

Title 263 WAC

BOARD OF INDUSTRIAL INSURANCE APPEALS

Chapter
263-12 Practice and procedure.
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Chapter 263-12 WAC

PRACTICE AND PROCEDURE

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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.

263-12-025 Appearances before the board—Appearance by repre-
 sentatives. [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.] Re-
 pealed by 83-01-001 (Order 12), filed 12/2/82.
 Statutory Authority: RCW 51.41.060(4) and
 51.52.020.
 263-12-027 Appearances before the board—No formal admission
 to practice. [General Order 3, Rule 3.3, filed
 10/29/65; General Order 2, Rule 3.6, filed 6/12/63.
 Formerly WAC 296-12-027.] Repealed by 83-01-
 001 (Order 12), filed 12/2/82. Statutory Authority:
 RCW 51.41.060(4) and 51.52.020.
 263-12-028 Certificate of service. [Rule 3.3, filed 6/12/63. Form-
 erly WAC 296-12-028.] Repealed by General Order
 No. 3, filed 10/29/65. *See Reviser's note.
 263-12-030 Appearances before the board—Withdrawal or sub-
 stitution of representatives. [General Order 3, Rule
 3.4, filed 10/29/65; General Order 2, Rule 3.4, filed
 6/12/63. Formerly WAC 296-12-030.] Repealed by
 83-01-001 (Order 12), filed 12/2/82. Statutory Au-
 thority: RCW 51.41.060(4) and 51.52.020.
 263-12-035 Appearances before the board—Conduct. [General
 Order 3, Rule 3.5, filed 10/29/65; General Order 2,
 Rule 3.5, filed 6/12/63. Formerly WAC 296-12-
 035.] Repealed by 83-01-001 (Order 12), filed
 12/2/82. Statutory Authority: RCW 51.41.060(4)
 and 51.52.020.
 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 Repealed by Order 7, filed 4/4/75.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; Sub-
 sections (1), (2), and (4) amended by General Order
 3, filed 10/29/65. Formerly WAC 296-12-110.] Re-
 pealed by Order 4, filed 6/9/72.
 263-12-112 Hearings—Conditions for setting subsequent hear-
 ings. [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 263-12-007 Application of chapter. Unless otherwise provided in this title, the rules of practice and procedure set forth in this chapter are applicable to appeals filed under: (1) The Industrial Insurance Act, Title 51 RCW, except those relating to expedited appeals filed pursuant to RCW 51.41.060, (2) the Washington Industrial Safety and Health Act, chapter 49.17 RCW, and

(3) the Crime Victims Compensation Act, chapter 7.68 RCW. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-007, filed 12/2/82.]

WAC 263-12-010 Function and jurisdiction. It is the function of the board as an agency to review, hold hearings on, and decide 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 7.68 RCW), and from all citations or penalty assessments issued by the department under the Washington Industrial Safety and Health Act (chapter 49.17 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 chairperson, who must be an active 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 the first and third Tuesday of each month, and at such other times and places as the board may deem necessary, subject to 24-hour notice as required by law.

(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 industrial appeals judges, supervised by a chief industrial appeals judge and two assistant chief industrial appeals judge, who travel throughout the state in the performance of their duties and who have their offices in Olympia and in other areas of the state as is deemed necessary for efficient and cost effective handling of agency business.

(c) The office of the 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 industrial appeals judge assigned to the case for appropriate action. Correspondence respecting the scheduling of a particular case shall be sent to the industrial appeals judge 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. [Statutory Authority: RCW 51.52.020. 84-02-024 (Order 15), § 263-12-015, filed 12/29/83. Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-015, filed 12/2/82. Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-015, filed 1/18/82; Order 10, § 263-12-015, filed 4/5/76; Order 7, § 263-12-015, filed 4/4/75; Order 4, § 263-12-015, filed 6/9/72; General Order 2, § 2, filed 6/12/63; General Order 1, § 2, filed 3/23/60; General Order 3, Subsection 4, filed 10/29/65. Formerly WAC 296-12-015.]

