

Title 263 WAC

BOARD OF INDUSTRIAL INSURANCE APPEALS

**Chapter
263-12**

Practice and procedure.

**Chapter 263-12 WAC
PRACTICE AND PROCEDURE**

WAC

- 263-12-005 Purpose.
- 236-12-010 Function and jurisdiction.
- 263-12-015 Administration and organization.
- 263-12-016 Public records—Location—Office hours.
- 263-12-018 Public records—Exemptions.
- 263-12-020 Appearances of parties before the board.
- 263-12-025 Appearances of parties before the board—Appearance by representatives.
- 263-12-027 Appearances of parties before the board—No formal admission to practice.
- 263-12-030 Appearances of parties before the board—Withdrawal or substitution of representatives.
- 263-12-035 Appearances of parties before the board—Conduct.
- 263-12-045 Hearing examiners.
- 263-12-050 Appeals arising under the Industrial Insurance Act—Contents of notice of appeal.
- 263-12-053 Appeals arising under the Crime Victims Compensation Act—Contents of notice of appeal.
- 263-12-056 Appeals arising under the Washington Industrial Safety and Health Act—Contents of notice of appeal.
- 263-12-060 Filing appeals—Procedures—Limitation of time.
- 263-12-065 Disposition on department record.
- 263-12-070 Granting the appeal.
- 263-12-075 Cross appeals.
- 263-12-080 Correction and amendment of notice.
- 263-12-090 Conferences—Notice of conferences.
- 263-12-093 Conferences—Disposition of appeals by agreement.
- 263-12-095 Conference procedure where agreement concerning final disposition of appeal is not reached by the parties.
- 263-12-100 Hearings—Notice of hearing.
- 263-12-115 Procedures at hearings.
- 263-12-120 Additional evidence by hearing examiner.
- 263-12-125 Applicability of court rules.
- 263-12-130 Disposition of contested cases—Definition.
- 263-12-135 Record.
- 263-12-140 Proposed decisions and orders.
- 263-12-145 Petition for review.
- 263-12-150 Finality of proposed decisions and orders.
- 263-12-155 Final decisions and orders after review.
- 263-12-165 Attorney's fees.
- 263-12-170 Appeals to superior court—Certification of record.
- 263-12-175 Computation of time.
- 263-12-180 Petitions for declaratory ruling.
- 263-12-190 Petitions for rule making.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

*Reviser's note: WAC 263-12-028 and 263-12-040 as shown in this disposition, were sections within chapter 296-12 WAC disposition, when all rules were recodified into chapter 263-12 WAC. Therefore, the sections were merely given the WAC 263-12-028 and 263-12-040 designation for codification purposes only.

- 263-12-028 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. *See Reviser's note.
- 263-12-040 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.] *See Reviser's note.
- 263-12-055 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.
- 263-12-105 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.
- 263-12-110 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.

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 42.17.250-42.17.320 (Initiative 276), pertaining to public records. [Order 7, § 263-12-005, filed 4/4/75.]

WAC 263-12-010 Function and jurisdiction. It is the function of the Board as an agency to review, hold hearings on, and decide all appeals filed from orders, decisions or awards of the Department of Labor and Industries issued either under the Industrial Insurance Act (Title 51 RCW) or the Crime Victims Compensation Act (chapter 68 of Title 7 RCW), and from all citations or penalty assessments issued by the Department under the Washington Industrial Safety and Health Act (chapter 17 of Title 49 RCW). [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 chairman, who must be a member of the Washington State Bar, is the representative of the public. Whenever the orderly and expeditious disposition of the workload of the Board necessitates, the

Governor may appoint two pro tem members in addition to the regular members, one of whom shall be a representative of workers and one of whom shall be a representative of employers. The members of the Board shall devote their entire time to the duties of the Board.

(2) **Location of the Board.** The headquarters, and principal office of the Board, is located at 410 W. Fifth, Capital Center Building, in Olympia, Washington 98504.

