CHAPTER 1420
OFFICE OF ADMINISTRATIVE HEARINGS
WORKERS' COMPENSATION LITIGATION PROCEDURES

1420.0100 SCOPE AND PURPOSE.

This chapter governs workers' compensation matters in litigation before the Office of Administrative Hearings. Except for parts 1420.0300 and 1420.3700, this chapter applies to litigation initiated by the filing of a petition and does not apply to administrative conferences. This chapter does not apply to matters pending at the Department of Labor and Industry. Chapter 1415 contains joint rules with the Department of Labor and Industry concerning workers' compensation litigation procedures. The two chapters together contain the litigation rules in workers' compensation cases. Rules regarding appeals to the Workers' Compensation Court of Appeals are contained in chapter 9800.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

1420.0200 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the following terms have the meanings given them.

Subp. 2. **Act.** "Act" means the Workers' Compensation Act, Minnesota Statutes, chapter 176.

Subp. 3. **Chief judge.** "Chief judge" means the chief administrative law judge of the Office of Administrative Hearings.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Labor and Industry.

Subp. 5. **Court of appeals.** "Court of appeals" means the Workers' Compensation Court of Appeals.

Subp. 6. **Days.** "Days" means calendar days unless specifically provided otherwise.

Subp. 7. **Division.** "Division" means the Workers' Compensation Division of the Department of Labor and Industry.

Subp. 8. **Expedited hearing.** "Expedited hearing" means a hearing that is required to be heard within a shorter time period than an ordinary hearing under the act.

Subp. 9. **Insurer.** "Insurer" means the workers' compensation insurer for the employer and includes self–insured employers. For the purposes of this chapter only, "insurer" also includes the special compensation fund where the employer was uninsured on the date of injury.

Subp. 10. **Intervenor.** "Intervenor" means a party under Minnesota Statutes, section 176.361, who has an interest in a pending workers' compensation proceeding such that the person or entity may either gain or lose by an order or decision in the case, and the person or entity has filed a motion to intervene under part 1415.1250 and Minnesota Statutes, section 176.361.

Subp. 11. **Judge.** "Judge" means a compensation judge from the Office of Administrative Hearings.

Subp. 12. **Office.** "Office" means the Office of Administrative Hearings.

Subp. 13. **Petition.** "Petition" means a claim filed by or on behalf of an injured or deceased employee, employer, insurer, or special compensation fund which initiates a contested workers' compensation case requiring resolution by the Office of Administrative Hearings.

Subp. 14. **Petitioner.** "Petitioner" means the injured employee, an heir or dependent of a deceased employee or a party filing on their behalf, an employer or insurer, or the special compensation fund.

Subp. 15. **Potential Intervenor.** "Potential intervenor" means a person or an entity under Minnesota Statutes, section 176.361, who has an interest in a workers' compensation proceeding such that the person or entity may either gain or lose by an order or decision in the case, and the person or entity has not filed a motion to intervene under part 1415.1250 or Minnesota Statutes, section 176.361.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

1420.0300 PROFESSIONALISM AND CIVILITY.

In matters pending at the office, lawyers and judges are expected to conduct themselves with professionalism and civility. Personal courtesy and professional integrity must be the standard for all interactions. The Minnesota Rules of Professional Conduct and the professionalism aspirations endorsed by the Minnesota State Supreme Court have also been endorsed by the office to ensure that all proceedings are conducted in a civil manner.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

1420.1300 JOINDER OF PARTIES.

Subpart 1. **Motion or amended petition.** Upon a motion of a party or upon a judge's own motion, a judge may order the joinder of additional parties necessary for the full adjudication of the case. The petitioner may also join an additional party by filing an amended petition or motion according to part 1415.1000, subpart 4.

Subp. 2. **Service.** A party requesting joinder of additional parties shall serve a copy of the motion on all existing parties and the party to be joined. The moving party or petitioner joining a party by amended petition must also serve the party to be joined with copies of all pleadings and notice of the date, time, and place set for a settlement or pretrial conference or the hearing, if scheduled. Pleadings and attachments already filed in the division file shall not be refiled. When a judge joins parties on the judge's own motion, the office shall either serve the pleadings on the newly joined parties or designate a party to do so.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

1420.1800 SETTLEMENT CONFERENCES.

Subpart 1. **Purpose.** A settlement conference is for the primary purpose of assisting the parties in resolving the disputes and for the secondary purpose of narrowing the issues and preparing for hearing.

Subp. 2. **Attendance.** All parties, including intervenors unless otherwise excused, shall attend personally or by representative any settlement conference conducted by a judge. A representative of a party shall be prepared to engage in meaningful settlement negotiations and shall have authority to reach a full settlement on the issues in dispute or have immediate access by telephone to a person having authority to reach a full settlement.

Subp. 3. **Preconference demand and offer.** The petitioner shall provide a claims summary and settlement demand to the opposing parties one week in advance of a settlement conference. The respondent shall respond to the opposing parties with an offer of settlement or response at least one working day before the settlement conference.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

1420.1850 RESOLUTION OF CLAIMS WITH INTERVENORS; HEARINGS.

Subpart 1. **Stipulations without agreement of all intervenors or potential intervenors.** A stipulation for settlement that does not include the agreement of all intervenors or that seeks to preclude rights of potential intervenors must meet the requirements of this subpart.

