

WAC 208-08-160 Interlocutory decision—Discretionary review.

(1) **Definitions.** Unless the context indicates otherwise, as used in this chapter, the following terms mean:

(a) **"Interlocutory decision"** means any initial decision or order of the presiding officer that does not terminate or fully resolve the matter before the presiding officer.

(b) **"Motion for discretionary review"** means a motion to the director for discretionary review of an interlocutory decision by the presiding officer and does not mean a petition for review under RCW 34.05.464.

(c) **"Petition for reconsideration"** means a petition before the presiding officer for reconsideration of an interlocutory decision and does not mean a petition for review under RCW 34.05.464 or a petition for reconsideration under RCW 34.05.470.

(2) **Actions reviewed.** A party may seek discretionary review by the director of any interlocutory decision, including procedural or substantive decisions or orders.

(3) **Exhaustion of administrative remedies.**

(a) **Filing a petition for reconsideration.** Prior to filing a motion for discretionary review, the party must file a petition for reconsideration with the presiding officer within ten days of service of the interlocutory decision.

(b) **Service.** Copies of the petition for reconsideration must be served on all other parties or their representatives at the time the petition is filed.

(c) **Party hearing the petition for reconsideration.** The petition for reconsideration is considered and disposed of by the presiding officer who entered the interlocutory decision, if reasonably available.

(d) **Requirement of a written order.** The disposition is in the form of a written order pursuant to WAC 10-08-210.

(e) An order denying reconsideration is not subject to judicial review prior to final order by the director in relation to a respondent as to all matters in a case.

(4) **Motion for discretionary review.**

(a) **Party filing.** Any party to an adjudicative proceeding may file a motion for discretionary review of a written order disposing of a petition for reconsideration.

(b) **How to file.** The motion for discretionary review must be filed with the director within ten days of the date of service of the written order disposing of the petition for reconsideration. The motion must state the specific grounds upon which relief is requested.

(c) **Service.** Copies of the motion for discretionary review must be served upon all other parties or their representatives at the time the motion for discretionary review is filed. Filing of the motion for discretionary review with the director is delivery of a copy of the motion for discretionary review to the office of the director at the principal office of the department. For purposes of this section, service upon the attorney of record of any agency or party of record constitutes service upon the agency or party of record.

(d) **Contents of motion.** The motion for discretionary review must specify the portions of the interlocutory decision to which exception is taken and must refer to the evidence of record which is relied upon to support the motion for discretionary review.

(e) **Reply to motion.** Any party may file a reply to a motion for discretionary review. The reply must be served in the same manner as the motion for discretionary review within ten days of the date of

service of the motion for discretionary review, and copies of the reply must be served upon all other parties or their representatives at the time the reply is filed.

(f) **Considerations governing acceptance of discretionary review.** Discretionary review of an interlocutory decision by the presiding officer will be accepted by the director only:

(i) If the presiding officer has committed an obvious error which would render further proceedings useless; or

(ii) If the presiding officer has committed probable error and the decision substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the presiding officer has so far departed from the accepted and usual course of administrative proceedings as to call for the exercise of review jurisdiction by the director.

(g) **Scope of review.** Unless the motion for discretionary review is deemed denied under (h) of this subsection, the motion for discretionary review is considered and disposed of by the director. The disposition is in the form of a written order. The director will review only the issues raised in the motion for discretionary review.

(h) **No oral argument; exception.** In the manner of a petition for review under RCW 34.05.464 or a petition for reconsideration under RCW 34.05.470, the director will not hear oral argument on a motion for discretionary review of an interlocutory decision unless (i) the issue before the director on motion for discretionary review is procedural in nature; and (ii) the director notifies the parties in writing of the date, time, and manner for hearing oral argument, which may include a scheduled teleconference. If the director elects to have oral argument on the motion for discretionary review, the director may designate a neutral officer of the department to hear such oral argument and confer with the director prior to the director issuing an order on the motion.

(i) **Suspension of proceeding.** Neither a motion for discretionary review nor any disposition of such motion suspends or stays the proceeding or effectiveness of the interlocutory order unless otherwise ordered by the director.

(j) **Denial.** The director is deemed to have denied the motion for discretionary review, if within twenty days from the date the motion for discretionary review is filed, the director does not either dispose of the motion or serve the parties with a written notice specifying the date by which the director will act on the motion. Denial of the motion does not affect the rights of a party to obtain later review of the presiding officer's decision or the issues included in that decision.

(k) **Judicial review.** Judicial review of the director's decision on motion for discretionary review occurs only after final order by the director in relation to a respondent as to all matters in a case.

[Statutory Authority: RCW 34.05.250. WSR 17-16-056, § 208-08-160, filed 7/25/17, effective 10/1/17.]