



STATE OF MINNESOTA

DEPARTMENT Labor and Industry

Office Memorandum

TO : Joan Anderson Growe  
Secretary of State

DATE: Feb. 14, 1978

FROM : E. I. "Bud" Malone, Commissioner  
Chairman and Judge Charles Reischel, Workers' Compensation  
Court of Appeals  
Judge James Pomush, Workers Compensation Court of Appeals  
Judge Robert McCarthy, Workers' Compensation Court of Appeals

PHONE: \_\_\_\_\_

Attached is a copy of the Rules of Practice for the Workers' Compensation Court of Appeals and the Workers' Compensation Division which have been duly approved by the undersigned parties and will become effective March 15, 1978.

These rules have been promulgated in accordance with Minnesota Statutes 175.17, Paragraphs (3) and (4). There is no statutory requirement for this filing with your office, but we are doing so on advice of the Office of the Attorney General.

EIM:jb

Att.

E. I. "Bud" Malone, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Charles Reischel, Chairman and Judge  
Workers' Compensation Court of Appeals

James Pomush, Judge  
Workers' Compensation Court of Appeals

Robert McCarthy, Judge  
Workers' Compensation Court of Appeals

STATE OF MINNESOTA  
DEPARTMENT OF STATE  
FILED  
FEB 28 1978  
Joan Anderson Growe  
Secretary of State

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**RULES OF PRACTICE**  
for the  
**WORKERS' COMPENSATION COURT OF APPEALS**  
and the  
**WORKERS' COMPENSATION DIVISION**  
*Effective March 15, 1976*

**WC 1 Payment of compensation,**

Payment of compensation and reimbursement of reasonable medical or treatment expenses shall be made directly to the employee or dependent at his home address unless the employee or dependent, in writing, authorizes payment to be sent elsewhere. If the employee or dependent desires payments to be sent to a bank, savings and loan association, or other financial institution, the employee shall provide the employer or insurer with the name and address of such institution and any pertinent account number. The employer and insurer shall comply with such request upon receipt, without any necessity of a specific order from the Workers' Compensation Division; however, the employer and insurer shall file a copy of such request with the Division. Upon request, the employer and insurer shall furnish proof of payment of past-due benefits and treatment expenses awarded pursuant to any determination or decision of the Workers' Compensation Division or Court of Appeals to the attorney representing the employee or dependent therein.

**WC 2 Discontinuance of compensation payments.**

In any case arising under M.S. 176.241, notice of proposed discontinuance of compensation shall be given to the Division on a form prescribed by the Division. Such notice shall specifically set forth the periods and amounts of payments of temporary total, temporary partial, permanent partial and permanent total disability, or dependency benefits, and attorney fees paid or withheld, together with the applicable compensation rate or rates. Sufficient copies shall be filed with the Division so that service can be made upon the employee or dependent and his attorney, if any.

Whenever an employee or dependent files an objection to discontinuance of compensation, or a claim petition designated as an objection to discontinuance, because the employer or insurer has discontinued compensation payments without complying with the Division's requirements, and a hearing is held thereon, the burden of establishing the right to discontinue payments on the date of last payment shall be on the party discontinuing, and proof shall be offered in the usual order by the one charged with sustaining the burden of proof.

**WC 3 Notice of payments to Division.**

The employer and insurer shall keep the Division advised of all payments of compensation by the filing of interim status reports or the Annual Claim for Reimbursement for Supplementary Benefits as required by the Division. Where payments have been discontinued pursuant to the filing of a final receipt or notice of discontinuance of compensation, the employer or insurer shall immediately notify the Division of any reinstatement of payments, and the date upon which additional payments commenced.

In all cases of payment of permanent partial disability, the employer and insurer shall immediately notify the Workers' Compensation Division and the employee of the amount of money being paid, the date of payment, and the rating of disability upon which such payment is based, and shall furnish the Division with a copy of the medical report or reports upon which such payment is based.

Employers and insurers shall use forms which conform in wording, size, design and color to those prescribed by the Workers' Compensation Division for all purposes for which the Division has prescribed forms. Such forms must be fully filled out, and the details required thereon must be furnished.

**WC 4 Claims for refunds from employees or dependents.**

All requests for refunds or reimbursements by an employer or insurer for payments made under a mistake of fact, which were allegedly not received by an employee or dependent in good faith, shall be made in writing to the employee with a copy immediately mailed to the attorney representing the employee or dependent, if any, and to the Workers' Compensation Division. All such requests shall clearly indicate the bases for believing said payments were not received in good faith, and shall set forth the following information:

- (a) amount of alleged overpayment;
- (b) what the original payment was made for;
- (c) the date on which the payment was made;
- (d) the mistake of fact or law which forms the basis for the claimed overpayment;
- (e) a statement informing the employee that, if he has any questions regarding his legal obligations to repay any such claims for overpayment, he should contact either his private attorney or an attorney at the Workers' Compensation Division.

