

STATE OF MINNESOTA
WORKERS' COMPENSATION REHABILITATION REVIEW PANEL
and
WORKERS' COMPENSATION MEDICAL SERVICES REVIEW BOARD

In the Matter of the Proposed
Adoption of Rules of Procedure
for the Rehabilitation Review
Panel and Medical Services
Review Board

**STATEMENT OF NEED
AND
REASONABLENESS**

Introduction

In 1984, the legislature amended Minn. Stat. § 176.102, subd. 3(a) (Supp. 1983) to permit the Rehabilitation Review Panel to promulgate rules of procedure jointly with the Medical Services Review Board.¹ Minn. Stat. § 176.103, subd. 3 (Supp. 1983) was also amended to allow the Board to adopt joint rules of procedure with the Panel.² Incorporated into these rules are the suggestions of the Commissioner's Advisory Task Force, an ad hoc committee of attorneys representing the plaintiff and defense workers' compensation bar, and the Department of Labor and Industry.

The rules use language which is easily understood by the average person, as nonlawyers sit on the Panel and Board and appear before the Panel and Board. To facilitate the speedy disposition of cases, only procedures which are necessary to a fair and complete resolution of disputes consistent with the requirements of due process are included. Wherever possible the procedures prescribed by these rules are intended to be consistent with those used by other workers' compensation tribunals so as to minimize confusion among litigants. See Minn. Rules, ch. 1415 and 9800.

Part 5217.0010/Definitions.

Subpart 1. Subpart 1 is necessary to set out the applicability of the definitions. The exception for a contextually different meaning is necessary and reasonable so that the basic purpose of the relevant rule is achieved.

Subpart 2. "Board" is defined to avoid the repetition throughout the rules of the full title "Medical Services Review Board." This definition is needed and reasonable for ease of use of the rules.

Subpart 3. It is reasonable and necessary to select a "chairperson" of the deciding body as its spokesperson and administrative leader to coordinate the efficient handling of business and technical matters.

Subpart 4. "Commissioner" is defined to eliminate repetition throughout these rules of the phrase "of the Department of Labor and Industry." The definition is needed and reasonable for ease of use of the rules.

Subpart 5. An "executive secretary" is appointed with whom litigants may communicate before and after the hearing, when it is improper to communicate directly with the Panel or Board members. See part 5217.0180, subp. 2. As the administrator, the executive secretary is the appropriate person to receive documents on behalf of the Board or Panel. This definition is necessary and reasonable to apprise parties of the liaison for filing and for pre- or post-hearing communications.

Subpart 6. "Panel" is defined to avoid repetition throughout the rules of the full title "Rehabilitation Review Panel." This definition is needed and reasonable for ease of use of the rules.

Subpart 7. The definition of "party" is necessary to clarify that "interested party" has the same meaning as "party." Because party status presupposes an interest in a case, the two terms are interchangeable. The notice of hearing will accurately identify the parties in a case unless a petition to intervene is later granted pursuant to part 5217.0130.

Subpart 8. "Person" is defined broadly, thereby reducing the need for further description in each instance in which it is used. The definition is needed and reasonable for clarification and ease of use of the rules.

Subpart 9. The Panel and Board hear cases in five and three member panels of the Panel and Board respectively. The definition of "presiding officer" is needed to distinguish the member chosen to preside over the panel at a hearing from the chairperson who is the administrative head of the entire Panel or Board. Other rules concerning presiding officers are contained in part 5217.0180.

Subpart 10. "Rehabilitation and Medical Services" is defined to eliminate use of the full title "Rehabilitation and Medical Services Section of the Workers' Compensation Division of the Department of Labor and Industry" throughout these rules. The definition is needed and reasonable for economy and ease of use of the rules.

Part 5217.0020/Scope and Purpose.

The scope and purpose section simply states the applicability of and authority for these rules. It is necessary as a guideline for determining when these rules apply. For consistency and fairness to all parties, the rules apply to all cases appealed to the Panel or Board.

Part 5217.0030/Commencement of Appeal.