(3) **Formal Board meetings.** The Board shall meet in formal session at its headquarters in Olympia, Washington at 9 a.m. on Friday of each calendar week of the year, and at such other times and places as the Board may deem necessary, subject to 24-hour notice as required by law.

(4) **Staff organization.** (a) The Board's headquarters in Olympia is staffed with executive, administrative and clerical personnel.

(b) The Board has a staff of hearing examiners who travel throughout the state conducting hearings and who have their offices in Olympia.

(c) The office of the Secretary of the Board is located at the headquarters and principal office of the Board.

(5) **Communications with the Board.** All written communications by parties pertaining to a particular case, including applications, motions, requests, or petitions for review, shall be filed with the Secretary of the Board at its headquarters in Olympia, Washington, except that copies of all correspondence and official communications filed with the Secretary of the Board pertaining to a particular case, before the entry of a Proposed Decision and Order, must be sent to the hearing examiner assigned to the case for his action. Correspondence respecting the scheduling of a particular case shall be sent to the hearing examiner assigned to that case. Copies of all such written communications shall be furnished to all other parties or their representatives of record, and the original shall show thereon compliance with this requirement. [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 263-12-016 Public records—Location—Office hours. (1) Public records shall be available for inspection and copying during the customary office hours of the Board. For the purpose of this chapter, the customary office hours shall be from 8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays.

(2) General information concerning the Board may be obtained at its headquarters, 410 W. Fifth, Capital Center Building, Olympia, Washington 98504.

(3) Upon written request, made to the Board's headquarters, in Olympia, the Board or its designee may authorize, and promptly make appropriate arrangements for, inspection and copying of its public records.

(4) Indexes 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

hearing examiners; (c) hearing examiner's handbook; (d) in addition, any indexes 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 said public records.

(6) A fee of ten cents per page shall be charged for copies made with the Board's equipment. Copies made with the use of one's personal equipment and paper shall be free of charge. [Order 10, § 263-12-016, filed 4/5/76; Order 7, § 263-12-016, filed 4/4/75.]

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 42.17.310.

(2) Pursuant to RCW 42.17.260, 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 42.17 RCW authorizing withholding the record and a brief explanation of how the exemption applies to the record held will be included.

(4) Denials of requests for public records will be reviewed, upon request by the applicant, by the Board pursuant to RCW 42.17.320. [Order 7, § 263-12-018, filed 4/4/75.]

WAC 263-12-020 Appearances of parties before the Board. (1) **Who May Appear.** (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 (2) below and shall thereafter be deemed a party in 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 (2) below, and shall thereafter be deemed a party in the appeal.

(c) Any party to any appeal may appear before the Board at any conference or hearing held in such appeal, either representing himself or by a lay person, or by an attorney at law of his choosing. If no agreement of the parties is reached at such conferences 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.

(d) Where the party appears representing himself, he may be accompanied, both at conference and at hearing, by a lay person of his choosing who shall be permitted to accompany the party into the conference or hearing room and with whom he can confer during such procedures.

(e) All parties who appear either at conferences or hearings will be assisted by the Board's hearing examiner assigned to the case in a fair and impartial manner consistent with his responsibilities to the end that all parties clearly understand the procedure which is to be followed and the issues which are involved in the proceedings. Any party who appears representing himself shall be carefully advised by the hearing examiner of the burden of proof that he has if he is to prevail in his contention.

(2) **Manner of Appearance.** (1) Appearances shall be made either by:

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

(ii) Physically appearing at the time and place of a conference or hearing on the appeal, and notifying the hearing examiner conducting the same of the party to be represented, and the name and address of the representative.

(b) Copies of every written notice of appearance shall be furnished to all other parties or their representatives of record at the time the original notice is filed with the Secretary of the Board.

(c) All notices and orders shall be served by the Board upon such representative in addition to the party represented, and service upon the representative shall constitute service upon the party.

(3) **No Formal Admission to Practice.** Duly authorized representatives shall be permitted to appear in proceedings before the Board without a formal request or admission to practice before the Board.

