Title 263 WAC
INDUSTRIAL INSURANCE APPEALS, BOARD OF

Chapters
263-12  Practice and procedure.

Chapter 263-12 WAC
PRACTICE AND PROCEDURE

WAC
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WAC 263-12-016  Public records—Location. (1) Public records available. All public records of the board as defined in chapter 42.56 RCW are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.56.210-[42.56.480].

(2) General information concerning the board may be obtained at its headquarters, 2430 Chandler Ct. S.W., P.O. Box 42401, Olympia, Washington 98504-2401.  

(3) Public records officer. The public records officer shall be responsible for the following: The implementation of the board's rules and regulations regarding release of public records, coordinating the staff of the board in this regard, and generally insuring compliance by the staff with the public records disclosure requirements of chapter 42.56 RCW.

(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) 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 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.

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 42.56.210-[42.56.480].

(2) Pursuant to RCW 42.56.070, 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 42.56 RCW authorizing withholding the record and a brief explanation of how the exemption applies to the record held will be included.

WAC 263-12-092  Mediation conferences. (1) A statement made by any party, representative or other participant in the course of mediation conducted pursuant to RCW 51.52.095, whether verbal or written, is privileged as provided in subsection (2) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or reduced to writing and made part of a settlement agreement.

(2) In a proceeding, the following privileges apply:  
(a) A mediation party may refuse to disclose and may prevent any other person from disclosing a statement;  
(b) A mediator may refuse to disclose and may prevent any other person from disclosing a statement of the mediator;  
(c) A nonparty participant may refuse to disclose and may prevent any other person from disclosing a statement of the non-party participant.

(3) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation unless otherwise privileged by section 2(a)-(c) above.

(4) Mediation conferences are confidential and nonparties may be excluded from the proceedings.

WAC 263-12-115  Procedures at hearings. (1) Industrial appeals judge. All hearings shall be conducted by an industrial appeals judge who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections and motions.

(2) Order of presentation of evidence.  
(a) In any appeal under either the Industrial Insurance Act, the Worker and Community Right to Know Act or the Crime Victims Compensation Act, the appealing party shall initially introduce all evidence in his or her case-in-chief except that in an appeal from an order of the department that alleges fraud or willful misrepresentation the department or
self-insured employer shall initially introduce all evidence in its case-in-chief.

(b) In all appeals subject to the provisions of the Washington Industrial Safety and Health Act, the department shall initially introduce all evidence in its case-in-chief.

c) After the party with the initial burden has presented his or her case-in-chief, the other parties may then introduce the evidence necessary to their cases-in-chief. In the event there is more than one other party, they may either present their cases-in-chief successively or may join in their presentation. Rebuttal evidence shall be received in the same order. Witnesses may be called out of turn in contravention of this rule only by agreement of all parties.

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

(4) Rulings. The industrial appeals judge on objection or on his or her own motion shall exclude all irrelevant or unduly repetitious evidence and statements that are inadmissible pursuant to WAC 263-12-095(5). All rulings upon objections to the admissibility of evidence shall be made in accordance with rules of evidence applicable in the superior courts of this state.

(5) Interlocutory appeals to the board - Confidentiality of trade secrets. A direct appeal to the board shall be allowed as a matter of right from any ruling of an industrial appeals judge adverse to the employer concerning the confidentiality of trade secrets in appeals under the Washington Industrial Safety and Health Act.

(6) Interlocutory review by a chief industrial appeals judge.

(a) Except as provided in subsection (5) of this section interlocutory rulings of the industrial appeals judge are not subject to direct review by the board. A party to an appeal or a witness who has made a motion to quash a subpoena to appear at board related proceedings, may within five working days of receiving an adverse ruling from an industrial appeals judge request a review by a chief industrial appeals judge or his or her designee. Such request for review shall be in writing and shall be accompanied by an affidavit in support of the request and setting forth the grounds for the request, including the reasons for the necessity of an immediate review during the course of conference or hearing proceedings. Within ten working days of receipt of the written request, the chief industrial appeals judge, or designee, may decline to review the ruling based upon the written request and supporting affidavit; or, after such review as he or she deems appropriate, may either affirm or reverse the ruling, or refer the matter to the industrial appeals judge for further consideration.

(b) Failure to request review of an interlocutory ruling shall not constitute a waiver of the party's objection, nor shall an unfavorable response to the request preclude a party from subsequently renewing the objection whenever appropriate.

c) No conference or hearing shall be interrupted for the purpose of filing a request for review of the industrial appeals judge's rulings; nor shall any scheduled proceedings be canceled pending a response to the request.

(7) Recessed hearings. Where, for good cause, all parties to an appeal are unable to present all their evidence at the time and place originally set for hearing, the industrial appeals judge may recess the hearing to the same or a different location so as to insure that all parties have reasonable opportunity to present their respective cases. No written "notice of hearing" shall be required as to any recessed hearing.

