

**WSR 22-16-113**  
**PROPOSED RULES**  
**BOARD OF INDUSTRIAL**  
**INSURANCE APPEALS**

[Filed August 3, 2022, 9:22 a.m.]

Original Notice.

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

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

Hearing Location(s): On September 6, 2022, 9:00 a.m., videoconference or telephonic hearing only. Please use your computer browser or mobile app to join on Zoom <https://us06web.zoom.us/j/87434266933>; Or call in (for audio only) 253-215-8782, Meeting ID 874 3426 6933.

Date of Intended Adoption: September 7, 2022.

Submit Written Comments to: Brian Watkins, P.O. Box 42401, Olympia, WA 98501, email [brian.watkins@biia.wa.gov](mailto:brian.watkins@biia.wa.gov), fax 855-586-5611, by August 31, 2022.

Assistance for Persons with Disabilities: Contact Kylee Redman, phone 360-753-6823, fax 855-586-5611, TTY 800-833-6388, email [kylee.redman@biia.wa.gov](mailto:kylee.redman@biia.wa.gov). BIIA website for reasonable accommodation is [www.biia.wa.gov/Accommodation.html](http://www.biia.wa.gov/Accommodation.html), by August 31, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 263-12-050 Contents of notice of appeal. Amendment refers readers to new WAC 263-12-05901 for what must be contained in a Washington Industrial Safety and Health Act (WISHA) discrimination appeal. Also requires appellant to provide their phone number and email address for all types of notices of appeal. The specific provisions requiring phone numbers and email addresses for WISHA safety and health, and WISHA discrimination appeals are included in those specific rules, WAC 263-12-059, and new proposed WAC 263-12-05901.

New WAC 263-12-05901 Discrimination appeals arising under RCW 49.17.160 of the Washington Industrial Safety and Health Act—Contents of notice of appeal. The procedure for discrimination appeals is different from the procedure for safety and health violation appeals (no posting requirement, no stay of abatement provision, no union certification requirement). For clarity, we propose a separate rule for WISHA discrimination appeals. The new section contains the requirements for what must be in a WISHA discrimination notice of appeal, which are different and less burdensome than a safety and health violation appeal.

WAC 263-12-059 Appeals arising under the safety and health provisions of the Washington Industrial Safety and Health Act—Contents of notice of appeal—Notice to affected employees—Request for stay of abatement pending appeal. Amended to clarify that WAC 263-12-059 (posting, certification, and abatement) applies to only safety and health violation appeals. Also requires phone numbers and email addresses in notices of appeal.

WAC 263-12-093 Conferences—Disposition of appeals by agreement. Amended to clarify that discrimination appeals can be resolved between employer and employees (just like industrial insurance appeals) if the department of labor and industries (L&I) interposes no objection.

WAC 263-12-060 Filing appeals—Limitation of time. This amendment is a housekeeping correction to reflect the 2018 statutory reassump-

tion period for WISHA appeals that is set forth in RCW 49.17.140 and in the department's rules.

Reasons Supporting Proposal: The board needs to amend our rules regarding appeals arising under WISHA to prepare for the new WISHA discrimination caseload. The discrimination appeals are different in some ways from WISHA safety and health appeals. The procedural requirements are less burdensome. Without these changes, the existing rules regarding WISHA appeals would appear nonsensical when appellants seek review of a discrimination citation issued by L&I under RCW 49.17.160.

Also, while we were examining what should be in the notices of appeal for the discrimination appeals, we saw that our rules for notices of appeal didn't require phone numbers and email addresses. Phone numbers and email addresses are usually provided in notices of appeal, are included in our standard forms for appeal, and are helpful when we need to email courtesy copies of documents to parties. So, we should take this opportunity to update the rules on what must be in a notice of appeal.

Statutory Authority for Adoption: RCW 51.52.020.

Statute Being Implemented: RCW 49.17.160.

Rule is not necessitated by federal law, federal or state court decision.

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

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

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

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

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

The rule proposal is fully exempt. Exemptions identified above apply to all portions of the rule proposal.

August 3, 2022  
Brian O. Watkins  
Chief Legal Officer

## OTS-4014.1

AMENDATORY SECTION (Amending WSR 14-24-105, filed 12/2/14, effective 1/2/15)

**WAC 263-12-050 Contents of notice of appeal.** The board's jurisdiction shall be invoked by filing a written notice of appeal.

