

Rule No. 1

Address of the Board: Office Hours

All communications to the Board shall be addressed to "Industrial Accident Board, State of Delaware" at 4425 N. Market Street, Wilmington, Delaware, 19802. The office is open daily from 8:00 a.m. to 4:30 p.m. except Saturdays, Sundays, and Legal Holidays.

Rule No. 2

Sessions

Hearings on petitions will be held during the normal work week at such locations and at such times as may be set upon notice by the Department of Labor.

Special sessions of the Board for the transaction of business may be held at any time and place in the State of Delaware as may be scheduled by the Board, with notice as provided by law.

Rule No. 3

The Administrator of the Office of Workers' Compensation:

Filing of Papers

(A) The Administrator of the Office of Workers' Compensation shall have custody of the Board's seal and official records, and shall be responsible for the maintenance and custody of the docket, files and records of the Board, including the transcripts of the testimony and exhibits with all papers and requests filed in proceedings, the minutes of all action taken by the Board, and of its findings, determinations, reports, opinions, orders, rules, regulations and approved forms.

(B) All orders and other actions of the Board shall be signed by the Board members issuing such order and authenticated by the Administrator of the Office of Workers' Compensation.

(C) All pleadings or papers required to be filed with the Board shall be filed in the Department of Labor's offices at Wilmington or other location designated by the Department for that purpose, within the time limit, if any, fixed by law or Board Rule for such filing; and similarly all requests for official information, copies of official records or opportunity to inspect public records shall be made to the Administrator of the Office of Workers' Compensation. After the Petition to Determine Compensation Due is filed, all communication shall contain the assigned case file number.

(D) Communications addressed to the Board and all petitions and other pleadings, all reports, exhibits, depositions, transcripts, orders and other papers or documents,

received or filed in the office kept by the Administrator of the Office of Workers' Compensation shall be stamped showing the date of the receipt of filing thereof.

Rule No. 4

Notice of Denial of Liability

(A) An insurance carrier or self-insurer shall within 15 days after receipt of knowledge of a work-related injury advise the Department and the claimant in writing of the following:

- (1) the date the notice of the claimant's alleged industrial accident was received by the insurance carrier or self-insured employer; plus,
- (2) if the claim is accepted by the insurance carrier or self-insured employer; or
- (3) if the claim is denied by the insurance carrier or self-insured employer giving the reason for the denial; or
- (4) state that the insurance carrier or self-insured employer presently cannot accept or deny the claim, giving the reasons therefor; and stating approximately when the determination will be made.

(B) All medical expenses shall be paid by the carrier within 30 days after bills for said expenses are sent to the carrier for payment, unless the carrier notifies claimant or his/her attorney in writing that said expenses are contested or that further verification is required.

(C) Should claimant allege to the Board that the insurance carrier or self-insured has failed in its responsibilities under Sections (A) & (B) the Department will schedule a hearing. The claimant and the insurance carrier or self-insured employer will present their respective positions. After the hearing, if warranted, the Board will assess a fine of not less than \$100 nor more than \$1000.

Rule No. 5

Forms Provided By the Department

(A) In all cases where forms are provided by the Department, all papers filed with the Board shall be on such forms, and all applicable questions shall be answered.

(B) Petitions shall be signed by a non-corporate party or an attorney who is a member of the Bar of the Supreme Court of Delaware.

(C) An application to terminate a claimant's benefits shall be by petition.

Rule No. 6

Formal Pleadings Not Required

(A) No formal pleading or formal statement of claim or formal answer shall be required of any party to any action before the Board, but each person making written request for a hearing shall file with the Department on forms to be furnished by the Department, a statement giving substantially the information requested on said forms.

(B) If, during the progress of any hearing, it shall appear to the Board that persons other than those named or referred to in the claim petition are, or may be entitled to receive or liable to pay compensation, the Board may inquire into and ascertain the rights and liabilities of such parties at an adjourned hearing of said case upon due notice to all such parties in interest. After the rights of all such parties are determined, the Board may amend the title of the cause in such a manner as may be right and proper.