WAC 263-12-016 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) Indices are available providing identifying information as to the following: (a) Final decisions and orders of the board, including concurring and dissenting opinions; (b) proposed decisions and orders of the board's industrial appeals judges; (c) industrial appeals judge's handbook; (d) in addition, any indices maintained for intra-agency use are available for public inspection and copying.

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

(6) A fee shall be charged for copies of documents made with the board's equipment in an amount necessary to cover the cost to the agency of providing such service. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-016, filed 12/2/82. Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-016, filed 1/18/82; Order 10, § 263-12-016, filed 4/5/76; Order 7, § 263-12-016, filed 4/4/75.]

WAC 263-12-018 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 to the appeal.

(b) In an appeal by an employer, under the Washington Industrial Safety and Health Act, an employee or employee representative may enter an appearance as prescribed in subsection (2) below, and shall thereafter be deemed a party to the appeal.

(c) Any party to any appeal may appear before the board at any conference or hearing held in such appeal, either on the party's own behalf or by an attorney at law or other authorized representative of the party's choosing.

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

(e) All parties who appear either at conferences or hearings are entitled to the assistance of the industrial appeals judge presiding over the proceeding. Such assistance shall be given in a fair and impartial manner consistent with the industrial appeals judge's responsibilities to the end that all parties clearly understand the procedure which is to be followed and the issues which are involved in the proceedings. Any party who appears representing himself or herself shall be carefully advised by the industrial appeals judge of the burden of proof required to establish a right to the relief being sought.

(2) **Manner of appearance.**

(a) 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 industrial appeals judge 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 by the appearing party 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. 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 industrial appeals judge, 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 industrial appeals judge, 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 industrial appeals judges 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 industrial appeals judge presiding over the proceeding shall, at his or her 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 industrial appeals judges, or certification of the record to the superior court for contempt proceedings 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 industrial appeals judge shall, at his or her 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 industrial appeals judges, or certification of the record to the superior court for contempt proceedings as provided in RCW 51.52.100. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-020, filed 12/2/82. Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-020, filed 1/18/82; Order 7, § 263-12-020, filed 4/4/75; Order 6, § 263-12-020, filed 9/29/72; Order 4, § 263-12-020, filed 6/9/72; General Order 2, § 3.1, filed 6/12/63; General Order 1, filed 3/23/60; General Order 3, § 3.1(b), Subsection (2), filed 10/29/65.]

WAC 263-12-045 Industrial appeals judges. (1)

Definition. Whenever used in these rules, the term "industrial appeals judge" shall include any member of the board, as well as any duly authorized industrial appeals judge assigned to conduct a conference or hearing.

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

- (a) To administer oaths and affirmations;
- (b) To issue subpoenas on request of any party;
- (c) To rule on all objections and motions including those pertaining to matters of discovery or procedure;
- (d) To rule on all offers of proof and receive relevant evidence;
- (e) To interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the appeal;
- (f) To secure and present in an impartial manner such evidence, in addition to that presented by the parties, as he or she deems necessary to fairly and equitably decide the appeal, including the obtaining of physical, mental, or vocational examinations or evaluations of workers;
- (g) To take appropriate disciplinary action with respect to representatives of parties appearing before the board;
- (h) To issue orders joining other parties, on motion of any party, or on his or her own motion when it appears that such other parties may have an interest in or may be affected by the proceedings;
- (i) To consolidate appeals for hearing when such consolidation will expedite disposition of the appeals and avoid duplication of testimony and when the rights of the parties will not be prejudiced thereby;
- (j) To take any other action necessary and authorized by these rules and the law.

(3) **Substitution of industrial appeals judge.** At any time the board or the chief industrial appeals judge may

substitute one industrial appeals judge for another in any given appeal. [Statutory Authority: RCW 51.52.020. 84-02-024 (Order 15), § 263-12-045, filed 12/29/83. Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-045, filed 12/2/82. Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-045, filed 1/18/82; Order 8, § 263-12-045, filed 5/2/75; Order 7, § 263-12-045, filed 4/4/75; Order 4, § 263-12-045, filed 6/9/72; Rules 4.1 - 4.3, filed 6/12/63.]