**WC 5 Medical reports to be filed with the Division.**

Employees, employers or their insurers shall promptly file or cause to be filed in the St. Paul office of the Workers' Compensation Division all reports of doctors attending or examining injured employees that facilitate the statutory obligation of the Division to keep itself fully informed as to the nature and extent of any injury to any employee arising under the Workers' Compensation Act.

**WC 6 Change of doctors.**

When an injured employee or his employer or insurer desires a change of doctors for the treatment of employee's injuries, the proponent may make application to the Division for an order for a change of doctors. Such application shall be made on forms prescribed by the Division, and shall state the reasons for the change, and shall name a doctor by whom the treatment is desired. Sufficient copies of the application shall be filed with the Division at the St. Paul office so that service can be made by the Division upon the other parties. The Division may grant such request ex parte, or may set the matter for hearing.

**WC 7 Neutral doctors.**

A request for the appointment for a neutral doctor may be made by any party to the compensation judge at or prior to the submission of the case to him, or to the Workers' Compensation Court of Appeals at or prior to the time of oral argument. The compensation judge or the Court of Appeals, if the matter is before it, may hear this matter ex parte. Notice of such request shall be given to the other party at such time as the request is made. An agreement of the parties that a neutral doctor be appointed or that a specific neutral doctor be appointed shall not be binding on the compensation judge or the Workers' Compensation Court of Appeals.

Any order appointing a neutral doctor shall be served upon all parties as well as upon the neutral doctor. The order shall specify the number of copies of the report of the neutral doctor to be filed with the Workers' Compensation Division.

**WC 8 Notice of representation.**

Written notice of representation by an attorney may be filed with the Workers' Compensation Division. Such notice must be signed by the client, and shall include the address and phone number of the attorney. Thereafter all notices shall be served on the attorney.

When a party appears without attorney at a legal proceeding, the records shall show, before proceeding with the hearing, by interrogations by the presiding official, that the party had knowledge of his right to representation by an attorney and his wish to present his case without an attorney. In such case, the presiding official shall assist in the interrogation of witnesses in an endeavor to bring out all the material facts.

**WC 9 Examination of files by attorneys.**

Attorneys desiring to examine a file in a compensation case shall present to designated personnel of the Division a written authorization to inspect such file, signed by the employer, insurer, employee or dependent. Such authorization shall be placed in and become a part of the Division's file.

**WC 10 Third-party recovery.**

Any employer or insurer, learning of a third-party recovery or settlement arising out of a personal injury for which such employer or insurer is or may be liable, shall inform the Division of such possible, pending or completed third-party action, indicating:

- (a) name of the employee,
- (b) employee's social security number, or Division file number (if known),
- (c) name of employer,
- (d) date of injury,
- (e) name and address of the attorney, if any, representing the employee in the third-party action,
- (f) if the employee is not represented by an attorney in the third-party action, or if the name of the attorney is not known, the name and address of the insurer for the third party, together with the name of their insured and any identifying file or claim numbers.

The parties shall furnish the Division with the information necessary to issue its order determining the subrogation rights of the employer and insurer, and any credit to which the employer and insurer may be entitled against compensation liability.

**WC 11 Legal documents.**

Pleadings, briefs and other legal documents shall be printed or typewritten. Where a printed form prescribed by the Division is used, it may be completed either in typewriting or with pen and ink. Typewritten documents shall use only one side of the paper.

**WC 12 Docket procedure.**

All petitions in compensation matters and every instrument which is required to be served therein shall be promptly stamped to show the date of receipt, and shall be filed and docketed, together with any notice or order and proof of service thereof with record or docket number thereon in addition to the regular file number. All papers relating to the case shall be kept in the file jacket with the docketed papers, and all docketed papers shall be securely bound together with the report of injury, consecutively arranged according to the subject matter and the date of docketing.

Notices of hearings, postponements, continuances and other proceedings before the Division or Court of Appeals, as well as orders or awards by the Division, shall be served as directed by the Division or the Court of Appeals on matters before it.

