

CHAPTER 5215

DEPARTMENT OF LABOR AND INDUSTRY

OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

PROCEDURAL RULES

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5215.0100 SCOPE OF RULES.

This chapter governs all proceedings before the board. Additionally, all contested case and rule hearing proceedings are governed by chapter 1400.

In the absence of a specific provision, procedures shall be in accordance with the Minnesota Administrative Procedure Act.

Statutory Authority: *MS s 14.06*

History: *8 SR 1482*

5215.0200 DEFINITIONS.

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

Subp. 2. **Act.** "Act" means the Minnesota Occupational Safety and Health Act of 1973, Minnesota Statutes, sections 182.65 to 182.674.

Subp. 3. **Affected employee.** "Affected employee" means an employee of a cited employer who is exposed within the scope of employment to the alleged hazard described in the citation.

Subp. 4. **Authorized employee representative.** "Authorized employee representative" means a labor organization that has a collective bargaining relationship with the cited employer and that represents affected employees. It also means a person authorized to act on behalf of affected employees.

Subp. 5. **Chairperson.** "Chairperson" means the chairperson of the board as designated by the governor.

Subp. 6. **Citation.** "Citation" means a written communication issued by the commissioner to an employer pursuant to Minnesota Statutes, section 182.66.

Subp. 7. **Commissioner, board, employer, employee.** "Commissioner," "board," "employer," and "employee," have the meanings set forth in Minnesota Statutes, section 182.651.

Subp. 8. **Day.** "Day" means a calendar day.

Subp. 9. **Executive secretary.** "Executive secretary" means the executive secretary of the Occupational Safety and Health Review Board.

Subp. 10. **Administrative law judge.** "Administrative law judge" means a person assigned to hear a contested case by the Office of Administrative Hearings.

Subp. 11. **Intervenor.** "Intervenor" means any person who has submitted a petition to intervene with the administrative law judge in accordance with part 1400.6200.

Subp. 12. **Notification of proposed penalty.** "Notification of proposed penalty" means a written communication issued by the commissioner to an employer pursuant to Minnesota Statutes, section 182.661, subdivision 1 or 2.

Subp. 13. **Party.** "Party" means each person named as a party by the board in the notice of and order for hearing, or persons granted permission to intervene pursuant to part 1400.6200.

Subp. 14. **Person.** "Person" means any individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or any government or governmental subdivision unit or agency other than a court of law.

Subp. 15. **Proceeding.** "Proceeding" means any proceeding before the board or before an administrative law judge.

Subp. 16. **Representative.** "Representative" means any person, including an authorized employee representative or legal counsel for an authorized employee representative, authorized by a party or intervenor to represent that person in a proceeding.

Subp. 17. **Working day.** "Working day" means all days except Saturdays, Sundays, or holidays as defined in Minnesota Statutes, section 645.44.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482; L 1984 c 640 s 32; 17 SR 1279

5215.0300 [Repealed by amendment, 8 SR 1482]

5215.0400 [Repealed by amendment, 8 SR 1482]

5215.0500 EXTENSIONS OF TIME.

Requests for extensions of time for the filing of any pleading or document must be received by the board three days in advance of the date on which the pleading or document is due to be filed.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482

SERVICE AND NOTICE; OTHER PREHEARING PROCEDURES

5215.0600 RECORD ADDRESS.

The initial pleading filed by a person must contain the person's name, address, and telephone number. Any change in the information must be communicated promptly in writing to the administrative law judge or the board, as the case may be, and to all other parties and intervenors. A party or intervenor who fails to furnish the information waives the right to notice and service under parts 5215.0700 to 5215.0750:

Statutory Authority: *MS s 14.06*

History: 8 SR 1482; L 1984 c 640 s 32; 17 SR 1279

5215.0700 SERVICE AND NOTICE.

Subpart 1. **Parties and intervenors.** At the time of filing pleadings or other documents, a copy shall be served by the filing party or intervenor on every other party or intervenor.

