

5229.0700 ARBITRATION PROCEDURE.

Subpart 1. **Nature of hearing.** Upon consideration of the requests of the parties and the facts and evidence presented, the arbitrator shall determine if the matter will be heard orally or be considered by the panel solely on the written evidence.

A. The determination as to whether the matter will be heard orally or solely upon the written submissions must be made within 30 days of the date of submission of the last timely response.

B. The arbitrator shall determine the time and place for oral argument or the meeting of the arbitration panel, upon consultation with the parties and panel members.

C. Unless extraordinary circumstances require otherwise, the first oral argument or first meeting of the panel must take place within 60 days of the date for final submission of the response.

Subp. 2. **Submission of additional materials.** If, upon review of the materials submitted by the parties, the arbitrator determines that further evidentiary materials are required, the arbitrator may order the parties to submit these materials and may set a date by which these materials must be submitted. In no case may the deadline for submission of additional evidence be greater than 90 days from the arbitrator's order to submit materials.

Subp. 3. **Determination on written evidence.** If the arbitrator concludes that the matter should be determined solely on the written evidence submitted, the arbitrator must notify the arbitration advisors, if any, of the date, time, and place of the first meeting, and the panel shall meet as needed.

Subp. 4. **Oral hearings.** If the arbitrator determines that an oral hearing is required, the arbitrator shall notify the parties, the panel, and the employee and the employee's attorney, if any, of the date, time, and place of the hearing.

A. Unless otherwise agreed to by the parties, the panel must consider all relevant evidence and is not bound by the formal rules of evidence.

B. The arbitrator must determine if more than one day of hearing is required.

C. If more than one day of hearing is required, the panel may meet one or more times following the completion of the hearing to discuss the evidence presented.

D. At the cost of the party requesting the recording, oral proceedings may be recorded by a court reporter. Nothing said by an employee may be used in any other proceeding under Minnesota Statutes, chapter 176.

Subp. 5. **Neutral physician.** Following the conclusion of oral argument, if any, or the final meeting of the panel, the arbitrator may promptly render a decision in accordance with subpart 6, or may first render a determination on the facts of the case and submit those facts

to a neutral physician for an apportionment opinion. The arbitrator will notify the neutral physician of the number of days within which the opinion must be received in order to be used and, therefore, payable. The last oral argument or meeting of the panel, or review of the neutral physician's opinion by the panel if that opinion was sought, must occur within 60 days of the first oral argument or meeting of the panel unless extraordinary circumstances require otherwise.

A. The costs of obtaining the apportionment opinion of the neutral physician must be borne on a pro rata basis by the parties in accordance with the apportionment decision and subpart 6.

B. The neutral physician must be determined:

- (1) if the parties agree, by agreement of the parties; or
- (2) if the parties do not agree, by the arbitrator after the arbitrator has considered the objections for cause made by any of the parties.

C. Following the rendering of the opinion of the neutral physician, the arbitration panel must review the opinion. If additional oral testimony is required, the arbitrator may order further oral argument.

Subp. 6. **Decision.** The arbitrator must issue a written decision on the equitable apportionment arbitration within 30 days of the final oral argument or final meeting of the panel, or if the opinion of a neutral physician was sought, within 30 days of review of that opinion by the panel. In any event, a final decision must be issued within 240 days of the request for arbitration. The arbitrator is not bound by the opinion of the neutral physician. In the event of a default by any party, the arbitrator shall make a decision based on the evidence submitted. Disputed issues of fact are determined by a preponderance of the evidence. The written decision must include:

- A. a statement of the facts as determined by the arbitrator;
- B. the apportionment decision;
- C. the application of the apportionment decision;
- D. a brief explanation of the basis for the decision;
- E. an order requiring the parties to make pro rata payment of arbitration costs and fees in accordance with the apportionment decision, including reimbursement by the parties of their apportioned share of the arbitration administration fee or any other costs or fees, to any party that initially paid the costs or fees. As provided in Minnesota Statutes, section 176.191, subdivision 5, expenses of witnesses, including the employee, are a cost of the arbitration. Each party shall pay its own attorney fees for the arbitration, except any employee attorney fee under Minnesota Statutes, section 176.191, subdivision 8, which is a cost or fee of the arbitration; and

F. any other information as the case merits.

Subp. 7. **Enforcement.** Enforcement of the arbitrator's decision under this chapter must be as set forth for an arbitrator's decision under the Uniform Arbitration Act in Minnesota Statutes, chapter 572.

Statutory Authority: *MS s 175.17; 175.171; 176.191; 176.83*

History: *20 SR 2286*

Published Electronically: *June 11, 2008*