

1 Department of Labor and Industry

2

3 Adopted Permanent Rules Governing Equitable Apportionment
4 Arbitration

5

6 Rules as Adopted

7 5229.0100 DEFINITIONS.

8 Subpart 1. **Scope.** For the purpose of parts 5229.0100 to
9 5229.0700, the following terms have the meanings given them.

10 Subp. 2. **Administrator.** "Administrator" means the
11 administrator of the apportionment arbitration process.

12 Subp. 3. **Arbitrator.** "Arbitrator" means that person who
13 makes the final determination in an arbitration under this
14 chapter.

15 Subp. 4. **Arbitration advisor.** "Arbitration advisor" means
16 that person selected by a party to an arbitration under this
17 chapter to offer advice and counsel to the arbitrator during the
18 course of an arbitration.

19 Subp. 5. **Employer/insurer.** "Employer/insurer" means an
20 employer within the meaning of Minnesota Statutes, chapter 176,
21 and that employer's insurer for workers' compensation liability
22 and includes the special compensation fund when it is
23 representing an uninsured employer. The term does not include a
24 self-insured employer.

25 Subp. 6. **Neutral physician.** "Neutral physician" means the
26 physician who in the parties' or arbitrator's opinion will
27 render an independent assessment on apportionment.

28 Subp. 7. **Panel.** "Panel" means the arbitrator and the
29 arbitration advisors, if any.

30 Subp. 8. **Roster.** "Roster" means the list of those
31 nominated to act as apportionment arbitrators under this chapter
32 who meet the requirements and are nominated.

33 Subp. 9. **Self-insured employer.** "Self-insured employer"
34 means an employer within the meaning of Minnesota Statutes,
35 chapter 176, that has been permitted to self-insure for workers'

1 compensation liability pursuant to Minnesota Statutes, section
2 176.181, subdivision 2.

3 5229.0200 PURPOSE.

4 This chapter is intended to set forth the procedure for the
5 arbitration of issues of equitable apportionment of liability
6 for workers' compensation benefits, as defined by Minnesota
7 Statutes, section 176.191, subdivisions 1a and 5; to provide a
8 process for selecting arbitrators; and to provide a general rule
9 of presumptive apportionment.

10 5229.0300 SCOPE.

11 Minnesota Statutes, section 176.191, subdivision 1a,
12 provides that equitable apportionment of liability for an injury
13 is no longer allowed except:

14 A. in a settlement agreement filed pursuant to
15 Minnesota Statutes, section 176.521; and

16 B. when an employer or insurer requests arbitration
17 of equitable apportionment under Minnesota Statutes, section
18 176.191, subdivision 5.

19 This chapter applies where equitable apportionment is
20 sought but the parties have not been able to reach the agreement
21 described in item A. This chapter applies solely to arbitration
22 of claims by self-insured employers or employer/insurers under
23 Minnesota Statutes, section 176.191, subdivisions 1a and 5,
24 including when the sole issue is a claim for partial or total
25 contribution towards, or reimbursement of workers' compensation
26 benefits against, one or more self-insured employers or
27 employer/insurers. As set forth in Minnesota Statutes, section
28 176.191, subdivision 1a, the arbitration proceeding is for the
29 limited purpose of apportioning liability for workers'
30 compensation benefits payable, when liability for workers'
31 compensation has been admitted by or adjudicated against the
32 claiming self-insured employer or employer/insurer. Minnesota
33 Statutes, section 176.191, subdivision 1a, provides that it is
34 not to be interpreted to repeal or in any way affect the law
35 with respect to the special compensation fund statutory

1 liability or benefits. When disputed, fund liability under
2 Minnesota Statutes, sections 176.131 and 176.132, is to be
3 determined by workers' compensation judges and fund issues will
4 be decided in proceedings over which they preside. These
5 arbitration proceedings cannot bind the fund to more liability
6 than that which was found by a judge. A self-insured employer
7 or employer/insurer cannot request reimbursement from the
8 special compensation fund that would exceed what has been
9 ordered by the compensation judge at the Office of
10 Administrative Hearings.

11 5229.0350 PRESUMPTIVE RULE OF EQUITABLE APPORTIONMENT.

12 The presumptive rule of equitable apportionment under this
13 chapter is that the parties and the arbitrator, in making the
14 decision, must be guided by parts 5229.0100 to 5229.0700;
15 Minnesota Statutes, section 176.191, subdivisions 1a and 5; and
16 workers' compensation case law on the issue.

17 5229.0400 NOMINATION AND QUALIFICATIONS OF ARBITRATORS.