Subp. 2. **Representatives.** Service upon a party or intervenor who has appeared through a representative must be made only upon such representative.

Subp. 3. **Methods of service.** Unless otherwise ordered, service may be made by post-age-prepaid first class mail, personal delivery, or by posting. Service is made at the time of mailing, personal delivery, or posting.

Subp. 4. Proof of service; filing. Service must be certified by a written statement that sets forth the date and manner of service. The statement must be signed by the person accomplishing service, and it must be filed with the pleading or document.

Subp. 5. Service by posting; certification and filing. If service is made by posting, the posting must take place within two working days of receipt of the document posted. Certification of posting must be filed with the executive secretary within five working days of receipt of the document.

Subp. 6. Service by first class mail; certification and filing. Where service is accomplished by first class mail or personal delivery, certification must be filed with the executive secretary within five working days of receipt of the document.

Subp. 7. Posting maintained. Where posting is required by parts 5215.0700 to 5215.0750, posting must be maintained until commencement of the hearing or until earlier disposition.

Statutory Authority: *MS s 14.06; 182.661 subd 3,3a; 182.664 subd 3*

History: 8 SR 1482; 13 SR 2552

5215.0710 [Repealed, 13 SR 2552]

5215.0711 SERVICE AND NOTICE TO UNREPRESENTED EMPLOYEES.

Subpart 1. Notice of contest or petition for abatement date. If there are any affected employees who are not represented by an authorized employee representative, the employer shall, within five working days of receiving the acknowledgment of the notice of contest or petition for modification of abatement date, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times.

If, because of the nature of the employer's operations, it is not practicable to post the notice of contest and notice to employees at or near the worksite, the notice must be posted in a prominent place where it can be readily observable by all affected employees. If employers are engaged in activities which are physically dispersed, these notices must be posted at the location to which employees report each day. If employees do not primarily work at or report to a single location, these notices must be posted at the location from which the employees operate to carry out their activities. If the employer's operation at the cited worksite ceases and affected employees are no longer employed by that employer, the employer must serve a copy of the notice of contest and notice to employees on all affected employees either by hand delivery or by mail to the last known address.

A notice in the following form complies with this subpart:

(Name of employer)

Your employer has been cited by the commissioner of labor and industry for violation of the Minnesota Occupational Safety and Health Act of 1973. The citation has been contested and may be the subject of a hearing. Affected employees are entitled to participate in this hearing as parties in the rules of procedure established by the Occupational Safety and Health Review Board. Notice of intent to participate should be sent to: Executive Secretary, Occupational Safety and Health Review Board, 443 Lafayette Road, Saint Paul, MN 55155, or any other address that the review board has. The notice of intent to participate must contain the employees' names, addresses, representatives, if any, and a statement that they are affected employees of the cited employer.

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace.)

Service and notice to affected employees not represented by an authorized employee representative are deemed accomplished by posting.

Certification of the posting required in this subpart must be filed with the executive secretary of the board within five working days of receipt of the acknowledgment of the notice of contest. If the employer fails to certify the posting in the prescribed manner, the board may issue an order to show cause why the contest should not be dismissed on the grounds that the employer has failed to comply with the posting requirements. If the employer fails either to show cause or to certify that the notice of contest was posted within the time prescribed by

this part, the administrative law judge may dismiss the notice of contest. In those cases where an employer has a demonstrated history of failing to certify that the notice of contest has been posted timely, the employer must show cause and certify that the notice of contest was posted within the time prescribed by this part to avoid dismissal of the notice of contest.

Subp. 2. Notice of hearing. A copy of the notice of hearing to be held before the administrative law judge must be served by the employer on affected employees who are not represented by an authorized employee representative. The notice of hearing must be posted within five days of receipt at or near the place where the citation is required to be posted.