Subpart 1. Subpart 1 outlines procedures for filing the notice of appeal. The items listed in A.-I. are necessary to identify the parties as well as the specific decision and issues appealed. They are consistent with the requirements for initiating other workers' compensation proceedings. See Minn. Rules, part 1415.1000 and Minn. Stat. § 176.421 (Supp. 1983). Proof of service is required to show that all parties have received proper notice of the commencement of the action. The name, address, and telephone number of the appellant is required for communication among the parties, and between the executive secretary and the appellant.

Subpart 2. The time for appealing a rehabilitation and medical services decision to the Panel is prescribed by Minn. Stat. § 176.102, subd. 6 (Supp. 1983). The same appeal period applies to the Board under Minn. Stat. § 176.103, subd. 3(b) (Supp. 1983), which requires the Board to conduct hearings in the same manner, giving the same notice, and following the same procedures as the Panel under Minn. Stat. § 176.102, subd. 3(a) (Supp. 1983). This part is needed and reasonable for completeness of the rules.

Subpart 3. To protect the rights of interested persons who are not parties, the appellant must notify potential intervenors of the pending action. Prompt notice to potential intervenors is necessary to promote fair and complete dispositions and settlements, and to avoid administrative delays caused by the failure to notify interested persons.

Part 5217.0040/Notice of Hearing.

The Panel and Board are required by Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983) to give at least ten working days notice of a hearing. To provide adequate time for preparation and scheduling, notice will be served 30 days before the hearing. However, where a continuance has been granted, ten working days is sufficient notice. Parties may consent to a shorter notice period if they wish to expedite their hearing.

Items A.-H. specify the contents of the notice of hearing. The information necessary to identify the case, the names of the parties, the date of injury, and the social security number is listed in items A.-C. Item D. is essential to notify the parties of the date, time, and place of the hearing. The executive secretary's name, address, and telephone number in item E. is needed and reasonable to facilitate communication regarding the administrative aspects of the case.

Under Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983) the notice of hearing must inform parties of the right to be represented by an attorney at the hearing, as in item F. Item F. also notifies the parties that they may select any person to represent them, such as a union official. Further explanation of the right of representation appears in part 5217.0050.

Item G. is necessary and reasonable to underscore the importance of attendance at the hearing. Full disclosure of the consequences of failing to attend protects parties from unknowingly foregoing their rights under these rules and the Workers' Compensation Act.

Item H. is necessary to apprise the parties of the procedure for requesting a continuance of a scheduled hearing. Without encouraging continuances, prompt notice of the procedure for obtaining a continuance permits immediate rescheduling of the hearing and minimizes delays.

Part 5217.0050/Representation.

Part 5217.0050 provides for representation at the hearing by an attorney or another person chosen by the party. Representation by nonattorneys is consistent with the limitations imposed by Minn. Stat. § 481.02 (Supp. 1983) and is reasonable and necessary to encourage cost containment and informal resolution of disputes. Service on both the employee and the representative is required in conformity with part 5217.0070.

Part 5217.0060/Filing.

Part 5217.0060 is necessary so that the parties are informed of the filing procedures. Consistent with Minn. Stat. § 176.275 (1982), filing is complete on the date the document is received by the Panel or Board. Glasgow v. Sheehy Construction Co., 34 W.C.D. 615 (1981). Filing deadlines are made certain by this rule because the Panel and Board can easily verify the date of receipt. As required elsewhere in the workers' compensation system, an affidavit of service must be attached to ensure compliance with service requirements. See Minn. Rules, parts 1415.0700 and 9800.1400.

Part 5217.0070/Service.

Part 5217.0070 requires service of filed documents on parties and is needed to ensure adequate notice. Under Minn. Stat. § 176.285 (Supp. 1983), service is complete upon mailing or personal delivery. Both parties and their representatives must be served, as in proceedings before the workers' compensation court. See Minn. Rules, part 1415.0700. Consistent with the practice in the workers' compensation system, three days are not added when service is by mail.

Part 5217.0080/Time.

The rule governing time is modeled after Rule 6.01 of the Minnesota Rules of Civil Procedure and Minn. Stat. § 645.15 (1982), and its requirements are therefore reasonable. The rule is necessary to add certainty to time period computations.

Part 5217.0090/Examination of Panel or Board Files.