A. Where a potential intervenor has been excluded from the settlement for failure to timely file a petition to intervene, a statement to that effect must be made in the stipulation for settlement and the stipulation must be accompanied by a copy of the notice given to the potential intervenor under part 1415.1100 and an affidavit of service. If the judge finds a potential intervenor had proper notice or actual notice of the right to intervene within a reasonable period of time before a case was finally concluded but failed to act, the judge may order extinguishment of the potential intervenor's interest under Minnesota Statutes, section 176.361.

B. Where other parties have reached an agreement to settle a claim but have been unable to reach agreement with an intervenor, the requirements of subitem (1) or (2) must be met.

(1) If the stipulation is signed by the intervenor, the stipulation must include a statement that the parties negotiated with the intervenor in good faith but the intervenor chooses not to enter into an agreement and reserves the right to petition for hearing on the merits under subpart 3. By signing the stipulation in this manner, the intervenor is waiving the right to a Parker/Lindberg hearing under subpart 2, but not waiving the right to a hearing on the merits under subpart 3.

(2) If the stipulation, or a letter of agreement attached to the stipulation, is not signed by the intervenor, the stipulation must include a statement that the parties were unable to obtain a response from the intervenor despite good faith efforts, or were unable to reach agreement with the intervenor despite the belief that the parties negotiated with the intervenor in good faith and made a reasonable offer to settle the intervention claim. At the time the stipulation is filed for approval, a copy of the stipulation must be served on the intervenor. An affidavit of service of the stipulation must accompany the stipulation when it is filed for approval.

Subp. 2. **Initial hearing on partial settlement.**

A. Where the principal parties have reached an agreement to settle a pending matter but are unable to reach agreement with one or more intervenors as provided in subpart 1, item B, subitem (2), the office shall schedule the matter for an expedited hearing to be held within 60 days of the filing of the stipulation for settlement.

B. The purpose of the initial hearing is to determine whether the stipulation for settlement of the other parties precludes the nonparticipating party from pursuing its claim.

C. If the judge finds that the stipulation for settlement does not preclude the intervenor from pursuing its claim and the stipulation for settlement is otherwise in accordance with the law, the stipulation will be approved. An intervenor claim of exclusion from the settlement negotiations or entitlement on the merits of the claim will be scheduled for hearing at a later date as provided in subpart 3.

Subp. 3. **Intervenor hearing on the merits.**

A. If the parties have not fully resolved the intervenor claim following the procedures in subparts 1 and 2 and there is no action pending at the office, a party must file a written petition under Minnesota Statutes, section 176.291, for a hearing on the merits of the intervening party's claim. The petition must be filed within 30 days after an award on stipulation

is served and filed. If a petition is pending at the time an award on stipulation is served and filed under subpart 2, the office shall schedule the intervenor claims for a hearing on the merits for at least one-half day.

B. The intervenor may present evidence that the intervenor was effectively excluded from meaningful settlement negotiations through lack of an offer of settlement, lack of notice of the right to intervene, or an unreasonable or bad faith offer of settlement. If the judge finds that the intervenor was effectively excluded from the proceeding or negotiations, full reimbursement to the intervenor will be ordered. If the judge does not find that the intervenor was excluded from the proceeding or negotiations, the intervenor must present evidence regarding the compensability of the employee's claim from which the intervenor's claim is derived as well as evidence of the intervenor's claim. The intervenor has the burden of proving the claims.

Subp. 4. **Potential intervenor claims after final order.** If a potential intervenor claims the potential intervenor was not served with a notice of the right to intervene and a settlement or decision is now final, the potential intervenor may request a hearing on the issue of whether the parties failed to provide proper notice under part 1415.1100. The potential intervenor must, within 30 days of knowledge of the exclusion, file a motion under part 1420.2250 for a hearing under subpart 3.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

1420.1900 PRETRIAL PROCEDURES.

Subpart 1. **Conference.** All cases are subject to a pretrial conference with a judge. All parties shall attend or be represented unless a judge orders otherwise.

Subp. 2. **Location, notice of conference.** A pretrial conference must be conducted by telephone if the set location would require a party to travel more than 50 miles to attend, unless the party prefers to be physically present. If a telephone conference is scheduled, the parties not in attendance must be available by telephone at the time of the conference. Written notice of the pretrial conference must be given at least 20 days before the conference.