(1) **General rule.** In all appeals, the notice of appeal should contain where applicable:

(a) The name, mailing address, telephone number, and email address of the appealing party and of the party's representative, if any;

(b) A statement identifying the date and content of the department order, decision or award being appealed. This requirement may be satisfied by attaching a copy of the order, decision or award;

(c) The reason why the appealing party considers such order, decision or award to be unjust or unlawful;

(d) A statement of facts in full detail in support of each stated reason;

(e) The specific nature and extent of the relief sought;

(f) The place, most convenient to the appealing party and that party's witnesses, where board proceedings are requested to be held;

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

(h) The signature of the appealing party or the party's representative.

(2) **Industrial insurance appeals.** In appeals arising under the Industrial Insurance Act (Title 51 RCW), the notice of appeal should also contain:

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

(b) The name and address of the worker's employer at the time the injury occurred;

(c) 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;

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

(e) The time when and the place where the injury occurred or the occupational disease arose.

(3) **Crime Victims' Compensation Act.** In appeals arising under the Crime Victims' Compensation Act (chapter 7.68 RCW), the notice of appeal should also contain:

(a) The time when and the place where the criminal act occurred;

(b) The name and address of the alleged perpetrator of the crime; and

(c) The nature of the injury.

(4) **Assessment appeals.** In appeals from a notice of assessment arising under chapter 51.48 RCW or in cases arising from an assessment under the Worker and Community Right to Know Act (chapter 49.70 RCW), the notice of appeal should also contain:

(a) A statement setting forth with particularity the reason for the appeal; and

(b) The amounts, if any, that the party admits are due.

(5) **LEOFF and public employee death benefit appeals.** In appeals arising under the special death benefit provision of the Law Enforcement Officers' and Firefighters' Retirement System (chapter 41.26 RCW), the notice of appeal should also contain:

(a) The time when and the place where the death occurred; and

(b) The name and address of the decedent's employer at the time the injury occurred.

(6) **Asbestos certification appeals.** In appeals arising under chapter 49.26 RCW concerning the denial, suspension or revocation of certificates involving asbestos projects, the notice of appeal should also contain:

(a) A statement identifying the certification decision appealed from;

(b) The reason why the appealing party considers such certification decision to be incorrect.

(7) **WISHA appeals.** For appeals arising under the safety and health provisions of the Washington Industrial Safety and Health Act, refer to WAC 263-12-059.

(8) **WISHA discrimination appeals.** For appeals arising under the discrimination provisions of the Washington Industrial Safety and Health Act, refer to WAC 263-12-05901.

(9) **Other safety appeals.** In appeals arising under chapter 49.22 RCW concerning alleged violations of safety procedures in late night retail establishments, chapter 70.74 RCW concerning alleged violations of the Washington State Explosives Act, or chapter 88.04 RCW concerning alleged violations of the Charter Boat Safety Act, the notice of appeal should also contain:

(a) A statement identifying the citation, penalty assessment, or notice of abatement date appealed from;

(b) The name and address of the representative of any labor union representing any employee who was or who may be affected by the alleged safety violation or violations;

(c) If applicable, a statement certifying compliance with WAC 263-12-059.

[Statutory Authority: RCW 51.52.020. WSR 14-24-105, § 263-12-050, filed 12/2/14, effective 1/2/15; WSR 11-20-003, § 263-12-050, filed 9/21/11, effective 10/22/11; WSR 04-16-009, § 263-12-050, filed 7/22/04, effective 8/22/04; WSR 03-02-038, § 263-12-050, filed 12/24/02, effective 1/24/03; WSR 01-09-031, § 263-12-050, filed 4/11/01, effective 5/12/01; WSR 00-23-021, § 263-12-050, filed 11/7/00, effective 12/8/00; WSR 91-13-038, § 263-12-050, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-050, filed 1/10/86. Statutory Authority: RCW 51.52.020. WSR 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.]

AMENDATORY SECTION (Amending WSR 17-24-121, filed 12/6/17, effective 1/6/18)

**WAC 263-12-059 Appeals arising under the safety and health provisions of the Washington Industrial Safety and Health Act; contents of notice of appeal; notice to affected employees; request for stay of abatement pending appeal.** (1) **Contents of notice of appeal in WISHA appeals.** In all appeals arising under the safety and health provisions of the Washington Industrial Safety and Health Act, the notice of appeal should contain where applicable:

(a) The name, mailing address, telephone number, and email address of the appealing party and of the party's representative, if any.

(b) A statement identifying the citation, penalty assessment, or notice of abatement date appealed from. This requirement may be satisfied by attaching a copy of the citation, penalty assessment, or notice of abatement date.

(c) The name and address of the representative of any labor union representing any employee who was or who may be affected by the alleged safety violation(s). If the employer has no affected employees who are members of a union, the employer shall affirmatively certify that no union employees are affected by the appeal.