Minn. Rules, part 1415.0600 defines the requirements for access to workers' compensation division files in proceedings before the workers' compensation division and the workers' compensation court. Because the Panel and Board may utilize the Division files, and the Division later maintains Panel and Board files under part 5217.0240, subp. 1, it is reasonable to allow access under the same conditions. Staff members of the workers' compensation division are also available to advise parties regarding existing rules.

Part 5217.0100/Prehearing Procedures.

Subpart 1. Early submission of the statements of position and witness list is necessary to narrow the issues, identify witnesses and facilitate preparation for the hearing by the parties and by Panel and Board members. The executive secretary also requires these documents in order to properly allocate time for the hearing. Because the Panel and Board have limited time for hearings, the efficient use of available time is essential.

Subpart 2. Subpart 2 requires advance disclosure of witnesses so that opposing parties may adequately prepare their case. Parties may, however, consent to the testimony of undisclosed witnesses not included in the witness lists. Additionally, the Panel and Board need to know the approximate number of witnesses in order to allot an appropriate amount of time for the hearing.

Subpart 3. Subpart 3 states that copies of statements of position must be provided for each Panel or Board member. The budgets of the Panel and Board are insufficient to cover copying costs. Further, this requirement is consistent with that of other tribunals.

The statement of position must accurately state the issues and explain the party's position on each issue, including any authority which supports that position. This information is needed to facilitate settlement discussions, the preparation of rebuttal arguments, and even the dismissal of some cases on preliminary procedural grounds. Where a case proceeds to hearing, a completed statement of position will assist the presiding officer in efficiently conducting the hearing.

Part 5217.0110/Subpoenas.

The subpoena rule is based in part on Minn. Rules, part 1400.7000, the subpoena rule governing contested cases, and on Minn. Stat. § 176.351, subd. 2 (1982). The subpoena rule is necessary so that all material documents and testimony are obtainable. The nonrequesting party may seek to modify or quash the subpoena if it is inappropriate. Allowable fees are those set by statute and are therefore reasonable. Witness fees, expenses and other costs are paid by the requesting party to avoid overuse of the subpoena authority.

Part 5217.0120/Petitions.

Part 5217.0120 establishes uniform procedures for the filing of petitions and responses to petitions to the Panel and Board. The short deadlines ensure that procedural matters will be promptly resolved without delay of a substantive disposition. The Panel and Board do not wish to encourage the filing of unnecessary petitions by this rule, but are merely providing orderly procedures where petitions are appropriate, such as petitions for default, dismissal, or intervention. A general petition rule is necessary in the event that appropriate relief has not been anticipated in these rules. The petition must be sufficiently specific for the opposing party to respond and for the Panel or Board to make a determination.

Part 5217.0130/Intervention.

Part 5217.0130 prescribes the prerequisites for intervention. It is consistent with Minn. Stat. § 176.361 (Supp. 1983). See Gran v. Bituminous Consulting and Contracting Co., File No. 468-80-5245 (served and filed Feb. 7, 1984). Persons must be permitted to participate where their rights may be affected by a decision to the extent that the interests of existing parties are not substantially prejudiced. Intervention also promotes judicial economy, as the rights of all interested persons are adjudicated in a single, rather than in multiple proceedings. Needless disruption is avoided, however, by the preclusion of intervention where existing parties adequately represent the petitioner.

The Commissioner of the Department of Labor and Industry is specifically granted intervention rights by Minn. Laws 1984, ch. 432, § 45 when a rule or law he administers is attacked. He is authorized by Minn. Stat. §§ 175.101, subd. 1 (Supp. 1983) and 175.17(1) (1982) to administer the workers' compensation system. Where a workers' compensation law or rule is challenged before the Panel or Board, the Commissioner is thus entitled to intervene. Contrary to Rule 24.02 of the Minnesota Rules of Civil Procedure, the Commissioner's intervention is of right, not permissive.

Part 5217.0140/Dismissal.

Dismissal of cases expedites the scheduling of appropriate cases for hearing and the prompt disposition of others which need not be examined on their merits. Dismissal is appropriate where the parties have reached agreement (item A.); the appellant has withdrawn the appeal (item B.); or has failed to initiate a timely appeal (item C.). Failure to timely respond to requests for information will rarely, if ever, warrant dismissal of cases as it is intended to apply only where the information is at least one year overdue (item D.). The rule thus provides a needed and reasonable mechanism for managing the caseload of the Panel and Board.