(4) **Withdrawal or Substitution of Representatives.** An attorney or other representative withdrawing from a case shall immediately so notify the Secretary of the Board, the hearing examiner, and all parties of record in writing, or shall state such withdrawal on the record at a conference or hearing. Any substitution of an attorney or representative shall be accomplished by written notification to the Secretary of the Board, to the hearing examiner, and to all parties of record together with the written consent of the prior attorney or representative, or if such consent cannot be obtained, a written statement of the reason therefor shall be supplied.

(5) **Conduct.** (a) All persons appearing as counsel or representatives in proceedings before the Board or before its hearing examiners shall conform to the standards of ethical conduct required of attorneys before the courts of the State of Washington. If any such person does not conform to such standard, the hearing examiner shall, at his discretion and depending on all the circumstances, admonish or reprimand such person, or exclude such person from further participation in the proceedings and adjourn the same, or certify the facts to the appropriate superior court for contempt proceedings as provided in RCW 51.52.100, or report the matter to the Board, which may, in its discretion, after notice and hearing, take appropriate disciplinary action including, but not limited to, a letter of reprimand, refusal to permit such person to appear in a representative capacity in any proceeding before the Board or its hearing examiners, or

certification of the record to the superior court as provided in RCW 51.52.100.

(b) 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 hearing examiner shall, at his discretion and depending on all the circumstances, admonish or reprimand such person, or exclude such person from further participation in the proceedings and adjourn the same, or certify the facts to the appropriate superior court for contempt proceedings as provided in RCW 51.52.100, or report the matter to the Board, which may, in its discretion, after notice and hearing, take appropriate disciplinary action including, but not limited to, a letter of reprimand, refusal to permit such person to appear in a representative capacity in any proceeding before the Board or its hearing examiners, or certification of the record to the superior court as provided in RCW 51.52.100. [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.]

WAC 263-12-025 Appearances before the board—Appearance by representatives. (1) Appearances may be made on behalf of any party by his attorney or other duly authorized representative as defined in WAC 263-12-020 by:

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

(b) Entering an appearance at the time and place of a conference or hearing on the appeal, and notifying the presiding officer conducting the same of the party to be represented and the name and address of the representative.

(c) Copies of every written notice of appearance shall be furnished to all other parties or their representatives of record at the time the original is filed with the secretary of the board.

(2) Thereafter all future notices and orders shall be served by the board upon such representative, in addition to the party represented. Service upon the representative shall constitute service upon the party. [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.]

WAC 263-12-027 Appearances before the board—No formal admission to practice. Duly authorized representatives shall be permitted to appear in proceedings before the board as prescribed for in WAC 263-12-020 without a formal request or admission to practice before the board. [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.]

WAC 263-12-030 Appearances before the board—Withdrawal or substitution of representatives. An attorney or other representative withdrawing from a case shall immediately so notify the secretary of the board and all parties of record in writing, or shall state such withdrawal on the record at a conference or hearing. Any substitution of an attorney or representative shall be accomplished by written notification to the secretary of the board and to all parties of record together with the written consent of the prior attorney or representative, and if such consent cannot be obtained a written statement of the reason therefor shall be supplied. [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.]

WAC 263-12-035 Appearances before the board—Conduct. All persons appearing in a representative capacity in proceedings before the board or before its hearing examiners shall conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any such person does not conform to such standard, the presiding officer may, in his discretion and depending on all the circumstances, admonish or reprimand such person, or exclude such person from further participation in the proceedings and adjourn the same, or certify the facts to the appropriate superior court for contempt proceedings as provided in RCW 51.52.100, or report the matter to the board which may, in its discretion, after notice and hearing, take appropriate disciplinary action including, but not limited to, a letter of reprimand, refusal to permit such person to appear in a representative capacity in any proceeding before the board or its hearing examiners, or certification of the record to superior court as provided in RCW 51.52.100. [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.]

WAC 263-12-045 Hearing examiners. (1) Definition. Whenever used in these Rules, the term "hearing examiner" shall include any member of the Board, as well as any duly authorized hearing examiner assigned to conduct a conference or hearing.

