

Chapter 263-12 WAC

PRACTICE AND PROCEDURE

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

263-12-025	Appearances before the board—Appearance by representatives. [General Order 3, § 3.2, filed 10/29/65; General Order 2, § 3.2, filed 6/12/63; General Order 1, filed 3/23/60. Formerly WAC 296-12-025.] Repealed by WSR 83-01-001 (Order 12), filed 12/2/82. Statutory Authority: RCW 51.41.060(4) and 51.52.020.
263-12-027	Appearances before the board—No formal admission to practice. [General Order 3, Rule 3.3, filed 10/29/65;

General Order 2, Rule 3.6, filed 6/12/63. Formerly WAC 296-12-027.] Repealed by WSR 83-01-001 (Order 12), filed 12/2/82. Statutory Authority: RCW 51.41.060(4) and 51.52.020.

Certificate of service. [Rule 3.3, filed 6/12/63. Formerly WAC 296-12-028.] Repealed by General Order No. 3, filed 10/29/65.

Appearances before the board—Withdrawal or substitution of representatives. [General Order 3, Rule 3.4, filed 10/29/65; General Order 2, Rule 3.4, filed 6/12/63. Formerly WAC 296-12-030.] Repealed by WSR 83-01-001 (Order 12), filed 12/2/82. Statutory Authority: RCW 51.41.060(4) and 51.52.020.

Appearances before the board—Conduct. [General Order 3, Rule 3.5, filed 10/29/65; General Order 2, Rule 3.5, filed 6/12/63. Formerly WAC 296-12-035.] Repealed by WSR 83-01-001 (Order 12), filed 12/2/82. Statutory Authority: RCW 51.41.060(4) and 51.52.020.

No formal admission to practice. [Rule 3.6, filed 6/12/63. Renumbered as Rule 3.3 by General Order No. 3. Formerly WAC 296-12-040. Codified as WAC 263-12-027.]

Appeals arising under the Worker and Community Right to Know Act—Contents of notice of appeal. [Statutory Authority: RCW 51.52.020. WSR 91-13-038, § 263-12-051, filed 6/14/91, effective 7/15/91.] Repealed by WSR 00-23-023, filed 11/7/00, effective 12/8/00. Statutory Authority: RCW 51.52.020.

Appeals arising under the Crime Victims Compensation Act—Contents of notice of appeal. [Statutory Authority: RCW 51.52.020. WSR 91-13-038, § 263-12-053, filed 6/14/91, effective 7/15/91; WSR 82-03-031 (Order 11), § 263-12-053, filed 1/18/82; Order 7, § 263-12-053, filed 4/4/75.] Repealed by WSR 00-24-061, filed 12/1/00, effective 1/1/01. Statutory Authority: RCW 51.52.020.

Filing appeals in all other cases. [Order 4, § 263-12-055, filed 6/9/72; Rule 5.2, filed 6/12/63; Rule 3.2, filed 3/23/60; amended by General Order No. 3, Rule 5.2, filed 10/29/65. Formerly WAC 296-12-055.] Repealed by Order 7, filed 4/4/75.

Appeals arising under the Washington Industrial Safety and Health Act—Contents of notice of appeal. [Statutory Authority: RCW 51.52.020. WSR 91-13-038, § 263-12-056, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-056, filed 1/10/86. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-056, filed 1/18/82; Order 7, § 263-12-056, filed 4/4/75.] Repealed by WSR 00-23-023, filed 11/7/00, effective 12/8/00. Statutory Authority: RCW 51.52.020.

Appeals arising under the Washington Industrial Safety and Health Act—Notice to interested employees. [Statutory Authority: RCW 51.52.020. WSR 91-13-038, § 263-12-057, filed 6/14/91, effective 7/15/91.] Repealed by WSR 00-23-023, filed 11/7/00, effective 12/8/00. Statutory Authority: RCW 51.52.020.

Appeals arising under chapters 49.26 and 49.22 RCW—Contents of notice of appeal. [Statutory Authority: RCW 51.52.020. WSR 91-13-038, § 263-12-058, filed 6/14/91, effective 7/15/91.] Repealed by WSR 00-23-023, filed 11/7/00, effective 12/8/00. Statutory Authority: RCW 51.52.020.

Hearings—Cancellation. [General Order 3, Rule 7.2, filed 10/29/65; General Order 2, Rule 7.2, filed 6/12/63; General Order 1, Rule 5.2, filed 3/23/60. Formerly WAC 296-12-105.] Repealed by Order 4, filed 6/9/72.

Hearings—Continuances. [General Order 2, Rule 7.3, filed 6/12/63; General Order 1, filed 3/23/60; Subsections (1), (2), and (4) amended by General Order 3, filed 10/29/65. Formerly WAC 296-12-110.] Repealed by Order 4, filed 6/9/72.

- 263-12-112 Hearings—Conditions for setting subsequent hearings. [General Order 3, Rule 7.4, filed 10/29/65. Formerly WAC 296-12-112.] Repealed by Order 4, filed 6/9/72.
- 263-12-130 Disposition of contested cases—Definition. [Order 4, § 263-12-130, filed 6/9/72; Rule 8.1, filed 6/12/63. Formerly WAC 296-12-130.] Repealed by WSR 00-23-023, filed 11/7/00, effective 12/8/00. Statutory Authority: RCW 51.52.020.

WAC 263-12-005 Purpose. The purpose of this chapter is to promulgate rules concerning the board's practice and procedure pursuant to RCW 51.52.020 and to comply with RCW 42.17.250 through 42.17.320 pertaining to public records.

[Statutory Authority: RCW 51.52.020. WSR 91-13-038, § 263-12-005, filed 6/14/91, effective 7/15/91; Order 7, § 263-12-005, filed 4/4/75.]

WAC 263-12-007 Application of chapter. Unless otherwise provided, the rules of practice and procedure set forth in this chapter are applicable to appeals filed with the board of industrial insurance appeals.

[Statutory Authority: RCW 51.52.020. WSR 91-13-038, § 263-12-007, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-007, filed 1/10/86. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-007, filed 12/2/82.]

WAC 263-12-010 Function and jurisdiction. It is the function of the board as an agency to review, hold hearings on, and decide appeals filed from final orders, decisions or awards of the department of labor and industries. The jurisdiction of the board extends to:

- (1) Appeals arising under the Industrial Insurance Act (Title 51 RCW);
- (2) Appeals arising under the Crime Victims Compensation Act (chapter 7.68 RCW);
- (3) Appeals arising under the Washington Industrial Safety and Health Act (chapter 49.17 RCW);
- (4) Appeals from assessments issued under the Worker and Community Right to Know Act (chapter 49.70 RCW);
- (5) Appeals arising under chapter 49.26 RCW concerning the denial, suspension or revocation of certificates involving asbestos projects;
- (6) Appeals arising under chapter 49.22 RCW concerning safety procedures in late night retail establishments; and
- (7) Appeals arising under RCW 41.26.048 concerning the death of a law enforcement officer or firefighter in the course of employment.

[Statutory Authority: RCW 51.52.020. WSR 98-20-109, § 263-12-010, filed 10/7/98, effective 11/7/98; WSR 91-13-038, § 263-12-010, filed 6/14/91, effective 7/15/91; Order 7, § 263-12-010, filed 4/4/75; Order 4, § 263-12-010, filed 6/9/72; General Order 3, § 1, filed 10/29/65; General Order 2, § 1, filed 6/12/63; General Order 1, § 1, filed 3/23/60. Formerly WAC 296-12-010.]

WAC 263-12-015 Administration and organization.

(1) **Composition of the board.** The board is an independent agency of the state of Washington composed of three members appointed by the governor. One member is a representative of workers, one member is a representative of employers, and the chairperson, who must be an active member of the Washington State Bar, is the representative of the public.

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(2) **Location of the board.** The headquarters, and principal office of the board, is located at 2430 Chandler Ct. S.W., PO Box 42401, in Olympia, Washington 98504-2401.

(3) **Customary office hours.** The customary office hours of the board shall be from 8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays.

(4) **Formal board meetings.** The board shall meet in formal session at its headquarters in Olympia, Washington at 9 a.m. on the first Tuesday of each month, and at such other times and places as the board may deem necessary, subject to 24-hour notice as required by law.

(5) Staff organization.

(a) The board's headquarters in Olympia is staffed with executive, administrative and clerical personnel.

(b) The board has a staff of industrial appeals judges who travel throughout the state in the performance of their duties and who have their offices in Olympia and in other areas of the state as is deemed necessary for efficient and cost effective handling of agency business.

(c) The office of the executive secretary of the board is located at the headquarters and principal office of the board.

[Statutory Authority: RCW 51.52.020. WSR 98-20-109, § 263-12-015, filed 10/7/98, effective 11/7/98; WSR 95-02-065, § 263-12-015, filed 1/3/95, effective 2/3/95; WSR 91-13-038, § 263-12-015, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-015, filed 1/10/86. Statutory Authority: RCW 51.52.020. WSR 84-02-024 (Order 15), § 263-12-015, filed 12/29/83. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-015, filed 12/2/82. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-015, filed 1/18/82; Order 10, § 263-12-015, filed 4/5/76; Order 7, § 263-12-015, filed 4/4/75; Order 4, § 263-12-015, filed 6/9/72; General Order 2, § 2, filed 6/12/63; General Order 1, § 2, filed 3/23/60; General Order 3, Subsection 4, filed 10/29/65. Formerly WAC 296-12-015.]

WAC 263-12-01501 Communications and filing with the board.

(1) **Where to file communications with the board.** Except as provided elsewhere in this section all written communications shall be filed with the board at its headquarters in Olympia, Washington. With written permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions (other than motions for stay filed pursuant to RCW 51.52.050), briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.

(2) **Methods of filing.** Unless otherwise provided by statute or these rules any written communication may be filed with the board personally, by mail, by telephone facsimile, or by electronic filing.

(a) **Filing personally.** The filing of a written communication with the board personally is accomplished by delivering the written communication to an employee of the board at the board's headquarters in Olympia during customary office hours.

(b) **Filing by mail.** The filing of a written communication with the board is accomplished by mail when the written communication is deposited in the United States mail, properly addressed to the board's headquarters in Olympia and with postage prepaid. Where a statute or rule imposes a time limitation for filing the written communication, the party filing the same should include a certification demonstrating the date filing was perfected as provided under this subsection.

(12/2/14)

Unless evidence is presented to the contrary, the date of the United States postal service postmark shall be presumed to be the date the written communication was mailed to the board.

(c) Filing by telephone facsimile.

(i) The filing of a written communication with the board by telephone facsimile is accomplished when a legible copy of the written communication is reproduced on the board's telephone facsimile equipment during the board's customary office hours. All facsimile communications must be filed with the board via fax numbers listed on the board's web site.

(ii) The hours of staffing of the board's telephone facsimile equipment are the board's customary office hours. Documents sent by facsimile communication comments outside of the board's customary office hours will be deemed filed on the board's next business day.

(iii) Any written communication filed with the board by telephone facsimile should be preceded by a cover page identifying the party making the transmission, listing the address, telephone and telephone facsimile number of such party, referencing the appeal to which the written communication relates, and indicating the date of, and the total number of pages included in, such transmission. A separate transmission must be used for each appeal. Transmissions containing more than one docket number will be rejected and filing will not be accomplished, unless the multiple docket numbers have been previously consolidated by the board.

(iv) Written communication should not exceed fifteen pages in length, exclusive of the cover page required by this rule.

(v) The party attempting to file a written communication by telephone facsimile bears the risk that the written communication will not be received or legibly printed on the board's telephone facsimile equipment due to error in the operation or failure of the equipment being utilized by either the party or the board.

(vi) The board may require a party to file an original of any document previously filed by telephone facsimile.

(d) Electronic filing. Electronic filing is accomplished by using the electronic filing link on the board's web site. Communication sent by e-mail will not constitute or accomplish filing. Communication filed using the board's web site outside of the board's customary office hours will be deemed filed on the board's next business day. A separate transmission must be used for each appeal. Transmissions containing more than one docket number will be rejected and filing will not be accomplished, unless the multiple docket numbers have been previously consolidated by the board.

(3) Electronic filing of a notice of appeal. A notice of appeal may be filed electronically when using the appropriate form for electronic filing of appeals as provided on the board's web site. An electronic notice of appeal is filed when it is received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Appeals received via the board's web site outside of the board's customary office hours will be deemed filed on the board's next business day. The board will issue confirmation to the filing party that an electronic notice of appeal has been received. The board may reject a notice of appeal that fails to comply with the board's filing requirements. The board will notify the filing party of the rejection.

(12/2/14)

(4) Electronic filing of application for approval of claim resolution structured settlement agreement. An application for approval of claim resolution structured settlement agreement must be filed electronically using the form for electronic filing of applications for approval of claim resolution structured settlement agreement as provided on the board's web site. An electronic application for approval of claim resolution structured settlement agreement is filed when received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Applications received by the board via the board's web site outside of the board's customary office hours will be deemed filed on the board's next business day. The board will issue confirmation to the filing party that an electronic application for approval of claim resolution structured settlement agreement has been received. An electronic copy of the signed agreement for claim resolution structured settlement agreement must be submitted as an attachment to the application for approval. The board will reject an application for approval of claim resolution structured settlement agreement that fails to comply with the board's filing requirements. The board will notify the filing party of the rejection.

(5) Sending written communication. All correspondence or written communication filed with the board pertaining to a particular case, before the entry of a proposed decision and order, should be sent to the attention of the industrial appeals judge assigned to the case. Interlocutory appeals should be sent to the attention of the chief industrial appeals judge. In all other instances, written communications shall be directed to the executive secretary of the board.