Part 5217.0150/Default.

Part 5217.0150 establishes authority for the issuance of default orders for failure of the respondent to appear at the hearing. A proposed default order is first served on the parties. If the respondent remains in default, the default order will be issued. The matter will be rescheduled for a future date, however, if the respondent shows that a default should not be granted and also meets the requirements for a continuance. Delay in issuance of the actual order until the

service of the proposed order is needed to ensure fairness to the parties. This procedure is used by the workers' compensation court under Minn. Rules, part 1415.1500.

Because this "second chance" is routinely given, there is no need to create procedures to vacate default orders. As in contested hearings, the rule also provides that the appellant must prove a right to the relief requested. Because parties are not automatically entitled by the Workers' Compensation Act to the benefits or action requested, it is reasonable to require them to establish their entitlement to that relief.

Part 5217.0160/Consolidation.

Part 5217.0160, allowing consolidation of related cases, is necessary for the convenience of the parties and for the efficient administration of the caseload of the Panel and Board. Consolidation conserves available hearing time, thereby reducing the waiting period before a hearing may be held. Consolidation is not permitted, however, when parties are prejudiced, or when consolidation causes scheduling or other administrative problems.

The rule also allows the consolidation of two claims when one claim is before the Panel and the other is before the Board. To avoid duplication of testimony, it is reasonable to consolidate both appeals for hearing. At the conclusion of the hearing, the Panel and Board then adjourn to separately consider the respective issues before them.

Part 5217.0170/Settlement.

Subpart 1. This part establishes a procedure for the settlement of appropriate cases before the Panel and Board. It is necessary and reasonable to refer these cases to settlement judges who have expertise assisting parties in reaching settlements.

The settlement judge has 30 days in which to schedule a conference or the matter must be referred back to the Panel or Board. Cases are thus minimally delayed if they are not suitable for settlement. To date, a large percentage of cases have been settled prior to hearing through the assistance of settlement judges, thereby reducing the time spent waiting for a hearing in the remaining cases.

To promote consistency in the workers' compensation system, the settlement rule is patterned after the settlement conference rule used in other workers' compensation cases. See Minn. Rules, part 1415.1800. The parties and intervenors are required to attend the settlement conference unless excused by

the judge, and must come prepared to discuss the issues and reach agreement. Items A., C., E. and F. contain information necessary for settlement negotiations. If the parties are unable to reach an agreement, the conference is then intended to serve as a pretrial conference. Accordingly, items B. and D. are designed to aid in the preparation for trial.

Subpart 2. This subpart restates the requirements under Minn. Stat. § 176.521 (Supp. 1983) regarding approval of stipulations for settlement. It is included for completeness.

Part 5217.0180/Presiding Officers.

Subpart 1. Subpart 1 is needed to prescribe the method of selecting presiding officers and of conducting hearings. Minn. Stat. § 176.102, subd. 3(a) (Supp. 1983) requires the Panel to permit the presentation of relevant, competent, oral or written evidence, and the cross-examination of opposing evidence. Minn. Stat. § 176.103, subd. 3(b) (Supp. 1983) mandates the use of the same hearing procedures by the Board. Because the presiding officer has the primary responsibility for conducting the hearing, it is reasonable and necessary to specify this duty in the rule.

Subpart 2. This prohibition of ex parte communication with Panel and Board members is necessary to ensure that all parties are treated fairly. Neutrality is best preserved when contact with the litigants is limited to the hearing at which each party is prepared to present its position and defend against the opposing party's claims. The rule does not prohibit communication with the executive secretary or other designee of the Panel or Board regarding procedural matters.

Subpart 3. Biased Panel and Board members are required to disqualify themselves under this subpart. This is essential to the integrity of the Panel and Board. Requests for disqualification must be filed no later than fifteen days before the hearing so that a substitute hearing panel member may be assigned if necessary. Parties also have ample time from service of the notice of hearing (part 5217.0040) to determine whether to request a disqualification.

Part 5217.0190/Rights of Parties.

