

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 263-12-01501 Communications and filing with the board. (1) Communications with the board.

(a) **Where to file.** All written communications, except those listed below, shall be filed with the board at its headquarters in Olympia, Washington. With permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions (other than motions for stay filed pursuant to RCW 51.52.050), briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.

(b) **Methods of filing.** Unless otherwise provided by statute or these rules any written communication may be filed with the board personally, by mail, or by telephone facsimile.

(i) **Filing personally.** The filing of a written communication with the board personally is perfected by delivering the written communication to an employee of the board at the board's headquarters in Olympia during customary office hours.

(ii) **Filing by mail.** The filing of a written communication with the board is perfected by mail when the written communication is deposited in the United States mail, properly addressed to the board's headquarters in Olympia and with postage prepaid. Where a statute or rule imposes a time limitation for filing the written communication, the party filing the same should include a certification demonstrating the date filing was perfected as provided under this subsection. Unless evidence is presented to the contrary, the date of the United States postal service postmark shall be presumed to be the date the written communication was mailed to the board.

(iii) **Filing by telephone facsimile.**

(A) The filing of a written communication with the board by telephone facsimile is perfected when a legible copy of the written communication is reproduced on the board's telephone facsimile equipment. All facsimile communications, except those listed below, shall be filed with the board at its headquarters in Olympia, Washington. With permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions (other than motions for stay filed pursuant to RCW 51.52.050), briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.

(B) The hours of operation of the board's telephone facsimile equipment are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. If a transmission of a written communication commences after these hours of operation the written communication shall be deemed filed on the next business day.

(C) Any written communication filed with the board by telephone facsimile should be preceded by a cover page identifying the party making the transmission, listing the address, telephone and telephone facsimile number of such party, referencing the appeal to which the written communication relates, and indicating the date of, and the total number of pages included in, such transmission.

(D) No written communication should exceed fifteen pages in length, exclusive of the cover page required by this rule.

(E) The party attempting to file the written communication by telephone facsimile bears the risk that the written communication will not be legibly printed on the board's telephone facsimile equipment due to error in the operation or failure of the equipment being utilized by either the party or the board.

(F) The board may require a party to file an original of any document previously filed by telephone facsimile.

(iv) **Electronic filing of a notice of appeal.** A notice of appeal may be filed electronically when using the appropriate form for electronic filing of appeals as provided on the board's internet site. An electronic notice of appeal is filed when it is received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Otherwise the notice of appeal is considered filed at the beginning of the next business day. The board shall issue confirmation to the filing party that an electronic notice of appeal has been received. The board may reject a notice of appeal that fails to comply with the board's filing requirements. The board must notify the filing party of the rejection.

(c) **Sending written communication.** All correspondence or written communication filed with the board pertaining to a particular case, before the entry of a proposed decision and order, should be sent to the attention of the industrial appeals judge assigned to the case. Interlocutory appeals should be sent to the attention of the chief industrial appeals judge. In all other instances, written communications shall be directed to the executive secretary of the board.

(d) **Form requirements.** Any written communications with the board concerning an appeal should reference the docket number which was assigned by the board to the appeal, if known. Copies of any written communications filed with the board shall be furnished to all other parties or their representatives of record, and the original shall demonstrate compliance with this requirement. All written communications with the board shall be on paper 8 1/2" x 11" in size.

[Statutory Authority: RCW 51.52.020, 10-14-061, § 263-12-01501, filed 6/30/10, effective 7/31/10; 06-12-003, § 263-12-01501, filed 5/25/06, effective 6/25/06; 04-22-047, § 263-12-01501, filed 10/28/04, effective 11/28/04; 04-16-097, § 263-12-01501, filed 8/3/04, effective 9/3/04; 98-20-109, § 263-12-01501, filed 10/7/98, effective 11/7/98; 91-13-038, § 263-12-01501, filed 6/14/91, effective 7/15/91.]

WAC 263-12-020 Appearances of parties before the board. (1) Who may appear.

(a) 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 lay representative of the party's choosing as prescribed in subsection (3) below.