Subp. 3. **Pretrial statements; conference procedures.** At the pretrial conference, the parties shall be prepared to state the claims and defenses with specificity; identify witnesses; identify anticipated exhibits; disclose any photographs, videotapes, or other documentary evidence intended to be used at the hearing; and identify any additional potential intervenors. A pretrial statement must be served and filed prior to a pretrial conference or delivered to the parties and the office at the pretrial conference. In cases not expedited under part 1420.2150 and not scheduled for a pretrial, the pretrial statement must be filed 30 days before the hearing. Pretrial statements may be amended up to seven days before the hearing in response to an opposing party's statement. The pretrial statement must include answers to the questions asked in the pretrial order or, if no pretrial order was issued, to the questions in the standard pretrial order maintained by the office, including whether or not security or an interpreter is needed. Pretrial statements are not required in expedited cases unless specifically ordered by a judge.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

1420.2050 SETTLEMENT AGREEMENTS.

Subpart 1. **Contents.** Stipulations for settlement must contain, if applicable, a brief statement of the admitted material facts, a statement of the matters in dispute, the positions of the parties and supporting documentation, the matters agreed upon, and where the agreement is not conclusively presumed reasonable under Minnesota Statutes, section 176.521, sufficiently specific information for the judge to determine whether or not the settlement is fair, reasonable, and in conformity with the act. The party submitting the stipulation for settlement for approval must also provide a proposed award on stipulation prepared for signature by a judge.

Subp. 2. **Filing.** A stipulation for settlement must be filed within 45 days of the date the parties reached an agreement. If the stipulation is not timely filed, and good cause for the delay is not shown after notice to the parties, the judge shall reinstate the matter on the active trial calendar, strike or dismiss the matter, or schedule the matter for another proceeding. The office shall assist the parties in finalizing and filing a stipulation for settlement.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

1420.2150 EXPEDITED PROCEEDINGS.

Subpart 1. **Expedited hearings.** A hearing will be held on an expedited basis only where all required statutory conditions have been met. If the statutory requirements are not met, the matter will be placed on the regular hearing calendar. A hearing will also be held on an expedited basis concerning a request for prior approval of surgery or other treatment if the surgery or treatment is urgently needed and if the surgery or treatment has not already been provided at the time of hearing.

Subp. 2. **Issues limited.**

A. The hearing on an objection to discontinuance is limited to the issues raised in the notice of intention to discontinue benefits.

B. The hearing on a petition to discontinue benefits is limited to the issues raised in the petition to discontinue benefits.

C. The hearing on a request for formal hearing is limited to the issues raised on the medical or rehabilitation request or response.

D. The hearing on a claim granted hardship status is limited to the issues raised on the original claim.

E. The hearing on a failure to answer under Minnesota Statutes, section 176.331, is limited to the issues raised in the original petition.

F. The hearing on a request for approval of urgent medical treatment is limited to the treatment approval issues.

Subp. 3. **Expansion of issues.** Expansion of the issues in an expedited proceeding will only be allowed upon agreement of the parties and the office, except that an expedited proceeding may be consolidated with another expedited proceeding.

A. If the parties agree to expansion of the issues, the judge has 60 days rather than 30 days to issue a decision.

B. If the expansion of the issues will require substantially more discovery and preparation time by any party, the expansion will not be allowed unless all parties agree that the case may be removed from expedited status.

Subp. 4. **Incomplete pleadings.** If the office notifies a party that a pleading is incomplete, the incomplete pleading must be corrected within ten days of notification in order to maintain expedited status.

Subp. 5. **Intervention.** Once an expedited process is initiated or granted, the parties must, within ten days, notify any remaining potential intervenors that the proceeding is expedited and that a motion to intervene must be filed within 30 days from service of the intervention notice rather than the 60 days allowed under part 1415.1250.

Subp. 6. **Discovery.** In expedited proceedings, reasonable discovery is allowed provided it is conducted as expeditiously as possible and is completed before the date of hearing. A judge may require the parties to comply with curtailed time limits in order to ensure a timely hearing.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

1420.2200 DISCOVERY.

Subpart 1. **Demand.** Each party shall, within 30 days of a demand by another party, unless a shorter time is indicated by this part, disclose or furnish the following:

A. the names and addresses of all known witnesses that a party intends to call at the hearing, including doctors by cross–examination or who will testify by report only. All witnesses unknown at the time of the disclosure must be disclosed within 15 days after they become known if a prior demand has been made;

B. nonprivileged written or recorded statements made by a party or by witnesses on behalf of a party. The demanding party must be permitted to inspect and reproduce such statements at the demanding party's expense. A party unreasonably failing upon demand to make the disclosure required by this part, upon proper motion made to the judge at the hearing, may be foreclosed from presenting evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed;

C. the petitioner shall disclose the names and addresses of all persons who have treated the employee in the past for injuries or conditions identical or related to those alleged in the petition, the dates of the treatment, and provide medical authorization for each. Medical privilege is waived as to the injuries or conditions alleged in the petition by the filing of the petition alleging injury or occupational disease;

D. wage and personnel records;

E. if temporary partial disability benefits are claimed, the employee must provide a list of postinjury employers and authorizations for the release of wage information for each or a complete set of wage records regarding the employee's claim; and

F. for the purpose of the pending hearing only, a party shall provide a response to a party's request for admissions relevant to the matters in dispute, including, but not limited to, the genuineness of any documents, whether the party is the person depicted in surveillance, and whether or not surveillance accurately depicts the subject's activities during the time covered by the surveillance. If a party fails to provide a response to a request for admissions, the requesting party may file a motion to compel compliance with discovery under part 1420.2250 or a motion to establish an admission or preclude evidence under subpart 5.