As required by Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983), parties may present evidence, argument, and cross-examine witnesses. However, they must limit their argument and evidence to the issues appealed. Parties and Panel and Board members thus have advance notice of issues that will be raised at the hearing. The same rule applies to the workers' compensation court of appeals. See Minn. Stat. § 176.421, subd. 6 (Supp. 1983).

Subject to approval of the Panel and Board, however, parties can agree to waive this requirement. This restriction also provides Panel and Board members with a standard for determining when evidence is relevant and competent, as required by Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983).

Part 5217.0200/Witnesses.

Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983) authorize parties to present witnesses at the hearing. To preserve the integrity of the hearing, testimony must be under oath or affirmation. Under Minn. Stat. § 176.351, subd. 1 (1982), testimony taken in other workers' compensation proceedings is to be under oath or affirmation. The seclusion of witnesses is allowed where testimony may be tainted by the testimony of other witnesses as in the workers' compensation court. See Minn. Rules, part 1415.2900, subp. 5.

Part 5217.0210/Rules of Evidence.

Subpart 1. This subpart is necessary to provide guidelines to the presiding officer regarding the acceptance and exclusion of evidence. Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983) specify that evidence must be relevant and competent. As in other workers' compensation and administrative proceedings, few other rules of evidence are necessary. Minn. Rules, part 1415.2900, subp. 6; Minn. Stat. § 14.60 (1982). The restriction of evidence relating to issues in the notice of appeal was described in part 5217.0190 as a means of ensuring fairness to parties, permitting adequate preparation, and controlling hearings. Accordingly, even if the parties consent to the admission of evidence unrelated to the issues on appeal, the presiding officer may, nevertheless, exclude the evidence.

Subpart 2. This subpart, limiting the evidence considered to that which has been offered by the parties into evidence, is necessary so that parties do not assume that documents previously filed with the workers' compensation division will be considered by the Panel and Board members. The rule also precludes Panel and Board members from considering evidence which the opposing party has not had an opportunity to rebut.

Subpart 3. Subpart 3 requires the authentication of documentary evidence unless its authenticity is undisputed. This provision is consistent with standard litigation practice. To enable the Panel and Board members to review the evidence as it is introduced, the parties must provide copies of exhibits for each Panel or Board member.

Subpart 4. Depositions of unavailable witnesses may be introduced into evidence, but must ordinarily be taken before the hearing. Post-hearing depositions are rarely permitted because of the difficulty of excluding improper evidence, and of adding evidence based on the deposition. Further, post-hearing depositions delay the disposition of the case. Special circumstances that would justify a post-hearing deposition would include late cancellation of a deposition by a medical witness, precluding its rescheduling prior to the scheduled hearing date.

Subpart 5. This subpart is needed to permit a party to complete the presentation of its case without rescheduling additional hearing time. Despite the disadvantages of post-hearing depositions described in part 5221.0210, subp. 4, they are sometimes needed for the efficient use of the Panel's and Board's limited hearing time. By submitting questions on the record or in writing to be addressed by the witness, the Panel and Board continues to serve as a neutral fact-finder.

Subpart 6. Panel and Board members may use their expertise in rehabilitation and health care in evaluating the case before them. The rule limits noticeable facts to those which are not disputed within the profession as defined by Minn. Stat. § 14.60, subd. 4 (1982) and by Rule 201(b) of the Minnesota Rules of Evidence. Due process requires that notice be taken on the record after parties have been permitted to respond.

Subpart 7. Minn. Stat. § 176.021, subd. 1(a) (Supp. 1983) governs the burden of proof in proceedings before the Panel and Board. This subpart is needed for completeness and ease of use of the rules.

Part 5217.0220/Continuances.

This rule is necessary to establish the procedure for obtaining a continuance of the case to another hearing date. The rule discourages requests for continuances by requiring petitions to be in writing and show good cause. Excess availability of continuances reduces the productivity of the Panel and Board and causes lengthy administrative delay.

The 15 day time period in item A. permits the executive secretary to schedule another case during the hearing time originally allocated to the continued case.

The higher standard for obtaining continuances in item B. reflects the administrative difficulties of scheduling replacement hearings less than 15 days before the hearing.

Item C. is reasonable and necessary to establish the procedure for granting a continuance of the hearing at the hearing itself. The eight day notice period is adequate for parties to prepare for the reconvening of the hearing and to clear their calendar without unduly delaying the disposition of the case. (The ten day notice period for hearings prescribed by Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983) does not apply because the hearing is reconvened; not a new hearing.)

