

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

(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.]