Certification of the posting required in this subpart must be filed with the administrative law judge and a copy served on the commissioner within five working days of receipt of the notice of hearing. If the employer fails to certify that the notice of hearing was posted within the prescribed time, the administrative law judge may on a motion by one of the parties or on the judge's own motion render a default decision.

Statutory Authority: *MS s 14.06; 182.661 subd 3,3a; 182.664 subd 3*

History: *13 SR 2552*

5215.0720 [Repealed, 13 SR 2552]

5215.0721 SERVICE AND NOTICE TO REPRESENTED EMPLOYEES.

Subpart 1. Notice of contest. If there are any affected employees who are represented by an authorized employee representative, the employer shall within five working days of receiving the acknowledgment of the notice of contest or petition for modification of abatement date serve by first class mail or personal delivery upon the representative the notice in part 5215.0711, subpart 1, and a copy of the notice of contest.

Service and notice to employees represented by an authorized employee representative are deemed accomplished by serving the representative by first class mail or personal delivery.

Certification of the service required in this subpart must be filed with the executive secretary of the board within five working days of receipt of the acknowledgment of the notice of contest. If the employer fails to certify the service in the prescribed manner, the board may issue an order to show cause why the contest should not be dismissed on the grounds that the employer has failed to comply with the service requirements. If the employer either fails to show cause or to certify that the notice of contest was served within the time prescribed by this part, the administrative law judge may dismiss the notice of contest. In those cases where an employer has a demonstrated history of failing to certify that the notice of contest has been served timely, the employer must show cause and certify that the notice of contest has been served within the time prescribed by this part to avoid dismissal of the notice of contest.

Subp. 2. Notice of hearing. Within five working days of receipt of the notice of hearing to be held before the administrative law judge a copy of the notice of hearing shall be served by the employer on the authorized employee representative of affected employees, if any, by mail or personal delivery, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date the notice is received by the employer.

Certification of the service of the notice of hearing required in this subpart must be filed with the administrative law judge and a copy served on the commissioner within five working days of receipt of the notice of hearing. If the employer fails to certify that the notice was served within the prescribed time, the administrative law judge may on a motion by one of the parties or on the judge's own motion render a default decision.

Statutory Authority: *MS s 14.06; 182.661 subd 3,3a; 182.664 subd 3*

History: *13 SR 2552*

5215.0730 NOTICE OF CONTEST FILED BY EMPLOYEE OR REPRESENTATIVE.

Subpart 1. By unrepresented employee among affected, represented employees. When a notice of contest is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receiving

acknowledgment by the board of the notice of contest, serve a copy on the authorized employee representative by mail or personal delivery and shall file certification of service with the executive secretary within five working days.

Subp. 2. Notice to employer. When a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest must be provided to the employer for posting in the manner prescribed in part 5215.0710, subpart 1.

Subp. 3. Notice to other employee representatives. An authorized employee representative who files a notice of contest is responsible for serving any other authorized employee representative whose members are affected employees.

Subp. 4. Failure to serve notice of contest. If the parties referred to under subparts 1 to 3 fail to certify that the notice of contest has been posted or served as required within the time prescribed by this part, the board may issue an order to show cause why the contest should not be dismissed on the grounds that the contesting party has failed to comply with the posting or service requirements. If the party fails to show cause or to certify that the notice of contest has been served, the administrative law judge may dismiss the notice of contest.

Statutory Authority: *MS s 14.06; 182.661 subd 3,3a; 182.664 subd 3*

History: 8 SR 1482; 13 SR 2552; 17 SR 1279

5215.0740 [Renumbered 5215.0700, subp. 7]

5215.0750 [Repealed, 13 SR 2552]

5215.0800 FILING.

Before a case is assigned to an administrative law judge, all papers must be filed with the executive secretary. After the case has been assigned to an administrative law judge and before the issuance of the decision, all papers must be filed with the administrative law judge at the address given in the notice informing the parties of the assignment, with the exception of the certification of posting and service prescribed in parts 5215.0710, subpart 2, and 5215.0720, subpart 2, which must be filed with the administrative law judge and the executive secretary. After issuance of the decision by the administrative law judge, all papers must be filed with the executive secretary of the board.