Rule No. 7

Agreements for Scheduled Loss

All agreements for any scheduled loss or loss of function must be accompanied by appropriate doctors' reports.

Rule No. 8

Motions Concerning Legal Issues

(A) Except for motions contemplated by Rule No. 10 and 11, where a motion is filed with the Department which makes a legal argument, a supporting brief containing citations shall be filed with such motion. A motion may not be filed without proof that a copy of said motion has been served upon the non-moving party.

(B) An answering brief shall be filed with the Department by the non-moving party within 15 days of receipt of the supporting brief. An answering brief may not be filed without proof that a copy of said answering brief has been served upon the moving party.

(C) A reply brief may be filed with the Department by the moving party in the discretion of the moving party, but in no event will a reply brief be accepted by the Department after 7 days from the receipt by the moving party of the non-moving party's answering brief. A reply brief may not be filed without proof that a copy of said reply brief has been served upon the non-moving party.

(D) After the briefs have been filed with the Department, an oral argument may be scheduled by the Department in the Board's discretion.

(E) Motions of a procedural nature need not be accompanied by supporting briefs. No order involving a procedural matter requested by the moving party shall be issued by the Board against the non-moving party until the non-moving party has been given an opportunity to be heard on the issue.

(F) Anytime after the employer's first report of injury has been filed with the Department, the Department's scheduling officer may be notified either by oral, telephonic or written communication of the request by a party or party's legal counsel for a legal hearing. The Department's scheduling officer will have the discretion of requiring a written argument from the parties or the parties' legal counsel on the legal issue. Should one or both of the parties fail to accept the scheduling officer's decision, the parties must reduce their respective positions to written memorandums. The memorandums will be submitted to the Department by the parties on a date chosen by the scheduling officer. The Board will review the memorandums and issue a written decision.

(G) Parties may submit a proposed stipulation order for cooperation with reasonable vocational rehabilitation to the Board for approval without a legal hearing.

Rule No. 9

Formulation of Issues-Pretrial Procedure

(A) In any action, the Department of Labor shall conduct a pretrial conference. The pretrial scheduling officers shall be responsible for noticing and conducting such pretrial conferences. Such conference shall be held telephonically, unless either party is unrepresented by counsel in which case, the conference may be held at the Department of Labor offices servicing the county where the accident occurred. The scheduling officer shall set a date and time for the hearing on the issues which are the subject of the petition convenient to all parties and counsel and subject to the provisions of 19 Del.C. 2348 (c). Hearings as to all other Petitions will be scheduled at the convenience of all parties and counsel to the extent possible. At such conference, the parties may consider:

- (1) means and methods to simplify the issues(s);
- (2) the necessity or desirability of amendments to the papers filed or for additional papers to be filed;
- (3) the possibility of obtaining stipulations, admissions of fact or admissions of documents to avoid unnecessary proof;
- (4) the limitation on the number of expert witnesses;
- (5) such matters as may aid in the disposition or expedition of the action.

(B) The Board may make an order which recites the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties or on their behalf as to any of the matters considered and which limits the issues for hearing to those not disposed of by admissions or agreements of counsel. Such order when entered controls the subsequent course of the action unless modified to prevent manifest injustice.

(C) The Department shall designate the pretrial officer to arrange for and preside over pretrial hearings. The pretrial officer will have discretionary power to see that the pretrials are conducted in an effective manner.

(D) At the time of the noticed pretrial, the following information or documentation must be provided:

- (1) names and addresses of prospective medical and lay witnesses;
- (2) a complete statement of what the petitioner seeks and alleges. When a claimant seeks an order for payment of medical expenses either by petition or when raised as an issue in the pretrial conference on the employer's petition, copies of the bills shall be provided to counsel with the petition at least 30 days before the hearing;
- (3) a complete statement of defenses to be used by the opposing party;
- (4) a copy of the medical report upon which a petition for benefits under 19DelC. §2326 is based shall be provided by opposing counsel;
- (5) a clear statement of the basis for a petition under 19DelC. §2347;
- (6) notice of the intent to use any movie, video or still picture and either a copy of the same or information as to where the same may be viewed.

