

1 Office of Administrative Hearings

2

3 Adopted Amendments to Procedural Rules for Workers' Compensation

4 Hearings

5

6 Rules as Adopted

7 9 MCAR S 2.306 ~~Notice-of-intention~~ Objections to discontinuance
8 and petitions to discontinue compensation payments.

9 A. Hearing. When either an objection to a ~~notice-of~~
10 ~~intention-to-discontinue~~ discontinuance of compensation payments
11 or an ~~objection-to-a-decision-of-the-commissioner-allowing-a~~
12 ~~discontinuance-has-been-filed-or-where~~ a petition to discontinue
13 benefits has been filed and the matter has been referred to the
14 chief hearing examiner, it shall be set for hearing on a
15 priority basis not less than 30 nor more than 75 days from the
16 date of the receipt of the matter from the commissioner.

17 B. Objection to discontinuance as claim petition. Any
18 objection filed more than 120 days after service of a notice of
19 intention to discontinue, a notice of discontinuance or an ~~order~~
20 administrative decision of the commissioner allowing the
21 discontinuance shall be treated as a claim petition for purposes
22 of scheduling a hearing and shall not be heard on a priority
23 basis.

24 C. Petitions for discontinuance. When an employer or
25 insurer petitions the commissioner for an order allowing
26 discontinuance of benefits ~~but-has-chosen-not-to-discontinue~~
27 ~~payments-until-after-a-final-determination~~ and the matter has
28 been referred to the chief hearing examiner, the petitioner
29 shall be entitled to a hearing on the same priority basis as set
30 forth in A. After an administrative conference on a notice of
31 intention to discontinue, a petition to discontinue pursuant to
32 Minnesota Statutes, section 176.242, subdivision 5, filed more
33 than 120 days following the issuance of the commissioner's ~~order~~
34 administrative decision disallowing the discontinuance shall not
35 be given priority status for the purpose of scheduling a hearing.

8-30-83

1 9 MCAR S 2.312 Disqualification.

2 A compensation judge shall withdraw from participation in a
3 case at any time if the judge deems himself or herself
4 disqualified, prejudiced, or biased for any reason. Any party
5 or his attorney may make and serve on the opposing party and
6 file with the chief hearing examiner an affidavit stating that,
7 on account of prejudice or bias on the part of the judge who is
8 to preside at the hearing, he has good reason to believe and
9 does believe that he cannot have a fair hearing before the
10 assigned judge. Each party shall be allowed one filing under
11 this section on any one case. The affidavit shall be filed with
12 the chief hearing examiner not more than ten days after the
13 moving party has received notice of the assignment of the judge
14 to the hearing or has knowledge of the grounds for
15 disqualification, prejudice, or bias, whichever occurs last.
16 Upon the filing of the affidavit, with proof of service, the
17 chief hearing examiner shall assign the case to another judge.

18 A proceeding to disqualify a compensation judge for cause
19 other than or in addition to the foregoing is allowed. It shall
20 be initiated by the service on all parties and the filing of a
21 motion for disqualification supported by affidavit stating in
22 detail the facts establishing the grounds for disqualification
23 of the compensation judge. The motion shall be filed with the
24 chief hearing examiner not more than ten days after the moving
25 party has received notice of the assignment of the judge to the
26 hearing or has knowledge of the grounds for disqualification,
27 whichever occurs last. The motion shall be determined by the
28 chief hearing examiner or his designee.

29 Unless required because of the unavailability of a
30 compensation judge to hear the case, no continuance shall be
31 granted by reason of a disqualification under this section. If
32 a continuance is necessary, another regular hearing will be
33 scheduled as early as possible.

34 Consolidated cases are to be considered as one case within
35 the meaning of this section. This section is not applicable to
36 settlement or pretrial conferences.

1 9 MCAR S 2.314 Discovery.

2 A. [Unchanged.]

3 B. Depositions. Pursuant to the provisions of Minnesota
4 Statutes, section 176.411, subdivision 2, depositions may be
5 taken in the manner which the law provides for depositions in
6 civil actions in the district courts for the state, except where
7 a compensation judge orders otherwise. When a party has
8 objected to the taking of a deposition, the party requesting the
9 deposition shall bring a motion before the compensation or
10 calendar judge, before whom the case is pending at the time of
11 the motion, who shall determine whether the deposition should go
12 forward. The motion shall state, with specificity, the facts or
13 other reasons supporting the need for the deposition. The
14 compensation or calendar judge shall order the deposition to
15 proceed if the judge finds that the request for the taking of
16 the deposition has been shown to be needed for the proper
17 presentation of a party's case, is not for purposes of delay,
18 that unusual or extraordinary circumstances exist which compel
19 extensive discovery, or that the issues or amounts in
20 controversy are significant enough to warrant extensive
21 discovery.