(6) Form requirements. Any written communications with the board concerning an appeal should reference the docket number assigned by the board to the appeal, if known. Copies of any written communications filed with the board shall be furnished to all other parties or their representatives of record, and the original shall demonstrate compliance with this requirement. All written communications with the board shall be on paper 8 1/2" x 11" in size.

[Statutory Authority: RCW 51.52.020, WSR 14-24-105, § 263-12-01501, filed 12/2/14, effective 1/2/15; WSR 11-23-154, § 263-12-01501, filed 11/22/11, effective 12/23/11; WSR 10-14-061, § 263-12-01501, filed 6/30/10, effective 7/31/10; WSR 06-12-003, § 263-12-01501, filed 5/25/06, effective 6/25/06; WSR 04-22-047, § 263-12-01501, filed 10/28/04, effective 11/28/04; WSR 04-16-097, § 263-12-01501, filed 8/3/04, effective 9/3/04; WSR 98-20-109, § 263-12-01501, filed 10/7/98, effective 11/7/98; WSR 91-13-038, § 263-12-01501, filed 6/14/91, effective 7/15/91.]

WAC 263-12-016 Public records—Location. (1) Public records available. All public records of the board as defined in chapter 42.56 RCW are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.56.210-[42.56.]480.

(2) General information concerning the board may be obtained at its headquarters, 2430 Chandler Ct. S.W., P.O. Box 42401, Olympia, Washington 98504-2401.

(3) Public records officer. The public records officer shall be responsible for the following: The implementation of the board's rules and regulations regarding release of public records, coordinating the staff of the board in this regard, and generally insuring compliance by the staff with the public records disclosure requirements of chapter 42.56 RCW.

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(4) Indices are available providing identifying information as to the following: (a) Final decisions and orders of the board, including concurring and dissenting opinions; (b) proposed decisions and orders of the board's industrial appeals judges; (c) in addition, any indices maintained for intra-agency use are available for public inspection and copying.

(5) No fee will be charged for inspection of public records. Inspection will be during office hours in a space provided by the board and must be accomplished without excessive interference with the essential functions of the agency, and without causing damage or disorganization to public records.

(6) A fee shall be charged for copies of documents made with the board's equipment in an amount necessary to cover the cost to the agency of providing such service.

[Statutory Authority: RCW 51.52.020. WSR 08-01-081, § 263-12-016, filed 12/17/07, effective 1/17/08; WSR 00-23-021, § 263-12-016, filed 11/7/00, effective 12/8/00; WSR 91-13-038, § 263-12-016, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-016, filed 1/10/86. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-016, filed 12/2/82. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-016, filed 1/18/82; Order 10, § 263-12-016, filed 4/5/76; Order 7, § 263-12-016, filed 4/4/75.]

WAC 263-12-017 Request for public records. (1) In accordance with requirements of chapter 42.56 RCW, the board will make nonexempt "public records" available for inspection and copying.

(2) A request to inspect or copy public records should be made in writing upon the board's request form, which is available at its Olympia headquarters or its web site. The form may be presented to the public records officer, or to any member of the board's staff, if the public records officer is not available, at the headquarters of the board during customary office hours. The form may also be mailed, faxed, or e-mailed to the attention of the public records officer at the address or fax number provided on the board's web site.

The request should include the following information:

(a) The name and address of the person requesting the record and any other contact information, such as phone number or e-mail address, that may aid in responding to the request;

(b) The date the request is made;

(c) The identity of the record(s) requested. If the record(s) requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index should be included whenever possible. If the requested record(s) is not identifiable by reference to the board's current index, as detailed a description as possible should be included to aid staff in identifying the records sought; and

(d) Whether the request is for copies or to inspect records.

(3) Requestors desiring copies of records shall make arrangements with the records officer to pay for the cost of providing the records. Costs shall include the cost of copies and the cost of mailing the records. The per page cost for standard size (8 1/2" x 11") black and white or color photocopies will be as posted on the board's web site. Nonstandard-sized documents and documents produced on something other than paper will be provided at the actual cost to repro-

duce and may include the cost of the materials used. Mailing cost will include actual postage and the cost of the container.

(4) Requestors desiring to inspect records shall make arrangements with the records officer for inspection. There is no cost to inspect records. Records will be made available for inspection at the board's Olympia headquarters during the board's customary office hours.

(5) In all cases in which a member of the public is making a request, the public records officer or staff member to whom the request is made will assist the member of the public in appropriately identifying the public record requested.

[Statutory Authority: RCW 51.52.020. WSR 14-24-105, § 263-12-017, filed 12/2/14, effective 1/2/15; WSR 91-13-038, § 263-12-017, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-017, filed 1/10/86.]

WAC 263-12-018 Public records—Exemptions. (1) The board shall determine which public records requested in accordance with these rules are exempt under the provisions of RCW 42.56.210-[42.56.]480.

(2) Pursuant to RCW 42.56.070, the board may delete identifying details when it makes available or publishes any public record in any case where there is reason to believe that disclosure of such details would be an invasion of personal privacy.

(3) Denials of requests for public records will be accompanied by a written statement specifying the reason for the denial. A statement of the specific exemption in chapter 42.56 RCW authorizing withholding the record and a brief explanation of how the exemption applies to the record held will be included.

[Statutory Authority: RCW 51.52.020. WSR 08-01-081, § 263-12-018, filed 12/17/07, effective 1/17/08. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-018, filed 1/10/86; Order 7, § 263-12-018, filed 4/4/75.]

WAC 263-12-019 Review of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the board. The board shall immediately consider the matter and either affirm or reverse such denial or call a special meeting of the board as soon as legally possible to review the denial. In any case, the request shall be returned with a final decision within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the board has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

[Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-019, filed 1/10/86.]

WAC 263-12-020 Appearances of parties before the board. (1) **Who may appear?** Any party to any appeal may appear before the board at any conference or hearing held in such appeal, either on the party's own behalf or by a representative as described in subsections (3) and (4) of this section.

(2) **Who must obtain approval prior to representing a party?** A person who is disbarred or is presently suspended from the practice of law for disciplinary reasons in any jurisdiction, or has previously been denied admission to the bar in any jurisdiction for reasons other than failure to pass a bar examination, shall not represent a party without the prior approval of the board. A written petition for approval shall be filed sixty calendar days prior to any event for which the person seeks to appear as a representative. The board may deny any petition that fails to demonstrate competence, moral character, or fitness.

(3) **Who may represent a party?**

(a) A worker or beneficiary may be represented by:

(i) An attorney at law with membership in good standing in the Washington state bar association or a paralegal supervised by an attorney at law with membership in good standing in the Washington state bar association.

(ii) An attorney at law with membership in good standing in the highest court of any other state or the District of Columbia.

(iii) A lay representative so long as the person does not charge a fee and is not otherwise compensated for the representation except as provided in (a)(iv) of this subsection.

(iv) A person employed by the worker's labor union whose duties include handling industrial insurance matters for the union.

(b) An employer or retrospective rating group may be represented by:

(i) An attorney at law with membership in good standing in the Washington state bar association or a paralegal supervised by an attorney at law with membership in good standing in the Washington state bar association.

(ii) An attorney at law with membership in good standing in the highest court of any other state or the District of Columbia.

(iii) An employee of the employer or retrospective rating group.

(iv) A firm that contracts with the employer or retrospective rating group to handle matters pertaining to industrial insurance.

(4) **Appeals under the Washington Industrial Safety and Health Act.**

(a) In an appeal by an employee or employee representative under the Washington Industrial Safety and Health Act, the cited employer may enter an appearance as prescribed in subsection (7) of this section and will be deemed a party to the appeal.

(b) In an appeal by an employer, under the Washington Industrial Safety and Health Act, an employee or employee representative may enter an appearance as prescribed in subsection (7) of this section and will be deemed a party to the appeal.

(5) **May a self-represented party be accompanied by another person?** Where the party appears representing himself or herself, he or she may be accompanied, both at conference and at hearing, by a lay person of his or her choosing

who shall be permitted to accompany the party into the conference or hearing room and with whom he or she can confer during such procedures. If the lay person is also a witness to the proceeding, the industrial appeals judge may exclude the lay person from the proceeding as provided by Evidence Rule 615.

(6) **Assistance by the industrial appeals judge.** Although the industrial appeals judge may not advocate for either party, all parties who appear either at conferences or hearings are entitled to the assistance of the industrial appeals judge presiding over the proceeding. Such assistance shall be given in a fair and impartial manner consistent with the industrial appeals judge's responsibilities to the end that all parties are informed of the procedure to be followed and the issues involved in the proceedings. Any party who appears representing himself or herself shall be advised by the industrial appeals judge of the burden of proof required to establish a right to the relief being sought.

(7) **How to make an appearance.**

(a) Appearance by employer representative. Within four-teen days of receipt of an order granting appeal, any representative of an employer or retrospective rating group must file a written notice of appearance that includes the name, address, and telephone number of the individual who will appear.

(b) Appearances by a worker or beneficiary representative shall be made either by:

(i) Filing a written notice of appearance with the board containing the name of the party to be represented, and the name and address of the representative; or by

(ii) Appearing at the time and place of a conference or hearing on the appeal, and notifying the industrial appeals judge of the party to be represented, and the name and address of the representative.

(8) **Notice to other parties.**

(a) The appearing party shall furnish copies of every written notice of appearance to all other parties or their representatives of record at the time the original notice is filed with the board.

(b) The board will serve all of its notices and orders on each representative and each party represented. Service upon the representative shall constitute service upon the party. Where more than one individual associated with a firm, or organization, including the office of the attorney general, has made an appearance, service under this subsection shall be satisfied by serving the individual who filed the notice of appeal, or who last filed a written notice of appearance or, if no notice of appeal or written notice of appearance has been filed on behalf of the party, the individual who last appeared at any proceeding concerning the appeal.

(9) **Withdrawal or substitution of representatives.** An attorney or other representative withdrawing from a case shall immediately notify the board and all parties of record in writing. The notice of withdrawal shall comply with the rules applicable to notices of withdrawal filed with the superior court in civil cases. Withdrawal is subject to approval by the industrial appeals judge or the executive secretary. Any substitution of an attorney or representative shall be accomplished by written notification to the board and to all parties of record together with the written consent of the prior attorney or representative. If such consent cannot be obtained, a written statement of the reason therefor shall be supplied.

(10) **Conduct.** All persons appearing as counsel or representatives in proceedings before the board or before its industrial appeals judges shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Washington.

(a) Industrial appeals judge. If any such person does not conform to such standard, the industrial appeals judge presiding over the appeal, at his or her discretion and depending on all the circumstances, may take any of the following actions:

(i) Admonish or reprimand such person.

(ii) Exclude such person from further participation or adjourn the proceeding.

(iii) Certify the facts to the appropriate superior court for contempt proceedings as provided in RCW 51.52.100.

(iv) Report the matter to the board.

(b) The board. In its discretion, either upon referral by an industrial appeals judge as stated above or on its own motion, after information comes to light that establishes to the board a question regarding a person's ethical conduct and fitness to practice before the board, and after notice and hearing, the board may take appropriate disciplinary action including, but not limited to:

(i) A letter of reprimand.

(ii) Refusal to permit such person to appear in a representative capacity in any proceeding before the board or its industrial appeals judges.

(iii) Certification of the record to the superior court for contempt proceedings as provided in RCW 51.52.100. If the circumstances require, the board may take action as described above prior to notice and hearing if the conduct or fitness of the person appearing before the board requires immediate action in order to preserve the orderly disposition of the appeal(s).

(c) Proceedings. If any person in proceedings before the board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered so to do, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath as a witness, or after having the oath refuses to be examined according to law, the industrial appeals judge may, at his or her discretion and depending on all the circumstances:

(i) Admonish or reprimand such person.

(ii) Exclude such person from further participation or adjourn the proceeding.

(iii) Certify the facts to the appropriate superior court for contempt proceedings as provided in RCW 51.52.100.

(iv) Report the matter to the board for action consistent with (b) of this subsection.

[Statutory Authority: RCW 51.52.020, WSR 14-24-105, § 263-12-020, filed 12/2/14, effective 1/2/15; WSR 10-14-061, § 263-12-020, filed 6/30/10, effective 7/31/10; WSR 04-16-009, § 263-12-020, filed 7/22/04, effective 8/22/04; WSR 00-23-021, § 263-12-020, filed 11/7/00, effective 12/8/00; WSR 98-20-109, § 263-12-020, filed 10/7/98, effective 11/7/98; WSR 91-13-038, § 263-12-020, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-020, filed 12/2/82. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-020, filed 1/18/82; Order 7, § 263-12-020, filed 4/4/75; Order 6, § 263-12-020, filed 9/29/72; Order 4, § 263-12-020, filed 6/9/72; General Order 2, § 3.1, filed 6/12/63; General Order 1, filed 3/23/60; General Order 3, § 3.1(b), Subsection (2), filed 10/29/65.]

[Ch. 263-12 WAC p. 6]

WAC 263-12-045 Industrial appeals judges. (1) **Definition.** Whenever used in these rules, the term "industrial appeals judge" shall include any member of the board, the executive secretary, as well as any duly authorized industrial appeals judge assigned to conduct a conference or hearing.