(E) Either party may modify a pretrial memorandum at any time prior to thirty (30) days before the hearing. If the thirtieth day prior to a hearing falls on a weekend or holiday, the last day to amend the pretrial shall be the last business day which is a least thirty days prior to the hearing date. Should a party wish to amend the pretrial to list additional witnesses, the party shall provide the names and addresses of such witnesses. Notice of any modification to the pretrial shall be sent to the opposing counsel or to a party directly if the party is unrepresented in a fashion insuring timely receipt of the same. The thirty day notice requirement regarding amendments to a pretrial memorandum may be waived by consent of the parties upon written stipulation or by the pretrial scheduling officer or the Board upon written application. However, only the party who filed the

petition which forms the subject of the pretrial memorandum may amend the petition subject to the provisions of Board Rule 26.

(F) Subject to the pretrial officer's discretion, a hearing date for a petition may be scheduled even if one or both parties fail to attend the pretrial. Only the pretrial scheduling officer can grant a continuance of a pretrial hearing.

(G) Responsibility does attach to the requesting party to arrange to have medical witness(es) present for the Board's scheduled hearing date. Such arrangements must be coordinated with and approved by the pretrial scheduling officer. Unless specifically asked for, no subpoena will be issued to expert witnesses since parties make their own arrangements for expert appearance.

(H) The pretrial officers, at their discretion, may schedule an additional pretrial hearing upon request of either party or the Board.

(I) In the absence of unusual circumstances, the party filing a petition shall file with said petition a pretrial memorandum with the petitioner's portion completed. The pretrial memorandum shall be sent to the opposing party's counsel by the Department of Labor upon the filing of an entry of appearance. In the event that the opposing party may send the pretrial directly to opposing counsel with notice to the Board that the same has been done.

(J) The pretrial scheduling conference shall be held on a date not later than 30 days after the date of the issuance of proper notice of a pretrial conference regarding the petition at issue. In the event that the pretrial memorandum has not yet been filed with the Department of Labor, the Board shall issue an Order compelling the submission of the same by a date certain, not to exceed fifteen (15) days.

Rule No. 10

Depositions Upon Oral Examination

(A) After a petition has been filed with the Department, any party to a proceeding before the Board may apply to the Board for an Order to provide for obtaining evidence by oral deposition within the State of Delaware for use in hearing before the Board. The application shall be made by motion, presented upon notice, showing good cause for obtaining such evidence by oral deposition or use in such proceeding. The procedure for obtaining such evidence shall conform to the Rules of Civil Procedure of the Superior Court of the State of Delaware insofar as may be practicable.

(B) The term "good cause", within the meaning of this rule shall mean cases where unusual circumstances exists, such as when a witness is about to leave the State or who will otherwise be unavailable to testify at the time of the hearing, or when a witness is too ill to appear and testify in person. The taking of depositions will not be ordered as a matter of course.

(C) After notice and argument, the Board shall rule on each such motion unless, prior to motion or argument, the parties stipulate in writing to the taking of the deposition, in which case the oral deposition may be taken, without the Board sanction, before any person, at any notice, and in any manner and when so taken may be used like other depositions.

(D) The deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.

(E) The party placing a deposition into evidence during a Board hearing, must supply the Board with three copies of the deposition at the time of the hearing.

(F) Medical witness fees pursuant to 19 Del.C. Section 2322 (e) shall include the costs of depositions taken pursuant to this rule. Costs shall also include the taking of videotape depositions.

(G) All videotape depositions must be accompanied by a written transcript.

Rule No. 11

Discovery And Production of Documents And Things For Inspection, Copying, Or Photographing

(A) After a petition has been filed, any party may serve on any other party a request to produce and permit the party making the request, or someone acting in his/her behalf, to inspect and copy or photograph, any designated documents which constitute or contain evidence relating to any matter which is relevant to the subject matter involved in the pending hearing and not otherwise privileged and which are in the possession, custody or control of the party upon whom the request is served.

(B) The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(C) The party upon whom the request is served shall serve a written request within 15 days after the service of the request. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order from the Board compelling discovery with respect to any obligations to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. The Board shall rule upon any such motion after notice and argument.