22 Depositions for the purpose of preserving testimony or for
23 presenting testimony due to the unavailability of the witness
24 shall be allowed. Unless, for good cause shown, the party
25 taking the deposition has obtained the permission of the
26 calendar judge, or compensation judge if the case has been
27 assigned for hearing, to take the deposition subsequent to the
28 hearing, it shall be taken sufficiently in advance of the
29 hearing so that the deposition is filed prior to or at the
30 commencement of the regular hearing.

31 Pursuant to Minnesota Statutes, section 176.155,
32 subdivision 5, the cross-examination of a physician or health
33 care provider prior to hearing is specifically allowed. When a
34 deposition for the purpose of cross-examination of a physician
35 or health care provider is taken pursuant to this paragraph,
36 re-direct examination is allowed. Unless ordered otherwise by a

1 compensation judge, the cross-examination deposition shall be
2 completed and the original filed with the office at or prior to
3 the hearing on the case.

4 The original copy of any deposition taken for purposes of
5 presenting testimony in the case shall be filed with the office
6 if the matter has been referred to the chief hearing examiner
7 for assignment. The original copy of any deposition taken
8 solely for purposes of discovery shall be sealed and filed as in
9 the case of evidentiary depositions but shall not be reviewed or
10 utilized in any fashion by the compensation judge unless the
11 deposition shall be formally entered as evidence in the case.

12 C.-E. [Unchanged.]

13 9 MCAR S 2.317 The hearing.

14 A. [Unchanged.]

15 B. Availability of witnesses. As soon as the parties are
16 apprised of the date scheduled for hearing, they shall
17 immediately notify all witnesses in writing and arrange for
18 their presence or for the taking of their deposition pursuant to
19 9 MCAR S 2.314 B.

20 C. Medical evidence.

21 1. If a party believes that the oral testimony of a
22 physician or health care provider is crucial to the accurate
23 determination of the employee's disability, the party shall
24 prepare, serve on all other parties, and file with the office a
25 written motion, with supporting affidavits if deemed necessary,
26 requesting a written finding from a judge on the cruciality of
27 the oral testimony. The motion must be served and filed at or
28 prior-to-the-filing-of-a-pretrial-statement no later than 30
29 days prior to the scheduled hearing date. Any party may file an
30 objection to the motion. Objections must be filed within ten
31 calendar days of the service of the motion.

32 2. Upon receipt of a motion under C.1. a compensation
33 judge shall, after waiting for objections to be filed, issue an
34 order granting or denying the motion, stating the reasons for
35 the order.

36 3. Absent a motion by a party, if, upon review of a case

1 prior to the hearing date, a compensation judge finds that the
2 oral testimony of a physician or health care provider may be
3 crucial to the accurate determination of the employee's
4 disability, the judge shall issue an order requiring that the
5 full testimony be presented in person or by oral deposition.

6 4. If, during the course of a hearing, a judge determines
7 that the appearance of the physician or health care provider is
8 crucial to the accurate determination of the employee's
9 disability, the judge shall either continue the hearing to a
10 date, time, and place for the testimony to be taken, or order
11 that the testimony be taken in full by oral deposition.

12 5. The production of medical evidence in the form of
13 written reports is required by Minnesota Statutes, section
14 176.155, subdivision 5. These reports shall include, in the
15 following order:

- 16 a. The date of the examination;
- 17 b. The history of the injury;
- 18 c. The patient's complaints;
- 19 d. The source of all facts set forth in the history
20 and complaints;
- 21 e. Findings on examination;
- 22 f. Opinion as to the extent of disability and work
23 limitations, if any;
- 24 g. The cause of the disability and, if applicable,
25 whether the work injury was a substantial contributing factor
26 toward the disability;
- 27 h. The medical treatment indicated;
- 28 i. If permanent disability is an issue, an opinion as
29 to whether or not the permanent disability has resulted from the
30 injury and whether or not the condition has stabilized. If
31 stabilized, a description of the disability with a complete
32 evaluation;
- 33 j. If a permanent disability is a result of two or
34 more injuries or occurrences, or if part of the permanent
35 disability is a result of a preexisting disability that arises
36 from a congenital condition, or is the result of a traumatic

1 injury or incident, whether or not compensable under Minnesota
2 Statutes, chapter 176, the report shall apportion the disability
3 between the injuries, occurrences, or conditions;

4 k. If future medical care or treatment is anticipated,
5 a statement of the nature and extent of the treatment
6 recommended and, if possible, the anticipated results; and

7 l. The reason or reasons for the opinion or opinions.

8 6. Medical reports to be used to support a party's
9 position shall be served on all other parties and filed with the
10 office, with proof of service, ~~prior-to-or-at-the-time-of-the~~
11 ~~filing-of-a-pretrial-statement~~ no later than 60 days prior to
12 the scheduled hearing date, unless it can be shown that the
13 delay in filing the report was caused by a failure of the
14 employee to report for an adverse medical examination or to
15 provide medical support for the claim on a timely basis or other
16 good cause.

17 D.-J. [Unchanged.]

18 9 MCAR S 2.318 The compensation judge's decision.