(2) **Duties and powers.** It shall be the duty of the industrial appeals judge to conduct conferences or hearings in cases assigned to him or her in an impartial and orderly manner. The industrial appeals judge shall have the authority, subject to the other provisions of these rules:

(a) To administer oaths and affirmations;

(b) To issue subpoenas on request of any party or on his or her motion. Subpoenas may be issued to compel:

(i) The attendance and testimony of witnesses at hearing and/or deposition, or

(ii) The production of books, papers, documents, and other evidence for discovery requests or proceedings before the board;

(c) To rule on all objections and motions including those pertaining to matters of discovery or procedure;

(d) To rule on all offers of proof and receive relevant evidence;

(e) To interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the appeal;

(f) To secure and present in an impartial manner such evidence, in addition to that presented by the parties, as he or she deems necessary to fairly and equitably decide the appeal, including the obtaining of physical, mental, or vocational examinations or evaluations of workers;

(g) To take appropriate disciplinary action with respect to representatives of parties appearing before the board;

(h) To issue orders joining other parties, on motion of any party, or on his or her own motion when it appears that such other parties may have an interest in or may be affected by the proceedings;

(i) To consolidate appeals for hearing when such consolidation will expedite disposition of the appeals and avoid duplication of testimony and when the rights of the parties will not be prejudiced thereby;

(j) To schedule the presentation of evidence and the filing of pleadings, including the filing of perpetuation depositions;

(k) To close the record on the completion of the taking of all evidence and the filing of pleadings and perpetuation depositions. In the event that the parties do not confirm witnesses or present their evidence within the timelines prescribed by the judge, the judge may consider appropriate sanctions, including closing the record and issuing a proposed decision and order;

(l) To take any other action necessary and authorized by these rules and the law.

(3) **Interlocutory review.** A party may request interlocutory review pursuant to WAC 263-12-115(6) of any exercise of authority by the industrial appeals judge under this rule.

(4) **Substitution of industrial appeals judge.** At any time the board or a chief industrial appeals judge or designee may substitute one industrial appeals judge for another in any given appeal.

(12/2/14)

(5) **Pro tem industrial appeals judge.** If the board or the chief industrial appeals judge determines that there may be a conflict of interest for an industrial appeals judge to hear a particular appeal or when it is necessary to ensure an appearance of fairness, the board may appoint a pro tem industrial appeals judge to preside over the appeal and, if necessary, issue a proposed decision and order.

[Statutory Authority: RCW 51.52.020. WSR 06-12-003, § 263-12-045, filed 5/25/06, effective 6/25/06; WSR 03-02-038, § 263-12-045, filed 12/24/02, effective 1/24/03; WSR 00-23-021, § 263-12-045, filed 11/7/00, effective 12/8/00; WSR 91-13-038, § 263-12-045, filed 6/14/91, effective 7/15/91; WSR 84-02-024 (Order 15), § 263-12-045, filed 12/29/83. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-045, filed 12/2/82. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-045, filed 1/18/82; Order 8, § 263-12-045, filed 5/2/75; Order 7, § 263-12-045, filed 4/4/75; Order 4, § 263-12-045, filed 6/9/72; Rules 4.1 - 4.3, filed 6/12/63.]

WAC 263-12-050 Contents of notice of appeal. The board's jurisdiction shall be invoked by filing a written notice of appeal.

(1) **General rule.** In all appeals, the notice of appeal should contain where applicable:

(a) The name and address of the appealing party and of the party's representative, if any;

(b) A statement identifying the date and content of the department order, decision or award being appealed. This requirement may be satisfied by attaching a copy of the order, decision or award;

(c) The reason why the appealing party considers such order, decision or award to be unjust or unlawful;

(d) A statement of facts in full detail in support of each stated reason;

(e) The specific nature and extent of the relief sought;

(f) The place, most convenient to the appealing party and that party's witnesses, where board proceedings are requested to be held;

(g) A statement that the person signing the notice of appeal has read it and that to the best of his or her knowledge the contents are true;

(h) The signature of the appealing party or the party's representative.

(2) **Industrial insurance appeals.** In appeals arising under the Industrial Insurance Act (Title 51 RCW), the notice of appeal should also contain:

(a) The name and address of the injured worker;

(b) The name and address of the worker's employer at the time the injury occurred;

(c) In the case of occupational disease, the name and address of all employers in whose employment the worker was allegedly exposed to conditions that gave rise to the occupational disease;

(d) The nature of the injury or occupational disease;

(e) The time when and the place where the injury occurred or the occupational disease arose.

(3) **Crime Victims' Compensation Act.** In appeals arising under the Crime Victims' Compensation Act (chapter 7.68 RCW), the notice of appeal should also contain:

(a) The time when and the place where the criminal act occurred;

(b) The name and address of the alleged perpetrator of the crime; and

(c) The nature of the injury.

(4) **Assessment appeals.** In appeals from a notice of assessment arising under chapter 51.48 RCW or in cases arising from an assessment under the Worker and Community Right to Know Act (chapter 49.70 RCW), the notice of appeal should also contain:

(a) A statement setting forth with particularity the reason for the appeal; and

(b) The amounts, if any, that the party admits are due.

(5) **LEOFF and public employee death benefit appeals.** In appeals arising under the special death benefit provision of the Law Enforcement Officers' and Firefighters' Retirement System (chapter 41.26 RCW), the notice of appeal should also contain:

(a) The time when and the place where the death occurred; and

(b) The name and address of the decedent's employer at the time the injury occurred.

(6) **Asbestos certification appeals.** In appeals arising under chapter 49.26 RCW concerning the denial, suspension or revocation of certificates involving asbestos projects, the notice of appeal should also contain:

(a) A statement identifying the certification decision appealed from;

(b) The reason why the appealing party considers such certification decision to be incorrect.

(7) **WISHA appeals.** For appeals arising under the Washington Industrial Safety and Health Act, refer to WAC 263-12-059.

(8) **Other safety appeals.** In appeals arising under chapter 49.22 RCW concerning alleged violations of safety procedures in late night retail establishments, chapter 70.74 RCW concerning alleged violations of the Washington State Explosives Act, or chapter 88.04 RCW concerning alleged violations of the Charter Boat Safety Act, the notice of appeal should also contain:

(a) A statement identifying the citation, penalty assessment, or notice of abatement date appealed from;

(b) The name and address of the representative of any labor union representing any employee who was or who may be affected by the alleged safety violation or violations;

(c) If applicable, a statement certifying compliance with WAC 263-12-059.

[Statutory Authority: RCW 51.52.020. WSR 14-24-105, § 263-12-050, filed 12/2/14, effective 1/2/15; WSR 11-20-003, § 263-12-050, filed 9/21/11, effective 10/22/11; WSR 04-16-009, § 263-12-050, filed 7/22/04, effective 8/22/04; WSR 03-02-038, § 263-12-050, filed 12/24/02, effective 1/24/03; WSR 01-09-031, § 263-12-050, filed 4/11/01, effective 5/12/01; WSR 00-23-021, § 263-12-050, filed 11/7/00, effective 12/8/00; WSR 91-13-038, § 263-12-050, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-050, filed 1/10/86. Statutory Authority: RCW 51.52.-020. WSR 82-03-031 (Order 11), § 263-12-050, filed 1/18/82; Order 7, § 263-12-050, filed 4/4/75; Order 4, § 263-12-050, filed 6/9/72; Rule 5.1, filed 6/12/63; Rules 3.1 - 3.2, filed 3/23/60, amended by General Order 3, Rule 5.1, filed 10/29/65. Formerly WAC 296-12-050.]

WAC 263-12-052 Contents of claim resolution structured settlement agreement. A claim resolution structured settlement agreement shall be submitted electronically with a signed copy of the agreement. If the worker is not represented by an attorney, the agreement shall contain all of the following information. If the worker is represented by an attorney,

the agreement does not need to include the information requested in subsections (6) through (9) of this section:

- (1) The names and mailing addresses of the parties to the agreement;
- (2) The date of birth of the worker;
- (3) The date the claim was received by the department or the self-insured employer, and the claim number;
- (4) The date of the order allowing the claim and the date the order became final;
- (5) The payment schedule and amounts to be paid through the claim resolution structured settlement agreement;
- (6) The nature and extent of the injuries and disabilities of the worker and the conditions accepted and segregated in the claim;
- (7) The life expectancy of the worker;
- (8) Other benefits the worker is receiving or is entitled to receive and the effect that a claim resolution structured settlement agreement may have on those benefits;
- (9) The marital or domestic partnership status of the worker;
- (10) The number of dependents, if any, the worker has;
- (11) A statement that:
 - (a) The worker knows that he/she has the right to:
 - (i) Continue to receive all the benefits for which they are eligible under this title;
 - (ii) Participate in vocational training if eligible; or
 - (iii) Resolve their claim with a structured settlement;
 - (b) All parties have signed the agreement. If a state fund employer has not signed the agreement, a statement that:
 - (i) The cost of the settlement will no longer be included in the calculation of the employer's experience factor used to determine premiums; or
 - (ii) The employer cannot be located; or
 - (iii) The employer is no longer in business; or
 - (iv) The employer failed to respond or declined to participate after timely notice of the claim resolution settlement process provided by the department;
 - (c) The parties are seeking approval by the board of the agreement;
 - (d) The agreement binds parties with regard to all aspects of the claim except medical benefits;
 - (e) The periodic payment schedule is equal to at least twenty-five percent but not more than one hundred fifty percent of the average monthly wage in the state pursuant to RCW 51.08.018, except for the initial payment which may be up to six times the average monthly wage in the state pursuant to RCW 51.08.018;
 - (f) The agreement does not set aside or reverse an allowance order;
 - (g) The agreement does not subject any employer who is not a signatory to the agreement to any responsibility or burden under any claim;
 - (h) The agreement does not subject any department funds covered under the title to any responsibility or burden without prior approval from the director or his/her designee;
 - (i) The unrepresented worker or beneficiary of a self-insured employer was informed that he/she may request that the office of the ombudsman for self-insured injured workers provide assistance or be present during the negotiations;
 - (j) The claim will remain open for treatment or that the claim will be closed;

(k) The worker will either be required to or not be required to demonstrate aggravation of accepted conditions as contemplated by RCW 51.32.160 if the worker applies to reopen the claim;

(l) The parties understand and agree to the terms of the agreement;

(m) The parties have entered into the agreement knowingly and willingly, without harassment or coercion;

(n) The parties have represented the facts and the law to each other to the best of their knowledge;

(o) The parties believe that the agreement is reasonable under the circumstances;

(p) The parties know that they may revoke consent to the agreement by providing written notice to the other parties and the board within thirty days after the agreement is approved by the board;

(q) The designation of the party that will apply for approval with the board;

(r) Restrictions on the assignment, if any, of rights and benefits under the claim resolution structured settlement agreement.

[Statutory Authority: RCW 51.52.020. WSR 14-24-105, § 263-12-052, filed 12/2/14, effective 1/2/15; WSR 11-23-154, § 263-12-052, filed 11/22/11, effective 12/23/11.]

WAC 263-12-054 Petition to enforce terms of claim resolution structured settlement agreement. A petition to enforce the terms of a claim resolution structured settlement agreement must include:

- (1) A copy of the agreement;
- (2) A copy of the board order approving the agreement;
- (3) A statement setting forth the basis for the parties' failure to comply with the agreement; and
- (4) The current mailing address of each party to the agreement.

[Statutory Authority: RCW 51.52.020. WSR 11-23-154, § 263-12-054, filed 11/22/11, effective 12/23/11.]

WAC 263-12-059 Appeals arising under the Washington Industrial Safety and Health Act; contents of notice of appeal; notice to affected employees; request for stay of abatement pending appeal. (1) **Contents of notice of appeal in WISHA appeals.** In all appeals arising under the Washington Industrial Safety and Health Act, the notice of appeal should contain where applicable:

(a) The name and address of the appealing party and of the party's representative, if any.

(b) A statement identifying the citation, penalty assessment, or notice of abatement date appealed from. This requirement may be satisfied by attaching a copy of the citation, penalty assessment, or notice of abatement date.

(c) The name and address of the representative of any labor union representing any employee who was or who may be affected by the alleged safety violation(s). If the employer has no affected employees who are members of a union, the employer shall affirmatively certify that no union employees are affected by the appeal.

(d) The reason why the appealing party considers such order or decision, to be unjust or unlawful.

(e) A statement of facts in full detail in support of each stated reason.

(f) The specific nature and extent of the relief sought.

(g) The place, most convenient to the appealing party and that party's witnesses, where board proceedings are requested to be held.

(h) A statement that the person signing the notice of appeal has read it and that to the best of his or her knowledge the contents are true.

(i) The signature of the appealing party or the party's representative.

In all appeals where a stay of abatement of alleged violation(s) pending appeal is requested, the notice of appeal must comply with additional requirements set forth in subsection (3) of this section.

(2) Employer duty to notify affected employees.

(a) In the case of any appeal by an employer concerning an alleged violation of the Washington Industrial Safety and Health Act, the employer shall give notice of such appeal to its employees by either:

(i) Providing copies of the appeal to each employee member of the employer's safety committee; or

(ii) By posting a copy of the appeal in a conspicuous place at the work site at which the alleged violation occurred. Any posting shall remain during the pendency of the appeal.

(b) The employer shall also provide notice advising interested employees that an appeal has been filed with the board and that any employee or group of employees who wish to participate in the appeal may do so by contacting the board. Such notice shall include the address of the board.

(c) The employer shall file with the board a certificate of proof of compliance with this section within fourteen days of issuance of the board's notice of filing of appeal. A certification form is provided on the board's web site.

(3) Request for a stay of abatement in WISHA appeals.

(a) **How made.** Any request for stay of abatement pending appeal must be included in the notice of appeal. An employer may request a stay of abatement pending appeal by placing "STAY OF ABATEMENT REQUESTED" prominently on the first page of the notice of appeal in bold print. The board will issue a final decision on such requests within forty-five working days of the board's notice of filing of appeal.

(b) Union information.