WAC 263-12-050 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 or her 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 or her 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 or her knowledge or information and belief the contents thereof are true. A notice of appeal may be signed by the appealing party or by his or her representative. [Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-050, filed 1/18/82; Order 7, § 263-12-050, filed 4/4/75; Order 4, § 263-12-050, filed 6/9/72; Rule 5.1, filed 6/12/63; Rules 3.1 - 3.2, filed 3/23/60, amended by General Order 3, Rule 5.1, filed 10/29/65. Formerly WAC 296-12-050.]

WAC 263-12-053 Appeals arising under the Crime Victims Compensation Act--Contents of notice of appeal. In cases arising under the Crime Victims Compensation Act (chapter 7.68 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 or her 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 or her 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 or her knowledge, or information and belief the contents thereof are true. A notice of appeal may be signed by the party or by his or her representative. [Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-053, filed 1/18/82; 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 49.17 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 or her 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 or her representative. [Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-056, filed 1/18/82; 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 working days from the

date of notification of such citation, abatement period or penalty assessment. If the director does not reassume jurisdiction over the matter as to which notice of intent to appeal is given, there shall be promptly transmitted 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, there shall be, within fifteen working days of such reassumption, a further determinative order issued 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 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. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-060, filed 12/2/82. Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-060, filed 1/18/82; Order 7, § 263-12-060, filed 4/4/75; Order 4, § 263-12-060, filed 6/9/72; Rule 5.3, filed 6/12/63; Rule 3.3, filed 3/23/60; Rule 5.3, amended by General Order 3, filed 10/29/65. Formerly WAC 296-12-055.]

WAC 263-12-065 Disposition on department record. In cases arising under the Industrial Insurance Act 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.

(3) If the appeal is brought prior to the taking of appealable action or issuance of an appealable order, decision or award by the department, the board may deny the appeal and return the matter to the department. [Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-065, filed 1/18/82; Order 7, § 263-12-065, filed 4/4/75; Order 4, § 263-12-065, filed 6/9/72; Rule 5.4, filed 6/12/63. Formerly WAC 296-12-065.]

WAC 263-12-070 Granting the appeal. If the appeal is not disposed of pursuant to WAC 263-12-065, the appeal shall be granted and proceedings scheduled. The 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 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 industrial appeals judge may prescribe, and the industrial appeals judge may, when deemed necessary, in justice to all parties, require correction, clarification or amendment of a notice of appeal before allowing any hearing thereon to proceed, or may issue an order requiring such 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. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-080, filed 12/2/82; Order 4, § 263-12-080, filed 6/9/72; General Order 3, Rule 5.7, filed 10/29/65; General Order 2, Rule 5.7, filed 6/12/63. Formerly WAC 296-12-080.]

WAC 263-12-090 Conferences--Notice of conferences. Upon the granting of an appeal it shall be assigned to an industrial appeals judge with directions to conduct all conference and hearing proceedings in the case. If a conference is scheduled in a case, it shall be upon written notice to all parties specifying the industrial appeals judge assigned to hear the case as well as the time and place set for such conference, and such notice shall be mailed not less than seven days prior to the date of the conference, unless such notice is waived by all parties. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-090, filed 12/2/82. Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-090, filed 1/18/82;

Order 7, § 263-12-090, filed 4/4/75; Order 4, § 263-12-090, filed 6/9/72; General Order 2, Rules 6.1-6.4, filed 6/12/63; General Order 1, Rules 5.3-5.4, filed 3/23/60; Subsection (6), General Order 3, Rule 6.4, filed 10/29/65. Formerly WAC 296-12-090.]

WAC 263-12-093 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.

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

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

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

(2) Ordinarily an agreement concerning final disposition of an appeal will be accepted only at a conference attended by all agreeing parties. The industrial appeals judge may, however, in his or her 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 industrial appeals judge is satisfied of the concurrence of the party.