(D) The Board authorized the following medical authorization form for Workers' Compensation Cases:

"I, _____ do hereby authorize any doctor or hospital or other health care provider to supply any and all medical records and reports to the bearer of the original or a copy of this petition regarding any medical condition provided all requests for this information are in writing."

Legal counsel for the insurance carrier or self-insured employers will go through the claimant's legal counsel to obtain any medical information concerning the claimant. Legal counsel for one party may speak to the opposing party's medical witness(es) with the oral or written consent of the opposing party's legal counsel.

Medical authorizations must be signed and returned or objected to, in writing, within 15 working days of its receipt.

Rule No. 12

Continuances

(A) A request for a continuance shall be in writing and shall be addressed to the Department of Labor pretrial scheduling officer. A request for a continuance may be granted upon showing of the appropriate cause under the statute, 19 Del.C. 2348. The scheduling officer shall rule upon the request within three (3) business days of the receipt of the written request unless the request is made within three (3) business days of the hearing in which case the matter shall be ruled upon on the day of the request. Said ruling may be issued verbally to the parties as long as a written decision is issued within three (3) business days of the ruling. The written decision shall set forth the reason(s) for the grant or denial of the request.

Should a party object to the Department's decision, it may by motion, seek Board review and the Board shall hear the matter denovo. Upon such motion, the Department of Labor shall then set the matter for a legal hearing before the Board on the next Board motion day or as expeditiously as possible.

Once a hearing on the merits has begun, only the Board may grant a continuance should it become necessary to continue the case in order to prevent a miscarriage of justice.

(B) For the purposes of determining whether a requesting party had made the required showing of "good cause" or "extraordinary circumstances" under the statute, the Department and the Board shall use the following definitions of those terms:

(1) "*Good Cause*" shall include:

- (a) the unavailability of a previously scheduled medical or other material witness;
- (b) the unavailability of an attorney for a party due to an unintended conflicting court appearance;
- (c) the illness of a party; a party's attorney or a material witness (including, if appropriate, illness which affects the ability of necessary persons to participate in the deposition of a medical or other material witness);
- (d) an unexpected justifiable absence from the State of a party, a party's attorney or material witness;
- (e) a justifiable substitution of counsel for one party (this shall not include a transfer of files within a law firm);
- (f) the unavailability of a medical witness whose deposition cannot be scheduled despite due and prompt diligence on the part of the requesting party;
- (g) inadequate notice from the Department and/or Board which would justifiably prevent a party from having a full and fair opportunity to be heard; and
- (h) any other unforeseen circumstances beyond the control of the party seeking the continuance which would prevent the party from having a full and fair hearing.

The Department and/or the Board's decision must set forth the facts in sufficient detail to support its decision.

(2) "*Extraordinary Circumstances*" shall include:

- (a) the sudden unavailability of a previously scheduled medical or other material witness;
- (b) an emergency mandatory court appearance which precludes the appearance of a party's attorney at the hearing;
- (c) a serious personal or medical emergency on the part of a party or a party's attorney;
- (d) any other unforeseen circumstance beyond the control of the party seeking the continuance which would prevent the party from having a full and fair hearing.

The Department and/or the Board's decision must set forth the facts in sufficient detail to support its decision.

Rule No. 13

Opening Statements And Summations

(A) The attorney for the petitioner may make an opening address. The attorney for the respondent may make an opening address either before any testimony is taken on behalf of the petitioner or at the close of petitioner's testimony and before any testimony is offered on behalf of the respondent.

(B) Regarding summations, the petitioner shall be permitted to open and close and the respondent shall be permitted to respond.

Rule No. 14

Evidence

(A) All witnesses shall be sworn in all proceedings before the Board.

(B) The rules of evidence applicable to the Superior Court of the State of Delaware shall be followed insofar as practicable; however, that evidence will be considered by the Board which, in its opinion, possesses any probative value commonly accepted by reasonably prudent men in the conduct of their affairs. The Board may, in its discretion, disregard any customary rules of evidence and legal procedures so long as such a disregard does not amount to an abuse of its discretion.