(d) The reason why the appealing party considers such order or decision, to be unjust or unlawful.

(e) A statement of facts in full detail in support of each stated reason.

(f) The specific nature and extent of the relief sought.

(g) The place, most convenient to the appealing party and that party's witnesses, where board proceedings are requested to be held.

(h) A statement that the person signing the notice of appeal has read it and that to the best of his or her knowledge the contents are true.

(i) The signature of the appealing party or the party's representative.

In all appeals where a stay of abatement of alleged violation(s) pending appeal is requested, the notice of appeal must comply with additional requirements set forth in subsection (3) of this section.

**(2) Employer duty to notify affected employees.**

(a) In the case of any appeal by an employer concerning an alleged violation of the safety and health provisions of the Washington Industrial Safety and Health Act, the employer shall give notice of such appeal to its employees by either:

(i) Providing copies of the appeal and applicable division of safety and health citation and notice or corrective notice of redetermination to each employee member of the employer's safety committee; or

(ii) By posting a copy of the appeal and applicable division of safety and health citation and notice or corrective notice of redetermination in a conspicuous place at the work site at which the alleged violation occurred. Any posting shall remain during the pendency of the appeal.

(b) The employer shall also provide notice advising interested employees that an appeal has been filed with the board and that any employee or group of employees who wish to participate in the appeal may do so by contacting the board. Such notice shall include the address of the board.

(c) The employer shall file with the board a certificate of proof of compliance with this section within (~~fourteen~~) 14 days of issuance of the board's notice of filing of appeal. A certification form is provided on the board's website.

(d) If notice as required by this subsection is not possible or has not been satisfied, the employer shall notify the board in writing of the reasons for noncompliance or impossibility. If the board, or its designee, determines that it is not possible for the employer to provide the required notice to employees, it will prescribe the terms and conditions of a substitute procedure reasonably calculated to give notice to affected employees, or may waive the affected-employee-notice requirement. If the employer requests a stay of abatement pending appeal, and desires to assert the claim of impossibility of notice to employees, the employer must include its claim of impossibility, together with facts showing impossibility, in its notice of appeal.

**(3) Request for a stay of abatement in WISHA appeals.**

(a) **How made.** Any request for stay of abatement pending appeal must be included in the notice of appeal. An employer may request a

stay of abatement pending appeal by placing "STAY OF ABATEMENT REQUESTED" prominently on the first page of the notice of appeal in bold print. The board will issue a final decision on such requests within (~~forty-five~~) 45 working days of the board's notice of filing of appeal.

(b) **Union information.**

(i) **Appeals from corrective notice of redetermination.** In appeals where the employer has requested a stay of abatement of the violation(s) alleged in the corrective notice of redetermination, the employer shall include in the notice of appeal the names and addresses of any unions representing workers for the employer as required by subsection (1) of this section. If the employer has no affected employees who are members of a union, the employer shall affirmatively inform the board that no union employees are affected by the appeal.

(ii) **Appeals from citation and notice.** Where an employer files an appeal from a citation and notice and the department of labor and industries chooses to forward the appeal to the board to be treated as an appeal to the board, the employer shall provide the board with the names and addresses of any unions representing workers for the employer as required by subsection (1) of this section. If the employer has no affected employees who are members of a union, the employer shall inform the board that no union employees are affected by the appeal. The employer shall provide this information to the board within (~~fourteen~~) 14 days of the date of the board's notice of filing of appeal.

(c) **Supporting and opposing documents.**

(i) **Supporting documents.** In appeals where the employer has requested a stay of abatement pursuant to RCW 49.17.140, the employer shall, within (~~fourteen~~) 14 calendar days of the date of the board's notice of filing of appeal, file with the board supporting declarations, affidavits, and documents it wishes the board to consider in deciding the request. The employer must also simultaneously provide supporting documents to the department and any affected employees' safety committee or union representative. Supporting affidavits or declarations shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Copies of individual relevant supporting documents shall be specifically referred to in the affidavit and shall be attached to the affidavit. Such supporting documents shall not be excluded from consideration based on a hearsay objection. All such affidavits and supporting documents shall be limited to evidence addressing:

(A) Whether there is good cause to stay the abatement of the violation(s) set forth in the citation and notice or corrective notice of redetermination; and

(B) Whether it is more likely than not that a stay of the abatement of the violation(s) would result in death or serious physical harm to a worker.

