WSR 24-19-013
PROPOSED RULES
BOARD OF INDUSTRIAL INSURANCE APPEALS

[Filed September 5, 2024, 2:53 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Chapter 263-12 WAC, Practice and procedure (before the board of industrial insurance appeals (board)).

Hearing Location(s): On October 30, 2024, at 10 a.m., virtual or telephonic hearing only. Please use your computer or mobile app to join on Zoom https://us06web.zoom.us/j/2427334324; or call in (audio only) at 253-205-0468, Meeting ID 242 733 4324.

Date of Intended Adoption: November 6, 2024.

Submit Written Comments to: Brian Watkins, P.O. Box 42401, Olympia, WA 98501, email brian.watkins@biia.wa.gov, fax 855-586-5611, beginning October 2, 2024, by October 28, 2024.

Assistance for Persons with Disabilities: Contact Tim Blood, phone 360-753-6823, fax 855-586-5611, TTY 800-833-6384, email timothy.blood@biia.wa.gov, website for reasonable accommodation www.biia.wa.gov/Accommodation.html, by October 23, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: (1) Proposal to amend WAC 263-12-01501 to clarify that court reporters are the persons who must file perpetuation deposition transcripts.

(2) Proposal to amend WAC 263-12-115 to clarify the order of presentation in worker appeals from claim rejection orders where the worker argues that a presumption applies and there is a dispute about whether the presumption applies.

(3) Proposal to amend WAC 263-12-117 to clarify that the court reporter hired by the party taking the deposition is responsible for filing perpetuation deposition transcripts.

(4) Proposal to amend WAC 263-12-11801 to change the chapter reference to reflect the correct RCW.

(5) Proposal to amend WAC 263-12-145 to clarify that to toll the deadline to file a petition for review, a request for translation of a proposed decision and order must be received before the deadline to file a petition for review has expired.

(6) Proposal to amend WAC 263-12-170 to add that documents sealed by the board after *in camera* review are not part of the certified appellate board record and shall not be submitted to the superior court unless ordered by the superior court.

Reasons Supporting Proposal: **(1) Filings with the board:** Amend WAC 263-12-01501(1) to clarify that written communications can only be filed at the board's Olympia office. We no longer accept mail at the board field offices. Also amend WAC 263-12-01501(6) to ensure that written communication filed with the board shall not include personal identifiers as described in GR 31(e) and, if present, shall be redacted. Change would prohibit or discourage parties from filing Social Security numbers, financial account numbers, and driver's license numbers.

(2) Order of presentation in worker appeals from claim rejection orders where the worker argues that a presumption applies: Amend WAC 263-12-115 to clarify that if a claimant or beneficiary appeals a determination rejecting an industrial insurance claim and asserts that a

statutory presumption applies, the appealing party will first present evidence in support of that assertion. The employer or department may then present evidence in opposition of the assertion a statutory presumption applies. The judge shall then rule on whether a statutory presumption applies. If a statutory presumption applies, the department or self-insured employer may present evidence to rebut the statutory presumption. The claimant may then present additional evidence. Nothing in this subsection prohibits the industrial appeals judge or board from consolidating or bifurcating trial to decide issues or appeals, consistent with CR 42.

Explanation: With the advent of occupational disease presumptions now present in the Industrial Insurance Act, it is time to reexamine the board's strict rule on the order of presentation at trial. Change rule to recognize the difference in the order of presentation when a worker appeals a claim rejection order and claims entitlement to a statutory presumption. The notion is that when a worker appeals a claim rejection order and claims entitlement to a statutory presumption, the worker should first show that the presumption applies, then the defense should go next to have an opportunity to rebut the presumption, then the claimant should be allowed to present evidence in response to the case presented by the defense. Note: A change was made after early comment from stakeholder. The Washington State Association for Justice requested that we clarify that this applies only when there is a claim rejection **and it is disputed** as to whether a presumption applies.

(3) Perpetuation depositions: Amend WAC 263-12-117(4) to clarify that the court reporter hired by the party taking a perpetuation deposition is responsible for filing perpetuation deposition transcripts. Why? There have been some instances where there was confusion about whether the court reporter or the attorney should file it. Also amend WAC 263-12-117(4) to ensure that deposition transcripts are Americans with Disabilities Act compliant (readable by reader software for people with vision impairment).

(4) Affidavits and declarations: Housekeeping change. WAC 263-12-11801(2) currently refers to affidavits or declarations conforming to the requirements of RCW 9A.72.085. But that RCW has been repealed. Chapter 5.50 RCW is titled Uniform Unsworn Declarations Act. We should change the reference to chapter 5.50 RCW.

(5) Requests for translation of proposed decisions and orders (PDO) by limited-English-proficient persons: Amend WAC 263-12-145 to clarify that to toll the deadline to file a petition for review, a request for translation of a PDO must be received before the deadline to file a petition for review has expired.

(6) Certified appellate board record (CABR): WAC 263-12-170 (governing the board's final record) should be amended to add that documents sealed by the board (e.g., trade secrets or privileged information) after in camera review are not part of CABR and shall not be furnished to the parties unless ordered by the superior court.