Rule No. 15

Leading Questions

Leading questions of expert witnesses are permissible by either party to a controversy.

Rule No. 16

Attorneys, Questions And Facts

(A) The Department shall forthwith be notified of representation by an attorney for an employer or an employee or any matter pending before the Board. An attorney may withdraw his/her appearance without obtaining the Board's permission where such withdrawal will leave a member of the Delaware Bar appearing as attorney of record for the party. Otherwise, no appearance shall be withdrawn except on order of the Board. Requests by attorneys to withdraw shall be in writing and state the last known address of their client.

(B) When employees, employers, or their insurance carriers or self-insurers are represented by an attorney in hearings before the Board, only the attorney can examine or cross examine witnesses at the hearing. Further, the attorney must be a member of the Bar of the State of Delaware and duly licensed to practice in the Courts of this State. Otherwise, there must be an associate counsel with the above qualifications.

Rule No. 17

Exhibits

Exhibits submitted at Industrial Accident Board hearings are to be kept by the Department during passage of time of appeal. When time for appeal has passed, the exhibits may be returned to their proper owner or destroyed.

Rule No. 18

Copies Of Evidence Available To Applicants

(A) Typewritten copies of evidence taken in any case before the Board shall not be furnished to the parties, but persons entitled thereto may purchase same from the reporter who has recorded such evidence.

(B) In cases of appeal to the Superior Court, a typewritten copy of the evidence shall be furnished as provided by statute.

Rule No. 19

Filing Of Agreements After Awards

(A) In the case of an award by the Board which is not appealed or if the appeal is sustained by the Court of last appeal the insurance carrier or self-insurer shall make payments pursuant to and in compliance with the provisions of said award. An award of the Board shall be considered as self-executing. Nevertheless, for administrative purposes, an agreement reflecting the provisions of an award of the Board shall be entered into between the parties and filed with the Department. A final receipt shall be filed with the Department when the agreement is paid in full.

(B) In absence of the final receipt mentioned in paragraph (A) above, payments of compensation shall not be ended except on an award made according to the provisions of 19 Del.C. Section 2347, as amended. A final receipt signed by the injured employee will be accepted by the Board as prima facia evidence that the disability of such injured employee has ceased.

Rule No. 20

Time Of Draft For First Payment of Compensation

(A) An insurance carrier for the employer or the self-insurer shall enter into an agreement and make the first payment of compensation within fifteen (15) days after a compensable injury unless liability is denied, in which case Rule No. 4 shall apply. Said agreement must be filed with and approved by the Department.

(B) When an award has been made by the Board, the first payment of compensation shall be drawn to the claimant's order but not later than seven (7) days after the appeal period has run, irrespective of whether an agreement has at that time been entered into between the parties pursuant to Rule No. 19(A).

(C) When an award has been made by the Board, and an appeal has been taken therefrom by the employer or its insurance carrier, no compensation shall be paid during the pendency of the appeal. If the final disposition of the case is adverse to the employer or its insurance carrier, first payment of compensation shall be drawn to the claimant's order not later than seven (7) days after the Board's award becomes final and binding, irrespective of whether an agreement has at that time been entered into between the parties pursuant to Rule No. 19(A).

(D) Unless otherwise agreed, the proceeds of all settlements of cases pending before the Board, except in commutation cases, shall be paid within 30 days after a letter correctly memorializing the settlement is sent to either party by the other.

Rule No. 21

Further Hearing, Reopening Or Rehearing

(A) Applications for (1) further hearing in a proceeding after the closing of testimony and before final submission on oral argument or brief, or for (2) reopening a proceeding after final submission and before decision, or for (3) rehearing, or reargument after decision, must be made by petition, duly verified, within ten (10) days after the date of such closing of testimony, final submission or decision, as the case may be. Such petition shall state specifically the grounds relied upon, and shall be filed with the Department and a copy served by the petitioner upon each adverse party, or his or her attorney, who appeared at the hearing, or oral argument, if any, or on brief.