(8) Failure to present evidence when due. If any party is due to present certain evidence at a hearing or recessed hearing and, for any reason on its part, fails to appear and present such evidence, the industrial appeals judge may conclude the hearing and issue a proposed decision and order on the record, or recess or set over the proceedings for further hearing for the receipt of such evidence.

(9) Offers of proof in colloquy. When an objection to a question is sustained an offer of proof in question and answer form shall be permitted unless the question is clearly objectionable on any theory of the case.

[Statutory Authority: RCW 51.52.020. 08-01-081, § 263-12-115, filed 12/17/07, effective 1/17/08; 03-02-038, § 263-12-115, filed 12/24/02; effective 1/24/03; 00-23-021, § 263-12-115, filed 11/7/00, effective 12/8/00; 91-13-038, § 263-12-115, filed 6/14/91, effective 7/15/91; 84-08-036 (Order 17), § 263-12-115, filed 3/30/84. 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, § 263-12-115, filed 10/29/65; General Order 2, Rule 7.4, § 263-12-115, § 263-12-115, filed 3/23/60. Formerly WAC 296-12-115.]

WAC 263-12-135 Record. The record in any contested case shall consist of the order of the department, the notice of appeal therefrom, all orders issued by the board (including litigation orders and judge's report of proceeding), 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.

The record in any appeal disposed of by order denying appeal or order granting relief on the record as provided in RCW 51.52.080, shall include those documents found in the department record that are relevant to the board's disposition.

[Statutory Authority: RCW 51.52.020. 08-01-081, § 263-12-135, filed 12/17/07, effective 1/17/08; 03-02-038, § 263-12-135, filed 12/24/02; effective 1/24/03; 00-23-021, § 263-12-135, filed 11/7/00, effective 12/8/00; 91-13-038, § 263-12-135, filed 6/14/91, effective 7/15/91; 84-08-036 (Order 17), § 263-12-135, filed 3/30/84. Statutory Authority: RCW 51.41.060(4) and 51.52.020, 83-01-001 (Order 12), § 263-12-135, filed 12/2/82. Statutory Authority: RCW 51.52.020, 82-03-031 (Order 11), § 263-12-135, filed 1/18/82; Order 9, § 263-12-135, filed 8/8/75; Order 7, § 263-12-135, filed 4/4/75; Order 4, § 263-12-135, filed 6/9/72; General Order 3, Rule 7.5, § 263-12-135, filed 10/29/65; General Order 2, Rule 7.4, § 263-12-135, § 263-12-135, filed 3/23/60. Formerly WAC 296-12-135.]

WAC 263-12-165 Attorney's fees. (1) Applications for attorney's fees.

(a) For the fixing of attorney fees as provided by RCW 51.52.120, 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, within one year after the board's final decision and order is communicated to the party making the application. 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 services rendered before the board in an appeal and the justification supporting the requested fee. The board shall afford to all parties affected a
Considered.

and witness fees, shall be first deducted and the net benefits

one or beneficiary of the litigation, i.e., medical examination

awarded by the department, the cost to the worker, crime vic-

extent of additional benefits, or the retention of benefits

result of proceedings before the board.

benefits to the worker, crime victim or beneficiary or in sus-

attorney's services are instrumental in securing additional

may be fixed without regard to any medical benefits secured.

locale and manner in which such fee shall be payable.

reasonable monetary amount, the board may also set the sched-

allow the worker, crime victim or beneficiary to retain a rea-

(2) Fee fixing criteria. All attorney fees fixed by the

(3) Amount of fees.

minimum of ten days in which to submit comments and mate-

(b) For the ordered payment of attorney fees as provided

by RCW 51.32.185, the board shall set the attorney fee in a

manner consistent with applicable provisions of subsections

(2) and (3) below.

(2) Fee fixing criteria. All attorney fees fixed by the

board, where application therefor has been made, shall be

established in accordance with Rule 1.5 of the Rules of Pro-

fessional Conduct and the following general principles:

(a) 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 percent of the increased compensation shall be fixed

after considering all factors. This provision shall also apply to

retroactive permanent total disability (pension) benefits.

(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 percent of the increased compensation shall be fixed

after considering all factors. This provision shall also apply to

retroactive permanent total disability (pension) benefits.

(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 vic-


tim, 10 percent of the first $40,000.00 of the pension reserve

as calculated by the department of labor and industries, and

15 percent of the pension reserve in excess of $40,000.00

shall constitute the usual fee, which may be decreased or

increased after weighing all factors.

(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 or her beneficiary, the right to receive the ben-

efits awarded by the department is affirmed, a fee in accord-

ance 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. 08-01-081, § 263-12-165, filed

12/17/07, effective 1/17/08; 95-12-062, § 263-12-165, filed 6/5/95, effective

7/6/95; 91-13-038, § 263-12-165, filed 6/14/91, effective 7/15/91; 82-03-031

(Orde r 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.]