(ii) **Opposing documents.** Within (~~twenty-eight~~) 28 calendar days of the date of the board's notice of filing of appeal, the department of labor and industries and any affected employees shall file with the board any declarations, affidavits, and documents they wish the board to consider in deciding the request. The department must also simultaneously serve these opposing documents on the employer and any affected employees' safety committee or representative. The employees must also simultaneously serve the opposing documents on the employer and the department. Supporting and opposing affidavits and declarations shall be made on personal knowledge, shall set forth such facts as

would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Copies of individual relevant supporting documents shall be specifically referred to in the affidavit and shall be attached to the affidavit. Such supporting documents shall not be excluded from consideration based on a hearsay objection. All such affidavits and supporting documents shall be limited to evidence addressing:

(A) Whether there is good cause to stay the abatement of the violation(s) set forth in the citation and notice or corrective notice of redetermination; and

(B) Whether it is more likely than not that a stay of the abatement of the violation(s) would result in death or serious physical harm to a worker.

(4) **Denial of request to stay abatement.** If any of the following procedural or substantive grounds are present, the board will deny the request for a stay of abatement pending appeal:

(a) The request for stay of abatement is not contained in the employer's notice of appeal as required by RCW 49.17.140 (4) (a).

(b) The employer fails to include union information as required in subsection (3) (b) of this section.

(c) The employer fails to timely file a certification that its employees have been notified about the appeal and the request for stay of abatement as required in subsection (2) of this section.

(d) The employer fails to file supporting documents within ((fourteen)) 14 calendar days of the issuance of the board's notice of filing of appeal as required in subsection (3) (c) (i) of this section.

(e) The request is moot.

(f) The only violation alleged by the department of labor and industries is a general violation.

(g) The employer fails to show good cause for a stay of abatement in its supporting documents.

(h) The preliminary evidence shows it is more likely than not that a stay would result in death or serious physical harm to a worker.

(5) **Expedited nature of requests to stay abatement/requests to enlarge time.** Requests to stay abatement pending appeal must be decided in accordance with a strict statutory timeline. Oral argument will not be permitted. The board will grant requests to enlarge time to file documents or certifications only after receipt of a written motion with supporting affidavit filed with the board and all other parties before the filing deadline and only upon a showing of good cause.

[Statutory Authority: RCW 51.52.020. WSR 17-24-121, § 263-12-059, filed 12/6/17, effective 1/6/18; WSR 16-24-054, § 263-12-059, filed 12/2/16, effective 1/2/17; WSR 14-24-105, § 263-12-059, filed 12/2/14, effective 1/2/15; WSR 11-20-003, § 263-12-059, filed 9/21/11, effective 10/22/11; WSR 03-02-038, § 263-12-059, filed 12/24/02, effective 1/24/03; WSR 01-09-032, § 263-12-059, filed 4/11/01, effective 5/12/01.]

NEW SECTION

**WAC 263-12-05901 Discrimination appeals arising under RCW 49.17.160 of the Washington Industrial Safety and Health Act—Contents**

**of notice of appeal.** In all appeals arising under the discrimination provisions of the Washington Industrial Safety and Health Act, RCW 49.17.160, the notice of appeal should contain where applicable:

- (1) The name, mailing address, telephone number, and email address of the employee who filed the complaint with the department and their representative, if any.
- (2) The name, mailing address, telephone number, and email address of the cited employer or business and their representative, if any.
- (3) A statement identifying the citation number, penalty assessment, or appropriate relief order being appealed. This requirement may be satisfied by attaching a copy of the citation, penalty assessment, or order of appropriate relief.
- (4) The reason why the appealing party considers the citation, penalty, or appropriate relief decision to be wrong.
- (5) A statement of facts in full detail in support of each stated reason.
- (6) The specific nature and extent of the relief sought.
- (7) The place, most convenient to the appealing party and that party's witnesses, where board proceedings are requested to be held.
- (8) A statement that the person signing the notice of appeal has read it and that to the best of his or her knowledge the contents are true.
- (9) The signature and date of the appealing party or the party's representative.

[ ]

AMENDATORY SECTION (Amending WSR 03-02-038, filed 12/24/02, effective 1/24/03)

**WAC 263-12-060 Filing appeals—Limitation of time.** (1) In cases arising under the Industrial Insurance Act, or the Worker and Community Right to Know Act, the notice of appeal shall be filed within (~~sixty~~) 60 days from the date the copy of the order, decision or award of the department was received by the appealing party, except an appeal from an order or decision making demand for repayment of sums paid to a provider of medical, dental, vocational or other health services shall be filed within (~~twenty~~) 20 days from the date the order or decision was received by the provider.