A copy of each decision will be mailed by certified mail, return receipt requested to all interested parties. The ten days will commence upon receipt of the certified mailed decision. A properly submitted application for rehearing or reargument within 10 days of a parties' receipt of a Board decision will toll the Statute of Limitations under 19 Del.C. Section 2349. The time under Section 2349 will begin anew when the published decision of the rehearing or reargument is received by the parties.

(B) If the application be for further hearing before final submission, or for reopening the proceeding to take further evidence after submission and before decision, the nature and purpose of the evidence to be adduced must be briefly stated, and it must appear not to be merely cumulative.

(C) If the application be for rehearing or reargument after decision, the matter claimed to have been erroneously decided must be specified and the alleged errors stated. If thereby any order of the Board is sought to be vacated, repealed, enlarged, or modified, the matter so relied upon must be fully set forth in the petition.

(D) The non-moving party shall file an answer within 10 days and serve a copy upon each adverse party, or his/her attorney, who appears at the hearing, or oral argument, if any, or on the brief.

Rule No. 22

Commutation of Compensation

(A) Commutation of compensation pursuant to 19 Del.C. Section 2358 is to be favorably considered by the Board where there are sound and convincing reasons substantiated by dependable evidence that such communication will be in the best interests of the injured employee or the dependents of a deceased employee.

(B) The Board may lay down such guidelines and impose such conditions as it may deem advisable for the disbursement of all funds commuted.

Rule No. 23

Attorney's Fees

The claimant's attorney shall file with the Board and serve upon the other party at the time of hearing a completed Affidavit Regarding Attorney's Fees, said forms being provided by the Department. Said affidavit shall be reviewed by the Board so as to assist it in awarding a reasonable attorney's fee in those cases where an attorney's fee may be awarded to the claimant. Objections, if any, to the contents thereof will be heard by the Board during the summation of the employer's or its carriers' attorney.

Rule No. 24

Reimbursement From The Workers' Compensation Fund

No petition of an employer or its insurance carrier for reimbursement from the Workers' Compensation Fund as provided in 19 Del.C. 2327 will be accepted by the Department unless the employer or its insurance carrier first notified by certified mail the Deputy Attorney General assigned to defend said Fund, of its intention to seek reimbursement from said Fund, and supply the Department with proof of compliance when its petition is

filed. Any application for reimbursement from said Fund shall be by petition with supporting medical documentation attached.

Rule No. 25

Expedited Hearings

(A) If a claimant who is receiving no wages or benefits desires to have his/her petition heard at the earliest possible time, or is out of work without income or substantial income, he/she may file with the petition, or thereafter, a Request for Expedited Hearing, which shall state the grounds for the Request and shall be accompanied by the following:

- (1) a copy of the Department's standard pretrial memorandum, filled out as completely as possible with regard to the claimant's case;
- (2) a copy of a medical report, hospital record, or similar documentation, which fairly describes the nature of claimant's injury and disability and the cause thereof; if such documentation is unavailable, or incomplete, claimant shall submit a supplementary statement describing, to the best of his/her knowledge and understanding, the nature of his/her injury and disability and the cause thereof;
- (3) a statement indentifying: (a) the name and address of employer's insurer, if known; and (b) the name of the person, if known, who denied the claim and his/her office address and telephone number.

(B) Upon filing of a Request for Expedited Hearing, it shall be reviewed for completeness by a pretrial officer. Unless substantially lacking in compliance with the requirements of (A), a copy of the Request and supporting papers shall promptly be sent return receipt requested, to the employer and its insurance carrier, if known, together with a copy of this Rule (or a resume of its requirements) and a notice as to the name and telephone number of the pretrial officer handling the case.

If the filed Request does not fully comply with the requirements of (A), the pretrial officer may direct the claimant to submit further information or documentation before the Request will be sent to employer or its insurer, or the officer may direct claimant to submit the additional material directly to employer, its insurer, and the Department.