(2) **Duties and Powers.** It shall be the duty of the hearing examiner to conduct conferences or hearings in cases assigned to him in an impartial and orderly manner, and he 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;
- (c) To rule on all procedural matters, objections and motions;
- (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 deems necessary to fairly and equitably decide the

appeal, including the obtaining of physical and mental examinations 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 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 take any other action necessary and authorized by these Rules and the law.

(3) **Substitution of Hearing Examiner.** At any time one hearing examiner may be substituted for another in any given appeal. [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 Appeals arising under the Industrial Insurance Act—Contents of notice of appeal. In cases arising under the Industrial Insurance Act (Title 51 RCW) the jurisdiction of the Board shall be invoked by filing a written notice of appeal, which shall contain where applicable:

(1) The name and address of the appealing party and his representative, if any;

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

(3) The name and address of the worker's employer at the time the injury or occupational disease occurred;

(4) 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;

(5) The time when and the place where the injury occurred or the occupational disease arose;

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

(7) A statement identifying the order, decision or award appealed from;

(8) The grounds upon which the appealing party considers such order, decision or award to be unjust or unlawful;

(9) A statement of facts in full detail in support of each ground stated;

(10) The relief sought, including the specific nature and extent thereof;

(11) The place, most convenient to the appealing party and his witnesses, where Board proceedings are requested to be held;

(12) A statement that the person signing the notice of appeal has read it and that to the best of his knowledge or information and belief the contents thereof are true. A notice of appeal may be signed by the appealing party or by his representative. [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 263-12-053 Appeals arising under the Crime Victims Compensation Act—Contents of notice of appeal. In cases arising under the Crime Victims Compensation Act (chapter 68 of Title 7 RCW), the jurisdiction of the Board shall be invoked by filing a written notice of appeal which shall contain where applicable:

- (1) The name and address of the appealing party and his representative, if any;
- (2) The time when and the place where the criminal act occurred, and the name and address of the alleged perpetrator of the crime, if known;
- (3) The place, most convenient to the appealing party and his witnesses, where Board proceedings are requested to be held;
- (4) The nature of the injury;
- (5) The date of the Department order, decision or award appealed from;
- (6) The grounds upon which the appealing party considers such order, decision or award to be unjust or unlawful;
- (7) A statement of facts in full detail in support of each ground stated;
- (8) The relief sought, including the specific nature and extent thereof;
- (9) A statement that the person signing the notice of appeal has read it and that to the best of his knowledge, or information and belief the contents thereof are true. A notice of appeal may be signed by the party or by his representative. [Order 7, § 263-12-053, filed 4/4/75.]

WAC 263-12-056 Appeals arising under the Washington Industrial Safety and Health Act—Contents of notice of appeal. In cases arising under the Washington Industrial Safety and Health Act (chapter 17 of Title 49 RCW), the notice of appeal when filed with the Board shall be in writing and shall contain where applicable:

- (1) The name and address of the appealing party and his representative, if any;
- (2) A statement identifying the citation, penalty assessment, or notice of abatement date appealed from;
- (3) The grounds upon which the appealing party considers such citation, penalty assessment, or abatement date to be incorrect or improper;
- (4) A notice of appeal may be signed by the party or by his representative. [Order 7, § 263-12-056, filed 4/4/75.]

WAC 263-12-060 Filing appeals—Procedures—Limitation of time. (1) In cases arising under the Industrial Insurance Act or the Crime Victims Compensation 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 communicated to the appealing party. The original and one copy of the Notice of Appeal shall be filed, by mail or otherwise, with the Secretary of the Board at its headquarters, and one copy shall be filed, by mail or otherwise, with the director of the Department of Labor and Industries.