**WC 13 Commencement of proceedings.**

All proceedings before the Workers' Compensation Division on claims for personal injuries or occupational diseases shall be instituted by petition addressed to the Workers' Compensation Division, and shall be on forms prescribed by the Division. Sufficient copies of forms for filing a claim for compensation will be furnished by the Division, upon request, without charge, to claimants or their attorneys. If the action is brought against one employer and insurer, the original and two copies shall be filed with the Division at its St. Paul office. If more than one employer and insurer, or the State Treasurer as Custodian of the Special Compensation Fund, are named as adverse parties, the original petition and enough copies to serve all parties named must be filed.

**WC 14 Extension of time within which to answer.**

Requests for an extension of time within which to answer shall be made to the calendar judge or, in his absence, the chief attorney within the 10 day period provided by law for answering.

**WC 15 Joinder of parties.**

Any party requesting joinder of additional parties must petition for such joinder, serve a copy of the petition on all interested parties, and file the original with proof of service with the Division no later than 10 days prior to the pre-trial conference, unless the Division, for cause, extends such time by order. When this petition is served on the parties to be joined, it shall be accompanied by copies of all pleadings including any notice of pre-trial conference.

Any request for extension of time in which to petition for joinder of additional parties must be in writing, filed with the Division at least 10 days prior to the pre-trial conference, and supported by an affidavit setting forth the reason for such request. Copies of this request shall be served upon the other parties by the party making the request.

In cases where no extension of time to petition for joinder has been granted by the Division, no case set for pre-trial or hearing shall be stricken, continued, or otherwise delayed for the purposes of joinder, unless the attorney for the employee or dependent consents thereto, or unless the calendar judge or chief attorney orders otherwise.

All petitions for joinder shall contain, but not be limited to the following:

- (a) The party to be joined and its insurer, if any;
- (b) The date and nature of claimed personal injury or impairment;
- (c) The detailed circumstances, in affidavit form, showing that the party to be joined is a necessary party;
- (d) The supporting medical opinions relied upon;
- (e) If the party to be joined is the Special Compensation Fund, the detailed circumstances, in affidavit form, showing the specific basis claimed for joinder, including the date of registration of prior impairment where applicable.

A party contesting joinder under these rules may do so by objection filed with the Division within 5 days of service, requesting a hearing thereon; otherwise, an ex parte order may be issued granting or denying this joinder.

**WC 16 Temporary orders.**

(1) Any insurer or self-insurer voluntarily agreeing to pay benefits pursuant to M.S. 176.191 shall file a formal petition for temporary order containing the following:

- (a) Name of the employer and its insurer (or self-insured) consenting to payment of compensation benefits and medical expenses;
- (b) The dispute involved, including the name and address of other employer and its workers' compensation insurer, if known, that may be liable for workers' compensation benefits and the date of the alleged injury while working for such employer;
- (c) The beginning date of employee's present disability, and the compensation rate that said insurer/self-insurer will voluntarily pay.

The original of the petition for temporary order, with proof of service on all necessary parties, shall be filed with the Division.

(2) The petition for temporary order shall be accompanied by a prepared formal order that should be substantially in the following form:

"The undersigned having examined the foregoing petition for temporary order and the compensation files and records herein, and it appearing that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by M.S. 176.191;

NOW, THEREFORE, IT IS HEREBY ORDERED, that (name of insurer or self-insured) having consented to payment of compensation benefits pursuant to M.S. 176.191 shall pay to (name), employee, compensation at the weekly rate of \$ (amount), during the period of employee's disability, beginning (date), and shall also pay reasonable medical expenses related to employee's said disability.

IT IS FURTHER ORDERED, that following a final determination of liability and if it has been determined that some other employer(s) and/or insurer(s) are liable for all or part of the compensation paid pursuant to this temporary order, then the Division or Court of Appeals shall order the party(ies) held liable to reimburse (name of paying party) for all or part of the compensation paid pursuant to this temporary order, for which such other party(ies) is (are) held liable, including interest at the rate of 5 percent per annum.

Dated at St. Paul, Minnesota

WORKER'S COMPENSATION  
DIVISION or COURT OF APPEALS

By \_\_\_\_\_

} rest

The original and sufficient copies of said order to make service upon all necessary parties, and any attorneys representing them, shall be filed.

(3) For the purpose of this Rule, the following shall be deemed necessary parties:

- (a) The employee or dependents;
- (b) All insurers or self-insured named in the petition for temporary order;
- (c) Any employer who is uninsured or whose insurer for the date of the alleged injury in that employment is unknown.

(4) Within 10 days after being served with a copy of the petition for temporary order and order, employers or their insurers (other than paying party) may file a verified answer to the petition in accordance with the provisions of M.S. 176.321.