Unless otherwise ordered, all filing may be accomplished by first class mail.

Filing is deemed effected at the time of mailing.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482; L 1984 c 640 s 32; 17 SR 1279

5215.0900 CONSOLIDATION.

Cases may be consolidated on the motion of any party, on the administrative law judge's own motion, or on the board's own motion, where there exist common parties, common questions of law or fact, or both, or in other circumstances as justice and the administration of the act require.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482; L 1984 c 640 s 32

5215.1000 SEVERANCE.

Upon its own motion, or upon the motion of any party, the board or the administrative law judge may, for good cause, order any proceeding severed with respect to some or all issues or parties.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482; L 1984 c 640 s 32

5215.1100 PROTECTION OF TRADE SECRETS AND OTHER CONFIDENTIAL INFORMATION.

Upon application by any person in a proceeding where trade secrets or other matters may be divulged, the administrative law judge shall issue orders as may be appropriate to protect the confidentiality of these matters.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482; L 1984 c 640 s 32

PARTIES AND REPRESENTATIVES**5215.1200 PARTY STATUS.**

Affected employees or an authorized representative may choose to participate as parties provided they file notice of intent to participate at least five days before the start of the hearing. The notice of intent to participate must contain the employees' names, addresses, representatives, if any, and a statement that they are affected employees of the cited employer. This notice shall be filed with the executive secretary if an administrative law judge has not yet been assigned. After an administrative law judge has been assigned, this notice shall be filed with the administrative law judge and served upon all other parties.

Where a notice of contest is filed by an employee or by an authorized employee representative with respect to the reasonableness of the date for abatement of a violation, the type of alleged violation, the proposed penalty, or notification issued, the employer charged with the responsibility of the alleged violation may choose party status by filing a notice at least five days before the start of the hearing. The notice must contain the employer's name, address, and representative, if any. This notice shall be filed with the executive secretary if an administrative law judge has not yet been assigned. After an administrative law judge has been assigned, this notice shall be filed with the administrative law judge and served upon all other parties.

Intervention and appearance by nonparties may be granted pursuant to part 1400.6200.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482; L 1984 c 640 s 32

5215.1300 [Repealed by amendment, 8 SR 1482]

5215.1400 REPRESENTATIVES OF PARTIES AND INTERVENORS.

Any party or intervenor may appear in person or through a representative. A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.

Affected employees who are represented by an authorized employee representative may appear only through the authorized employee representative.

Nothing contained herein requires any representative to be an attorney at law.

Withdrawal of appearance of any representative may be affected by filing a written notice of withdrawal and by serving a copy thereof on all parties and intervenors.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482

PLEADINGS AND MOTIONS**5215.1500 FORM OF PLEADINGS.**

Except as provided in parts 5215.1500 to 5215.2500, there are no specific requirements on the form of any pleading. A pleading is simply required to contain a caption sufficient to identify the parties in accordance with part 5215.1800. It must include the board's and the administrative law judge's docket number, if any, and a clear and plain statement of the relief that is sought, together with the ground for the relief.

Pleadings and other documents, other than exhibits, must be typewritten or otherwise be legible on paper, approximately 8-1/2 inches by 11 inches.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482; L 1984 c 640 s 32

5215.1600 SIGNATURE ON PLEADINGS.

Pleadings must be signed by the party filing or by the party's representative. Signing constitutes a representation by the signer that the signer has read the document or pleading, that to the best of the signer's knowledge, information, and belief the statements made in it are true, and that it is not interposed for delay.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482; 17 SR 1279

5215.1700 REFUSAL OF THE PLEADING.

The board may refuse to filing any pleading or document that does not comply with the requirements of parts 5215.1500 and 5215.1600.

