSMo, the same shall not be considered to be a final award from which an application for review (see 8 CSR 20-3.030) may be made. The time for making an application for review shall not commence until a final award is issued by the administrative law judge in cases where a temporary or partial award has been issued.

(2) Any party who feels aggrieved by the issuance of a temporary or partial award by any administrative law judge may petition the commission to review the evidence upon the ground that the applicant is not liable for the payment of any compensation and especially setting forth the grounds for the basis of that contention and where the evidence fails to support findings of the administrative law judge as to liability for the payment of compensation. The commission will not consider applications or petitions for the review of temporary or partial awards where the only contention is as to the extent or duration of the disability of the employee for the reason that the administrative law judge has not made a final award and determination of the extent or duration of disability.

AUTHORITY: section 286.060, RSMo 1986. This version of rule filed Dec. 18, 1975, effective Dec. 28, 1975.*

**Original authority: 286.060, RSMo 1945, amended 1947, 1980.*

8 CSR 20-3.050 Consolidation of Claims

PURPOSE: This rule outlines how a consolidation of claims is to be handled.

(1) All claims of all persons arising out of the same injury or death shall be filed in the same proceeding.

(2) The administrative law judge may order the consolidation of two (2) or more related proceedings arising out of the same accident for the purpose of taking evidence. In the event of consolidation, all documentary evidence previously filed or filed after that in any such proceeding shall be filed in the proceeding designated by the administrative law judge as the master proceeding and when so filed shall be considered evidence and part of the record in each of the consolidated proceedings.

(3) Separate pleadings, however, must be filed and separate findings and awards made in each of the proceedings. Joint transcripts of the evidence may be made and a copy filed in each of the consolidated cases or in the master proceeding.

AUTHORITY: section 286.060, RSMo 1986. This version of rule filed Dec. 18, 1975, effective Dec. 28, 1975.*

**Original authority: 286.060, RSMo 1945, amended 1947, 1980.*

8 CSR 20-3.060 Policy of the Commission

PURPOSE: This rule states the policy of the commission on continuances of hearing, attorney fees and agreements or contracts for settlements.

(1) Continuance. Continuances or further hearings are not favored by the commission. The parties are expected to submit all matters in controversy for decision at a single hearing before the commission. The parties cannot agree to a continuance of any case set for hearing before the commission without the consent of the commission. The purpose of the Workers' Compensation Law is to give a speedy determination of the rights of the employee.

(2) Attorney Fees.

(A) All attorney fees to be charged the employee for the prosecution of the employee's claim for compensation, including compromise settlements of the employee's claims, shall be submitted to the commission or to the administrative law judge for approval,

depending upon whether the commission or the division has jurisdiction of the claim at the time the final award is issued.

(B) The limitation as to fees shall apply to the combined charges of attorneys who knowingly combine their efforts towards the enforcement or collection of any compensation claim.

(C) No attorney fee shall be received or charged for services rendered in connection with a lump sum advance payment, or an agreement to compromise and settle liability, without the approval of the commission or the administrative law judge, as the case may be.

(3) Compromise Settlements. All agreements or contracts for settlement that provide for the payment of less than the full amount of compensation due or to become due, and which undertake to release the employer from all further liability, will be approved by the commission only where it appears that a reasonable doubt exists as to liability and as to the rights of parties, and that approval would be for the best interest of the parties. All compromise and contracts for settlement must conform strictly to the requirements of section 287.390, RSMo.

(4) Every compromise agreement or contract for settlement, in addition to the requirements of section 287.390, RSMo, shall be accompanied by—

(A) A statement or stipulation agreed to by the parties which would contain the facts upon which they are in agreement;

(B) The claims, facts or findings, or both, which are in dispute between the parties;

(C) The latest medical reports in the possession of the parties bearing on the case;

(D) A written statement showing whether or not the employee has returned to work and, if so, when;

(E) A separate statement signed by the employee, or dependents in death cases, in which the employee would state under oath that s/he understands that by agreeing to the settlement that s/he is forever closing out this present claim under the Missouri Workers' Compensation Law; that s/he will receive no further compensation or medical aid by reason of this accident; that s/he understands that s/he has a right to prosecute his/her claim before the commission to a final determination; and that the award of the commission might allow him/her more or less money than is provided by the proposed settlement and that s/he requests the commission to approve the settlement;

(F) Inclusion in the stipulation or agreement of the amount of compensation previously paid, weekly rate of compensation and

the amount of medical aid that has been provided; and it may include the following statement: "It is agreed by all parties hereto that the filing of its document is the filing of an application for adjustment of claim on behalf of the employee, and that the commission, in its discretion, may set the matter for hearing as a regular application, reserving to the parties the right to put in issue any of the facts admitted herein; and that if hearing is held with this document used as an application, the employer-insurer shall have available to them all defenses that were available as of date of filing of this document; and that the commission may thereafter either approve the compromise agreement and settlement or disapprove same and issue findings and award after review of the evidence has been made and the matter regularly submitted for decision"; and

(G) A signature of the stipulation or contract by the employee, or dependent in death cases, by his/her attorney or the representative of the claimant, if any, together with a statement over their signatures as to the agreement between them as to the attorney fee they request the commission to allow the attorney for the employee and be signed by a minor claimant, the minor claimant's parents or legal guardian and be signed by the employer-insurer or their attorney.

AUTHORITY: section 286.060, RSMo 1986. This version of rule filed Dec. 18, 1975, effective Dec. 28, 1975.*

**Original authority: 286.060, RSMo 1945, amended 1947, 1980.*

8 CSR 20-3.070 Posting of Bonds

PURPOSE: This proposed rule outlines procedures for posting of bonds by uninsured employers covered by the Workers' Compensation Act and implements section 287.480.2, RSMo Supp. 1998.

(1) Any uninsured employer subject to the Workers' Compensation Act as determined by the division must file a certificate of surety or other document issued by a bank, savings and loan institution or an insurance company licensed to do business in Missouri, establishing that the employer has a bond which will satisfy the award in full with its application for review. If no bond accompanies the application for review, the application for review will be returned to the employer as if never filed. The time limit for appeal to the commission shall continue to run and will not be tolled by the filing of an application for review without bond.

(2) Any uninsured employer subject to the Workers' Compensation Act must file a certificate of surety or other document issued by a bank, savings and loan institution or an insurance company licensed to do business in Missouri, establishing that the employer has a bond which will satisfy the award in full, if no bond has been filed under 8 CSR 20-3.070(1), with the filing of a Notice of Appeal with the commission. If no bond accompanies the Notice of Appeal, the Notice of Appeal shall be returned to employer as if never filed. The time limit for filing a Notice of Appeal shall continue to run and shall not be tolled by the filing of the Notice of Appeal without bond.

AUTHORITY: section 286.060, RSMo Supp. 1997. Original rule filed Sept. 15, 1998, effective March 30, 1999.*

**Original authority: 286.060, RSMo 1945, amended 1947, 1980, 1995.*