Subp. 2. **Depositions.** Under Minnesota Statutes, section 176.411, subdivision 2, depositions may be taken in the manner the law provides for depositions in civil actions in the district courts for the state, except where a judge orders otherwise. Upon request by an adverse party, a party must produce named witnesses for discovery deposition, except as otherwise provided by this part or Minnesota Statutes, section 176.155, subdivision 5.

A. When a party has objected to the taking of a deposition, the party requesting the deposition shall bring a motion before the judge who will determine whether the deposition should proceed. The motion must state, with specificity, the facts or other reasons supporting the need for the deposition. The judge shall order the deposition to proceed if the judge finds that:

(1) the deposition is needed for the proper presentation of a party's case;

(2) the deposition is not for purposes of delay;

(3) unusual or extraordinary circumstances exist which compel extensive discovery; or

(4) the issues or amounts in controversy are significant enough to warrant extensive discovery.

B. Depositions to preserve testimony or to present testimony due to the unavailability of the witness are allowed. The deposition must be taken sufficiently in advance of the hearing so that the deposition may be offered as an exhibit at the hearing, unless, for good cause shown, the party taking the deposition has the permission of the judge to take or file the deposition subsequent to the hearing.

C. Under Minnesota Statutes, section 176.155, subdivision 5, the cross–examination of a physician or health care provider before a hearing is specifically allowed. When a deposition for the purpose of cross–examination of a physician or health care provider is taken under this item, redirect examination is allowed. Unless ordered otherwise by a judge, the cross–examination deposition must be completed before the hearing.

D. Depositions taken for purposes of presenting testimony may be offered as an exhibit at the hearing but need not be filed with the division before the hearing.

E. The party initiating the taking of any deposition, including a cross-examination deposition under Minnesota Statutes, section 176.155, subdivision 5, is responsible for all costs of the deposition, including witness fees and court reporter fees.

Subp. 3. **Motions for disputed or additional discovery.** Upon the motion of a party, the judge may order discovery of other relevant material or information and resolve disputes about the extent of discovery, recognizing all privileges recognized by law. The judge may order discovery available under the Rules of Civil Procedure for the district courts of Minnesota provided that the discovery:

A. is needed for the proper presentation of a party's case;

B. is not for purposes of delay; and

C. the issues or amounts in controversy are significant enough to warrant extensive discovery.

Subp. 4. **Motion for direct testimony by physician or health care provider.** A motion for full testimony of a physician or health care provider must comply with part 1420.2900, subpart 3.

Subp. 5. **Penalties.** Upon the failure of a party to reasonably comply with discovery or a judge's order under this part, the following orders of the judge are allowed upon a party's motion:

A. an order that the subject matter of the order for discovery or other relevant facts is established in accordance with the moving party's claim; or

B. an order prohibiting the party failing to comply to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

Subp. 6. **Protective orders.** When a party is asked to reveal material which that party considers proprietary or privileged information, trade secrets, or sensitive medical data, the party may bring the matter to the attention of the judge, who shall issue a protective order as is reasonable and necessary or as otherwise provided by law.

Subp. 7. **Employer's expert medical examinations.** If an employee claims that the employee's ability to earn has been substantially reduced because of the injury in combination with other factors, the employee must submit to a physical and verbal examination by the employer's or insurer's expert under Minnesota Statutes, section 176.155, subdivision 1, if requested by the employer or insurer. Expert reports must be provided, upon demand, to adverse parties. A party who objects to the scope of the requested examination may bring a motion for protection. The motion must be served as provided in part 1420.2250. The judge may issue an order allowed by Rule 26.03 of the Rules of Civil Procedure for the district courts. An insurer seeking to require attendance for the requested examination may file a motion to compel attendance under part 1420.2250.

Subp. 8. **Disclosure of surveillance evidence.**

A. A party possessing relevant surveillance evidence must disclose the existence of said evidence to opposing parties upon discovery demand but no later than 30 days prior to the hearing date, or within five business days of the date it is obtained if the evidence is obtained within 30 days of the hearing date. The surveillance evidence must be disclosed at least five business days before a hearing. If a party offers undisclosed surveillance, it is only admissible where the proponent makes an offer of proof to the judge and establishes that admission of the undisclosed surveillance is vital to prevent a miscarriage of justice or fraud.

Surveillance evidence under this part includes any photographic, video, digital, motion picture, or other electronic recording or depiction of a party surreptitiously taken or obtained without the party's expressed permission or knowledge. If the items described in this subpart were not surreptitiously obtained, they are not considered surveillance evidence. Surveillance evidence does not include the personal observations of an investigator or witness or party whether surreptitiously obtained or not, or the handwritten or recorded notes of observations. Surveillance evidence includes surveillance reports.

B. At the time of disclosure of the existence of surveillance evidence under this subpart, the party disclosing evidence shall provide a copy of the evidence to the attorney representing the subject of the surveillance, or where the subject is unrepresented, to the sub-

ject, and shall advise the other parties of the existence of surveillance. A copy of the surveillance shall be presumed to have been disclosed when sent by first class mail upon posting or delivered by messenger. In the case of surveillance evidence disclosed within ten days of the hearing date, disclosure shall be by messenger under this rule and not by first class mail. Where an edited version of surveillance is disclosed, the subject of the surveillance may request the right to view or inspect the unedited version or to be provided with a copy of the unedited version at the insurer's expense.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

1420.2250 MOTION PRACTICE.

Subpart 1. **Timing.** Unless otherwise provided or due to circumstances occurring just prior to or after a pretrial conference, a motion must be served and filed on or before the date set for a pretrial conference. An adverse party has ten days from the date the motion was served to serve and file a response.