19 A. [Unchanged.]

20 B. Compensation judge decisions.

21 1. Within 60 days after the close of the record, the
22 compensation judge shall prepare his or her decision and, upon
23 completion, it shall be served on all parties. The record shall
24 be considered to be closed upon the submission of the entire
25 case to the judge including any late filed exhibits,
26 depositions, or legal memoranda but excluding the time for
27 submission ~~or~~ of a proposed decision by any party.

28 2. The compensation judge's decision shall contain the
29 following in the sequence as listed:

30 a. The date and location of the hearing and the
31 compensation judge's name;

32 b. Appearances by parties, if pro se, or their
33 attorneys, giving the full name and mailing address, including
34 zip code, of each;

35 c. The date on which the record of the hearing closed;

36 d. A notice of the right of parties to appeal and how

1 the appeal can be perfected;

2 e. A determination on each contested issue of fact or
3 law. In cases involving a multiplicity of issues, the
4 compensation judge may organize the decision by major subissues
5 if the judge determines that organizing the decision in that
6 manner will aid the reader in understanding the contents of it;
7 and

8 f. A memorandum only if necessary to delineate the
9 reasons for the decision or to discuss the credibility of
10 witnesses.

11 C. [Unchanged.]

12 D. Proposed decision filed by party. Any party may file a
13 proposed decision with the compensation judge. Any proposed
14 decision submitted shall conform to the provisions of these
15 rules, shall be served on all other parties and shall be in a
16 form which would allow the compensation judge to sign and issue
17 the decision if it is acceptable. It shall also include a brief
18 memorandum explaining the decision on each issue.

19 E. Decision, extension of time. If the parties consent to
20 extend the time for issuance of the decision, the written
21 consent shall include a statement of the reasons for the
22 extension, shall be filed with the compensation judge, and a
23 copy filed with the chief hearing examiner. If the chief
24 hearing examiner extends the time for issuance of the decision,
25 the extension shall be in writing and shall be served on all
26 parties of record.

27 9 MCAR S 2.320 Settlements.

28 A.-B. [Unchanged.]

29 C. Approval. Stipulations for settlement reached and agreed
30 upon subsequent to the referral of the case to the chief hearing
31 examiner shall be filed with and, except in cases where all
32 parties are represented by attorneys or for those filed pursuant
33 to Minnesota Statutes, section 176.081, subdivision 7a, subject
34 to approval by a compensation judge.

35 Where a settlement has been agreed upon pursuant to
36 Minnesota Statutes, section 176.081, subdivision 7a, when the

1 offer and acceptance is filed, it shall include findings of
2 fact, conclusions and an award on all issues, including
3 attorney's fees and costs. It shall be filed with the chief
4 hearing examiner who shall immediately send the settlement and
5 the file to the commissioner for entry of the agreed upon award.
6 Where approval is not required pursuant to Minnesota Statutes,
7 section 176.521, the award required by 9 MCAR S 2.320 G. shall
8 be immediately signed by the compensation judge, served on all
9 parties, and filed with the commissioner.

10 D. [Unchanged.]

11 E. Attorney's fees detailed. Stipulations for settlement of
12 cases in which the petitioner has engaged the services of an
13 attorney shall be accompanied by a statement of attorney's fees,
14 on a form prescribed by the commissioner, and an itemization of
15 the costs incurred, specifying who will be responsible for
16 payment of each cost, and shall provide sufficient information
17 to show the reasonableness of the requested fees and costs in
18 accordance with Minnesota Statutes, section 176.081, if approval
19 is required. If no fees are requested, the stipulation shall so
20 state.

21 F. [Unchanged.]

22 G. Award. The parties involved in the settlement shall
23 submit an award on stipulation prepared for signature by a judge.

24 H.-J. [Unchanged.]

25 9 MCAR S 2.321 Attorney fees.

26 A. Controlling statute. Fees for legal services are
27 governed by the provision of Minnesota Statutes, section 176.081.

28 B. Statement of fees, approval. A statement of attorney's
29 fees, on a form prescribed by the commissioner, and a copy of
30 the retainer agreement shall be filed as part of the record in
31 each case, whether the case is heard to a conclusion or settled
32 by agreement of all parties. If, at the hearing of any case or
33 in a stipulation for settlement, all parties state on the record
34 or include in the stipulation that they have no objection to the
35 statement of attorney's fees, the judge shall issue an
36 appropriate order without the necessity of waiting for the

1 expiration of ten calendar days.

2 C. Fees, objection. If a timely objection to the statement
3 of attorney's fees is filed, the compensation judge shall
4 utilize Minnesota Statutes, section 176.081, subdivision 5, only
5 as to those issues specifically raised by the objection.

6 D. Filing. A statement of attorney's fees under this rule
7 shall be filed with the compensation judge assigned to hear the
8 case or a calendar judge if no assignment has been made.

9 E. [Unchanged.]