(2) In appeals arising under the Crime Victims Compensation Act (chapter 7.68 RCW), the notice of appeal shall be filed within (~~nine-ty~~) 90 days from the date the copy of the order, decision or award of the department was received by the appealing party.

(3) In appeals from a notice of assessment arising under chapter 51.48 RCW, the notice of appeal shall be filed within (~~thirty~~) 30 days from the date the notice of assessment was served.

(4) In appeals arising under the Washington Industrial Safety and Health Act (chapter 49.17 RCW), the appeal shall be initiated by giving the director of the department of labor and industries notice of intent to appeal within (~~fifteen~~) 15 working days from the date of notification of such citation, abatement period or penalty assessment. If the director does not reassume jurisdiction over the matter to which notice of intent to appeal is given, the department shall

promptly transmit the notice of intent to appeal together with the department's record in the matter to 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 (~~thirty~~) 30 working days of such reassumption or within the extended redetermination period up to an additional (~~fifteen~~) 45 working days upon agreement of all parties to the appeal, a further determinative order issued in the matter. Any appeal from such further determinative order must be made directly to the board, with a copy filed with the director of the department, within (~~fifteen~~) 15 working days from the date of notification of such further determinative order.

(5) In appeals arising under chapter 49.26 RCW concerning the denial, suspension or revocation of certificates involving asbestos projects or in appeals arising under chapter 49.22 RCW concerning alleged violations of safety procedures in late night retail establishments, chapter 70.74 RCW concerning alleged violations of the Washington State Explosives Act, or chapter 88.04 RCW concerning alleged violations of the Charter Boat Safety Act, the notice of appeal shall be filed in the manner and within the time allowed for filing appeals under RCW 49.17.140 and WAC 263-12-060(4).

(6) In appeals arising under the special death benefit provision of the law enforcement officers' and firefighters' retirement system (chapter 41.26 RCW), the notice of appeal shall be filed within (~~sixty~~) 60 days from the date the copy of the order, decision or award of the department was received by the appealing party.

(7) 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 51.52.020. WSR 03-02-038, § 263-12-060, filed 12/24/02, effective 1/24/03; WSR 00-23-021, § 263-12-060, filed 11/7/00, effective 12/8/00; WSR 91-13-038, § 263-12-060, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-060, filed 1/10/86. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-060, filed 12/2/82. Statutory Authority: RCW 51.52.020. WSR 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.]

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

**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 with their agreement, providing the board finds the agreement is in accordance with the law and the facts.

(a) In industrial insurance cases and cases involving the discrimination provisions of the Washington Industrial Safety and Health Act, 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 is interposed by the department, an order shall be issued in conformity with their agreement, providing the board finds that the agreement is in accordance with the law and the facts. If an objection is interposed by the department on the ground that the agreement is not in accordance with the law or the facts, a hearing shall be scheduled.

(b) In cases involving safety and health violations of 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: (i) A statement reciting the abatement date for the violations involved, and (ii) a statement confirming that the penalty assessment for contested and noncontested violations has or will be paid.

(c) 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 necessary to adequately support the agreement in fact and/or in law.

(2) 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. The record may either be transcribed by a court reporter or recorded and certified by the industrial appeals judge conducting the conference.

The industrial appeals judge may, in his or her discretion accept an agreement for submission to the board in the absence of one or more of the parties from the conference, or without holding a conference.

(a) In such cases the agreement may 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 or that the party received notice of the conference and did not appear.

(b) In cases where no conference has been held but the parties have informed the judge of their agreement, yet no written confirmation has been received, a final order may be issued which encompasses the agreement.

(3) In the event concurrence of all affected employees or employee groups cannot be obtained in cases involving agreements for final disposition of safety and health 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))~~ 10 days before it is submitted to the board for entry of the final order. The manner of posting shall be in accordance with WAC 263-12-059. 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.

(4) 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 the event the parties agree that an order on agreement of parties may be issued based on the report of vocational evaluation or medical examination, 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 or an order on agreement of parties issued. If the worker or crime victim fails to appear at the evaluation or examination, the party or their representative may be required to reimburse the board for any fee charged for their failure to attend.

[Statutory Authority: RCW 51.52.020. WSR 18-24-123, § 263-12-093, filed 12/5/18, effective 1/5/19; WSR 06-12-003, § 263-12-093, filed 5/25/06, effective 6/25/06; WSR 03-02-038, § 263-12-093, filed 12/24/02, effective 1/24/03; WSR 00-23-021, § 263-12-093, filed 11/7/00, effective 12/8/00; WSR 91-13-038, § 263-12-093, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-093, filed 12/2/82. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-093, filed 1/18/82; Order 7, § 263-12-093, filed 4/4/75.]