Subp. 2. **Contents of motion and response to motion.** A motion must be filed as a separate document and may not be included within another pleading. A motion and a response to a motion must contain the following information:

A. the complete case caption and descriptive title in the case caption;

B. a statement of the specific relief sought;

C. a statement of the grounds supporting or opposing the motion including citations to applicable law and, if oral argument is requested in the motion, the reasons it is needed;

D. if the motion is untimely, a showing of good cause for the delay; and

E. one copy of an order granting or denying the motion ready for signature by the judge.

Motions and responses must also, as appropriate, include affidavits, memoranda, briefs, or other support setting forth the legal or factual grounds for the motion. If supporting documentation was previously filed, those documents may be incorporated by reference.

Subp. 3. **Judge action on motion.** The office shall assign a motion to a judge when action by a judge is needed. The judge shall take action on the motion within 30 days of the filing of the motion by issuing an order, advising the parties of how the motion will be resolved, or scheduling a conference or hearing to resolve the motion.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

1420.2350 TEMPORARY ORDERS.

Subpart 1. **Petition.** The person or entity seeking to pay or receive payment under a temporary order must file a petition. The petition for temporary order must contain:

A. an explanation of the nature of the dispute and an assertion that the claimed benefits are payable under the act by at least one of the employers or insurers;

B. the names and addresses of all employers and insurers who are parties to the claim or who may be liable for the benefits claimed;

C. the date of each alleged injury and the name of the employer and insurer on each date;

D. the beginning date of the employee's present disability, the compensation rate for each injury, the proposed compensation rate to be paid, and an itemization of all benefits to be paid under the order;

E. copies of medical reports supporting the claimed period of disability and other claimed benefits;

F. a statement identifying any intervenors or potential intervenors with proof the intervenor was served with notice under part 1415.1100; and

G. a statement indicating whether the employee is represented by counsel, the name and address of the attorney, and whether attorney fees should be withheld or paid from payments made under the order.

Subp. 2. **Necessary parties.** For the purpose of this part, the following are necessary parties:

A. the employee, dependent, or heir of a deceased employee;

B. insurers or self–insurers named in the petition for temporary order;

C. an employer who is uninsured or whose insurer for the date of the alleged injury in that employment is unknown;

D. the special compensation fund if the employer, after reasonable inquiry, appears to be uninsured; and

E. intervenors.

Subp. 3. **Proposed order.** The petition for temporary order must be accompanied by an order ready for a judge's signature.

Subp. 4. **Objections.** A responding party has ten days after service of the petition in which to serve and file an objection. The objection must clearly state the basis of the objection and include supporting documentation.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

1420.2400 PETITIONS FOR CONTRIBUTION OR REIMBURSEMENT.

Subpart 1. **Contents.** Petitions for contribution or reimbursement in cases pending before the office must describe in detail the basis of a claim for contribution or reimbursement against the additional employer, insurer, or the special compensation fund. The petition must be supported by medical evidence and signed by the petitioner. If a claim petition is currently pending, and the party from whom contribution or reimbursement is sought is not a party, the petition for contribution or reimbursement must be accompanied by either a petition for joinder of the party from whom reimbursement or contribution is sought, or a petition for consolidation under part 1420.2500. The two actions may be combined on a joint petition.

Subp. 2. **Filing.** A petition for contribution or reimbursement must be filed no later than ten days before a pretrial conference or 60 days before hearing if a pretrial conference is not held. Copies of all pleadings, including a notice of pretrial conference, must be served upon the additional employers or insurers by the party bringing the petition.

Subp. 3. **Answer.** Within 20 days after being served with a copy of a petition for contribution or reimbursement, employers or their insurers, other than the petitioning party, shall file an answer to the petition under Minnesota Statutes, section 176.321.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

1420.2500 CONSOLIDATION.

Subpart 1. **Authorization.** Except as provided in part 1420.2150, consolidation of two or more related cases involving the same employee may be ordered for the purpose of hearing. Consolidation may be ordered upon motion by a party to the judge, or upon the judge's own motion, if the judge determines that:

A. separate cases present substantially the same or similar issues of fact and law;

B. a holding in one case would affect the rights of the parties in the other case; and

C. the consolidation would not substantially prejudice the rights of any party.

Notwithstanding the requirements of this part, the parties may stipulate to consolidation.

Subp. 2. **Objection to consolidation.** A party objecting to consolidation or moving for severance must file with the judge and serve upon all parties at least seven days before the

hearing a motion for severance from consolidation which includes the reasons for the motion.

Subp. 3. **Companion cases.** Two or more related cases involving different employees may not be consolidated, however, companion cases involving the same or similar issues may be grouped for scheduling purposes. In companion cases, the parties and the judge shall prepare separate pleadings and orders for each case.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

1420.2600 REASSIGNMENT AND DISQUALIFICATION.

Subpart 1. **Disqualification by judge.** A judge shall withdraw from participation in a case at any time if the judge deems himself or herself disqualified, prejudiced, or biased for any reason.