(b) Appeals under the Washington Industrial Safety and Health Act.

(i) 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 will be deemed a party to the appeal.

(ii) 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 will be deemed a party to the appeal.

(c) 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.

(d) Although the industrial appeals judge may not advocate for either party, 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 are informed of 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 advised by the industrial appeals judge of the burden of proof required to establish a right to the relief being sought.

(2) How to make an appearance.

(a) Appearances shall be made either by:

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

(ii) Appearing at the time and place of a conference or hearing on the appeal, and notifying the industrial appeals judge of the party to be represented, and the name and address of the representative.

(b) The appearing party shall furnish copies of every written notice of appearance to all other parties or their representatives of record at the time the original notice is filed with the board.

(c) The board shall serve all notices and orders on each representative and each party represented. Service upon the representative shall constitute service upon the party. Where more than one individual associated with a firm, or organization, including the office of the attorney general, has made an appearance, service under this subsection shall be satisfied by serving the individual who filed the notice of appeal, or who last filed a written notice of appearance or, if no notice of appeal or written notice of appearance has been filed on behalf of the party, the individual who last appeared at any proceeding concerning the appeal.

(3) **Lay representation.** Duly authorized lay representatives may be permitted to appear in proceedings before the board without a formal request for admission to practice

before the board so long as the lay representative does not charge a fee and is not otherwise compensated for the representation except as provided below:

(a) A worker or beneficiary may be represented by a person employed by the worker's labor union whose duties include handling industrial insurance matters for the union. Lay persons may not represent workers before the board in return for remuneration received from the worker or from the worker's receipt of benefits under this act.

(b) An employer may be represented by an employee. An employer may also be represented by a firm or firms that contracts with the employer to handle matters pertaining to industrial insurance without regard to whether a fee is charged. Within fourteen days of receipt of an order granting appeal, any representative of an employer must file a written notice of appearance that includes the name, address, and telephone number of the individual who will appear.

(c) In appeals involving the Washington Industrial Safety and Health Act under chapter 49.17 RCW and assessments under chapter 51.48 RCW, an employer may be represented by a lay person without regard to whether a fee is charged.

(d) Paralegals supervised by an attorney licensed in the state of Washington to practice law may represent any party appearing before the board.

(4) **Withdrawal or substitution of representatives.** An attorney or other representative withdrawing from a case shall immediately notify the board and all parties of record in writing. The notice of withdrawal shall comply with the rules applicable to notices of withdrawal filed with the superior court in civil cases. Withdrawal shall be subject to approval by the industrial appeals judge or the executive secretary. Any substitution of an attorney or representative shall be accomplished by written notification to the board and to all parties of record together with the written consent of the prior attorney or representative. If such consent cannot be obtained, a written statement of the reason therefor shall be supplied.

(5) **Conduct.** 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.

(a) Industrial appeals judge. If any such person does not conform to such standard, the industrial appeals judge presiding over the appeal, at his or her discretion and depending on all the circumstances, may take any of the following actions:

(i) Admonish or reprimand such person;

(ii) Exclude such person from further participation in the proceedings and adjourn the same;

(iii) Certify the facts to the appropriate superior court for contempt proceedings as provided in RCW 51.52.100; or

(iv) Report the matter to the board.

(b) The board. In its discretion, either upon referral by an industrial appeals judge as stated above or on its own motion, after information comes to light that establishes to the board a question regarding a person's ethical conduct and fitness to practice before the board, and after notice and hearing, the board may take appropriate disciplinary action including, but not limited to:

(i) A letter of reprimand;

(ii) Refusal to permit such person to appear in a representative capacity in any proceeding before the board or its industrial appeals judges, or

(iii) Certification of the record to the superior court for contempt proceedings as provided in RCW 51.52.100. If the circumstances require, the board may take action as described above prior to notice and hearing if the conduct or fitness of the person appearing before the board requires immediate action in order to preserve the orderly disposition of the appeal or appeals.