In the event concurrence of all affected employees or employee groups cannot be obtained in cases involving agreements for final disposition of appeals under the Washington Industrial Safety and Health Act, a copy of

the proposed agreement shall be posted by the employer at each establishment to which the agreement applies in a conspicuous place or places where notices to employees are customarily posted. The agreement shall be posted for ten days before it is submitted to the board for entry of the final order. The manner of posting shall be in accordance with WAC 296-350-400 (4) and (5). If an objection to the agreement is interposed by affected employees or employee groups prior to entry of the final order of the board, further proceedings shall be scheduled.

(3) The parties present at a conference may agree to a vocational evaluation or a further medical examination of a worker or crime victim, including further evaluative or diagnostic tests, except such as require hospitalization, by medical or vocational experts acceptable to them, or to be selected by the industrial appeals judge, in which event the industrial appeals judge may arrange for evaluation or examination and the board will pay reasonable and necessary expenses involved. Upon receipt by the board, copies of the report of such examination or evaluation will be distributed to all parties represented at the conference and further appropriate proceedings will be scheduled. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-093, filed 12/2/82. Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-093, filed 1/18/82; Order 7, § 263-12-093, filed 4/4/75.]

WAC 263-12-095 Conference 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 industrial appeals judge may thereupon proceed to elicit from the parties such information as is necessary and helpful to the orderly scheduling of hearing proceedings and as may aid in expediting the final disposition of the appeal. For this purpose, where indicated, a stipulation of facts may be obtained to show the board's jurisdiction in the matter. In addition, agreement as to the issues of law and fact presented and the simplification or limitation thereof may be obtained. The industrial appeals judge may also determine 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 and vocational reports and other relevant documents; receive and rule on motions pertaining to pre-hearing discovery including motions by a party for a vocational evaluation of a claimant which may be granted upon a showing of surprise which ordinary prudence could not have guarded against or upon an equivalent showing of circumstances constituting good cause and upon notice to all parties of the time, place, manner, conditions, and scope of the evaluation and the person or persons by whom it is to be made, provided that the industrial appeals judge shall

impose all conditions necessary to avoid delay and prejudice in the timely completion of the appeal; 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 industrial appeals judge 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 industrial appeals judge, 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 industrial appeals judge the information reasonably necessary to schedule the hearing in a case, the board or the industrial appeals judge may suspend setting a hearing pending receipt of the required information, or may impose such conditions upon the presentation of evidence by the defaulting party as may be deemed appropriate.

(4) **Admissibility of matters disclosed at conference.** If no agreement of the parties is reached resolving all issues presented, no offers of settlement, admissions, or statements made by any party shall be admissible at any subsequent proceeding unless they are independently admissible therein. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-095, filed 12/2/82. Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-095, filed 1/18/82; Order 7, § 263-12-095, filed 4/4/75; Order 4, § 263-12-095, filed 6/9/72; Rules 6.5-6.9 filed 6/12/63; Rule 5.6, filed 3/23/60; Subsection 5, General Order 3, Rule 7.1, filed 10/29/65. Formerly WAC 296-12-100.]

WAC 263-12-100 Hearings--Notice of hearing. (1) **Time.** In those cases that proceed to hearing, the board shall mail notice thereof to all parties at their last known address as shown by the records of the board or department of labor and industries not less than fifteen days prior to the hearing date: *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. [Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-100, filed 1/18/82; Order 4, § 263-12-100, filed 6/9/72; General Order 1, Rule 5.2, filed 3/23/60;

Subsection 2, General Order 3, Rule 7.1, filed 10/29/65. Formerly WAC 296-12-100.]

WAC 263-12-115 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 or the Crime Victims Compensation Act, the appealing party shall initially introduce all evidence in his or her 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 or her case-in-chief, the other parties may then introduce the evidence necessary to their cases-in-chief. In the event there is more than one other party, they may either present their cases-in-chief successively or may join in their presentation. Rebuttal evidence shall be received in the same order.