Statutory Authority: *MS s 14.06*

History: *8 SR 1482*

5215.1800 CAPTION; TITLES OF CASES.

Subpart 1. **Notice of contest.** Cases initiated by a notice of contest shall be titled:

Commissioner of Labor and Industry,

Complainant

v.

(Name of contestant),

Respondent

Subp. 2. **Petition for modification of abatement date.** Cases initiated by a petition for modification of abatement date shall be titled:

(Name of employer),

Petitioner

v.

Commissioner of Labor and Industry,

Respondent

Subp. 3. **Third party interests.** Cases in which a third party interest has been exercised shall be entitled:

Commissioner of Labor and Industry,

Complainant

v.

(Name of employer),

Respondent

(Name of Authorized Employee
Representative),

Authorized
employee
representative

Subp. 4. **Placement of titles.** The titles listed in subparts 1, 2, and 3 must appear at the left upper portion of the initial page of any pleading or document, other than exhibits, filed.

The initial page of any pleading or document, other than exhibits, must show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the executive secretary of the board.

Statutory Authority: *MS s 14.06*

History: *8 SR 1482*

5215.1900 NOTICES OF CONTEST.

The commissioner shall, within seven working days of receiving a notice of contest, transmit the original to the board, together with copies of all relevant documents.

Statutory Authority: *MS s 14.06*

History: *8 SR 1482*

5215.2000 EMPLOYER CONTESTS.

Subpart 1. **Complaint.** The commissioner shall file a complaint with the board no later than 40 days after receiving the notice of contest.

The complaint must set forth all alleged violations and proposed penalties that are contested, stating with particularity:

A. the basis for jurisdiction;

B. the time, location, place, and circumstances of each alleged violation; and

C. the considerations upon which the date for abatement and the proposed penalty on each alleged violation are based.

If the commissioner seeks in the complaint to amend the citation or proposed penalty, the commissioner shall set forth the reasons for amendment and shall state with particularity the change sought.

At any time in the proceedings, an employer may withdraw the notice of contest.

Subp. 2. Notice to respondent. The commissioner shall file and serve on the respondent no later than 40 days after receiving the notice of contest a notice stating the following:

A. that the basis for the board's authority to hold a hearing is to be found in Minnesota Statutes, section 182.664;

B. that the party has a right to be represented by legal counsel in all proceedings;

C. that the rules of the board and the rules of the Office of Administrative Hearings apply to the proceedings;

D. the name of the agency official or member of the attorney general's staff to be contacted to discuss informal disposition under part 1400.5900 or discovery under part 1400.6700, subparts 2 and 3;

E. that respondent has a right to a contested case hearing before an independent administrative law judge from the Office of Administrative Hearings pursuant to Minnesota Statutes, sections 14.48 to 14.62, and 182.664, subdivision 3;

F. that respondent may present evidence and argument with respect to the issues and cross-examine witnesses;

G. where the procedural rules may be obtained;

H. that parties may attempt to settle the matter without a hearing; and

I. that should respondent wish to initiate discovery pursuant to part 1400.6700, subparts 2 and 3 prior to the setting of a hearing date, respondent must file a discovery motion with the review board and the case will be transferred to the Office of Administrative Hearings for a decision on the discovery motion.

Subp. 3. Answer. Within 15 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the board and serve the answer on every other party.

The answer must contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied is deemed admitted.

Subp. 4. Failure to file. If the complaint, notice to respondent, or the answer is not filed with the executive secretary in a timely manner, the board or one of the parties may move to dismiss the contest or the complaint. The hearing on any such motion shall be conducted before the administrative law judge.

Statutory Authority: *MS s 14.06; 182.661 subd 3,3a; 182.664 subd 3*

History: *8 SR 1482; L 1984 c 640 s 32; 13 SR 2552; 17 SR 1279*

5215.2100 PETITIONS FOR MODIFICATION OF ABATEMENT DATE.

When a petition for modification of abatement date filed under part 5210.0540 is objected to by the commissioner, affected employees, or an authorized employee representative, the petition must be processed as follows:

A. The petition, citation, and objections received by the Department of Labor and Industry must be forwarded to the board within three days after the expiration of the 15-day period set out in part 5210.0540, subpart 7.