(2) As required by the provisions of RCW 49.17.140(3), an appeal from a citation, abatement period or penalty assessment under the Washington Industrial Safety and Health Act is initiated by giving the director of the Department of Labor and Industries notice of intent to appeal within fifteen (15) working days from the date of notification of such citation, abatement period or penalty assessment. If the director does not re-assume jurisdiction over the matter as to which notice of intent to appeal is given, he shall promptly transmit the notice of intent to appeal together with the Department's record in the matter to the Secretary of 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, he shall, within fifteen (15) working days of such re-assumption, issue a further determinative order in the matter. Any appeal from such further determinative order must be made directly to the Board by filing a written notice of appeal, by mail or otherwise, with the Secretary of the Board, with a copy filed, by mail or otherwise, with the director of the Department, within fifteen (15) working days from the date of notification of such further determinative order.

(3) The Secretary of 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. [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 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 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 confirm 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. [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 Secretary of 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 statutory period, it shall be deemed to have been granted. [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 Secretary of the Board from the order of the Department from which the original appeal was taken. The contents of such cross appeal, and the number and manner of filing of copies thereof, shall be in accord with the applicable portions of WAC 263-12-050, and WAC 263-12-060. [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 dismissal of such appeal upon failure to comply within a specified time.

Any party may amend his Notice of Appeal on such terms as the hearing examiner may prescribe, and the hearing examiner 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 correction, clarification or amendment to be made within a specified time, and if such requirement is not complied with, the Board may dismiss the appeal. [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. Upon the granting of an appeal it shall be assigned to a hearing examiner with directions to complete all conference and hearing proceedings in the case by a date certain. If a conference is scheduled in a case, it shall be upon written notice to all parties of the time and place set for such conference mailed not less than seven days prior to the date of the conference, unless such notice is waived by all parties. [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 263-12-093 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 therewith, providing the

Board finds said agreement is in accordance with the law and the facts.

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 thereto is interposed by the Department, an order shall be issued in conformity therewith, providing the Board finds that said agreement is in accordance with the law and the facts. If an objection is interposed by the Department on the ground that said agreement is not in accordance with the law or the facts, a hearing shall be scheduled.

All agreements reached at a conference concerning final disposition of the appeal shall be stated on the record by the hearing examiner and the parties shall indicate their concurrence on the record.

(2) Ordinarily an agreement concerning final disposition of an appeal will be accepted only at a conference attended by all agreeing parties. The hearing examiner may, however, in his discretion accept the agreement for submission to the Board in the absence of one or more of the parties from the conference, or without holding a conference. In such cases the agreement shall 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 hearing examiner satisfies himself of the concurrence of the party.

(3) The parties present at a conference may agree to a further medical examination of a worker or crime victim, including further diagnostic tests, except such as require hospitalization, by a physician or physicians acceptable to them, or to be selected by the hearing examiner, in which event the hearing examiner may arrange such examination and the Board will pay the necessary medical and travel expenses involved. Upon receipt by the Board, copies of the report of such examination will be distributed to all parties represented at the conference and further appropriate proceedings will be scheduled. [Order 7, § 263-12-093, filed 4/4/75.]

WAC 263-12-095 Conference procedure where agreement concerning final disposition of appeal is not reached by the parties. (1) **Scheduling Information.** If no agreement is reached by the parties as to the final disposition of an appeal, the hearing examiner may thereupon proceed to elicit from the parties such information as he believes is necessary and helpful to the orderly scheduling of hearing proceedings and as may aid in expediting the final disposition of the appeal. He may for this purpose, where indicated, obtain a stipulation of facts to show the Board's jurisdiction in the matter; obtain agreement as to the issues of law and fact presented and the simplification or limitation thereof; determine the necessity of amendments to the Notice of Appeal or other pleadings; determine the possibility of obtaining admissions of facts and authenticity of documents which will avoid unnecessary proof, the admissibility of exhibits, a stipulation as to all or part of the facts in the case,

the limitation of the number of witnesses, and the exchange of medical reports and other relevant documents; 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.

(2) **Statement on the Record of Results of Conferences.** The results of such conference proceedings shall be stated on the record by the hearing examiner and the statement 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 hearing examiner, shall control the subsequent course of the proceedings, subject to modification to prevent manifest injustice.

(3) **Failure to Supply Information.** If any party fails to supply the hearing examiner the information reasonably necessary to schedule the hearing in a case, the Board or the hearing examiner 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. [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 236-12-100 Hearings—Notice of hearing.