Witnesses may be called out of turn in contravention of this rule only by agreement of all parties.

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

(4) **Rulings.** The industrial appeals judge on objection or on his or her own motion shall exclude all irrelevant or unduly repetitious evidence and 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 industrial appeals judge 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 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.

(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 industrial appeals judge 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, with each party bearing its own costs, which time limits

may be extended by the industrial appeals judge for good cause.

(8) **Evidence by deposition.** If a party volunteers or desires to take the testimony of any witness in a proceeding by deposition, or if the admission of evidence cannot otherwise be accomplished in a reasonably timely manner, the industrial appeals judge may permit or require the perpetuation of testimony by deposition regardless of the witness' availability to testify at the hearing or at a future recessed hearing. 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 need for the industrial appeals judge to personally observe the witness and evaluate the witness' demeanor and credibility, (c) the costs incurred by the parties in complying with the ruling, and (d) the fairness to the parties in complying with the ruling. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-115, filed 12/2/82. Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-115, filed 1/18/82; Order 9, § 263-12-115, filed 8/8/75; Order 7, § 263-12-115, filed 4/4/75; Order 4, § 263-12-115, filed 6/9/72; General Order 3, Rule 7.5, filed 10/29/65; General Order 2, Rule 7.4, filed 6/12/63; General Order 1, Rule 5.10, filed 3/23/60. Formerly WAC 296-12-115.]

WAC 263-12-120 Additional evidence by industrial appeals judge. The industrial appeals judge may, when all parties have rested, present such evidence, in addition to that presented by the parties, as deemed necessary to decide the appeal fairly and equitably, and in the exercise of this power, a physical, mental or vocational examination or evaluation of a worker by one or more medical or vocational experts may be ordered to be conducted at the board's expense. Any such evidence secured and presented by the industrial appeals judge shall be presented in an impartial manner, and shall be received subject to full opportunity for cross-examination by all parties. If a party desires to present rebuttal evidence to any evidence so presented by the industrial appeals judge, 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. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-120, filed 12/2/82. Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-120, filed 1/18/82; Order 4, § 263-12-120, filed 6/9/72; General Order 3, Rule 7.6, filed 10/29/65; General Order 2, Rule 7.5, filed 6/12/63. Formerly WAC 296-12-120.]

WAC 263-12-125 Applicability of court rules. Insofar as applicable, and not in conflict with these rules, the statutes and rules regarding procedures in civil cases in the superior courts of this state shall be followed: *Provided*, That affidavits of prejudice against an industrial appeals judge in the manner set forth in RCW 4.12.050 must be filed with the board prior to the date of the first conference in the appeal. [Statutory Authority: RCW

51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-125, filed 12/2/82. Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-125, filed 1/18/82; 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 industrial appeals judge 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. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-140, filed 12/2/82; Order 4, § 263-12-140, filed 6/9/72; Rule 8.3, filed 6/12/63. Formerly WAC 296-12-140.]

WAC 263-12-145 Petition for review. (1) **Time for filing.** Within twenty days, 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 representatives 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. The date such petition for review is received at the board's offices in Olympia shall be the date upon which filing is perfected. 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 in 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 industrial appeals judge 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 or evaluation by an expert vocational consultant may be ordered to be conducted at

the board's expense. Any evidence presented by the industrial appeals judge shall be presented in an impartial manner, and shall be received subject to full opportunity for cross-examination by all parties. If a party desires to present rebuttal evidence to any evidence so presented, 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 industrial appeals judge shall enter a proposed decision and order based upon the entire record.

If an objection is made to a ruling or rulings of an industrial appeals judge 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 or vocational evaluation 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 industrial appeals judge with appropriate instructions, and a further proposed decision and order shall be issued by the industrial appeals judge after the additional evidence shall have been received. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-145, filed 12/2/82. Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-145, filed 1/18/82; Order 9, § 263-12-145, filed 8/8/75; Order 7, § 263-12-145, filed 4/4/75; Order 4, § 263-12-145, filed 6/9/72; General Order 3, Rule 8.4, filed 10/29/65; General Order 2, Rule 8.4, filed 6/12/63. Formerly WAC 296-12-145.]