(C) Within five (5) business days after receipt of a Request for Expedited Hearing, employer or its insurer shall notify the designated pretrial officer by telephone, or by writing delivered within the allowed time, the following:

- (1) whether the Request is opposed and, if so, the reasons therefor. If additional time for this decision is requested, the pretrial officer,

may for good cause allow up to five (5) additional days, and shall notify claimant if this is done;

- (2) the name and address of the lawyer who will represent it;
- (3) the name and address of each physician or other expert being engaged to examine or test claimant and the dates of appointments. If additional time for scheduling appointments is requested, the pretrial officer may, for good cause, allow up to ten (10) additional days for submission of this information, and shall notify claimant if this is done;
- (4) whether a formal pretrial conference is requested.

(D) If a formal pretrial conference is requested, it shall be scheduled as promptly as practicable by the pretrial officer. Otherwise, the pretrial memorandum shall be completed, served on claimant, and filed with the Department within ten (10) business days after the deadline for the response under (C)(1).

(E) As soon as it is determined (by consent or by ruling) that a case will have an Expedited Hearing, the pretrial officer shall confer with the parties to set a date and time for hearing. Should it appear to the pretrial officer that undue delay is threatened, due to difficulty in securing pertinent records or a timely appointment for examination or other cause, the pretrial officer may endeavor to resolve the cause for delay by direct communication with any person responsible, and both parties shall cooperate in supporting efforts to secure an early hearing date. As soon as the pretrial officer is satisfied that all reasonable efforts to secure an early date have been completed, the officer shall schedule a hearing and notify both parties.

Rule No. 26

Additional Issues

Whenever a petition is pending before the Industrial Accident Board, either party may assert an additional issue or file an additional petition in the manner prescribed below:

(A) the following issues shall be added to a then-pending petition through a letter request, timely filed with the Department and sent to opposing counsel in the same manner as service is made upon the Department:

- (1) a request for the payment of medical expenses (subject to the provisions of Board Rule 9);
- (2) a request for reimbursement of travel expenses;

- (3) a request for partial disability benefits if the then-pending petition is claimant's petition for an ongoing period of total disability benefits or the employer's request for the review of an open agreement as to compensation.

(B) a party wishing to assert one or more of the following issues must file a formal petition and serve the same in accordance with the statute:

- (1) a request to review an open compensation agreement;
- (2) a claim for permanent impairment benefits;
- (3) a claim for a recurrence of total and/or partial disability; and
- (4) a petition for disfigurement benefits.

(C) a subsequently filed petition may be consolidated with then-pending matter only upon:

- (1) the agreement of the parties; or
- (2) a motion by the party seeking to consolidate the petitions approved by the Board after due notice to opposing counsel and the opportunity for counsel to be heard.

Rule No. 27

Form of Orders

(A) Any party seeking relief from the Industrial Accident Board on any of the matters listed below shall present the Board with a proposed form of order, suitable for immediate signatures by the Board member(s) hearing the request for relief. This rule shall apply to:

- (1) motion to compel production of documents;
- (2) motions to compel claimant to execute a medical or other authorization (including a copy of the proposed authorization);
- (3) motions to dismiss for failure to prosecute;
- (4) uncontested petitions to terminate temporary total or temporary partial disability benefits;
- (5) uncontested petitions for approval of commutation of benefits;

- (6) application to take the deposition of a witness unavailable for trial;
- (7) application for reconsideration of a pretrial officer's decision.

Rule No. 28

Time

(A) The Department of Labor and the Industrial Accident Board shall follow the provisions of Superior Court Civil Rule 6 unless otherwise specified in the statute, 19 Del.C. 2301 et. seq. or the Administrative Procedures Act, 29 Del.C. 1001 et. seq.

Rule No. 29

Legal Hearings/Motions Day

(A) Upon the receipt of a written request, with proper notice to opposing counsel, for a legal hearing or other pre-hearing motion before the Board, the Department shall hold a conference amongst the parties for the purposes of scheduling the same. The conference call shall take place no later than the third calendar day following the receipt of the request by the Department of Labor.

(B) Upon the receipt of a written request, with proper notice to opposing counsel, that the Department issue a subpoena, the Department shall act upon the request within three (3) calendar days of the date the request is received by the Department of Labor.

Delaware Department of Labor Office of Workers' Compensation

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Wilmington, DE 19802
(302) 761-8200

Milford Office:
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(302) 422-1134