(i) **Appeals from corrective notice of redetermination.** In appeals where the employer has requested a stay of abatement of the violation(s) alleged in the corrective notice of redetermination, the employer shall include in the notice of appeal the names and addresses of any unions representing workers for the employer as required by subsection (1) of this section. If the employer has no affected employees who are members of a union, the employer shall affirmatively inform the board that no union employees are affected by the appeal.

(ii) **Appeals from citation and notice.** Where an employer files an appeal from a citation and notice and the department of labor and industries chooses to forward the appeal to the board to be treated as an appeal to the board, the employer shall provide the board with the names and addresses of any unions representing workers for the employer as required by subsection (1) of this section. If the employer has no affected employees who are members of a union, the employer shall inform the board that no union employees are affected by the appeal. The employer shall

provide this information to the board within fourteen days of the date of the board's notice of filing of appeal.

(c) Supporting and opposing documents.

(i) **Supporting documents.** In appeals where the employer has requested a stay of abatement pursuant to RCW 49.17.140, the employer shall, within fourteen calendar days of the date of the board's notice of filing of appeal, file with the board supporting declarations, affidavits, and documents it wishes the board to consider in deciding the request. The employer must also simultaneously provide supporting documents to the department and any affected employees' safety committee or union representative. Supporting affidavits or declarations shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Copies of individual relevant supporting documents shall be specifically referred to in the affidavit and shall be attached to the affidavit. Such supporting documents shall not be excluded from consideration based on a hearsay objection. All such affidavits and supporting documents shall be limited to evidence addressing:

(A) Whether there is good cause to stay the abatement of the violation(s) set forth in the citation and notice or corrective notice of redetermination; and

(B) Whether it is more likely than not that a stay of the abatement of the violation(s) would result in death or serious physical harm to a worker.

(ii) **Opposing documents.** Within twenty-eight calendar days of the date of the board's notice of filing of appeal, the department of labor and industries and any affected employees shall file with the board any declarations, affidavits, and documents they wish the board to consider in deciding the request. The department must also simultaneously serve these opposing documents on the employer and any affected employees' safety committee or representative. The employees must also simultaneously serve the opposing documents on the employer and the department. Supporting and opposing affidavits and declarations shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Copies of individual relevant supporting documents shall be specifically referred to in the affidavit and shall be attached to the affidavit. Such supporting documents shall not be excluded from consideration based on a hearsay objection. All such affidavits and supporting documents shall be limited to evidence addressing:

(A) Whether there is good cause to stay the abatement of the violation(s) set forth in the citation and notice or corrective notice of redetermination; and

(B) Whether it is more likely than not that a stay of the abatement of the violation(s) would result in death or serious physical harm to a worker.

(4) **Denial of request to stay abatement.** If any of the following procedural or substantive grounds are present, the board will deny the request for a stay of abatement pending appeal:

(a) The request for stay of abatement is not contained in the employer's notice of appeal as required by RCW 49.17.-140 (4)(a).

(b) The employer fails to include union information as required in subsection (3)(b) of this section.

The employer fails to timely file a certification that its employees have been notified about the appeal and the request for stay of abatement as required in subsection (2) of this section.

(c) The employer fails to file supporting documents within fourteen calendar days of the issuance of the board's notice of filing of appeal as required in subsection (3)(c)(i) of this section.

(d) The request is moot.

(e) The only violation alleged by the department of labor and industries is a general violation.

(f) The employer fails to show good cause for a stay of abatement in its supporting documents.

(g) The preliminary evidence shows it is more likely than not that a stay would result in death or serious physical harm to a worker.

(5) **Expedited nature of requests to stay abatement/requests to enlarge time.** Requests to stay abatement pending appeal must be decided in accordance with a strict statutory timeline. Oral argument will not be permitted. The board will grant requests to enlarge time to file documents or certifications only after receipt of a written motion with supporting affidavit filed with the board and all other parties before the filing deadline and only upon a showing of good cause.

[Statutory Authority: RCW 51.52.020, WSR 14-24-105, § 263-12-059, filed 12/2/14, effective 1/2/15; WSR 11-20-003, § 263-12-059, filed 9/21/11, effective 10/22/11; WSR 03-02-038, § 263-12-059, filed 12/24/02, effective 1/24/03; WSR 01-09-032, § 263-12-059, filed 4/11/01, effective 5/12/01.]

WAC 263-12-060 Filing appeals—Limitation of time. (1) In cases arising under the Industrial Insurance Act, or the Worker and Community Right to Know Act, the notice of appeal shall be filed within sixty days from the date the copy of the order, decision or award of the department was received by the appealing party, except an appeal from an order or decision making demand for repayment of sums paid to a provider of medical, dental, vocational or other health services shall be filed within twenty days from the date the order or decision was received by the provider.

(2) In appeals arising under the Crime Victims Compensation Act (chapter 7.68 RCW), the notice of appeal shall be filed within ninety days from the date the copy of the order, decision or award of the department was received by the appealing party.

(3) In appeals from a notice of assessment arising under chapter 51.48 RCW, the notice of appeal shall be filed within thirty days from the date the notice of assessment was served.

(4) In appeals arising under the Washington Industrial Safety and Health Act (chapter 49.17 RCW), the appeal shall be initiated by giving the director of the department of labor and industries notice of intent to appeal within fifteen working days from the date of notification of such citation, abatement period or penalty assessment. If the director does not reassume jurisdiction over the matter to which notice of intent to appeal is given, the department shall promptly transmit the notice of intent to appeal together with the department's record in the matter to the board, whereupon the matter shall be deemed an appeal before the board. If the director reassumes jurisdiction pursuant to a notice of intent to appeal,

there shall be, within thirty working days of such reassumption or within the extended redetermination period up to an additional fifteen working days upon agreement of all parties to the appeal, a further determinative order issued in the matter. Any appeal from such further determinative order must be made directly to the board, with a copy filed with the director of the department, within fifteen working days from the date of notification of such further determinative order.

(5) In appeals arising under chapter 49.26 RCW concerning the denial, suspension or revocation of certificates involving asbestos projects or in appeals arising under chapter 49.22 RCW concerning alleged violations of safety procedures in late night retail establishments, chapter 70.74 RCW concerning alleged violations of the Washington State Explosives Act, or chapter 88.04 RCW concerning alleged violations of the Charter Boat Safety Act, the notice of appeal shall be filed in the manner and within the time allowed for filing appeals under RCW 49.17.140 and WAC 263-12-060(4).

(6) In appeals arising under the special death benefit provision of the law enforcement officers' and firefighters' retirement system (chapter 41.26 RCW), the notice of appeal shall be filed within sixty days from the date the copy of the order, decision or award of the department was received by the appealing party.

(7) The board shall forthwith acknowledge receipt of any appeal filed with the board and the board's stamp placed thereon shall be prima facie evidence of the date of receipt. The board may thereafter require additional copies to be filed.

[Statutory Authority: RCW 51.52.020, WSR 03-02-038, § 263-12-060, filed 12/24/02, effective 1/24/03; WSR 00-23-021, § 263-12-060, filed 11/7/00, effective 12/8/00; WSR 91-13-038, § 263-12-060, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-060, filed 1/10/86. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-060, filed 12/2/82. Statutory Authority: RCW 51.52.020, WSR 82-03-031 (Order 11), § 263-12-060, filed 1/18/82; Order 7, § 263-12-060, filed 4/4/75; Order 4, § 263-12-060, filed 6/9/72; Rule 5.3, filed 6/12/63; Rule 3.3, filed 3/23/60; Rule 5.3, amended by General Order 3, filed 10/29/65. Formerly WAC 296-12-055.]

WAC 263-12-065 Disposition on department record. In cases arising under the Industrial Insurance Act, the Worker and Community Right to Know Act, and the Crime Victims Compensation Act, the board may, within the times prescribed by RCW 51.52.090, enter an order making final disposition of an appeal, without prejudice to any party's right to appeal from any subsequent order, decision or award issued by the department, based solely upon review of the notice of appeal and the record of the department in the case, as follows:

(1) If the notice of appeal raises no issue or issues of fact and the board finds that the department properly and lawfully decided all matters raised therein, the board may deny the appeal and affirm the department's decision or award; or

(2) If the department's record sustains the contention of the appealing party, the board may allow the relief asked in such appeal;

(3) If the appeal is brought prior to the taking of appealable action or issuance of an appealable order, decision or award by the department, the board may deny the appeal;

(4) If the department has (a) held the order, decision or award under appeal in abeyance or modified, reversed or changed the order, decision or award under appeal within the time limited for appeal or within thirty days after receiving a notice of appeal, or (b) directed the submission of further evidence within the time limited for filing a notice of appeal, the board may deny the appeal on the basis that the appealing party is no longer aggrieved by the order, decision or award under appeal; or

(5) If an employer has filed an appeal from a notice of assessment, and the department, within thirty days after receiving a notice of appeal, modifies, reverses or changes any notice of assessment or holds any such notice of assessment in abeyance pending further investigation the board may deny the appeal.

[Statutory Authority: RCW 51.52.020. WSR 03-02-038, § 263-12-065, filed 12/24/02, effective 1/24/03; WSR 91-13-038, § 263-12-065, filed 6/14/91, effective 7/15/91; WSR 82-03-031 (Order 11), § 263-12-065, filed 1/18/82; Order 7, § 263-12-065, filed 4/4/75; Order 4, § 263-12-065, filed 6/9/72; Rule 5.4, filed 6/12/63. Formerly WAC 296-12-065.]

WAC 263-12-070 Granting the appeal. If the appeal is not disposed of pursuant to WAC 263-12-065, the appeal shall be granted and proceedings scheduled. The board shall forthwith notify all interested parties of the receipt and granting of the appeal, and shall forward a copy thereof to the other interested parties. If the board takes no action upon the appeal within the time allowed by RCW 51.52.090, it shall be deemed to have been granted.

[Statutory Authority: RCW 51.52.020. WSR 91-13-038, § 263-12-070, filed 6/14/91, effective 7/15/91; Order 7, § 263-12-070, filed 4/4/75; Order 4, § 263-12-070, filed 6/9/72; Rule 5.5, filed 6/12/63. Formerly WAC 296-12-070.]

WAC 263-12-075 Cross appeals. Within twenty days of receipt of notification of granting an appeal in cases arising under the Industrial Insurance Act, the worker or the employer, as the case may be, may file a cross appeal with the board from the order of the department from which the original appeal was taken. The contents of such cross appeal shall be in accord with the applicable portions of WAC 263-12-050.

[Statutory Authority: RCW 51.52.020. WSR 91-13-038, § 263-12-075, filed 6/14/91, effective 7/15/91; Order 7, § 263-12-075, filed 4/4/75; Order 4, § 263-12-075, filed 6/9/72; General Order 3, Rule 5.6, filed 10/29/65; General Order 2, Rule 5.3, filed 6/12/63. Formerly WAC 296-12-075.]

WAC 263-12-080 Correction and amendment of notice. If any notice of appeal is found by the board to be defective or insufficient, the board may require the party filing said notice of appeal to correct, clarify or amend the same to conform to the requirements of the statute and the board's rules. The board may refuse to schedule any conference or hearing thereon until compliance with such requirement, or may issue an order providing for the denial or dismissal of such appeal upon failure to comply within a specified time.

Any party may amend his or her notice of appeal on such terms as the industrial appeals judge may prescribe, and the industrial appeals judge may, when deemed necessary, in justice to all parties, require correction, clarification or amendment of a notice of appeal before allowing any hearing thereon to proceed, or may issue an order requiring such cor-

rection, clarification or amendment to be made within a specified time, and if such requirement is not complied with, the board may dismiss the appeal.

[Statutory Authority: RCW 51.52.020. WSR 95-02-065, § 263-12-080, filed 1/3/95, effective 2/3/95; WSR 91-13-038, § 263-12-080, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-080, filed 12/2/82; Order 4, § 263-12-080, filed 6/9/72; General Order 3, Rule 5.7, filed 10/29/65; General Order 2, Rule 5.7, filed 6/12/63. Formerly WAC 296-12-080.]

WAC 263-12-090 Conferences—Notice of conferences. Once an appeal has been granted, it shall be assigned to an industrial appeals judge with direction to conduct a settlement conference or a conference to schedule the appeal for hearing. If a conference is scheduled in a case, it shall be upon written notice to all parties specifying the time and place set for such conference, and such notice shall be mailed not less than seven days prior to the date of the conference, unless such notice is waived by all parties. The industrial appeals judge assigned to conduct hearings in an appeal or his or her designee shall conduct the conference at which hearings are scheduled.

[Statutory Authority: RCW 51.52.020. WSR 00-23-021, § 263-12-090, filed 11/7/00, effective 12/8/00; WSR 91-13-038, § 263-12-090, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-090, filed 12/2/82. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-090, filed 1/18/82; Order 7, § 263-12-090, filed 4/4/75; Order 4, § 263-12-090, filed 6/9/72; General Order 2, Rules 6.1-6.4, filed 6/12/63; General Order 1, Rules 5.3-5.4, filed 3/23/60; Subsection (6), General Order 3, Rule 6.4, filed 10/29/65. Formerly WAC 296-12-090.]

WAC 263-12-091 Affidavits of prejudice. Affidavits of prejudice against an industrial appeals judge assigned to conduct hearings in an appeal are subject to the provisions of RCW 4.12.050, except that such affidavit must be filed within thirty days of receipt of the notice of assignment of the appeal to the industrial appeals judge or prior to the assigned industrial appeals judge holding any proceeding in the appeal, whichever occurs sooner.

[Statutory Authority: RCW 51.52.020. WSR 91-13-038, § 263-12-091, filed 6/14/91, effective 7/15/91.]