WAC 263-12-150 Finality of proposed decisions and orders. In the event no petition for review is filed as provided herein by any party, the proposed decision and order of the industrial appeals judge shall be adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts. If an order adopting the proposed decision and order is not formally signed by the board on the day following the expiration of the time period for filing a petition for review of the proposed decision and order, said proposed decision and order shall be deemed adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-150, filed 12/2/82; Order 4, § 263-12-150, filed 6/9/72; Rule 8.5, filed 6/12/63. Formerly WAC 296-12-150.]

WAC 263-12-155 Final decisions and orders after review. In those cases where a petition for review is granted, the record before the board shall be considered by a panel of at least two of the members of the board, on which not more than one industry and one labor member serve. The 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 263-12-160 Final decisions favoring workers or beneficiaries—Retention of jurisdiction to fix interest due. (1) Qualifying appeals. A worker or beneficiary who prevails in his or her own appeal regarding a claim for temporary total disability or in any appeal by the employer shall be paid simple interest at the rate of twelve percent per annum on the unpaid amount of the award after deducting the amount of attorney's fees.

(2) Retention of jurisdiction to enter order for payment of interest. In a qualifying appeal the board will retain jurisdiction after issuance of its final order for the purpose of entering an order fixing the amount of interest to be paid by the party having the obligation to pay the amount of the award as a result of the board's final order.

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

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

(5) Fixing of interest and entry of order. Upon receipt of all required information, interest will be calculated by the board at twelve percent per annum from the date of

the department order granting the award in an appeal by the employer or the date of the department order denying payment of the award in a qualifying appeal by a worker or beneficiary. Thereafter, the board will enter an order fixing the amount of interest to be paid by the party having the obligation to pay the award as a result of the board's final order. Such interest shall be paid in full to the worker or beneficiary. [Statutory Authority: RCW 51.52.020 and 51.52.135. 84-02-024 (Order 15), § 263-12-160, filed 12/29/83.]

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, within one year after the board's final decision and order or in the event of a superior court appeal within one year from the date judgment becomes final. 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 the worker, crime victim or beneficiary, except that in cases of multiple beneficiaries represented by one or multiple attorneys the board has the discretion to set more than one attorney fee if so requested.

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

(c) A fee shall be fixed only in those cases where the attorney's services are instrumental in securing additional benefits to the worker, crime victim or beneficiary 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 amount of accrued time-loss payments as a result of proceedings before the board.

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

(viii) The worker's or crime victim's 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 percent of the amount the worker or crime victim is so relieved of paying shall be fixed after considering all factors.

(d) Where permanent total disability (pension) benefits are obtained for the worker or crime victim, or death benefits are obtained for survivors of a deceased worker or crime victim, 10 percent of the first \$40,000.00 of the pension reserve 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 \$8,000.00 be fixed.

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

(f) Where, upon an appeal by a party other than the worker or his 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. [Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-165, filed 1/18/82; Order 7, § 263-12-165, filed 4/4/75; Order 4, § 263-12-165, filed 6/9/72; Subsection 1 from General Order 3, Rule 9.1, filed 10/29/65; General Order 2, Rule 9.2, filed 6/12/63; General Order 1, Rule 6.4, filed 3/23/60; Subsection (2), General Order 3, Rule 9.2, filed 10/29/65; General Order 9.1, filed 6/12/63; General Order 1, Rule 6.4, filed 3/23/60. Formerly WAC 296-12-165.]