Subp. 2. **Disqualification by a party.** A party or the party's attorney may file an affidavit of prejudice and motion to disqualify a judge if the party reasonably believes that a hearing before the assigned judge cannot be fair due to the judge's prejudice or bias. The affidavit must be served on opposing parties and filed with the chief judge not more than ten days after the filing party has received notice of the assigned judge or has knowledge of the grounds for disqualification, whichever occurs last. Upon filing of the motion and affidavit of prejudice, the chief judge or designee shall issue an order and assign the case to another judge if appropriate.

A party or the party's attorney may file a motion to disqualify a judge for a cause other than or in addition to that described in an affidavit of prejudice. The motion must be supported by an affidavit detailing the facts establishing the grounds for disqualification and filed with the chief judge not more than ten days after the moving party has received notice of the assigned judge or has knowledge of the grounds for disqualification, whichever occurs last. The motion will be decided by the chief judge or a designee.

Subp. 3. **Reassignment.** A request for reassignment under Minnesota Statutes, section 176.312, is subject to the same procedures set forth in subpart 2, except that an affidavit of prejudice is not required. Each party is allowed one filing per case under this subpart and Minnesota Statutes, section 176.312. For purposes of this part, "case" means the initial assignment of a judge for hearing and all subsequent hearings regarding the same parties with the same judge. If the parties to the claim subsequently change, only the new parties may request reassignment. If a judge assignment is made just prior to a hearing, a party may request reassignment orally and then file the written request for reassignment on or before the hearing date. If a judge assignment is made just before the hearing, the written petition for reassignment may be faxed to the office or filed in person on or before the date of hearing. The chief judge may reassign a case or a particular hearing to a different judge as necessary when the assigned judge is unavailable to hear the case as scheduled.

Subp. 4. **Consolidated cases.** Consolidated cases are considered one case under this part.

Subp. 5. **Conferences.** This part is not applicable to settlement, administrative, or pretrial conferences.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

1420.2605 DISPOSITION OF COVERAGE ISSUES.

Subpart 1. **Motion.** If an answer filed under Minnesota Statutes, section 176.321, raises an issue related to independent contractor or employment status, a party may move to bifurcate the issue or issues for immediate and expedited resolution upon stipulated facts under Minnesota Statutes, section 176.322, a summary decision under Minnesota Statutes, section 176.305, or a hearing.

Subp. 2. **Filing.** The motion must be filed with the division pursuant to part 1420.2250. The motion must include evidence relied on in support of the motion by verified affidavits or stipulated facts, any request for a hearing, and if desired, a written brief not exceeding 25 pages in support of the motion.

Other parties to the proceeding may respond to the motion within 20 days after the service of the motion under this part by submission of affidavits and, in the party's discretion, a written brief not exceeding 20 pages. The movant will have ten days from service of a response to the motion to file affidavits and, if desired, a written brief not exceeding ten pages in rebuttal to any issue raised in opposition to the motion.

Subp. 3. **Decision; hearing.** The judge may determine the motion based on stipulated facts, issue a summary decision, or schedule a hearing.

Subp. 4. **Hearing on the merits.** The office shall schedule a hearing on other issues not decided under this subpart, if needed, following a final decision on the motion under this subpart and any related appeal.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

1420.2700 SUBPOENAS.

Subpoenas may be obtained without charge from the office. The name, address, and telephone number of the party or attorney requesting service of the subpoena must be included on the subpoena before service is tendered in accordance with Minnesota Statutes, section 357.22.

The judge shall quash or modify a subpoena upon a party's motion if the judge finds that it is unreasonable or oppressive. The motion must be promptly made, no later than the date specified in the subpoena for compliance.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

1420.2800 CONTINUANCES.

Subpart 1. **Continuances not favored.** Requests for continuances are inconsistent with the requirement that workers' compensation proceedings be expeditious. Continuances are not favored and will be granted only upon a clear showing of good cause.

Subp. 2. **Request.** When a continuance is requested before the hearing date, the party requesting the continuance shall first contact all other parties to determine whether mutual agreement to the continuance can be reached and, if the continuance is granted, the availability of all parties for hearing at future specific dates. When all parties are in agreement with the request for continuance and have agreed to a date for a future hearing, which date has been approved by the office, and when the continuance request is made more than 30 days before the hearing date, the continuance will be granted.

Subp. 3. **Motion.** A request for continuance must be in writing in the form of a motion for continuance pursuant to part 1420.2250. Urgent requests may be made orally to the assigned judge. For urgent requests on cases that have not been assigned to a judge, the continuance request must be made to the telephone calendar line designated by the office for such requests.