(c) Proceedings. 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 may, at his or her discretion and depending on all the circumstances:

(i) Admonish or reprimand such person;

(ii) Exclude such person from further participation in the proceedings and adjourn the same;

(iii) Certify the facts to the appropriate superior court for contempt proceedings as provided in RCW 51.52.100; or

(iv) Report the matter to the board for action consistent with (b) of this subsection.

[Statutory Authority: RCW 51.52.020. 10-14-061, § 263-12-020, filed 6/30/10, effective 7/31/10; 04-16-009, § 263-12-020, filed 7/22/04, effective 8/22/04; 00-23-021, § 263-12-020, filed 11/7/00, effective 12/8/00; 98-20-109, § 263-12-020, filed 10/7/98, effective 11/7/98; 91-13-038, § 263-12-020, filed 6/14/91, effective 7/15/91. 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 263-12-116 Exhibits. (1) Whenever possible, exhibits should be submitted on paper 8 1/2" x 11" in size. A larger version may be shown to the judge or witness for purpose of demonstration and a smaller version marked and offered as the exhibit.

(2) The board will not accept any hazardous exhibit. A hazardous exhibit is an exhibit that threatens the health and safety of persons handling the exhibit, including exhibits having potentially toxic, explosive, or disease-carrying characteristics. Nonexclusive examples of hazardous exhibits include:

- Biohazards (bodily fluid samples, bloody clothing)
- Used medical implements or devices (surgical screws, cables, plates, pins, prosthetic devices)
- Corrosive or toxic substances
- Controlled substances (prescription drugs)
- Potential airborne contaminants (asbestos, silica)
- Flammable, explosive, or reactive materials
- Live ammunition, firearms, knives, and other weapons

(3) Photographs, videotapes, or other facsimile representations may be used to demonstrate the existence, quantity, and physical characteristics of hazardous evidence.

(4) If a party is uncertain whether a proposed exhibit conforms to this rule, that party must request a conference for the judge to make a determination of conformity at least fourteen days before submitting the exhibit.

[Statutory Authority: RCW 51.52.020. 10-14-061, § 263-12-116, filed 6/30/10, effective 7/31/10.]

WAC 263-12-117 Perpetuation depositions. (1) **Evidence by deposition.** The industrial appeals judge may permit or require the perpetuation of testimony by deposition, subject to the applicable provisions of WAC 263-12-115. Such ruling may only be given after the industrial appeals judge gives due consideration to: (a) the complexity of the issues raised by the appeal; (b) the desirability of having the witness's testimony presented at a hearing; (c) the costs incurred by the parties in complying with the ruling; and (d) the fairness to the parties in complying with the ruling.

(2) The industrial appeals judge may require that depositions be taken and published within prescribed time limits. The time limits may be extended by the industrial appeals judge for good cause. Each party shall bear its own costs except when the industrial appeals judge allocates costs to parties or their representatives.

(3) The party filing a deposition must submit the deposition in a written format as well as an electronic format in accordance with procedures established by the board. Exhibits to the deposition do not have to be filed electronically but a legible hard copy must accompany the paper transcription of the deposition. If the deposition is not transcribed in a reproducible format it may be excluded from the record.

(4) **Procedure at deposition.** Unless the parties stipulate or the industrial appeals judge determines otherwise all depositions permitted to be taken for the perpetuation of testimony shall be taken subject to the following conditions: (a) that all motions and objections, whether to form or otherwise, shall be raised at the time of the deposition and if not raised at such time shall be deemed waived; (b) that all exhibits shall be marked and identified at the time of the deposition and, if offered into evidence, appended to the deposition; (c) that the deposition be published without necessity of further conference or hearing at the time it is received by the industrial appeals judge; (d) that all motions, including offers to admit exhibits and objections raised at the time of the deposition, shall be ruled upon by the industrial appeals judge in the proposed decision and order; and (e) that the deposition may be appended to the record as part of the transcript, and not as an exhibit, without the necessity of being retyped into the record.

[Statutory Authority: RCW 51.52.020. 10-14-061, § 263-12-117, filed 6/30/10, effective 7/31/10; 04-16-009, § 263-12-117, filed 7/22/04, effective 8/22/04; 03-02-038, § 263-12-117, filed 12/24/02, effective 1/24/03.]