(1) **Time.** In those cases that proceed to hearing, the Board shall mail notice thereof to all parties not less than fifteen days prior to the hearing date: Provided, that the hearing may be held on less than fifteen days' notice upon agreement of all parties that have theretofore 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, together with the evidence which shall be expected to be presented thereat. [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 263-12-115 Procedures at hearings. (1) **Hearing Examiner.** All hearings shall be conducted by a hearing examiner 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 or the Crime Victims Compensation Act, the appealing party shall initially introduce all evidence in his case-in-chief.

(b) In all appeals under 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 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 hearing examiner on objection or on his own motion shall exclude all irrelevant or unduly repetitious evidence and 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.** Rulings on evidence or other interlocutory rulings of the hearing examiner shall not be subject to direct appeal to the Board, with the exception that a direct appeal shall be allowed as a matter of right from any ruling adverse to the employer concerning the confidentiality of trade secrets in appeals under the Washington Industrial Safety and Health Act.

(6) **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 hearing examiner 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 given as to any recessed hearing.

(7) **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 present thereat all of such evidence, it shall be discretionary with the hearing examiner as to whether to conclude the hearing and issue a Proposed Decision and Order on the record, or to recess or set over the proceedings to further hearing for the receipt of such evidence, or to require its presentation by way of deposition to be taken and published within prescribed time limits, which may be extended by the hearing examiner for good cause. [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 263-12-120 Additional evidence by hearing examiner. The hearing examiner 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 or mental examination of a workman by medical experts may be ordered to be conducted at the Board's expense. Any such evidence secured and presented by the hearing examiner 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 hearing examiner, he shall make application therefor immediately following the conclusion of such evidence. Such application shall be granted by assignment of a time and place for presentation of such rebuttal evidence. [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. [Order 4, § 263-12-125, filed 6/9/72.]

WAC 263-12-130 Disposition of contested cases—Definition. As used herein, a contested case shall mean any case not previously disposed of on the Department record or by agreement of the parties, or by dismissal thereof either voluntarily or for failure of prosecution, which is submitted to the Board for determination of any issues of fact or law. [Order 4, § 263-12-130, filed 6/9/72; Rule 8.1, filed 6/12/63. Formerly WAC 296-12-130.]

WAC 263-12-135 Record. The record in any contested case shall consist of the order of the Department, the Notice of Appeal therefrom, 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. [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 and submission of the issues for decision and order, the hearing examiner shall enter a proposed decision and order which shall be in writing and contain findings and conclusions as to each contested issue of fact and law, as well as the order based thereon, and copies thereof shall be mailed by the Board to each party to the appeal and to his attorney or representative of record. [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, or such further period as the Board may allow on written application of a party, filed within twenty days from the date of communication of the proposed decision and order to the parties or their attorneys of record, any party aggrieved thereby may file with the Secretary of the Board at Olympia, Washington, a written petition for review with copies

thereof served on all other parties. In the event such 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) **Contents.** Such petition for review shall set forth in detail the grounds therefor and the party or parties filing the same shall be deemed to have waived 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. 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. In order to facilitate preparation of such petition for review in sufficient detail, the Board shall, on request of any party, serve upon said party a copy of the transcript of testimony and other proceedings at the hearing, provided that such party sign an acknowledgement that receipt thereof shall constitute compliance by the Board, in the event of an appeal to superior court, with that portion of RCW 51.52.110 requiring service on said party of a certified copy of the testimony in industrial insurance cases.

With respect to rulings concerning admission or exclusion of evidence, a general objection to all such rulings adverse to the party shall be considered adequate compliance with this rule.

(3) **Action by Board on Petition for Review.** Within twenty days after receipt of a petition for review, the Board shall enter an order either denying the petition for review, in which case the proposed decision and order shall become the final order of the Board, or granting the petition for review, in which case the Board shall within one hundred and eighty days from the date a petition for review is filed issue a final decision and order based upon its review of the record or any part thereof deemed necessary: *Provided*, That if a petition for review is not acted upon by the Board within twenty days from the date it is filed, it shall be deemed to have been granted.