Subp. 4. **Good cause.** Good cause does not include:

A. when a law firm, or an insurer with in–house counsel, consists of more than one attorney who practice in the field of workers' compensation law, and counsel assigned to the case is unavailable because of engagement in another court or otherwise, unless all counsel are committed elsewhere;

B. unavailability of a medical or other witness if the deposition of the witness could have been taken after receipt of the notice of hearing date and before the hearing; or

C. where the judge determines that the reason for the continuance was reasonably foreseeable and avoidable.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

1420.2900 HEARING.

Subpart 1. **Notice.** A place, date, and time certain will be assigned to each case. Written notice of the hearing will be given as soon as the assigned date is known, but must be given at least 30 days in advance of the hearing, except:

A. when notice is waived by the parties;

B. when a different time is expressly agreed to by the parties;

C. when the notice is governed by contrary law or rule; or

D. when the hearing has been continued from an earlier date and the parties are all available at an earlier date.

The notice must include the place of hearing, the amount of time allowed for the hearing, and if known, the name of the judge assigned. If an additional hearing date is required, the office will set the date and time.

Subp. 2. **Availability of witnesses.** As soon as the parties know the hearing date, they shall immediately notify all witnesses in writing and arrange for the witnesses to be present or for the taking of a deposition under part 1420.2200. A party calling a witness for whom an interpreter is required shall advise the office in advance of the need for an interpreter.

Subp. 3. **Medical evidence.** Rules governing medical evidence are as follows:

A. If a party believes that the oral testimony of a physician or health care provider is crucial to the accurate determination of the employee's disability, the party shall file a written motion pursuant to part 1420.2250.

B. If medical evidence is submitted in the form of written reports, rather than by oral testimony, under Minnesota Statutes, section 176.155, subdivision 5, the reports should include:

(1) the date of the examination;

(2) the history of the injury;

(3) the patient's complaints;

(4) the source of all facts in the history and complaints;

(5) findings on examination;

(6) opinion as to the extent of disability and work limitations, if any;

(7) the cause of the disability and, if applicable, whether the work injury was a substantial contributing factor toward the disability;

(8) the medical treatment indicated;

(9) if permanent disability is an issue, an opinion as to whether or not the permanent disability has resulted from the injury and whether or not the condition has stabilized. If stabilized, a description of the disability with a complete evaluation;

(10) if a permanent partial disability is a result of two or more injuries or occurrences, or if part of the permanent disability is a result of a preexisting disability that arises from a congenital condition, traumatic injury, or incident, whether or not compensable under Minnesota Statutes, chapter 176, the health care provider shall apportion the disability between the injuries, occurrences, or conditions;

(11) if future medical care or treatment is anticipated, a statement of the nature and extent of treatment recommended and, if possible, the anticipated results;

(12) the reason for each opinion; and

(13) if applicable, a statement that the health care provider has read the rules concerning determination of permanent partial disability, understands them, and has applied those rules in making the determination.

C. Medical reports to be used at the hearing must be served on the parties and filed with the office, with an affidavit of service, sufficiently in advance of the hearing to allow

other parties the opportunity to cross–examine the health care provider, if desired, unless the delay in filing the report was caused by a failure of the employee to report for an adverse medical examination or to provide medical support for the claim on a timely basis, or other good cause. If the report is filed too late to allow the cross–examination, the record will be held open to allow other parties to either cross–examine the health care provider after the hearing or provide a follow–up report from an expert of the other parties.

Subp. 4. **Rights of parties.** All parties have the right to present evidence, to cross–examine witnesses, and to present rebuttal testimony.

Subp. 5. **Witnesses.** A party may be a witness and present other witnesses at the hearing. Oral testimony at the hearing must be under oath or affirmation. At the request of a party or upon the judge's motion, the judge may exclude witnesses other than parties from the hearing room so that they cannot hear the testimony of other witnesses.

Subp. 6. **Evidence.**

A. The judge will accept only relevant and material evidence that is not repetitive or cumulative.

B. Exhibits for hearings scheduled to be conducted by video technology must be prefiled with the office at least three business days before the hearing. Mailed or delivered exhibits must be placed in a separate, sealed envelope marked with the name and date of the case, the file number, and must be identified as exhibits of the submitting party. Faxed exhibits may not exceed 15 pages in length and must be clearly marked as video hearing exhibits for immediate hand delivery to the judge, and must include the name and file number of the case, the date of hearing, and identify the submitting party. An adverse party must also receive the exhibits at least three business days before the hearing.

Subp. 7. **Record requirements.** Record requirements are as follows:

A. The office shall maintain the official record, other than the stenographic notes of a hearing reporter, in each case until the issuance of the final order.

B. The record shall contain:

(1) all pleadings, motions, and orders;

(2) subject to part 1415.3500, evidence received or considered unless, through agreement of the parties or by order of the judge, custody of an exhibit is given to one of the parties;

(3) those parts of the division's official file on the matter which the judge incorporates on the record;

(4) offers of proof, objections, and the resulting rulings;

(5) the judge's order;

(6) memoranda submitted by a party in connection with the case and accepted by the judge;

(7) a transcript of the hearing, if one was prepared; and

(8) until a final order is issued after any appeals, the audio–magnetic recording tapes used to record the hearing, if any.

C. The chief judge shall direct that the verbatim record of a hearing be transcribed if requested by any person. The person requesting a transcript must pay the person preparing the transcript a reasonable fee.