Because of the limited hearing times, cases continued upon motion of a party are placed on a backup calendar as described in item D. The backup calendar is used to fill hearing times left vacant due to continuances, settlements, or dismissed cases. The statutory ten day notice period is preserved by this rule. This procedure is reasonable and necessary to enable the Panel and Board to efficiently manage their case schedules.

Item E. lists frequently cited circumstances which do not constitute good cause. It is needed to apprise litigants of the strictly enforced restrictions on continuances. Item E. is a restatement of the parallel provision used by the workers' compensation court. See Minn. Rules, part 1415.2000, subp. 4.

Part 5217.0230/ Hearing Procedure.

The rule specifying the order of procedures at the hearing is necessary to facilitate the orderly progression of the hearing. Some flexibility regarding the sequence of events is necessary, however, to allow the presiding officer to control the hearing and expedite the disposition of the case.

Item A. requires the Panel and Board to begin the hearing by describing the general scope of the hearing, the hearing procedures and the parties' basic rights at the hearing. This announcement underscores the limited issues and evidence which the Panel and Board will accept, and is especially important information for unrepresented parties.

Item B. provides that stipulations must be made a part of the record to be considered. Stipulations must be introduced early in the hearing so that Panel or Board members are immediately informed of the undisputed issues, which need not be determined by the Panel or Board.

Item C. states that parties may make short opening statements, beginning with the appellant. It is standard legal procedure to allow the aggrieved party the first opportunity to state the issues and its position on them. The rule reasonably allows equal time to each party and limits the statements to five minutes unless additional time is needed and approved by the presiding officer.

Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983) permit the parties to present evidence on their behalf at the hearing. Following standard litigation practice, item D. allows the appellant to present evidence first. Having once failed to prevail on the issue, the appellant is given the opportunity to make the first impression by characterizing the issues in its favor.

Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983) permit the cross-examination of witnesses. Item E. is necessary to establish the cross-examination procedure where there are multiple opposing parties. It is reasonable to permit the presiding officer to determine the sequence in which opposing parties may cross-examine a witness.

Item F. is necessary to clarify the procedure for presenting final arguments. Item F. allows the parties to make short final arguments to summarize the issues and facts to be considered by the Panel and Board. The appellant, following standard litigation practice, is given the last opportunity to argue its case. The time limitations are the same as those for opening statements (item C), and are justified on the same grounds.

Item G. is necessary to describe the procedure for submitting post-hearing briefs or proposed findings. To assist the factfinders in their deliberation, parties may submit proposed findings and written legal or factual arguments. The rule directs the Panel and Board to set a reasonable deadline for the filing of briefs and proposed findings which will not unduly delay the resolution of the dispute.

Item H. is necessary to delineate the close of the hearing. Time periods for submission of post-hearing evidence commence at that time as specified in item I.

Item I. reasonably designates the close of the record as the date the last document or exhibit is filed, or where there are no late-filed exhibits, as the conclusion of the hearing. The close of the record is defined to mark the date by which evidence must be submitted to the Panel and Board.

Part 5217.0240/The Record.

Subpart 1. The record is described in subp. 1 so that parties are informed of the information which forms the basis of the Panel's and Board's deliberation. A complete record of all official communications related to the appeal must contain all items listed in items A.-G. Because the Panel and Board hear cases de novo, the record is devoid of information regarding the rehabilitation and medical services decision which is on appeal to the Panel or Board. A complete record is necessary to an informed decision by the Panel and Board and also by the workers' compensation court of appeals if the Panel or Board's decision is appealed.

Subpart 2. Pursuant to Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983), proceedings before the Panel and Board must be recorded. Subpart 2 provides that a transcript must be prepared upon request. Transcripts are necessary so that the hearing proceedings may be reviewed by the workers' compensation court of appeals. Persons requesting preparation of a transcript must pay the reasonable cost of preparation. It is reasonable to require the appellant to finance its own transcript. If that party's position is ultimately upheld, the prevailing party may seek reimbursement for the cost of the transcript.

Part 5217.0250/The Decision.