WAC 263-12-092 Mediation and claim resolution structured settlement agreement conferences. (1) A statement made by any party, representative or other participant in the course of mediation conducted pursuant to RCW 51.52.-095 or a claim resolution structured settlement agreement conference conducted pursuant to RCW 51.04.063, whether verbal or written, is privileged as provided in subsection (2) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or reduced to writing and made part of a settlement agreement.

(2) In a proceeding, the following privileges apply:

(a) A party may refuse to disclose and may prevent any other person from disclosing a statement;

(b) A mediator or structured settlement conference judge may refuse to disclose and may prevent any other person from disclosing a statement from the mediator or judge; and

(c) A nonparty participant may refuse to disclose and may prevent any other person from disclosing a statement of the nonparty participant.

(3) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation unless otherwise privileged by subsection (2) of this section.

(4) Mediation and claim resolution structured settlement agreement conferences are confidential and nonparties may be excluded from the proceedings.

(5) Mediation and claim resolution structured settlement agreement conferences may not be recorded by any type of recording device.

[Statutory Authority: RCW 51.52.020. WSR 14-24-105, § 263-12-092, filed 12/2/14, effective 1/2/15; WSR 08-01-081, § 263-12-092, filed 12/17/07, effective 1/17/08.]

WAC 263-12-093 Conferences—Disposition of appeals by agreement. (1) If an agreement concerning final disposition of any appeal is reached by all the parties present or represented at a conference, an order shall be issued in conformity with their agreement, providing the board finds the agreement is in accordance with the law and the facts.

(a) In industrial insurance cases, if an agreement concerning final disposition of the appeal is reached by the employer and worker or beneficiary at a conference at which the department is represented, and no objection is interposed by the department, an order shall be issued in conformity with their agreement, providing the board finds that the agreement is in accordance with the law and the facts. If an objection is interposed by the department on the ground that the agreement is not in accordance with the law or the facts, a hearing shall be scheduled.

(b) In cases involving the Washington Industrial Safety and Health Act, an agreement concerning final disposition of the appeal among the parties must include regardless of other substantive provisions covered by the agreement: (i) A statement reciting the abatement date for the violations involved, and (ii) a statement confirming that the penalty assessment for contested and noncontested violations has or will be paid.

(c) Where all parties concur in the disposition of an appeal but the industrial appeals judge is not satisfied that the agreement is in conformity with the facts and the law or that the board has jurisdiction or authority to order the relief sought, the industrial appeals judge may require such evidence or documentation necessary to adequately support the agreement in fact and/or in law.

(2) All agreements reached at a conference concerning final disposition of the appeal shall be stated on the record by the industrial appeals judge and the parties shall indicate their concurrence on the record. The record may either be transcribed by a court reporter or recorded and certified by the industrial appeals judge conducting the conference.

The industrial appeals judge may, in his or her discretion accept an agreement for submission to the board in the absence of one or more of the parties from the conference, or without holding a conference.

(a) In such cases the agreement may be confirmed in writing by the parties to the agreement not in attendance at a conference, except that the written confirmation of a party to the agreement not in attendance at a conference will not be required where the industrial appeals judge is satisfied of the

concurrence of the party or that the party received notice of the conference and did not appear.

(b) In cases where no conference has been held but the parties have informed the judge of their agreement, yet no written confirmation has been received, the judge may submit a judge's report of proceedings which encompasses the agreement.

(3) In the event concurrence of all affected employees or employee groups cannot be obtained in cases involving agreements for final disposition of appeals under the Washington Industrial Safety and Health Act, a copy of the proposed agreement shall be posted by the employer at each establishment to which the agreement applies in a conspicuous place or places where notices to employees are customarily posted. The agreement shall be posted for ten days before it is submitted to the board for entry of the final order. The manner of posting shall be in accordance with WAC 263-12-059. If an objection to the agreement is interposed by affected employees or employee groups prior to entry of the final order of the board, further proceedings shall be scheduled.

(4) The parties present at a conference may agree to a vocational evaluation or a further medical examination of a worker or crime victim, including further evaluative or diagnostic tests, except such as require hospitalization, by medical or vocational experts acceptable to them, or to be selected by the industrial appeals judge. In the event the parties agree that an order on agreement of parties or proposed decision and order may be issued based on the report of vocational evaluation or medical examination, the industrial appeals judge may arrange for evaluation or examination and the board will pay reasonable and necessary expenses involved. Upon receipt by the board, copies of the report of such examination or evaluation will be distributed to all parties represented at the conference and further appropriate proceedings will be scheduled or an order on agreement of parties or proposed decision and order issued. If the worker or crime victim fails to appear at the evaluation or examination, the party or their representative may be required to reimburse the board for any fee charged for their failure to attend.

[Statutory Authority: RCW 51.52.020. WSR 06-12-003, § 263-12-093, filed 5/25/06, effective 6/25/06; WSR 03-02-038, § 263-12-093, filed 12/24/02, effective 1/24/03; WSR 00-23-021, § 263-12-093, filed 11/7/00, effective 12/8/00; WSR 91-13-038, § 263-12-093, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-093, filed 12/2/82. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-093, filed 1/18/82; Order 7, § 263-12-093, filed 4/4/75.]

WAC 263-12-095 Conference procedures. (1) **Scheduling information.** If no agreement is reached by the parties as to the final disposition of an appeal, the industrial appeals judge presiding at a settlement conference may direct that the appeal be assigned to an industrial appeals judge for the purpose of scheduling and conducting a hearing in the appeal. Any industrial appeals judge assigned to conduct proceedings in an appeal, or his or her designee may elicit from the parties such information as is necessary and helpful to the orderly scheduling of hearing proceedings and as may aid in expediting the final disposition of the appeal.

(2) **Prehearing matters.** At any proceeding a stipulation of facts may be obtained to show the board's jurisdiction in the matter. In addition, agreement as to the issues of law and

fact presented and the simplification or limitation thereof may be obtained. The industrial appeals judge may also determine: (a) The necessity of amendments to the notice of appeal or other pleadings; (b) the possibility of obtaining admissions of facts and authenticity of documents which will avoid unnecessary proof; (c) the admissibility of exhibits; (d) a stipulation as to all or part of the facts in the case; (e) obtain information as to the number of expert and lay witnesses expected to be called by the parties and their names when possible, the place or places where hearings will be required, the approximate time necessary for the presentation of the evidence of the respective parties, and all other information which may aid in the prompt disposition of the appeal; (f) the limitation of the number of witnesses; (g) the need for interpretive services; (h) exchange of medical and vocational reports and other relevant documents; (i) receive and rule on motions pertaining to pre-hearing discovery. These include motions by a party for a vocational evaluation of a claimant which may be granted upon a showing of surprise which ordinary prudence could not have guarded against or upon an equivalent showing of circumstances constituting good cause and upon notice to all parties of the time, place, manner, conditions, and scope of the evaluation and the person or persons by whom it is to be made, provided that the industrial appeals judge shall impose all conditions necessary to avoid delay and prejudice in the timely completion of the appeal.

(3) **Record of results of conferences.** The results of any conferences shall be stated on the record. The record may be a transcript of the proceeding, a judge's report of proceedings, and/or written interlocutory order. The record shall include, where applicable, agreements concerning issues, admissions, stipulations, witnesses, time and location of hearings, the issues remaining to be determined, and other matters that may expedite the hearing proceedings. The statement of agreement and issues, and rulings of the industrial appeals judge, shall control the subsequent course of the proceedings, subject to modification by the industrial appeals judge or by interlocutory review pursuant to WAC 263-12-115(6).

(4) **Failure to supply information.** If any party fails to supply the information reasonably necessary to schedule the hearing in a case, the board or the industrial appeals judge may suspend setting a hearing pending receipt of the required information, or may impose such conditions upon the presentation of evidence by the defaulting party as may be deemed appropriate.

(5) **Admissibility of matters disclosed at conference.** If no agreement of the parties is reached resolving all issues presented, no offers of settlement, admissions, or statements made by any party shall be admissible at any subsequent proceeding unless they are independently admissible therein.

[Statutory Authority: RCW 51.52.020, WSR 00-23-021, § 263-12-095, filed 11/7/00, effective 12/8/00; WSR 91-13-038, § 263-12-095, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.41.060(4) and 51.52.020, WSR 83-01-001 (Order 12), § 263-12-095, filed 12/2/82. Statutory Authority: RCW 51.52.020, WSR 82-03-031 (Order 11), § 263-12-095, filed 1/18/82; Order 7, § 263-12-095, filed 4/4/75; Order 4, § 263-12-095, filed 6/9/72; Rules 6.5-6.9 filed 6/12/63; Rule 5.6, filed 3/23/60; Subsection 5, General Order 3, Rule 7.1, filed 10/29/65. Formerly WAC 296-12-100.]

WAC 263-12-097 Interpreters. (1) When an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW is a party or

witness in a hearing before the board of industrial insurance appeals, the industrial appeals judge may appoint an interpreter to assist the party or witness throughout the proceeding. Appointment, qualifications, waiver, compensation, visual recording, and ethical standards of interpreters in adjudicative proceedings are governed by the provisions of chapters 2.42 and 2.43 RCW and General Rule provisions GR 11, GR 11.1, and GR 11.2.

(2) The provisions of General Rule 11.3 regarding telephonic interpretation shall not apply to the board's use of interpreters.

(3) The industrial appeals judge shall make a preliminary determination that an interpreter is able to accurately interpret all communication to and from the impaired or non-English-speaking person and that the interpreter is impartial. The interpreter's ability to accurately interpret all communications shall be based upon either (a) certification by the office of the administrator of the courts, or (b) the interpreter's education, certifications, experience, and the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding. The parties or their representatives may question the interpreter as to his or her qualifications or impartiality.

(4) The board of industrial insurance appeals will pay interpreter fees and expenses when the industrial appeals judge has determined the need for interpretive services as set forth in subsection (1). When a party or person for which interpretive services were requested fails to appear at the proceeding, the requesting party or the party's representative may be required to bear the expense of providing the interpreter.

[Statutory Authority: RCW 51.52.020, WSR 06-12-003, § 263-12-097, filed 5/25/06, effective 6/25/06; WSR 00-23-022, § 263-12-097, filed 11/7/00, effective 12/8/00.]

WAC 263-12-100 Hearings—Notice of hearing. (1) Time. In those cases that proceed to hearing, the board shall mail notice of scheduled hearings to all parties at their last known address as shown by the records of the board or department of labor and industries not less than fifteen days prior to the hearing date. Hearings may be held on less than fifteen days' notice upon agreement of all parties that have made an appearance in the appeal.

(2) Contents. The notice shall identify the appeal to be heard, the names of the parties to the appeal and their representatives, if any, and shall specify the time and place of hearing.

[Statutory Authority: RCW 51.52.020, WSR 00-23-021, § 263-12-100, filed 11/7/00, effective 12/8/00; WSR 82-03-031 (Order 11), § 263-12-100, filed 1/18/82; Order 4, § 263-12-100, filed 6/9/72; General Order 1, Rule 5.2, filed 3/23/60; Subsection 2, General Order 3, Rule 7.1, filed 10/29/65. Formerly WAC 296-12-100.]

WAC 263-12-106 Expedited hearings. If a statute requires that the board conduct an expedited hearing in a matter, the matter will be referred to a duly authorized industrial appeals judge. Notices of conferences and hearings related to the expedited hearing will conform to the requirements identified in WAC 263-12-090 and 263-12-100. After hearing all testimony and receiving all evidence related to the expedited hearing, the industrial appeals judge will refer the matter

directly to the board for decision. The board will issue an order based on the record of the expedited hearing.

[Statutory Authority: RCW 51.52.020. WSR 04-16-009, § 263-12-106, filed 7/22/04, effective 8/22/04.]

WAC 263-12-115 Procedures at hearings. (1) Industrial appeals judge. All hearings shall be conducted by an industrial appeals judge who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections and motions.

(2) Order of presentation of evidence.

(a) In any appeal under either the Industrial Insurance Act, the Worker and Community Right to Know Act, or the Crime Victims Compensation Act, the appealing party shall initially introduce all evidence in his or her case-in-chief except that in an appeal from an order of the department that alleges fraud or willful misrepresentation the department or self-insured employer shall initially introduce all evidence in its case-in-chief.

(b) In all appeals subject to the provisions of the Washington Industrial Safety and Health Act, the department shall initially introduce all evidence in its case-in-chief.

(c) After the party with the initial burden has presented his or her case-in-chief, the other parties may then introduce the evidence necessary to their cases-in-chief. In the event there is more than one other party, they may either present their cases-in-chief successively or may join in their presentation. Rebuttal evidence shall be received in the same order. Witnesses may be called out of turn in contravention of this rule only by agreement of all parties.

(3) Objections and motions to strike. Objections to the admission or exclusion of evidence shall be in short form, stating the legal grounds of objection relied upon. Extended argument or debate shall not be permitted.

(4) Rulings. The industrial appeals judge on objection or on his or her own motion shall exclude all irrelevant or unduly repetitious evidence and statements that are inadmissible pursuant to WAC 263-12-095(5). All rulings upon objections to the admissibility of evidence shall be made in accordance with rules of evidence applicable in the superior courts of this state.

(5) Interlocutory appeals to the board - Confidentiality of trade secrets. A direct appeal to the board shall be allowed as a matter of right from any ruling of an industrial appeals judge adverse to the employer concerning the confidentiality of trade secrets in appeals under the Washington Industrial Safety and Health Act.

(6) Interlocutory review by a chief industrial appeals judge.