Background: When a party files an appeal to the superior court from a board order, the chief legal officer or designee must certify the record made before the board to the court. RCW 51.52.110 and WAC 263-12-170. This is colloquially called the board's *CABR*.

Good faith and fair dealing issue: Under SHB 1521, effective July 1, 2024, all self-insured municipal employers, self-insured private sector firefighter employers, and their third party administrators have a duty of good faith and fair dealing to workers. Penalties can be imposed by the department of labor and industries for the breach of

this duty. Appeals will be heard by the board, resulting in "good faith litigation." With the new good faith litigation, the board will expect motions from workers to pierce attorney-client privilege under *Cedell v. Farmers Ins.*, 176 Wn.2d 686, 295 P.3d 239 (2013), which permits piercing of that privilege in first-party bad faith insurance claims. There will be motions relying upon *Cedell* to the board. *Cedell* requires an *in camera* review in superior court to rule on privilege issues. Obviously, CR 53.3 applies to the board, so the industrial appeal judges (IAJ) can perform *in camera* reviews.

Trade secrets issue: Another issue is that the board is beginning to see industrial safety appeals where employers assert that certain exhibits or testimony contain trade secrets and should be placed under seal under GR 15 and chapter 19.18 RCW (Uniform Trade Secrets Act), which apply to board appeals.

It has been proposed that the exhibits/testimony the IAJ excludes on privilege or trade secrets grounds would, presumably, not be initially included in CABR until ordered by the superior court. But that potentially hampers the superior court from conducting its own de novo review of those documents/evidence.

The board should develop a system to keep a sealed portion of the CABR file in these limited circumstances that contains the submitted, but ruled privilege or trade secret materials. The board members can of course conduct their own review if/when they review a petition for review of a proposed decision and order from an IAJ.

Question: How, whether, and when should the board transmit this sensitive information to superior court. We need to amend our rule to make it clear that **documents sealed by the board after *in camera* review are not part of the certified appellate board record and shall not be furnished to the parties unless ordered by the superior court. The party who wants the superior court to review this information should file a motion in superior court to order the board to provide the documents so this sensitive information can be handled carefully in the manner directed by the courts.**

Statutory Authority for Adoption: RCW 51.52.020.

Statute Being Implemented: For number 6 above, SHB 1521; and in light of *Cedell v. Farmers Ins. Co. of Washington*, 176 Wn.2d 686 (2013).

Rule is necessary because of state court decision, [no further information supplied by agency].

Name of Proponent: Douglas Palmer, Attorney, Hamrick Palmer Johansen, private.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brian Watkins, Olympia, 360-753-6823.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These are procedural rules relating to procedures, practices, or requirements relating to agency rules. There are no significant legislative rules proposed.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

September 5, 2024
Brian Watkins
Chief Legal Officer

OTS-5832.1

AMENDATORY SECTION (Amending WSR 23-23-010, filed 11/1/23, effective 12/2/23)

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 by using one of four methods: Personally, by mail, by telephone facsimile, or by electronic filing. Failure of a party to comply with the filing methods selected by the party for use under this section, or as otherwise set forth in these rules or statute for filing written communications may prevent consideration of a document.

(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. 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 website.

(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) 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.

(v) 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 website. Communication sent by email will not constitute or accomplish filing. Communication filed using the board's website 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 website. 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 website 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.

(4) **Electronic filing of application for approval of claim resolution settlement agreement.** An application for approval of claim resolution settlement agreement must be filed electronically using the form for electronic filing of applications for approval of claim resolution settlement agreement as provided on the board's website. An electronic application for approval of claim resolution 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 website 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 settlement agreement has been received. An electronic copy of the signed agreement for claim resolution settlement agreement must be submitted as an attachment to the application for approval. The board will reject an application for approval of claim resolution 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 chief legal officer of the board.

(6) **Form and service requirements.** Any written communications with the board concerning an appeal should reference the docket number assigned by the board to the appeal, if known. Written communication shall not include personal identifiers including Social Security numbers (last four digits if necessary), financial account numbers (last four digits if necessary), and driver's license numbers, and as described in GR 31. If present, the filing party shall redact such personal identifiers (completely removed, not masked). The responsibility for redacting personal identifiers rests solely with counsel and the parties. Copies of any written communications filed with the board shall be served on all other parties or their representatives of record, and the original shall demonstrate compliance with the requirement to serve all parties. Where service is accomplished electronically (for example, facsimile or email), the proof of service must include language certifying that an electronic agreement exists (for example, "per electronic service agreement"). All written communications with the board shall be on paper 8 1/2" x 11" in size.

AMENDATORY SECTION (Amending WSR 23-23-010, filed 11/1/23, effective 12/2/23)

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.