B. The board shall docket and process the petition in the same manner as any other contested case, except that all hearings on the petitions must be handled on an expedited basis.

C. An employer petitioning for a modification of abatement date has the burden of proving that the employer has made a good faith effort to comply with the abatement requirements of the citation and that abatement has not been completed because of factors beyond the employer's control.

D. Within ten days after receiving notice of the docketing by the board of any petition for modification of abatement date, each objecting party shall file a response setting

forth the reasons for opposing the granting of a modification date different from that requested in the petition.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482; 17 SR 1279

5215.2200 EMPLOYEE CONTESTS.

An affected employee or authorized employee representative may file a notice of contest with respect to the time fixed for abatement, the citation, the type of alleged violation, the proposed penalty, or notification issued.

Employee contestations will be handled in accordance with parts 5215.1900 and 5215.2000.

At any time in the proceedings, an employee may withdraw the notice of contest.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482; 17 SR 1279

5215.2300 STATEMENT OF POSITION.

At any time prior to the commencement of the hearing before the administrative law judge, any party may file a statement of position with respect to any or all issues to be heard.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482; L 1984 c 640 s 32

5215.2400 RESPONSE TO MOTIONS.

Any party upon whom a motion is served has ten days from service of the motion to file a response.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482

5215.2500 FAILURE TO FILE.

Failure to file any pleading pursuant to this chapter when due, may, in the discretion of the board or the administrative law judge, constitute a waiver of the right to further participation in the proceedings.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482; L 1984 c 640 s 32

5215.2530 [Repealed, 13 SR 2552]

5215.2560 HEARING.

Subpart 1. **Notice of readiness for hearing.** Subsequent to the timely filing of an answer, a party that is prepared for hearing may file a notice of readiness for hearing with the board and serve a copy on all parties. Upon receipt of the notice of readiness for hearing, the board shall schedule a hearing.

Subp. 2. **Notice of readiness not filed.** If a notice of readiness for hearing is not filed with the board within 45 days of receipt of the answer, the board may schedule a hearing and shall serve written notice of hearing and order on all parties.

Subp. 3. **Notice of hearing and order.** The board shall serve a written notice of hearing and order under part 1400.5600 and all further proceedings shall be conducted pursuant to Minnesota Statutes, chapter 14.

The employer shall serve a copy of the notice of hearing and order on affected employees and authorized employee representatives pursuant to parts 5215.0700 to 5215.0730.

Statutory Authority: *MS s 14.06; 182.661 subd 3,3a; 182.664 subd 3*

History: 8 SR 1482; L 1984 c 640 s 32; 13 SR 2552

5215.2600 [Repealed, 8 SR 1482]

5215.2700 [Repealed, 8 SR 1482]

5215.2800 [Repealed, 8 SR 1482]
5215.2900 [Repealed, 8 SR 1482]
5215.3000 [Repealed, 8 SR 1482]
5215.3100 [Repealed, 8 SR 1482]
5215.3200 [Repealed, 8 SR 1482]
5215.3300 [Repealed, 8 SR 1482]
5215.3400 [Repealed, 8 SR 1482]
5215.3500 [Repealed, 8 SR 1482]
5215.3600 [Repealed, 8 SR 1482]
5215.3700 [Repealed, 8 SR 1482]
5215.3800 [Repealed, 8 SR 1482]
5215.3900 [Repealed, 8 SR 1482]
5215.4000 [Repealed, 8 SR 1482]
5215.4100 [Repealed, 8 SR 1482]
5215.4200 [Repealed, 8 SR 1482]
5215.4300 [Repealed, 8 SR 1482]
5215.4400 [Repealed, 8 SR 1482]
5215.4500 [Repealed, 8 SR 1482]
5215.4600 [Repealed, 8 SR 1482]
5215.4700 [Repealed, 8 SR 1482]
5215.4800 [Repealed, 8 SR 1482]

POSTHEARING PROCEDURES

5215.4900 DECISIONS OF ADMINISTRATIVE LAW JUDGES.

The decision of the administrative law judge must include findings of fact, conclusions of law, and an order.