(a) Except as provided in subsection (5) of this section interlocutory rulings of the industrial appeals judge are not subject to direct review by the board. A party to an appeal or a witness who has made a motion to quash a subpoena to appear at board related proceedings, may within five working days of receiving an adverse ruling from an industrial appeals judge request a review by a chief industrial appeals judge or his or her designee. Such request for review shall be in writing and shall be accompanied by an affidavit in support of the request and setting forth the grounds for the request, including the reasons for the necessity of an immediate review during the course of conference or hearing proceedings.

Within ten working days of receipt of the written request, the chief industrial appeals judge, or designee, may decline to review the ruling based upon the written request and supporting affidavit; or, after such review as he or she deems appropriate, may either affirm or reverse the ruling, or refer the matter to the industrial appeals judge for further consideration.

(b) Failure to request review of an interlocutory ruling shall not constitute a waiver of the party's objection, nor shall an unfavorable response to the request preclude a party from subsequently renewing the objection whenever appropriate.

(c) No conference or hearing shall be interrupted for the purpose of filing a request for review of the industrial appeals judge's rulings; nor shall any scheduled proceedings be canceled pending a response to the request.

(7) Recessed hearings. Where, for good cause, all parties to an appeal are unable to present all their evidence at the time and place originally set for hearing, the industrial appeals judge may recess the hearing to the same or a different location so as to insure that all parties have reasonable opportunity to present their respective cases. No written "notice of hearing" shall be required as to any recessed hearing.

(8) Failure to present evidence when due. If any party is due to present certain evidence at a hearing or recessed hearing and, for any reason on its part, fails to appear and present such evidence, the industrial appeals judge may conclude the hearing and issue a proposed decision and order on the record, or recess or set over the proceedings for further hearing for the receipt of such evidence.

(9) Offers of proof in colloquy. When an objection to a question is sustained an offer of proof in question and answer form shall be permitted unless the question is clearly objectionable on any theory of the case.

(10) Telephone testimony. At hearings, the parties may present the testimony of witnesses by telephone if agreed to by all parties and approved by the industrial appeals judge. For good cause the industrial appeals judge may authorize telephone testimony over the objection of a party after weighing the following nonexclusive factors:

- The need to weigh a witness's demeanor or credibility.
- Difficulty in handling documents and exhibits.
- The number of parties participating in the hearing.
- Whether any of the testimony will need to be translated.
- Ability of the witness to travel.
- Feasibility of taking a perpetuation deposition.
- Availability of quality telecommunications equipment and service.

When telephone testimony is permitted, the industrial appeals judge presiding at the hearing will swear in the witness testifying by phone as if the witness appeared live at the hearing. For rules relating to telephone deposition testimony, see WAC 263-12-117.

[Statutory Authority: RCW 51.52.020. WSR 14-24-105, § 263-12-115, filed 12/2/14, effective 1/2/15; WSR 08-01-081, § 263-12-115, filed 12/17/07, effective 1/17/08; WSR 03-02-038, § 263-12-115, filed 12/24/02, effective 1/24/03; WSR 00-23-021, § 263-12-115, filed 11/7/00, effective 12/8/00; WSR 91-13-038, § 263-12-115, filed 6/14/91, effective 7/15/91; WSR 84-08-036 (Order 17), § 263-12-115, filed 3/30/84. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-115, filed 12/2/82. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-115, filed 1/18/82; Order 9, § 263-12-115, filed 8/8/75; Order

7, § 263-12-115, filed 4/4/75; Order 4, § 263-12-115, filed 6/9/72; General Order 3, Rule 7.5, filed 10/29/65; General Order 2, Rule 7.4, filed 6/12/63; General Order 1, Rule 5.10, filed 3/23/60. Formerly WAC 296-12-115.]

WAC 263-12-116 Exhibits. (1) Whenever possible, exhibits should be submitted on paper 8 1/2" x 11" in size. A larger version may be shown to the judge or witness for purpose of demonstration and a smaller version marked and offered as the exhibit.

(2) Exhibits containing audio, video, or other electronic material may be submitted on a CD, DVD, flash drive, or similar device, subject to the following conditions:

- The party seeking to present the audio/video/electronic material at a hearing must provide the appropriate equipment for hearing/viewing the material.

- If the party submitting the material for presentation at a hearing does not provide the equipment needed, the material will not be heard or viewed during the hearing, but the exhibit may be marked into evidence and ruling reserved.

(3) The board will not accept any hazardous exhibit. A hazardous exhibit is an exhibit that:

(a) Threatens the health and safety of persons handling the exhibit, including exhibits having potentially toxic, explosive, or disease-carrying characteristics.

(b) Threatens the security of the board's electronic equipment or network. Nonexclusive examples of hazardous exhibits include:

- Biohazards (bodily fluid samples, bloody clothing).
- Used medical implements or devices (surgical screws, cables, plates, pins, prosthetic devices).
- Corrosive or toxic substances.
- Controlled substances (prescription drugs).
- Potential airborne contaminants (asbestos, silica).
- Flammable, explosive, or reactive materials.
- Live ammunition, firearms, knives, and other weapons.

(4) Photographs, videotapes, or other facsimile representations may be used to demonstrate the existence, quantity, and physical characteristics of hazardous evidence consistent with this rule.

(5) If a party is uncertain whether a proposed exhibit conforms to this rule or is not able to bring the necessary equipment to the hearing, that party must request a conference with the judge at least fourteen days before submitting the exhibit, asking the judge to make a determination of conformity or to provide assistance in making the exhibit accessible at the proceeding.

[Statutory Authority: RCW 51.52.020. WSR 14-24-105, § 263-12-116, filed 12/2/14, effective 1/2/15; WSR 10-14-061, § 263-12-116, filed 6/30/10, effective 7/31/10.]

WAC 263-12-117 Perpetuation depositions. (1) **Evidence by deposition.** The industrial appeals judge may permit or require the perpetuation of testimony by deposition, subject to the applicable provisions of WAC 263-12-115. Such ruling may only be given after the industrial appeals judge gives due consideration to:

- (a) The complexity of the issues raised by the appeal;
- (b) The desirability of having the witness's testimony presented at a hearing;
- (c) The costs incurred by the parties in complying with the ruling; and

(12/2/14)

(d) The fairness to the parties in complying with the ruling.

(2) **Telephone depositions:** When testimony is taken by perpetuation deposition, it may be taken by telephone if all parties agree. For good cause the industrial appeals judge may permit the parties to take the testimony of a witness by telephone deposition over the objection of a party after weighing the following nonexclusive factors:

- The need of a party to observe a witness's demeanor.
- Difficulty in handling documents and exhibits.
- The number of parties participating in the deposition.
- Whether any of the testimony will need to be translated.
- Ability of the witness to travel.
- Availability of quality telecommunications equipment and service.

If a perpetuation deposition is taken by telephone, the court reporter transcribing the deposition is authorized to swear in the deponent, regardless of the deponent's location within or outside the state of Washington.

(3) The industrial appeals judge may require that depositions be taken and published within prescribed time limits. The time limits may be extended by the industrial appeals judge for good cause. Each party shall bear its own costs except when the industrial appeals judge allocates costs to parties or their representatives.

(4) The party filing a deposition must submit the deposition in a written format as well as an electronic format in accordance with procedures established by the board. Exhibits to the deposition do not have to be filed electronically but a legible hard copy must accompany the paper transcription of the deposition. If the deposition is not transcribed in a reproducible format it may be excluded from the record.

(5) **Procedure at deposition.** Unless the parties stipulate or the industrial appeals judge determines otherwise all depositions permitted to be taken for the perpetuation of testimony shall be taken subject to the following conditions:

(a) That all motions and objections, whether to form or otherwise, shall be raised at the time of the deposition and if not raised at such time shall be deemed waived.

(b) That all exhibits shall be marked and identified at the time of the deposition and, if offered into evidence, appended to the deposition.

(c) That the deposition be published without necessity of further conference or hearing at the time it is received by the industrial appeals judge.

(d) That all motions, including offers to admit exhibits and objections raised at the time of the deposition, shall be ruled upon by the industrial appeals judge in the proposed decision and order.

(e) That the deposition may be appended to the record as part of the transcript, and not as an exhibit, without the necessity of being retyped into the record.

[Statutory Authority: RCW 51.52.020. WSR 14-24-105, § 263-12-117, filed 12/2/14, effective 1/2/15; WSR 10-14-061, § 263-12-117, filed 6/30/10, effective 7/31/10; WSR 04-16-009, § 263-12-117, filed 7/22/04, effective 8/22/04; WSR 03-02-038, § 263-12-117, filed 12/24/02, effective 1/24/03.]

WAC 263-12-118 Motions. (1) **Definition.** A party's written or oral request for the board to take action on a pending appeal is a "motion." Motions must be in writing unless made during a hearing before an industrial appeals judge. The

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board recognizes that there are two basic categories of motions:

(a) **Nondispositive motions.** Nondispositive motions include procedural motions, such as motions for a continuance, an extension of time, or to reopen the record; and discovery motions, such as motions *in limine* or motions to compel or request sanctions.

(b) **Dispositive motions.** Dispositive motions ask for a decision on one or more of the issues in an appeal or to dismiss the appeal. Examples of dispositive motions are motions to dismiss or motions for summary judgment. See WAC 263-12-11801.

(2) **Motions made to the executive secretary.** The procedural rules in subsections (3) through (6) of this section do not apply to motions made to the executive secretary for consideration by the three-member board:

(a) Motions for stay of the order on appeal under RCW 51.52.050 (2)(b). (See WAC 263-12-11802.)

(b) Motions to reconsider or vacate final board orders. (See WAC 263-12-156.)

(c) Motions to set reasonable attorneys' fees under RCW 51.52.120. (See WAC 263-12-165.)

(d) Requests for a stay of abatement pending appeal under RCW 49.17.140 (4)(a) in appeals filed under the Washington Industrial Safety and Health Act. (See WAC 263-12-059.)

(3) **Written motions must be filed separately.** Parties must file motions separately from any pleading or other communication with the board. If a motion is contained in another pleading, the first page must clearly indicate in bold print that a motion is contained therein. See WAC 263-12-01501 (1)(a) for information about motions that must be filed with the board at its headquarters in Olympia.

(4) **Oral motions.** Any party may bring an oral motion during a hearing, unless prohibited from doing so at the industrial appeals judge's discretion. The industrial appeals judge may provide an opportunity for other parties to respond to any oral motion. The industrial appeals judge may require that an oral motion also be submitted in writing and may provide an opportunity for written response.

(5) **Responses to nondispositive motions.** Any party who opposes a written nondispositive motion may file a written response within five business days after the motion is served, or may make an oral or written response at such other time as the industrial appeals judge may set.

(6) **Argument.** All nondispositive motions will be ruled on without oral argument, unless oral argument is requested by the parties and approved by the industrial appeals judge, or at the discretion of the industrial appeals judge. Any party may request oral argument by placing "ORAL ARGUMENT REQUESTED" prominently on the first page of the motion or responsive pleading. The time and date for hearing on the motion shall be scheduled in advance by contacting the judicial assistant for the assigned industrial appeals judge.

[Statutory Authority: RCW 51.52.020. WSR 14-24-105, § 263-12-118, filed 12/2/14, effective 1/2/15.]

WAC 263-12-11801 Motions that are dispositive—Motion to dismiss; motion for summary judgment; voluntary dismissal. (1) Motion to dismiss.

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(a) **General.** A party may move to dismiss another party's appeal on the asserted basis that the notice of appeal fails to state a claim on which the board may grant relief. The board will consider the standards applicable to a motion made under CR 12(b)(6) of the Washington superior court's civil rules. Examples of other grounds for a motion to dismiss include, but are not limited to, a lack of jurisdiction, failure to present evidence when due, and failure to present a *prima facie* case.

(b) **Time for filing motion to dismiss.** A motion to dismiss for lack of jurisdiction should be filed as early as possible to avoid unnecessary litigation. In all cases other than appeals under the Washington Industrial Safety and Health Act, a motion to dismiss for failure to present evidence when due may be made if the appealing party fails to appear at an evidentiary hearing held pursuant to due and proper notice. A motion to dismiss for failure to present a *prima facie* case may be made at any time prior to closure of the record.

(c) **Response.** A party who opposes a written motion to dismiss may file a response within ten days after service of the motion, or at such other time as may be set by the industrial appeals judge. The industrial appeals judge may allow oral argument.

(2) Motion for summary judgment.

(a) **General.** A party may move for summary judgment of one or more issues in the appeal if the pleadings filed in the proceeding, together with any properly admissible evidentiary support (e.g., affidavits or declarations conforming to the requirements of RCW 9A.72.085, fact stipulations, matters of which official notice may be taken), show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In considering a motion made under this subsection, the industrial appeals judge will consider the standards applicable to a motion made under CR 56 of the Washington superior court's civil rules.

(b) **Oral argument.** All summary judgment motions will be decided after oral argument, unless waived by the parties. The assigned industrial appeals judge will determine the length of oral argument allowed. Summary judgment motions must be heard more than fourteen calendar days before the hearing on the merits unless leave is granted by the industrial appeals judge. The time and date for hearing shall be scheduled in advance by contacting the judicial assistant for the assigned industrial appeals judge.

(c) **Dates for filing.** The deadlines to file and serve a motion for summary judgment and opposing and reply documents shall be as set forth in CR 56 unless the industrial appeals judge establishes different deadlines in the litigation order.

(3) **Motion for voluntary dismissal - General.** The party who filed the appeal may move to have the appeal voluntarily dismissed in accordance with CR 41(a) at any time.

[Statutory Authority: RCW 51.52.020. WSR 14-24-105, § 263-12-11801, filed 12/2/14, effective 1/2/15.]