(5) Temporary orders, as a general rule, shall not be approved if made contingent upon the waiver by the employee of his rights to claim an additional award pursuant to M.S. 176.225, or to have fees for his attorney assessed against the employer and insurer in addition to compensation pursuant to M.S. 176.191 or M.S. 176.081, Subdivision 8.

(6) The filing of a petition for temporary order shall not cause the matter to be placed on the calendar, unless accompanied by a petition for contribution or reimbursement.

#### WC 17 Petitions for contribution or reimbursement.

Petitions for contribution or reimbursement shall set forth in detail the allegations showing the basis of the claim for contribution or reimbursement against the additional employer or insurer named therein, shall be supported by medical evidence, and shall be signed and verified. The original petition shall be filed with the Division together with proof of service upon the employee or his attorney and all additional employers or insurers named therein.

In all cases where a claim petition or other form of action is pending before the Division, said petitions shall be filed no later than 10 days prior to the pre-trial conference, and copies of all pleadings, including any notice of pre-trial conference shall be served upon the additional employers or insurers by the party bringing said petition. In cases where no action is pending before the Division, the filing of the petition for contribution or reimbursement shall initiate proceedings.

Within 10 days after being served with a copy of the petition for reimbursement or contribution, employers or their insurers, other than the paying party, may file a verified answer to the petition in accordance with the provisions of M.S. 176.321 and the matter shall be set for pre-trial conference or hearing in accordance with the practice of the Division.

The employee shall be deemed a necessary party to all of the proceedings and should be represented by an attorney of his choice and a copy of all petitions or answers shall be duly served upon the employee and his attorney in accordance with M.S. 176.321. Attorneys fees for representation of the employee, and necessary costs and disbursements incurred by or on behalf of the employee may be awarded against the party held liable for payment of benefits pursuant to M.S. 176.191 or M.S. 176.081, Subdivision 8.



**WC 18 Intervention.**

Any application or petition to intervene shall be timely, verified, and specifically allege the grounds upon which the right of intervention is claimed.

It shall be accompanied by the following information if applicable:

(1) Itemization of disability payments showing the period during which such payments were or are being made, the weekly or monthly rate of such payments and the amount of reimbursement claimed;

(2) A summary of the medical or treatment payments, broken down by medical or treatment creditor, showing the total bill submitted, the period of treatment covered by that bill, the amount of payment on that bill, and to whom the payment was made;

(3) Copies of all medical or treatment bills on which some payment was made;

(4) Copies of the worksheets or other information setting forth how the payments on medical or treatment bills were calculated;

(5) A copy of the relevant policy or contract provisions upon which the claim for reimbursement is based.

Copies of the application or petition, plus accompanying information, must be served on all of the original parties to the proceedings and any other parties subsequently joined therein. The original with proof of service shall be filed with the Worker's Compensation Division.

The attorney for the intervenor shall attend the pre-trial and the hearing unless a written stipulation, signed by all parties, is filed stating that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in this proceeding, and that, if the petitioner is successful in proving the compensability of the claim, it is agreed that said sums shall be reimbursed to the intervenor.

At the hearing on the claim petition, the intervenor shall present his evidence in support of his claim after the petitioner has rested, unless otherwise ordered by the Division, in order that the issue of intervention may be promptly determined with no undue delay that may prejudice the rights of the original parties.

Failure to comply with any provision of this rule may result in a denial of the claim for reimbursement.

**WC 19 Second injury law.**

(1) Application for registration of physically impaired employees shall be on forms prescribed by the Workers' Compensation Division and submitted in duplicate. In addition to those impairments set forth in M.S. 176.131, Subd. 8, the following additional impairments shall be registerable:

- A. Brain Tumors
- B. Pott's Disease
- C. Seizures
- D. Cancer of the Bone
- E. Leukemia

(2) Medical evidence of the physical impairment shall be contained on the application or attached to the application. Such evidence shall show the date of the last examination, the nature of the impairment, the doctor's signature and the date of his signature. If not contained on the application, it shall be legible and suitable for microfilming.

(3) The application for registration with satisfactory medical evidence when accepted by the Division shall be prima facie evidence of the existence of the named "physical impairment" shown on the application, but shall not be determinative thereof, and the burden of proof upon this issue, if contested at any time prior to the subsequent injury, shall be upon the party asserting its existence.