WAC 263-12-170 Appeals to superior court--Certification of record. Upon receipt of a copy of notice of appeal to superior court from a board order, served upon the board by the appealing party pursuant to RCW 51.52.110, 7.68.110, or 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, 7.68.110, 34.04.130 or 49.17.150. Copies of such record (except the exhibits) shall be furnished to all parties to the proceedings before the board. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-170, filed 12/2/82; Order 7, § 263-12-170, filed 4/4/75; Order 4, § 263-12-170, filed 6/9/72; General Order 2, Rules 10.1 and 10.2, filed 6/12/63; General Order 1, Rules 7.1 and 7.2, filed 3/23/60; Subsections (1) and (2), General Order 3, Rule 10.2, filed 10/29/65. Formerly WAC 296-12-170.]

WAC 263-12-175 Computation of time. The time within which any act shall be done, as provided by these rules, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal state holiday, and then it is excluded and the next succeeding business day included. [Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-175, filed 1/18/82; Order 4, § 263-12-175, filed 6/9/72; General Order 2, Rule 11, filed 6/12/63. Formerly WAC 296-12-175.]

WAC 263-12-180 Petitions for declaratory ruling. (1) Right to petition for declaratory ruling. As prescribed by RCW 34.04.080, 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.]

Chapter 263-16 WAC

VOCATIONAL REHABILITATION APPEALS

WAC

263-16-005	Purpose and scope.
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263-16-020	Appeals arising under chapter 63, Laws of 1982, relating to vocational rehabilitation—Contents of notice of appeal.
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263-16-080	Final decision and orders in vocational rehabilitation appeals.
263-16-090	Appeals to superior court from final orders in vocational rehabilitation appeals—Certification of record.

WAC 263-16-005 Purpose and scope. The purpose of this chapter is to promulgate rules concerning the board's practice and procedure pursuant to chapter 51.41 RCW relating to vocational rehabilitation. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-16-005, filed 12/2/82.]

WAC 263-16-010 Applicability of practice and procedure rules in chapter 263-12 WAC. Insofar as applicable and not in conflict with the provisions set forth in this chapter, the rules of practice and procedure contained in chapter 263-12 WAC shall be followed. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-16-010, filed 12/2/82.]

WAC 263-16-020 Appeals arising under chapter 63, Laws of 1982, relating to vocational rehabilitation—Contents of notice of appeal. In cases arising under chapter 51.41 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) A statement identifying the decision of the supervisor of industrial insurance, or his or her designee from which the appeal is taken, by date, claim number, and description of action appealed;

(6) A statement describing the matter of law upon which the appeal is based;

(7) A statement indicating whether an irregularity in procedure is alleged and whether the opportunity for presentation of testimony concerning the alleged irregularity is desired;

(8) A statement indicating whether opportunity for presentation of oral argument or submission of written information in addition to that contained in the records of the office of rehabilitation review is desired;

(9) A description of the relief sought, including the specific nature and the extent thereof;

(10) A statement of the location most convenient to the appealing party where board proceedings are requested to be held;

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

(12) The signature by the appealing party and/or the party's authorized representative. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-16-020, filed 12/2/82.]

WAC 263-16-030 Vocational rehabilitation appeals—Procedure for filing—Limitation of time. (1) As required by the provisions of RCW 51.41.060, an appeal from the final decision of the supervisor or the supervisor's designee is initiated by filing a written notice of appeal, by mail or otherwise, with the secretary of the board at its headquarters in Olympia, within fifteen working days after receipt of the notice of the decision from the office of rehabilitation review.

(2) 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. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-16-030, filed 12/2/82.]

WAC 263-16-040 Assignment of vocational rehabilitation appeals—Expedited completion of proceedings. Vocational rehabilitation appeals filed pursuant to RCW 51.41.060 and WAC 263-16-020 shall be assigned to an industrial appeals judge with direction to complete proceedings on an expedited basis. In no case shall the time for hearing the appeal exceed thirty calendar days from the receipt of (1) the notice or appeal, or (2) a legible copy of the records of the office of rehabilitation review, whichever is later. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-16-040, filed 12/2/82.]

WAC 263-16-050 Disposition of vocational rehabilitation appeals by agreement. In cases arising under RCW 51.41.060, relating to expedited appeals, final disposition by agreement of the parties will be governed by the following:

(1) If an agreement concerning the final disposition of issues properly brought before the board is reached by all parties, an order shall be issued in conformity therewith, providing the board finds said agreement is in conformity with the law and the facts.