WAC 263-12-11802 Employer's motion for a stay of the order on appeal. (1) General. Any employer may move for a stay of the department order on appeal, in whole or in part, as provided in RCW 51.52.050 (2)(b). The board will grant the motion to stay if the moving party demonstrates that

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it is more likely than not to prevail on the facts as they existed at the time of the order on appeal.

(2) **Time for filing.** As set forth in RCW 51.52.050 (2)(b), a motion filed by the employer for a stay of benefits pursuant to RCW 51.52.050 must be filed within fifteen days of the board order granting the appeal.

(3) **Motion must be filed separately.** An employer must file a motion for a stay of the order on appeal separately from any pleading or other communication with the board and must note "MOTION FOR STAY OF BENEFITS" prominently on the first page of the motion.

(4) **Expedited review.** The board will conduct an expedited review of the department claim file as it existed on the date of the department order on appeal. The board will issue a final decision on the motion for stay of benefits within twenty-five days of the filing of the motion for stay or the order granting appeal, whichever is later.

(5) **Appeal to superior court.** The board's final decision on the motion for stay of benefits may be appealed to superior court in accordance with RCW 51.52.110.

[Statutory Authority: RCW 51.52.020, WSR 14-24-105, § 263-12-11802, filed 12/2/14, effective 1/2/15.]

WAC 263-12-120 Additional evidence by industrial appeals judge. The industrial appeals judge may, when all parties have rested, present such evidence, in addition to that presented by the parties, as deemed necessary to decide the appeal fairly and equitably, and in the exercise of this power, a physical, mental or vocational examination or evaluation of a worker by one or more medical or vocational experts may be ordered to be conducted at the board's expense. Any such evidence secured and presented by the industrial appeals judge shall be presented in an impartial manner, and shall be received subject to full opportunity for cross-examination by all parties. If a party desires to present rebuttal evidence to any evidence so presented by the industrial appeals judge, the party shall make application immediately following the conclusion of such evidence.

[Statutory Authority: RCW 51.52.020, WSR 00-23-021, § 263-12-120, filed 11/7/00, effective 12/8/00. Statutory Authority: RCW 51.41.060(4) and 51.52.020, WSR 83-01-001 (Order 12), § 263-12-120, filed 12/2/82. Statutory Authority: RCW 51.52.020, WSR 82-03-031 (Order 11), § 263-12-120, filed 1/18/82; Order 4, § 263-12-120, filed 6/9/72; General Order 3, Rule 7.6, filed 10/29/65; General Order 2, Rule 7.5, filed 6/12/63. Formerly WAC 296-12-120.]

WAC 263-12-125 Applicability of court rules. Insofar as applicable, and not in conflict with these rules, the statutes and rules regarding procedures in civil cases in the superior courts of this state shall be followed.

[Statutory Authority: RCW 51.52.020, WSR 91-13-038, § 263-12-125, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW, WSR 86-03-021 (Order 20), § 263-12-125, filed 1/10/86. Statutory Authority: RCW 51.41.060(4) and 51.52.020, WSR 83-01-001 (Order 12), § 263-12-125, filed 12/2/82. Statutory Authority: RCW 51.52.020, WSR 82-03-031 (Order 11), § 263-12-125, filed 1/18/82; Order 4, § 263-12-125, filed 6/9/72.]

WAC 263-12-135 Record. The record in any contested case shall consist of the order of the department, the notice of appeal therefrom, all orders issued by the board (including litigation orders and judge's report of proceeding), responsive

pleadings, if any, and notices of appearances, and any other written applications, motions, stipulations or requests duly filed by any party. Such record shall also include all depositions, the transcript of testimony and other proceedings at the hearing, together with all exhibits offered. No part of the department's record or other documents shall be made part of the record of the board unless offered in evidence.

The record in any appeal disposed of by order denying appeal or order granting relief on the record as provided in RCW 51.52.080, shall include those documents found in the department record that are relevant to the board's disposition.

[Statutory Authority: RCW 51.52.020, WSR 08-01-081, § 263-12-135, filed 12/17/07, effective 1/17/08; WSR 00-23-021, § 263-12-135, filed 11/7/00, effective 12/8/00; Order 4, § 263-12-135, filed 6/9/72; Rule 8.2, filed 6/12/63; Rule 6.2, filed 3/23/60, amended by General Order 3, Rule 8.2, filed 10/29/65. Formerly WAC 296-12-135.]

WAC 263-12-140 Proposed decisions and orders.

Upon completion of the record an industrial appeals judge shall enter a proposed decision and order which shall be in writing and contain findings of fact and conclusions of law as to each contested issue of fact and law, as well as the order based thereon. Copies of the proposed decision and order shall be mailed to each party to the appeal and to his or her attorney or representative of record.

[Statutory Authority: RCW 51.52.020, WSR 00-23-021, § 263-12-140, filed 11/7/00, effective 12/8/00; WSR 95-02-065, § 263-12-140, filed 1/3/95, effective 2/3/95. Statutory Authority: RCW 51.41.060(4) and 51.52.020, WSR 83-01-001 (Order 12), § 263-12-140, filed 12/2/82; Order 4, § 263-12-140, filed 6/9/72; Rule 8.3, filed 6/12/63. Formerly WAC 296-12-140.]

WAC 263-12-145 Petition for review. (1) **Time for filing.** Within twenty days from the date of communication of the proposed decision and order to the parties or their representatives of record, any aggrieved party may file with the board a written petition for review. When a petition for review is filed, the failure of any party not aggrieved by the proposed decision and order to file a petition for review shall not be deemed a waiver by such party of any objections or irregularities disclosed by the record.

(2) **Extensions of time.** The board may extend the time for filing a petition for review upon written request of a party filed within twenty days from the date of communication of the proposed decision and order to the parties or their representatives of record. Such extension of time, if granted, will apply to all parties to the appeal. Further extensions of time beyond any initial extension may be allowed only if (a) an application for further extension is filed within twenty days from the date of communication of the proposed decision and order to the parties or their representatives of record or (b) the board, on its own motion or at the request of a party, acts to further extend the time for filing a petition for review before the prior extended time for filing a petition for review has expired.

(3) **Contents.** A petition for review shall set forth in detail the grounds for review. A party filing a petition for review waives all objections or irregularities not specifically set forth therein. A general objection to findings of fact on the ground that the weight of evidence is to the contrary shall not be considered sufficient compliance, unless the objection shall refer to the evidence relied upon in support thereof. A general objection to all evidentiary rulings adverse to the

party shall be considered adequate compliance with this rule. If legal issues are involved, the petition for review shall set forth the legal theory relied upon and citation of authority and/or argument in support thereof. The board shall, at the request of any party, provide a copy of the transcript of testimony and other proceedings at the hearing. The requesting party shall sign an acknowledgement that receipt of the transcript of proceedings shall constitute compliance by the board with any statute requiring service on the party of a certified copy of the testimony.

(4) **Action by board on petition for review.** (a) After receipt of a petition for review, the board shall enter an order within twenty days either: (i) Denying the petition for review, in which case the proposed decision and order shall become the final order of the board, or (ii) granting the petition for review, in which case the board shall within one hundred and eighty days from the date the petition for review was filed issue a final decision and order based upon its review of the record. (b) After twenty days of receipt. If a petition for review is not acted upon by the board it shall be deemed to have been granted. (c) Remands for further hearing.

After review of the record, the board may set aside the proposed decision and order and remand the appeal to the hearing process, with instructions to the industrial appeals judge to whom the appeal is assigned on remand, to dispose of the matter in any manner consistent with chapter 263-12 WAC.

(5) Reply to petition for review. Any party may, within ten days of receipt of the board's order granting review, submit a reply to the petition for review, a written brief, or a statement of position regarding the matters to which objections were made, or the board may, on its own motion, require the parties to submit written briefs or statements of position or to appear and present oral argument regarding the matters to which objections were made, within such time and on such terms as may be prescribed.

[Statutory Authority: RCW 51.52.020. WSR 00-23-021, § 263-12-145, filed 11/7/00, effective 12/8/00; WSR 91-13-038, § 263-12-145, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-145, filed 1/10/86. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-145, filed 12/2/82. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-145, filed 1/18/82; Order 9, § 263-12-145, filed 8/8/75; Order 7, § 263-12-145, filed 4/4/75; Order 4, § 263-12-145, filed 6/9/72; General Order 3, Rule 8.4, filed 10/29/65; General Order 2, Rule 8.4, filed 6/12/63. Formerly WAC 296-12-145.]

WAC 263-12-150 Finality of proposed decisions and orders. (1) Where no petition for review is filed. In the event no petition for review is filed as provided herein by any party, the proposed decision and order of the industrial appeals judge shall be adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts.

(2) Proposed decision and order deemed adopted without formal action. If an order adopting the proposed decision and order is not formally signed by the board on the day following the date the petition for review of the proposed decision and order is due, said proposed decision and order shall be deemed adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts.

(3) Order adopting proposed decision and order—delay in mailing to parties. To permit adequate time for postal delivery of petitions for review or requests for extension of time to file petitions for review which have been filed by mail pursuant to RCW 51.52.104 and WAC 263-12-01501 (b)(ii), the board will delay the mailing of its order adopting the proposed decision and order to all parties until three days after the date the petition is due. Notwithstanding the date of mailing of the order adopting the proposed decision and order, such order shall be effective immediately following the last day permitted for filing a petition for review.

(4) Setting aside final order due to delayed postal delivery. If, after entry or mailing of the order adopting proposed decision and order, a petition for review or a request for extension of time to file a petition for review is received which bears evidence of mailing within the time permitted for filing such petition or request for extension, the board will set aside the order adopting the proposed decision and order and consider the petition or request for extension as one timely filed.

[Statutory Authority: RCW 51.52.020. WSR 03-02-038, § 263-12-150, filed 12/24/02, effective 1/24/03; WSR 91-13-038, § 263-12-150, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-150, filed 1/10/86. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-150, filed 12/2/82; Order 4, § 263-12-150, filed 6/9/72; Rule 8.5, filed 6/12/63. Formerly WAC 296-12-150.]

WAC 263-12-155 Final decisions and orders after review. In those cases where a petition for review is granted, the record before the board shall be considered by a panel of at least two of the members of the board, on which not more than one industry and one labor member serve. The chairperson may be a member of any panel. The decision and order of any such panel shall be the decision and order of the board. Every final decision and order rendered by the board shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the board's order based thereon. The board shall in all cases render a final decision and order within one hundred and eighty days from the date a petition for review is filed. A copy of the decision and order, including the findings and conclusions, shall be mailed to each party to the appeal and to his or her attorney or representative of record.

[Statutory Authority: RCW 51.52.020. WSR 95-02-065, § 263-12-155, filed 1/3/95, effective 2/3/95; Order 9, § 263-12-155, filed 8/8/75; Order 4, § 263-12-155, filed 6/9/72; General Order 3, Rule 8.6, filed 10/29/65; General Order 2, Rule 8.6, filed 6/12/63; General Order 1, Rule 6.2, filed 3/23/60. Formerly WAC 296-12-155.]

WAC 263-12-156 Board review of final order. The board will consider motions to reconsider and motions to vacate final board orders. The procedure for review of final orders is as defined in CR 59 and CR 60 of the Washington court rules except that hearings on the motion will be held solely at the discretion of the board. After receipt of the motion the board will acknowledge receipt of the motion and direct the time frames for opposing parties to respond to the motion and for the moving party to reply.

[Statutory Authority: RCW 51.52.020. WSR 03-02-038, § 263-12-156, filed 12/24/02, effective 1/24/03.]

WAC 263-12-160 Final decisions favoring workers or beneficiaries—Retention of jurisdiction to fix interest due. (1) Qualifying appeals. A worker or beneficiary who prevails in his or her own appeal regarding a claim for temporary total disability or in any appeal by the employer shall be paid simple interest at the rate of twelve percent per annum on the unpaid amount of the award after deducting the amount of attorney's fees.

(2) Retention of jurisdiction to enter order for payment of interest. In a qualifying appeal the board will retain jurisdiction after issuance of its final order for the purpose of entering an order fixing the amount of interest to be paid by the party having the obligation to pay the amount of the award as a result of the board's final order. In the event a further appeal is taken to superior court from the final order of the board, the board will retain jurisdiction to fix interest only if directed to fix interest by order or judgment of the court or if the appeal to superior court is dismissed without a decision on the merits of the appeal.

(3) Party who may be obligated to pay award to transmit interest fixing information. In those cases where the board determines that interest may be payable pursuant to RCW 51.52.135, the department or self-insurer, as the case may be, shall notify the board in writing of the amount of any award paid subsequent to the date of the department order under appeal, the date of payment of the award, and any other information necessary for the board to calculate and fix the interest which may be due on such award. In cases involving payment of compensation for temporary total disability the department or self-insurer shall notify the board of the monthly rate or rates at which payments are made and the periods to which the rate or rates apply.

(4) Attorneys to notify board of amount of fees. The attorney or attorneys of record for a worker or beneficiary in a qualifying appeal shall upon the request of the board provide a written statement indicating the dollar amount of fees charged to the worker or beneficiary for services rendered in obtaining or securing the award in qualifying appeals under RCW 51.52.135. Such statement shall be provided by a date specified in the board's request, but in no case later than thirty days from the date of payment by the department or self-insurer of the award paid as a result of the board's final order. In the event that the attorney or attorneys of record do not provide the board with the requisite statement within the time specified, the amount of fees paid to the attorney or attorneys will be deemed to be equal to thirty percent of the award paid as a result of the board's final order.