(4) Should the Division deem the application unacceptable prior to the subsequent injury, the applicant may, within 60 days following the receipt of notice of rejection, petition the Division in writing for a hearing upon said application. A copy of said petition shall be served by the applicant upon the State Treasurer, Custodian of the Special Compensation Fund, and upon the attorney general. Upon receipt of said petition, the Division shall set the matter for hearing, which shall be conducted as provided by M.S. 176.411, with right of appeal.

(5) Notice of intention to claim reimbursement under M.S. 176.131, Subdivision 6, shall be on forms prescribed by the Workers' Compensation Division. In a claim under M.S. 176.131, Subdivision 1, such forms shall be filed within 1 year after the payment of sufficient weekly benefits and/or medical expenses to make claim against the Special Compensation Fund. In a claim under M.S. 176.131, Subdivision 2, such forms shall be filed within 1 year from the first payment of weekly benefits or medical expense.

Reimbursement shall be made by an order of the Division or Court of Appeals from the Special Compensation Fund on a yearly basis upon application for reimbursement on forms prescribed by the Division. Such application shall be verified, set out in detail expenditures made and expenditures for which reimbursement is claimed, and shall be supported by medical reports, showing the nature and extent of disability and relationship to the injury and physical impairment for which reimbursement is claimed. The employer shall file the original and one copy of notice of intention to claim reimbursement and claim for reimbursement with the Workers' Compensation Division showing proof of service upon the attorney general.

**WC 20 Pre-trials.**

All cases shall be pre-tried whenever possible, unless the Division orders otherwise. The attorneys who will actually conduct the hearing should attend the pre-trial conference, and bring their appointment calendars with them.

Prior to pre-trial, the parties shall discuss the possibility of settlement if they deem reasonable basis for settlement exists.

At the pre-trial conference:

- (1) All parties shall be prepared to state the issues;
- (2) All parties shall state the names, and addresses if known, of all witnesses they intend to call;
- (3) All parties shall give notice of any amendments to pleadings that may still be necessary;
- (4) All parties shall file copies of all medical reports not already on file. Up-to-date medical reports are most important when the employee's present medical status is in dispute; reports of medical examinations made after pre-trial shall be filed as available prior to hearing;



(5) Each party shall state what exhibits, including but not limited to photographs, motion picture films and documentary evidence intended to be used at the hearing, and copies of such exhibits shall be made available to opposing counsel no later than 10 days prior to the date of the hearing; if any party requests showing of motion picture films before the hearing, they shall pay the expense for such showing and may tax <sup>this</sup> expense in the same manner as other costs and disbursements;

(6) If the employee plans to introduce into evidence his hospital records, the attorney for the employee shall bring to the pre-trial conference written authorizations for opposing counsel to examine those records;

(7) If the employee is claiming medical or other treatment expenses, his attorney shall state those expenses at the time of pre-trial, and shall furnish opposing counsel with copies of itemized bills for such expenses at least 10 days prior to the hearing;

(8) If the employee is claiming temporary total disability, his attorney shall state at pre-trial the dates of time lost from work;

(9) If the employee is claiming temporary partial disability, his attorney shall state the dates of such claim, the approximate amount of such claim, and the names and addresses of the employers for whom the employee worked during the period of such claim; authorizations to permit opposing counsel to confirm wages earned in those employments shall be furnished at pre-trial; an itemized breakdown of the claim for temporary partial disability shall be submitted to the compensation judge and opposing counsel at the time of the hearing;

(10) The attorney for the petitioner shall state whether payment has been made by any party other than the workers' compensation carrier for disability benefits, on medical or other treatment expenses, or on funeral expenses. If payment has been made, the name and address of the party making payment shall be furnished to the compensation judge at pre-trial, together with any identifying policy or claim numbers;

(11) If a dispute exists on the wage rate at the time of the injury, the attorney for the employer and insurer shall furnish to opposing counsel at pre-trial copies of the relevant wage records of the employee;

(12) Petitioner's attorney shall furnish to the compensation judge at pre-trial a copy of his retainer agreement with the employee or dependents and shall state the amount of any retainer fee paid. He shall be prepared at the time of hearing or settlement to show the reasonableness of any attorney fees or costs, in accordance with M.S. 176.081.

The above rules shall control the subsequent course of action, unless modified at the hearing in the interest of justice.

WC 21. Calendar procedures.

(1) A day and time certain will be assigned to each case. A notice of hearing will be sent as soon as the calendar date is known, usually at least 10 days in advance of the hearing. The notice will state the place of hearing and the amount of time allowed for the hearing. Usually cases will be set for one city only, the city most convenient for the petitioner, and adequate time will be allowed so that the case may be completely heard in one setting.