The administrative law judge shall sign and date the decision. Upon service of the decision by the administrative law judge, jurisdiction rests solely in the board, and all subsequent motions, petitions, and other pleadings filed must be addressed to the board.

Statutory Authority: *MS s 14.06*

History: *8 SR 1482; L 1984 c 640 s 32*

5215.5000 NOTICE OF APPEAL.

Subpart 1. **Appellant.** Any party may file a notice of appeal of the findings and decision of an administrative law judge with the board.

Subp. 2. **Contents.** A notice of appeal must contain a concise statement of each portion of the findings and decision to which exception is taken. It may be accomplished by a statement of reasons relied upon. The notice of appeal must include the legal or factual issues that are raised on appeal. The original and four copies shall be filed with the board.

Subp. 3. **Receipt.** The notice of appeal must be received by the board at its offices in Saint Paul, Minnesota, on or before the 30th day following issuance of the administrative law judge's findings and decision.

Subp. 4. **Other parties may file.** Within ten days after the filing of a notice of appeal, any other party may file a notice of appeal of the administrative law judge's findings and decision regardless of the 30-day period stated in subpart 3.

Subp. 5. **Service on other parties.** At the time of filing a notice of appeal, the party seeking appeal shall serve a copy of the notice of appeal on every other party of record.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482; L 1984 c 640 s 32

5215.5050 BRIEFS.

The board may order the parties to file any briefs or memoranda it deems necessary. Each brief or memorandum must state the legal or factual issues involved in the appeal and each party's stance on these issues.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482

5215.5100 STAY OF ORDER OF ADMINISTRATIVE LAW JUDGE.

The timely filing by any party of a notice of appeal to the board stays the order of the administrative law judge.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482; L 1984 c 640 s 32

5215.5200 ORAL ARGUMENT BEFORE BOARD.

Subpart 1. **Oral argument heard.** Oral argument before the board will be heard from each party or party's representative unless it is waived by that party.

Subp. 2. **Notice.** At least ten days before the date set for oral argument, the executive secretary will advise all parties to the proceedings of the date, hour, place, time allotted, and scope of the argument.

Subp. 3. **Limited review.** The board is limited in its review of an administrative law judge's findings and decision to the matters preserved in the record.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482; L 1984 c 640 s 32

5215.5250 DECISION OF ADMINISTRATIVE LAW JUDGE NOT APPEALED TO BOARD.

If no party files a notice of appeal within the 30-day time limit provided in part 5215.5000, subpart 3, the decision of the administrative law judge becomes a final order of the board.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482; L 1984 c 640 s 32

SETTLEMENT; MISCELLANEOUS PROVISIONS

5215.5300 SETTLEMENT.

Subpart 1. **Settlement encouraged.** Settlement is encouraged at any stage of the proceedings if the settlement is consistent with the provisions and objectives of the act, but shall not delay the scheduling of a hearing in the matter.

Subp. 2. **Service and notice.** A settlement agreement must be filed with the board or administrative law judge and served upon affected employees and authorized employee representatives by the employer. Service upon affected employees shall be accomplished by posting. Service upon employee representatives shall be accomplished by personal delivery or first class mail.

Subp. 3. **Contents of settlement agreements and orders.** Settlement agreements must contain:

A. an affirmative statement indicating that the notice of contest was served and posted pursuant to parts 5215.0700 to 5215.0730;

B. a provision stating the date on which the employer has served the agreement upon affected employees in the manner prescribed by subpart 2;

C. an affirmative statement that the contesting party withdraws the notice of contest; and

D. an affirmative statement as to how the settlement agreement affects the status of the contested citation.

Subp. 4. **Proposed order.** Settlement agreements submitted by the parties must be accompanied by an appropriate proposed order.