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

All agreements reached at hearing concerning final disposition of an appeal shall be stated on the record by the industrial appeals judge 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 hearing attended by all interested parties. The industrial appeals judge may, however, in his or her discretion accept an agreement for submission to the board even though: (a) One or more of the parties did not attend the hearing, or (b) the agreement is submitted outside the formal hearing proceeding. In such cases the agreement shall be confirmed in writing by the affected parties except that no written confirmation will be required where the industrial appeals judge is satisfied of the concurrence of the parties to the agreement. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-16-050, filed 12/2/82.]

WAC 263-16-060 Expedited hearings in vocational rehabilitation appeals—Notice of hearing. (1) Time. In appeals filed pursuant to RCW 51.41.060, the board shall mail notice thereof to all parties not less than ten days prior to the hearing date: *Provided*, That the hearing may be held on less than ten days' notice upon agreement of all parties.

(2) Contents. The notice shall identify the appeal to be heard, the names of the parties to the appeal and their representatives, if any, the industrial appeals judge assigned to hear the appeal, and shall specify the time and place of hearing. [Statutory Authority: RCW

51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-16-060, filed 12/2/82.]

WAC 263-16-070 Procedure at hearings of vocational rehabilitation appeals. (1) Industrial appeals judge. In cases arising under RCW 51.41.060, all hearings shall be conducted by an industrial appeals judge who shall conduct the hearing in an orderly manner and shall rule on all procedural matters, objections and motions.

(2) Order of presentation of evidence.

(a) Unless a party requests the opportunity to present testimony concerning alleged irregularities in procedure not revealed by the records of the office of rehabilitation review, the hearing shall be conducted by an industrial appeals judge initially reviewing for the recorded proceedings the records of the office of rehabilitation review and admitting such documents as are material, relevant and germane to the issues raised by the appeal.

(b) If a party requests the opportunity to present testimony concerning irregularities in procedure not revealed by the records of the office of rehabilitation review, and such request is granted by the industrial appeals judge, the requesting party shall produce all evidence in support of his or her position.

(c) After the party with the initial burden has presented his evidence, the other parties may then introduce evidence in rebuttal. In the event there is more than one other party, they may either present their evidence successively or may join in their presentation. Surrebuttal may be presented in the discretion of the industrial appeals judge.

(d) In the discretion of the industrial appeals judge and upon request of the worker or the employer, oral argument may be permitted or additional written information may be received and admitted in evidence concerning the matter in dispute.

(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 or which does not pertain to the matter of law in contest. All rulings upon objections to the admissibility of evidence shall be made in accordance with chapter 34.04 RCW.

(5) 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: *Provided*, That the hearing shall not be continued to a date later than thirty days from the date of receipt of:

(a) The notice of appeal from the aggrieved party; or

(b) A legible copy of the records of the office of rehabilitation review, whichever is later. No written "notice of hearing" shall be required as to any recessed hearing. [Statutory Authority: RCW 51.41.060(4) and

51.52.020. 83-01-001 (Order 12), § 263-16-070, filed 12/2/82.]

WAC 263-16-080 Final decision and orders in vocational rehabilitation appeals. In appeals filed pursuant to RCW 51.41.060, a panel of at least two board members shall, within thirty days of closing the hearing proceedings render a final decision and order which shall be in writing and shall contain conclusions of law, and if applicable, findings of fact, as well as the board's order based thereon.

A copy of the decision and order shall be mailed to each party to the appeal and to his attorney or representative of record. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-16-080, filed 12/2/82.]

WAC 263-16-090 Appeals to superior court from final orders in vocational rehabilitation appeals—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 34.04.130, the secretary shall transmit a certified copy of the entire record made before the board to the reviewing court. Copies of such record (except the exhibits) shall be furnished to all parties to the proceedings before the board. [Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-16-090, filed 12/2/82.]