(2) Parties will secure permission in advance from the Division to take depositions. The testimony of witnesses that cannot be taken at the hearing shall be taken by deposition prior to the hearing unless, for good cause shown, the party taking such deposition has obtained the permission of the Division to take such deposition subsequent to the hearing. Depositions shall be taken in accordance with the Rules of Civil Procedure for Minnesota District Courts. The original copy of any deposition taken in any case, including discovery depositions, shall be filed with the Workers' Compensation Division and shall be evidence in the case and a part of the record of the case.

(3) As soon as the attorney knows the date scheduled for the hearing, he shall immediately notify his medical witnesses in writing and arrange for their presence. Submission of medical reports, by stipulation of the parties, in lieu of medical testimony is encouraged.

(4) Subpoenas may be obtained without charge from the Workers' Compensation Division. The name, address and telephone number of the party or attorney requesting service of the subpoena shall be included on the subpoena before service is made. When service is made, service and witness fees shall be tendered in accordance with M.S. 357.22.

(5) Where just cause for continuance exists, request for continuance must be made immediately. Any request for continuance prior to date of hearing shall be made directly to the calendar judge, chief attorney, or other designated person. Continuances shall be granted only for the most urgent cause. The following are not considered causes for continuances:

(a) Where an insurer retains counsel on its own payroll, unavailability of that counsel because of engagement in another court or otherwise;

(b) Where a law firm consists of more than one member, unavailability of the counsel assigned to the case because of engagement in another court or otherwise;

(c) Unavailability of an individual law practitioner because of engagement in another court, if he has failed to notify the judge in charge of the trial court calendar of that court that he has been assigned to a date and time certain in a workers compensation case;

(d) Unavailability of a medical or other witness if his deposition could have been taken between the time the notice of hearing was sent and the time of the hearing;

(e) Agreement of parties.

(6) Failure of a petitioner to try a case will be cause for dismissing or striking from the docket, at the discretion of the compensation judge. When a case is stricken from the calendar, it can be reinstated only by petition to the Division showing just cause for reinstatement. Failure of the employer and insurer to appear at trial is cause for hearing the matter as a default, at the discretion of the compensation judge.

(7) When a case on the calendar is settled before trial, the attorneys shall immediately notify the calendar judge or, in his absence, the docket clerk.

**WC 22 Findings of compensation judges.**

In determining cases, compensation judges shall make findings of fact on all material issues, whether compensation is allowed or disallowed, and obviate, as far as possible, the necessity of the Court of Appeals making original findings.

When a compensation judge has filed his findings and award or disallowance, his jurisdiction over the case shall end after the time in which to appeal to the Workers' Compensation Court of Appeals has expired, except for taxation of disbursements, unless the matter is re-referred to him by the Court of Appeals for supplemental findings, taking of additional testimony, rehearing, the correction of a clerical error or other action.

**WC 23 Stipulations for settlement.**

(1) Compensation judges shall approve or disapprove stipulations for settlement of cases assigned to them except those involving death claims, the issue of permanent total disability, or full, final and complete settlements, which settlements together with documents or exhibits shall be referred to the Commissioner of the Department of Labor and Industry, or his designee, by the compensation judge, with a detailed memorandum of the facts and his recommendations.

(2) Stipulations for settlement shall contain the following information:

- (a) A brief statement of all the admitted material facts;
- (b) A detailed statement of the matters in dispute, setting forth the contentions of the parties, supported by all medical reports or other documents in the possession of each party pertaining to each issue;
- (c) The weekly wage and compensation rate of the employee;
- (d) An itemization of the sums, if any, previously paid by the employer and insurer;
- (e) A statement that all medical or treatment expenses have been paid by the employer or insurer, or an itemization of such expenses which have not been paid by the employer and insurer, indicating what payments, if any, have been made by the employee. The stipulation shall specifically state whether any third party has paid any such expenses and, if such payments have been made, shall include the name and address of such third party together with any identifying claim or policy number;
- (f) The number of weeks and rate of compensation and, in cases of permanent partial disability, the percentage loss or loss of use upon which the compromise agreement is based;
- (g) Where applicable, the amount payable by the employer and insurer to the Workers' Compensation Division for the benefit of the Special Compensation Fund;
- (h) Where applicable, a statement that the employee has been fully advised of the provisions of M.S. 176.132 and M.S. 176.645, and the effect of the settlement upon any future claims for supplementary benefits or adjustment of benefits;
- (i) Where applicable, a statement that the employee is claiming or waiving his right to make application for an award of attorney fees against the employer or insurer pursuant to M.S. 176.081, Subdivision 7 or Subdivision 8, or M.S. 176.191.