(5) Fixing of interest and entry of order. Upon receipt of all required information, interest will be calculated by the board at twelve percent per annum from the date of the department order granting the award in an appeal by the employer or the date of the department order denying payment of the award in a qualifying appeal by a worker or beneficiary. Thereafter, the board will enter an order fixing the amount of interest to be paid by the party having the obligation to pay the award as a result of the board's final order. Such interest shall be paid in full to the worker or beneficiary and is not subject to any claim for attorney's fees.

[Statutory Authority: RCW 51.52.020, WSR 91-13-038, § 263-12-160, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.020 and 51.52.135, WSR 84-02-024 (Order 15), § 263-12-160, filed 12/29/83.]

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WAC 263-12-165 Attorney's fees. (1) Applications for attorney's fees.

(a) For the fixing of attorney fees as provided by RCW 51.52.120, the board shall fix a reasonable attorney fee to be paid by the worker, crime victim or beneficiary for services rendered before the board, or before the department in a claim resolution structured settlement agreement, if written application therefor is made by the attorney, worker, crime victim or beneficiary, within one year after the board's final decision and order, or approval of the claim resolution structured settlement agreement, is communicated to the party making the application. If such application for fixing of a fee is made by the attorney, it shall set forth therein the monetary amount which the attorney considers reasonable for all services rendered before the board in an appeal, or before the department in a claim resolution structured settlement agreement, and the justification supporting the requested fee. The board shall afford to all parties affected a minimum of ten days in which to submit comments and material information which may be helpful to the board in setting a fair and reasonable fee.

(b) For the ordered payment of attorney fees as provided by RCW 51.32.185, the board shall set the attorney fee in a manner consistent with applicable provisions of subsections (2) and (3) below.

(2) **Fee fixing criteria.** All attorney fees fixed by the board, where application therefor has been made, shall be established in accordance with Rule 1.5 of the Rules of Professional Conduct and the following general principles:

(a) Only one fee shall be fixed for legal services in any one appeal or claim resolution structured settlement agreement regardless of the number of attorneys representing the worker, crime victim or beneficiary, except that in cases of multiple beneficiaries represented by one or multiple attorneys the board has the discretion to set more than one attorney fee if so requested.

(b) The board shall defer fixing a fee until such time as information, which it deems sufficient upon which to base a fee, is available.

(c) A fee shall be fixed only in those cases where the attorney's services are instrumental in securing additional benefits to the worker, crime victim or beneficiary, sustaining the worker's or beneficiary's right to benefits upon an appeal by another party, or in securing a claim resolution structured settlement agreement.

(d) Where increased compensation is obtained, the fee may be fixed without regard to any medical benefits secured.

(e) In setting all fees, the following factors shall be carefully considered and weighed:

(i) Nature of the appeal or the claim resolution structured settlement agreement.

(ii) Novelty and complexity of the issues presented or other unusual circumstances.

(iii) Time and labor expended.

(iv) Skill and diligence in conducting the case or in securing the claim resolution structured settlement agreement.

(v) Extent and nature of the relief. In computing the extent of additional benefits, or the retention of benefits awarded by the department, the cost to the worker, crime victim or beneficiary of the litigation, i.e., medical examination

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and witness fees, shall be first deducted and the net benefits considered.

(vi) The amount of accrued time-loss payments as a result of proceedings before the board.

(vii) The prevalent practice of charging contingency fees in cases before the board.

(viii) The worker's or crime victim's circumstances and the remedial social purposes of the Industrial Insurance Act and of the Crime Victims Compensation Act, which are intended to provide sure and adequate relief to injured workers and crime victims and their families.

(f) In those cases where the payment of accumulated benefits is insufficient to allow payment of the fee set and allow the worker, crime victim or beneficiary to retain a reasonable monetary amount, the board may also set the schedule and manner in which such fee shall be payable.

(3) Amount of fees.

(a) Where additional compensation for permanent partial disability, loss of earning power, or total temporary disability is obtained as a result of settlement of the appeal on agreement of the parties prior to presentation of testimony, a fee of from 10 to 25 percent of the increased compensation due the worker, crime victim or beneficiary on the date of the board's order on agreement of the parties and by reason thereof shall be fixed after considering all factors.

(b) Where additional compensation for permanent partial disability, loss of earning power or total temporary disability is obtained after the presentation of testimony, a fee of from 10 to 30 percent of the increased compensation shall be fixed after considering all factors. This provision shall also apply to retroactive permanent total disability (pension) benefits.

(c) Where no additional compensation is obtained, but the worker or crime victim is relieved of the payment for medical benefits, a fee of from 10 to 25 percent of the amount the worker or crime victim is so relieved of paying shall be fixed after considering all factors.

(d) Where permanent total disability (pension) benefits are obtained for the worker or crime victim, or death benefits are obtained for survivors of a deceased worker or crime victim, 10 percent of the first \$40,000.00 of the pension reserve as calculated by the department of labor and industries, and 15 percent of the pension reserve in excess of \$40,000.00 shall constitute the usual fee, which may be decreased or increased after weighing all factors.

(e) Where indeterminate additional compensation is obtained because the claimant is successful in establishing a proper claim for benefits which was previously rejected or for which responsibility was denied, a fee in accordance with the preceding principles and factors shall be fixed.

(f) Where, upon an appeal by a party other than the worker or his or her beneficiary, the right to receive the benefits awarded by the department is affirmed, a fee in accordance with the preceding principles and factors shall be fixed.

(g) Where a claim resolution structured settlement agreement is approved by the board, fees for attorney's services are limited to fifteen percent of the total amount to be paid to the worker after the agreement becomes final.

(4) Excess fee unlawful. Where the board, pursuant to written application by an attorney, worker, crime victim or beneficiary, fixes a reasonable fee for the services of the attorney in proceedings before this board, or before the

department in securing a claim resolution structured settlement agreement, it is unlawful for the attorney to charge or receive any fee for such services in excess of that fee so fixed, per RCW 51.52.132.

[Statutory Authority: RCW 51.52.020. WSR 11-23-154, § 263-12-165, filed 11/22/11, effective 12/23/11; WSR 08-01-081, § 263-12-165, filed 12/17/07, effective 1/17/08; WSR 95-12-062, § 263-12-165, filed 6/5/95, effective 7/6/95; WSR 91-13-038, § 263-12-165, filed 6/14/91, effective 7/15/91; WSR 82-03-031 (Order 11), § 263-12-165, filed 1/18/82; Order 7, § 263-12-165, filed 4/4/75; Order 4, § 263-12-165, filed 6/9/72; Subsection 1 from General Order 3, Rule 9.1, filed 10/29/65; General Order 2, Rule 9.2, filed 6/12/63; General Order 1, Rule 6.4, filed 3/23/60; Subsection (2), General Order 3, Rule 9.2, filed 10/29/65; General Order 9.1, filed 6/12/63; General Order 1, Rule 6.4, filed 3/23/60. Formerly WAC 296-12-165.]

WAC 263-12-170 Appeals to superior court—Certification of record. Upon receipt of a copy of notice of appeal to superior court from a board order, served upon the board by the appealing party pursuant to RCW 51.52.110, 7.68.110, 51.48.131, 34.05.542 or 49.17.150, the executive secretary or his or her designee shall certify the record made before the board to the court pursuant to the provisions of RCW 51.52.110, 7.68.110, 51.48.131, 34.05.566 or 49.17.150. Copies of such record (except nonreproducible exhibits) shall be furnished to all parties to the proceedings before the board.

[Statutory Authority: RCW 51.52.020. WSR 91-13-038, § 263-12-170, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-170, filed 1/10/86. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-170, filed 12/2/82; Order 7, § 263-12-170, filed 4/4/75; Order 4, § 263-12-170, filed 6/9/72; General Order 2, Rules 10.1 and 10.2, filed 6/12/63; General Order 1, Rules 7.1 and 7.2, filed 3/23/60; Subsections (1) and (2), General Order 3, Rule 10.2, filed 10/29/65. Formerly WAC 296-12-170.]

WAC 263-12-171 Appeals to superior court—Service of final court order or judgment on the board. In all cases in which a party has appealed to the superior court from a decision of the board, or from superior court to any appellate court, the prevailing party in such appeal shall promptly forward to the board a conformed copy of the final order, judgment or decision of the court.

[Statutory Authority: RCW 51.52.020. WSR 91-13-038, § 263-12-171, filed 6/14/91, effective 7/15/91.]

WAC 263-12-175 Computation of time. The time within which any act shall be done, as provided by these rules, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal state holiday, and then it is also excluded.

[Statutory Authority: RCW 51.52.020. WSR 98-20-109, § 263-12-175, filed 10/7/98, effective 11/7/98; WSR 82-03-031 (Order 11), § 263-12-175, filed 1/18/82; Order 4, § 263-12-175, filed 6/9/72; General Order 2, Rule 11, filed 6/12/63. Formerly WAC 296-12-175.]

WAC 263-12-180 Petitions for declaratory ruling. (1) Right to petition for declaratory ruling. As prescribed by RCW 34.05.240, any interested party may petition the board for a declaratory ruling with regard to the board's policies, procedures, and rules.

(2) Form of petition. The form of the petition for a declaratory ruling shall generally adhere to the following:

(a) On the first page shall appear the wording "In the matter of the petition of (name of petitioning party) for a declaratory ruling."

(b) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the relief sought by the petitioner. The petition shall be signed by the petitioner or its representative and contain a statement that the person signing the petition has read it and that to the best of his or her knowledge or information and belief the contents thereof are true.

(3) Consideration of petition. The entire board shall consider the petition, and within a reasonable time shall:

(a) Issue a nonbinding declaratory ruling; or

(b) Notify the petitioner that no declaratory ruling is to be issued; or

(c) Set a reasonable time and place for a hearing or for submission of written evidence on the matter, and give reasonable notification to the petitioner of the time and place for such hearing or submission, and of the issues involved.

(4) Disposition of petition. If a hearing is held or evidence is submitted, the board shall, within a reasonable time:

(a) Issue a binding declaratory ruling; or

(b) Issue a nonbinding declaratory ruling; or

(c) Notify the petitioner that no declaratory ruling is to be issued.

[Statutory Authority: RCW 51.52.020. WSR 98-20-109, § 263-12-180, filed 10/7/98, effective 11/7/98. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-180, filed 1/10/86; Order 4, § 263-12-180, filed 6/9/72; General Order 2, Rules 12.1-12.4, filed 6/12/63; Subsection (3), General Order 3, Rule 12.3, filed 10/29/65. Formerly WAC 296-12-180.]

WAC 263-12-190 Petitions for rule making. (1) Right to petition for rule making. Any interested person may petition the board for the promulgation, amendment, or repeal of any rule.

(2) Form of petition. The form of the petition for promulgation, amendment, or repeal of any rule shall generally adhere to the following:

At the top of the page shall appear the wording, "Before the board of Industrial Insurance Appeals, State of Washington." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for (state whether promulgation, amendment or repeal) of rule (or rules)." Opposite the foregoing caption shall appear the word "petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether the petitioner seeks the promulgation of new rule or rules, or amendment or repeal of existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for amendment, the new matter shall be underscored and the matter proposed to be deleted shall appear in double parentheses. Where the petition is for repeal of an existing

rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

Petitions shall be dated and signed by the person or entity named in the first paragraph or by his or her attorney. The original and two legible copies of the petition shall be filed with the board. Petitions shall be on white paper, 8 1/2" x 11" in size.

(3) Consideration of petitions. All petitions shall be considered by the entire board, and the board may, in its discretion, order an informal hearing or meeting for the further consideration and discussion of the requested promulgation, amendment or repeal of any rule.

(4) Notification of disposition of petition. The board shall notify the petitioning person within a reasonable time of the disposition, if any, of the petition.

[Statutory Authority: RCW 51.52.020. WSR 95-02-065, § 263-12-190, filed 1/3/95, effective 2/3/95. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-190, filed 1/10/86; Order 4, § 263-12-190, filed 6/9/72; General Order 2, Rules 13.1-13.4, filed 3/23/60; Subsections (3)-(4), General Order 3, Rule 13.3, filed 10/29/65. Formerly WAC 296-12-190.]

WAC 263-12-195 Significant decisions. (1) The board's publication "*Significant Decisions*," prepared pursuant to RCW 51.52.160, contains the decisions or orders of the board which it considers to have an analysis or decision of substantial importance to the board in carrying out its duties. Together with the indices of decision maintained pursuant to WAC 263-12-016(4), "*Significant Decisions*" shall serve as the index required by RCW 42.17.260 (4)(b) and (c).

(2) The board selects the decisions or orders to be included in "*Significant Decisions*" based on recommendations from staff and the public. Generally, a decision or order is considered "significant" only if it provides a legal analysis or interpretation not found in existing case law, or applies settled law to unusual facts. Decisions or orders may be included which demonstrate the application of a settled legal principle to varying fact situations or which reflect the further development of, or continued adherence to, a legal principle previously recognized by the board. Nominations of decisions or orders for inclusion in "*Significant Decisions*" should be submitted in writing to the executive secretary.

(3) "*Significant Decisions*" consists of microfilmed copies of the decisions and orders identified as significant and headnotes summarizing the proposition or propositions for which the board considers the decisions or orders "significant." Indices are also provided to identify each decision or order by name and by subject. Permanent revisions and additions to "*Significant Decisions*" are prepared annually. A cumulative supplement is prepared annually between permanent updates and is provided to subscribers of "*Significant Decisions*." The cumulative supplement contains decisions or orders identified by the board as "significant" in the interim between permanent updates.

(4) Copies of "*Significant Decisions*" and permanent updates are available to the public at cost. Requests for information concerning the purchase of "*Significant Decisions*" should be directed to the executive secretary.

[Statutory Authority: RCW 51.52.020. WSR 91-13-038, § 263-12-195, filed 6/14/91, effective 7/15/91.]