(d) If a claimant or beneficiary appeals a determination rejecting an industrial insurance claim and asserts that a statutory presumption applies, and the assertion is disputed, the appealing party will first present evidence in support of that assertion. The employer or the department may then present evidence in opposition of the assertion that a presumption applies. The judge shall then rule on whether a presumption applies. If a presumption applies, the department or employer may present evidence to rebut the statutory presump-

tion. The claimant may then present additional evidence. Nothing in this subsection prohibits the industrial appeals judge from consolidating or bifurcating trial to decide issues or appeals, consistent with CR 42.

(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 10 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.**

(a) 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.

(b) In cases concerning Washington Industrial Safety and Health Act citations, a failure to appear by the person and/or party who filed the appeal is deemed to be an admission of the validity of any citation, abatement period, or penalty issued or proposed, and constitutes a waiver of all rights except the right to receive a copy of the decision.

(c) In cases concerning willful misrepresentation, the industrial appeals judge may proceed with the hearing, receive evidence, and issue a proposed decision and order without requirement of further notice to the appealing party who fails to appear.

(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) **Hearing format.** Hearings generally occur by contemporaneous transmission from different locations (for example, video or telephone). Participants may request to appear in person. If the parties disagree on the format for the hearing, the industrial appeals judge will determine the format for the hearing, and may consider 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 interpreted.
- Ability of the witness to travel.
- Feasibility of taking a perpetuation deposition.
- Availability of quality telecommunications equipment and service.

The industrial appeals judge presiding at the hearing will swear in the witness testifying by telephone or video as if the witness appeared in person at the hearing. For rules relating to telephone or video deposition testimony, see WAC 263-12-117.

AMENDATORY SECTION (Amending WSR 23-23-010, filed 11/1/23, effective 12/2/23)

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

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

(2) **Deposition format:** When testimony is taken by perpetuation deposition, a party or witness, representative, or other participant may participate, and testimony may be presented, in person or by contemporaneous transmission from a different location (telephone or video) if all parties agree. If there is no agreement, the industrial ap-

peals judge may consider the following nonexclusive factors when determining the format by which participation occurs:

- 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 interpreted.
- Ability of the witness to travel.
- Availability of quality telecommunications equipment and service.

If a perpetuation deposition is taken by telephone or video, 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. If a party takes a deposition under this section, but elects not to file the deposition as evidence in the appeal, the party shall provide written notice to the assigned industrial appeals judge and all other parties prior to the deposition filing deadline.

(4) The ((~~party~~)) court reporter filing a deposition must submit the stenographically reported and transcribed deposition, certification, and exhibits in an electronic format in accordance with procedures established by the board. The following requirements apply to the submission of depositions:

(a) Video depositions will not be considered as part of the record on appeal;

(b) The electronic deposition transcript must be submitted in searchable pdf format that is accessible to persons with disabilities (including, but not limited to, being compatible with screen readers such as JAWS, NVDA, Narrator for Windows, VoiceOver for Apple, and TalkBack for Android);

(c) Exhibits to the deposition must be filed electronically as a single attachment separate from the deposition transcript and certification;

(d) Any media exhibit (audio or video) must meet the requirements set forth in WAC 263-12-116; and

(e) If the deposition is not transcribed in a reproducible format that is accessible to persons with disabilities, or not properly submitted, 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.

AMENDATORY SECTION (Amending WSR 14-24-105, 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.**

(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~~)) 10 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~~)) chapter 5.50 RCW, 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~~)) 14 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.

AMENDATORY SECTION (Amending WSR 18-24-123, filed 12/5/18, effective 1/5/19)

WAC 263-12-145 Petition for review. (1) **Time for filing.** Within ((~~twenty~~)) 20 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) **A petition for review must be filed separately.** A petition for review must be filed separately from any other pleading or communication with the board and must note "PETITION FOR REVIEW" prominently on the first page of the submission.

(3) **Extensions of time.**

(a) The board may extend the time for filing a petition for review upon written request of a party filed within ((~~twenty~~)) 20 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 an application for further extension is filed within ((~~twenty~~)) 20 days from the date of communication of the proposed decision and order to the parties or their representatives of record or 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.

(b) An unrepresented limited-English-proficient party may file a request for translation of a proposed decision and order. A request for translation of a proposed decision and order by an unrepresented limited-English-proficient party that the board received within the time frame for a petition for review will also be treated as a request for extension of time. When the board receives and mails the translated proposed decision and order, the board will also extend the time for filing a petition for review for all parties for an additional ((~~thirty~~)) 30 days.

(4) **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 pro-

ceedings at the hearing. The requesting party shall sign an acknowledgment 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.

(5) **Action by board on petition for review.**

(a) After receipt of a petition for review, the board shall enter an order within ((~~twenty~~)) 20 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~~)) 180 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~~)) 20 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.

(6) **Reply to petition for review.** Any party may, within ((~~ten~~)) 10 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.

AMENDATORY SECTION (Amending WSR 21-15-042, filed 7/14/21, effective 8/14/21)

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 chief legal officer 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. Documents sealed by the board after in camera review are not part of the certified appellate board record and shall not be furnished to the parties unless ordered by the superior court.