Subp. 5. **Contested items.** Only contested items are subject to settlement.

Subp. 6. [Repealed, 13 SR 2552]

Subp. 7. **Approval by administrative law judge.** All settlement agreements and orders must be approved by an administrative law judge. A settlement agreement and order shall not be approved until at least ten days following service of the settlement proposal on affected employees.

Subp. 8. **Vacating settlement.** The board may vacate any settlement agreement and order that is contrary to the act or board rules.

Subp. 9. **Objections.** An affected employee may file with the administrative law judge an objection to a proposed settlement agreement within ten days of service of the proposed agreement upon the employee. The administrative law judge shall give consideration to the objection before approving or disapproving the settlement.

Statutory Authority: *MS s 14.06; 182.661 subd 3,3a; 182.664 subd 3*

History: *8 SR 1482; L 1984 c 640 s 32; 13 SR 2552*

5215.5400 EXPEDITED PROCEEDING.

Upon application of any party or intervenor, or upon a board member's own motion, any board member may order an expedited proceeding. When an expedited proceeding is ordered, the executive secretary shall notify all parties and intervenors. The administrative law judge assigned in an expedited proceeding shall make necessary rulings with respect to time for filing of pleadings and with respect to all other matters, without reference to times set forth in these rules, shall order daily transcripts of the hearing, and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

Statutory Authority: *MS s 14.06*

History: *8 SR 1482; L 1984 c 640 s 32; 17 SR 1279*

5215.5500 STANDARDS OF CONDUCT.

All persons appearing in any proceeding shall conform to the standards of ethical conduct required in the courts of the state of Minnesota.

Statutory Authority: *MS s 14.06*

History: *8 SR 1482*

5215.5600 EX PARTE COMMUNICATION.

With respect to the merits of any case not concluded, there shall be no ex parte communication between the board, including any member, officer, employee, or agent of the board who is employed in the decisional process, and any of the parties or intervenors.

If ex parte communication occurs, the board may make orders or take whatever action fairness requires. Upon notice and hearing, the board may take any disciplinary action appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

Statutory Authority: *MS s 14.06*

History: *8 SR 1482*

5215.5700 RESTRICTIONS ON INVESTIGATIVE OR PROSECUTING OFFICERS.

In any proceeding noticed pursuant to the rules in this chapter, the commissioner of labor and industry shall not participate or advise with respect to the report of the administrative law judge or the board decision.

Statutory Authority: *MS s 14.06*

History: *8 SR 1482; L 1984 c 640 s 32*

5215.5800 INSPECTION AND REPRODUCTION OF DOCUMENTS.

Subject to the provisions of law restricting public disclosure of information, any person may, at the offices of the board, inspect and copy any document filed in any proceeding. Costs are borne by the person.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482

5215.5900 RESTRICTIONS ON FORMER EMPLOYEE OR MEMBER.

No former employee or member of the board or the Department of Labor and Industry may appear before the board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which the person participated personally and substantially during the period of employment or tenure.

No former employee or member of the board or the Department of Labor and Industry may appear before the board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which the person was involved during the period of employment or tenure, unless one year has elapsed since the termination of the employment or tenure.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482; 17 SR 1279

5215.6000 WAIVER.

In special circumstances not contemplated by this chapter, or for good cause shown, the board may, upon application by any party or intervenor, or on its own motion, after three days notice to all parties and intervenors, waive any rule or make any orders as justice or the administration of the act requires.

Statutory Authority: *MS s 14.06*

History: 8 SR 1482

5215.6100 PENALTIES.

The board has no jurisdiction under Minnesota Statutes, section 182.667 and must conduct no proceeding under it.

Statutory Authority: *MS s 14.06; 182.661 subd 3,3a; 182.664 subd 3*

History: 8 SR 1482; 13 SR 2552