(3) Stipulations for settlement of cases in which the employee or dependents have engaged the services of an attorney shall contain a statement of the amount of attorney fees and an itemization of the costs incurred, specifying who will be responsible for payment of each cost. It shall be accompanied by a written petition for attorney fees and costs providing sufficient information to show the reasonableness of the requested fees and costs in accordance with M.S. 176.081. If no fees are requested, the stipulation shall so state.

(4) Stipulations for settlement shall be accompanied by copies of all medical reports in the possession of the parties which have not previously been filed with the Division.

(5) The person or persons having jurisdiction over a case on which a settlement has been submitted may, at their discretion, require the parties involved in the settlement to draw the Order Approving Stipulation and submit it to them in the number of copies they request.

(6) The attorney representing the employee or dependents shall furnish a copy of the stipulation for settlement to his client at the time the client signs the stipulation.

#### WC 24 Attorney fees.

Whenever an employer or insurer receives notice that an attorney is representing an employee or dependent, 25 percent of the compensation, not including medical expense, shall be withheld pending an order determining the reasonable value of any claim for legal services or disbursements pursuant to M.S. 176.081. Written notice that such compensation is being withheld shall immediately be mailed to the employee or dependents, the attorney and the Division at its St. Paul office.

In applicable cases, the filing of a claim petition or an objection to discontinuance of compensation shall constitute an application for the award of attorney fees against the employer and insurer pursuant to M.S. 176.081, Subdivision 7.

Application for determination and approval of any claim for legal services or disbursements may be filed with the Division by the employer or insurer, the employee or dependents, or the attorney. Any such application shall disclose the amount of compensation withheld, the total fees or disbursements previously paid to said attorney or his associates and, if filed by the attorney or the employee or dependents, the amount of any retainer fee paid. Applications filed by attorneys shall contain sufficient information to show the reasonableness of the requested fees in accordance with M.S. 176.081, Subdivision 5 (d).

Any request for the review by the deputy commissioner of the Department of Labor and Industry in charge of workers' compensation of an order or award pertaining to attorney fees shall be on forms prescribed by the Division, and shall be filed with the Division within 30 days of date of service of the award or order upon which the appeal is taken.

#### WC 25 Additional evidence.

Applications to take additional evidence made on appeal to the Workers' Compensation Court of Appeals shall be accompanied by a sworn statement giving the names of the witnesses and the matters to which they will testify or, if such evidence is of a documentary nature, the original document or a verified copy thereof shall be attached to such application. The applicant shall, at least 10 days prior to the hearing, furnish to the Court of Appeals sufficient copies for service on the adverse parties. Hearings on such applications may be set simultaneously with the hearing on appeal and as a part thereof. If the application for additional evidence is granted, and consists of testimony of witnesses, such testimony shall be taken before a compensation judge, or as ordered by the Court of Appeals. The fee for such transcript shall be paid by the party making the application, unless otherwise ordered by the Court of Appeals.

Application to take additional evidence, made to compensation judges while the case is still within their jurisdiction, shall be made in the same manner as to the Court of Appeals on appeal. If the application is granted, the compensation judge shall designate the time and place for taking the evidence, and due notice thereof shall be given to the parties or their attorneys by the Division.

#### WC 26 Appeals from orders or decisions of the deputy commissioner or chief attorney.

With the exception of matters relating to attorney fees, where a matter has been acted upon by the deputy commissioner, the chief attorney, or any other person designated by the Commissioner of the Department of Labor and Industry to act thereon, any party in interest may appeal such matters to the Workers' Compensation Court of Appeals within 30 days after he has been served with the written order or decision affecting his interest on the grounds set forth in M.S. 176.421, and in accordance therewith.

#### WC 27 Quorum for acts of the Court of Appeals.

A majority of the Court of Appeals shall constitute a quorum for the exercise of powers conferred and duties imposed on the Court of Appeals as provided by M.S. 175.09.

Whenever any judge of the Court of Appeals is not present at the oral argument of the case, such case shall be deemed submitted to such judge of the Court of Appeals on the record and briefs therein, and when during the consideration of a case there is a change in the personnel of the Court of Appeals, the case shall be deemed submitted to the new judge or judges on the record and briefs.

#### WC 28 Hearings on appeal.

Arguments before the Court of Appeals in hearings on appeal shall be limited to the transcript of testimony taken before the compensation judge or other presiding official, the exhibits introduced into evidence, and the law.