D. Under Minnesota Statutes, section 176.421, subdivision 4, clause (3), a party may petition the chief judge for an order directing that a transcript be prepared, for purposes of appeal to the court of appeals, at no cost to the appellant. A petition filed under this provision must include:

(1) the caption of the case;

(2) case identification numbers;

(3) the name, address, and telephone number of the attorney representing the appellant; and

(4) a sworn affidavit from the appellant which must include a complete accounting of all household income from any source, the market value of any holdings including real estate, and all expenses on a monthly basis.

Subp. 8. **Hearing procedure.**

A. Unless the judge determines that the substantial rights of the parties will be ascertained better in some other manner, the hearing will be conducted in the following manner:

(1) After opening the hearing, the judge shall, unless all parties are represented by counsel, state the procedural rules for the hearing.

(2) Stipulations entered into by the parties before the hearing must be entered into the record.

(3) If the judge requests opening statements, the party with the burden of proof shall proceed first. Other parties shall make opening statements in a sequence determined by the judge.

(4) After opening statements, the party with the burden of proof shall begin the presentation of evidence. That party will be followed by the other parties in a sequence determined by the judge.

(5) Cross–examination of witnesses will be conducted in a sequence determined by the judge.

(6) When the parties and witnesses have been heard and if the judge believes that legal issues remain unresolved, final arguments may be presented in a sequence determined by the judge. Final argument may, in the discretion of the judge, be in the form of written memoranda or oral argument, or both. The judge shall decide when memoranda must be submitted. Final arguments must be limited to legal issues only.

(7) The record of the case will be closed upon receipt of the final written memorandum or transcript, if any, or late–filed exhibits which the judge has received into the record, whichever occurs last.

Subp. 9. **Disruption of hearing.** Persons in the hearing room may not converse in a disruptive manner, read newspapers, smoke, chew gum, eat food, or drink liquids other than water, or otherwise disrupt the hearing while the hearing is in session, and counsel shall so instruct parties they represent, witnesses they call, and persons accompanying them. A cellular telephone must be turned off in the hearing room unless the judge grants permission for it to be turned on. Guns and other weapons are not allowed in the hearing room or on the premises of the office.

No television, video, digital, still, or other camera, and no electronic recording devices, other than those provided by the office may be operated in the hearing room during the course of the hearing unless permission is obtained from the judge. Permission is subject to conditions set by the judge to avoid disruption of the hearing.

Under Minnesota Statutes, section 624.72, no person may interfere with the free, proper, and lawful access to or egress from the hearing room. No person may interfere or threaten interference with a hearing, or disrupt or threaten disruption of a hearing.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

1420.3150 AMENDED FINDINGS; APPEALS.

Subpart 1. **Amended findings.** Upon issuance of findings and orders after a hearing, the judge's jurisdiction over the case continues until a notice of appeal is filed or the appeal period expires, whichever occurs first. While jurisdiction continues, amended findings may be issued as needed to fully and fairly decide all issues litigated.

Subp. 2. **Filing fee for appeal.** When findings and orders are appealed under Minnesota Statutes, section 176.421 or 176.442, each appellant must submit a $25 filing fee payable to the state treasurer, office of administrative hearings account.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

1420.3700 SANCTIONS.

Subpart 1. **Generally.** Failure to comply with the order of a judge, or the willful failure to comply with the applicable provisions of this chapter or other applicable law, may subject a party or attorney to any of the following sanctions:

A. continuance of the proceeding;

B. striking of pleadings;

C. preclusion of evidence;

D. evidence sought deemed proven, where a party fails to comply with an order compelling discovery;

E. dismissal of proceedings;

F. to pay the reasonable expenses, including attorney fees, incurred by the other parties due to failure to appear, prepare, or participate in good faith; or

G. other sanction permitted by rule, statute, or case law, as the judge deems just or appropriate under the circumstances.

Subp. 2. **Procedures.** A motion to impose sanctions may be brought by a party under part 1420.2250 or upon the judge's own motion. An order for sanctions issued without a hearing is a summary decision under Minnesota Statutes, section 176.305, subdivision 1a.

Subp. 3. **Failure to appear or notify.** The petitioner must notify the office and other parties of settlement or other resolution of a conference or hearing immediately following resolution of the case. If the petitioner fails to provide notice of resolution and does not appear, and a court reporter, interpreter, or security guard appears, or the office incurs an expense to reserve a facility with video equipment, the office may impose a sanction of $150 or the reasonable fee charged by the court reporter, interpreter, security guard, or video facility if the fee is more than $150. A party seeking cancellation of a proceeding must take reasonable steps to notify the other parties of a late settlement, rescheduling, or other cancellation of a proceeding. If the party seeking cancellation fails to take reasonable steps to notify the other parties and a party makes an appearance, the office may impose a reasonable sanction payable to the appearing party to cover the expense incurred by the appearing party.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

1420.3800 SEVERABILITY.

If any provision of this chapter is held: to conflict with a governing statute, applicable provisions of the Administrative Procedure Act, Minnesota Statutes, chapter 14, or other relevant law; to exceed the statutory authority conferred; to lack a reasonable relationship to statutory purposes or to be unconstitutional, arbitrary, or unreasonable; or to be invalid or unenforceable for any other reason, the validity and enforceability of the remaining provisions of the rule shall in no manner be affected.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*