Subpart 1. Due process of law permits the Panel and Board to consider only that information which is a part of the record. Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983) also require that information considered by the Panel or Board be subject to cross-examination.

Subpart 2. Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983) require the Panel and Board to issue a written decision following the close of the record. The decision must be issued promptly to enable the employee to take the next appropriate step to returning to gainful employment or to physically recover from the injury. Appeals concerning qualified rehabilitation consultants or registered rehabilitation vendors also benefit from prompt decisions as their future employment options may be affected. Subpart 2 also reasonably designates the presiding officer to write the decision unless the duty is otherwise delegated. The rule is reasonable and necessary to eliminate confusion regarding decision writing and permits a rotation of these duties.

Subpart 3. Subpart 3 lists the necessary components of a decision. Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983) do not require recitation of the facts supporting the decision. However, the workers' compensation court of appeals recently recommended the inclusion in each decision of specific findings of the essential facts. Bergstrom v. Suburban Tires, Inc., and American Mutual Insurance Co., File No. 471-72-7950 (served and filed April 25, 1984). Complete decisions, including the facts, allow an appellate court to conduct a meaningful review of the decision. A memorandum explaining the basis for the decision is also essential to the appeal process and is authorized by Minn. Stat. §§ 176.102, subd. 3(a) and 176.103, subd. 3(b) (Supp. 1983).

The additional required information is necessary to identify key persons and dates. Notification of appeal procedures is a courtesy to the attorneys, but is essential information for unrepresented parties.

Part 5217.0260/Suspension of Rules.

This part permits the suspension of the rules upon a clear showing of extraordinary circumstances on the rare occasions when strict adherence to the rules would work great injustice on the parties. Suspension of the rules is prohibited, however, when contrary to law. To ensure proper notice and an opportunity to object, the rules may not be suspended without the filing and service of a petition under part 5217.0120 or upon notice if on petition of the Panel or Board.

A narrowly circumscribed provision for suspension of rules is reasonable to ensure that the rules operate fairly. Rules may be more readily suspended by the OSHA Review Board under Minn. Rules, part 5215.6000; and by the Minnesota Appellate Courts under Minn. R. Civ. App. 102.

Part 5217.0280/Severability.

Part 5217.0280 is a standard severability clause, added to preserve the enforceability of the remainder of these rules if any part is invalidated for any reason.

EFFECTIVE DATE.

Parts 5217.0010 - 5217.0280 are procedural in nature and therefore apply to all appeals commenced or pending on the effective date of these rules.

IMPACT ON SMALL BUSINESS

The Rehabilitation Review Panel and Medical Services Review Board have considered the potential impact of these rules on small businesses as required by Minn. Stat. § 14.115 (Supp. 1983). They have concluded that these rules accommodate the needs of small businesses. Insurers and self-insured employers do not qualify as small businesses under Minn. Stat. § 14.115, subd. 1 (Supp. 1983). Further, the health care and rehabilitation providers who may appear before the Panel and Board are regulated service businesses which are exempt. Minn. Stat. § 14.115, subd. 7 (c). As procedural rules which essentially codify present practice, these rules impose no new burdens on litigants; they merely prescribe with specificity proper procedures before the Panel and Board.

The needs of small businesses were considered as required by Minn. Stat. § 14.115, subd. 2 (Supp. 1983). The duties are clearly defined and do not require a legal education to be understood. Procedural requirements were simplified so as to expedite dispositions and to place minimal burdens on the parties.

It is not feasible to establish more lenient timelines or to otherwise create exceptions for small businesses in these rules. To do so would leave the employee at a disadvantage. The procedures are simple and fair as written; to alter them in favor of small businesses would jeopardize those characteristics.

The rules may be obtained from the Public Documents Division of the Department of Administration for a small fee. Assistance in applying the rules is available from the workers' compensation division and the staff members for the Panel and Board.

FISCAL IMPACT ON LOCAL PUBLIC BODIES.

The Panel and Board have considered the fiscal impact of these rules on local public bodies pursuant to Minn. Stat. § 14.11, subd. 1 (1982) and have found none. The rules place no additional financial burden on local public bodies.

¹Minn. Laws 1984, ch. 432, § 13.

²Minn. Laws 1984, ch. 432, § 15.