Partial transcripts of the testimony adduced at a hearing before such presiding officials may be used on appeal to the Court of Appeals only when the parties to the hearing stipulate in writing as to what portions are necessary for determining the rights of the parties. Such stipulation shall be made a part of the judgment roll in said case. In all such cases, the reporter shall note on the certification page that such transcript contains only a portion of the testimony adduced at the hearing before the compensation judge or other presiding official, and on the index page of said transcript he shall indicate the names of the witnesses whose testimony is transcribed and of those whose testimony has been omitted.

The appellant, within 20 days from the date of notice of filing of the transcript by the reporter with the docket clerk, shall file a written brief with the Court of Appeals, together with an affidavit stating that service has been made by appellant of a copy of his brief upon each adverse party. If a brief had been submitted to the compensation judge or other presiding official, the party submitting said brief may request that it be used on appeal to the Court of Appeals. The appellant's brief shall contain an accurate, concise statement of the facts and the issues, the proposed findings, his argument, and a statement or reference to any applicable law.

Any answering brief shall be filed with the Court of Appeals within 20 days of the date of service of the brief upon the adverse party or parties, together with affidavit of service showing service upon the opposing parties.

If a party desires to waive oral argument before the Court of Appeals, said party shall notify the Court of Appeals of this fact. All arguments on appeal before the Workers' Compensation Court of Appeals shall be limited to 15 minutes by the appellant and 15 minutes by the respondent, unless otherwise authorized by the Court.

#### **WC 29 Reargument on appeal.**

Any petition for reargument on appeal before the Workers' Compensation Court of Appeals shall be filed with the Court of Appeals within 15 days from the date of service of the decision of the Court of Appeals on appeal, and shall be accompanied by a proof of service upon the adverse parties. Such petitions shall state the grounds for the requested reargument, and no oral argument on said petitions will be allowed. Any objection to said petition shall be filed with the Court of Appeals within 10 days from date of service of the petition upon the adverse party or parties, together with affidavit of service showing service upon the opposing parties.

#### **WC 30 Petitions to vacate awards or orders, and for rehearings.**

Petitions to vacate awards or orders, and for rehearings, shall be verified and accompanied by supporting affidavits and/or medical reports. Sufficient copies shall be filed with the Court of Appeals for service upon the other parties.

Such petitions shall set forth in detail the grounds upon which they are based, and shall show:

- (a) That certain material evidence not available at the time of the hearing or settlement is now available; or
- (b) Proof of a change in condition material to the issue involved; or
- (c) Any other showing that a rehearing is in the interest of justice.

A transcript of the testimony taken before the compensation judge or other presiding official, or so much thereof as may be necessary to present the question involved in such petition, shall accompany the petition.

Counter-affidavits to be presented shall be served upon opposing counsel and filed with the Court of Appeals at least 2 days before the date of hearing on the petition. Rebuttal affidavits may be served upon opposing counsel and filed at any time before the hearing.

The Court of Appeals may, in its discretion, deny such petitions without hearing thereon, or may require the petitioner to submit further proof before acting upon them.

Petitions to vacate awards or orders, and for rehearings, must be filed with the Court of Appeals within a reasonable time after the petitioner has obtained knowledge of the facts constituting the grounds upon which they are based.

**WC 31 Dilatory prosecutions of appeals.**

In cases where litigants fail to prosecute with reasonable diligence appeals from the decisions of the compensation judges or other presiding officials, or any other matter pending before it, the Court of Appeals may on its own motion, or on motion of either party, on proper showing, order the matter to be stricken from the calendar of cases pending before it. Said matter may thereafter be reinstated on the active calendar of the Court of Appeals for hearing upon proper showing that the matter is ready for hearing.

**WC 32 Taxation of disbursements.**

Service of the requests for taxation of disbursements shall be made upon the other parties, or their attorneys, by the taxing party.

The opposing party has 5 days from the date of service upon him in which to serve and file a formal objection to said taxation or allowance, with admission or proof of service upon the other parties.

If requested, a time for hearing before the compensation judge or Court of Appeals may be fixed by the Division or Court of Appeals and notice thereof shall be given to the parties by the Division.

**WC 33 Removal from files of documents or exhibits.**

All applications for permission to remove any exhibit or document from the compensation files must be made to authorized personnel.

Upon the expiration of the time in which to appeal, all exhibits or other documents may be returned to their source of origin without the consent of the parties or notice thereto. Said return shall be accompanied by a letter of transmittal, a copy of which shall remain in the file.

STATE OF MINNESOTA  
DEPARTMENT OF STATE  
FILED  
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*Jean Anderson Howe*  
Secretary of State