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. In such instances, copies of the transcript of testimony and other proceedings at the hearing shall be furnished to any party requesting same, and this shall be deemed compliance with RCW 51.52.110 industrial insurance cases.

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 hearing examiner to whom the appeal is assigned on remand, to schedule a further hearing for the purpose of presenting such evidence in addition to that contained in the record

as the Board deems necessary to decide the appeal fairly and equitably. In the exercise of this power, a physical or mental examination of a worker or victim of crime by medical experts may be ordered to be conducted at the Board's expense. Any evidence presented by the hearing examiner 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, he must make application therefor immediately following the conclusion of such evidence. Such application will be granted by recessing the hearing to a time and place for taking such rebuttal evidence. Following the completion of the further hearing ordered by the Board, the hearing examiner shall enter a proposed decision and order based upon the entire record.

If an objection is made to a ruling or rulings of a hearing examiner sustaining an objection to admissibility of evidence, or denying a recess for the presentation of further evidence, or denying a motion for a physical or mental examination of a worker or victim of crime, and the Board determines that said ruling or rulings were erroneous, the Board may return the case to the hearing examiner with appropriate instructions, and a further proposed decision and order shall be issued by the hearing examiner after the additional evidence shall have been received. [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. In the event no petition for review is filed as provided herein by any party, the proposed decision and order of the hearing examiner 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. [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 chairman 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 attorney or representative of record. [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 263-12-165 Attorney's fees. (1) **Applications for Attorney's Fees.** The Board shall fix a reasonable attorney fee to be paid by the worker, crime victim or beneficiary for services rendered before the Board if written application therefor is made by the attorney, worker, crime victim or beneficiary, as provided in RCW 51.52.120. 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 service rendered before the Board in an appeal. In all instances, the Board shall afford to all parties affected a minimum of ten days in which to submit comment and material information which may be helpful to the Board in setting a fair and reasonable fee.

(2) **Fee Fixing Criteria.** All attorney fees fixed by the Board, where application therefor has been made, shall be established in accordance with the following general principles:

(a) Only one fee shall be fixed for legal services in any one appeal regardless of the number of attorneys representing worker, crime victim or beneficiary.

(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 or in sustaining the worker's or beneficiary's right to benefits upon an appeal by another party.

(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.

(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.

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

(vi) The prevalent practice of charging contingency fees in cases before the Board.

(vii) The worker's or crime victim's circumstance 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 per cent 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 per cent of the increased compensation shall be fixed after considering all factors.

(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 per cent 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 per cent of the first \$20,000.00 of the pension reserve shall constitute the usual fee, which may be decreased or increased after weighing all factors: *Provided*, That in no case shall a fee in excess of \$4,000.00 be fixed.

(e) Where, upon an appeal by a party other than the worker or his 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.

(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, 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. [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 or RCW 7.68.110, or by the clerk of the superior court pursuant to RCW 49.17.150, the Secretary shall certify the record made before the Board to the court pursuant to the provisions of RCW 51.52.110, RCW 7.68.110, RCW 34.04.130 or RCW 49.17.150. Copies of such record (except the exhibits) shall be furnished to all parties to the proceedings before the Board. [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 263-12-175 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 holiday, and then it is excluded and the next succeeding business day included. [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 34.04.080, any interested party may petition the Board for a declaratory ruling.

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

(a) 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 a Declaratory Ruling". Opposite the foregoing caption shall appear the word "Petition".

(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 state of 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 prayer of the petitioner. The petition shall be subscribed and verified in the manner prescribed in these rules.

(c) The original and two legible copies shall be filed with the Board. Petitions shall be on white paper, either 8 1/2" x 11" or 8 1/2" x 13" in size.

(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 person 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 person 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 person that no declaratory ruling is to be issued. [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 attorney. The original and two legible copies of the petition shall be filed with the Board. Petitions shall be on white paper, either 8 1/2" x 11" or 8 1/2" x 13" 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. [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.]