18 Subpart 1. **Nomination.** Workers' compensation insurers,
19 self-insured employers who administer their own claims, and
20 third-party administrators for self-insured employers may
21 annually nominate individuals to the roster. Self-nomination is
22 not allowed. Additional nominations will be closed on the 30th
23 day following the effective date of parts 5229.0100 to 5229.0700
24 and will be reopened for the 30-day period following each
25 anniversary of the effective date.

26 Subp. 2. **Qualifications.** Members of the roster must have
27 a minimum of five years of technical claims handling in
28 Minnesota workers' compensation or five years of legal
29 experience in Minnesota workers' compensation. The
30 administrator must verify that all persons nominated meet the
31 qualifications.

32 Subp. 3. **Membership on roster.** Each qualified nominee who
33 is willing to participate must be included in membership on the
34 roster.

1 5229.0410 ADMINISTRATOR.

2 Subpart 1. **Selection.** The commissioner of the Department
3 of Labor and Industry, in consultation with representatives of
4 three workers' compensation insurers and one self-insured
5 employer, must select an entity to act as administrator of the
6 apportionment arbitration process. As set forth in parts
7 5229.0100 to 5229.0700, the administrator must facilitate the
8 selection of arbitrators and the expeditious resolution of the
9 equitable apportionment issues.

10 Subp. 2. **Recordkeeping.** The administrator must keep a
11 record of all arbitration proceedings, including copies of the
12 documents submitted by the parties, the names of the arbitration
13 panel, and a copy of the final arbitration order.

14 Subp. 3. **Term.** The term of the contract for the
15 administrator must not exceed three years.

16 5229.0420 SELECTION AND COMPOSITION OF ARBITRATION PANEL.

17 Subpart 1. **Composition.** An arbitration under this chapter
18 must be heard by a panel consisting of the arbitrator and, if
19 the parties agree they are needed, one arbitration advisor for
20 each party to the dispute.

21 Subp. 2. **Selection of arbitrator.** The arbitrator must be
22 selected by the following process:

23 A. Within ten days of receiving a request for
24 arbitration of apportionment, the administrator must, by lot and
25 excluding anyone on the roster who is an employee of any party
26 to the dispute, select the names of persons to hear the
27 arbitration from the roster and submit those names to the
28 parties to the dispute.

29 B. The number of names submitted to the parties must
30 be equal to the number of parties to the arbitration, plus one.

31 C. Beginning with the party on the list for the
32 earliest date of injury, each party must, within ten days,
33 submit the name of a person whom that party wishes to strike
34 from the list. The party with the next earliest date must then
35 submit the name it wishes to strike, and so forth, until one

1 name remains on the list.

2 D. The individual remaining on the list is the
3 arbitrator until the dispute is resolved.

4 E. If the arbitrator is unable to complete the
5 arbitration, the administrator must choose another arbitrator as
6 provided in this subpart.

7 Subp. 3. Selection of arbitration advisors. If the
8 parties have agreed that they are needed, each party to the
9 arbitration may select an individual to act as an arbitration
10 advisor for the period of the dispute.

11 Subp. 4. Notification of parties. When the arbitrator has
12 been determined and, when the parties have agreed that they are
13 needed, when each of the arbitration advisors has been named,
14 the administrator must notify all parties to the arbitration of
15 the names included on the panel.

16 5229.0500 PROCEDURE FOR INITIATION OF ARBITRATION.

17 Subpart 1. Request for arbitration. The arbitration
18 process must be initiated by the filing of a request for
19 arbitration of an apportionment issue with the administrator by
20 an aggrieved self-insured employer or employer/insurer, but
21 shall be permitted only when the requesting party has met the
22 requirements of Minnesota Statutes, section 176.191, subdivision
23 5.

24 A. A request must be made on a form approved by the
25 administrator, which must include the names of the self-insured
26 employers or employer/insurers among which equitable
27 apportionment is sought or from which contribution or
28 reimbursement is sought, the name and social security number of
29 the employee, and the dates of the relevant injury or injuries.

30 B. The request for arbitration must be accompanied by:

31 (1) a statement of the facts;

32 (2) documentation that the requirements of
33 Minnesota Statutes, section 176.191, subdivision 5, have been
34 met;

35 (3) medical evidence in support of the requested

1 equitable apportionment;

2 (4) a brief or written argument in support of the
3 requesting party's position, including legal support;

4 (5) the name of the party's desired arbitration
5 advisor, if any;

6 (6) any request for oral argument or special
7 handling of the case; and

8 (7) a nonrefundable arbitration administration
9 fee payable to the administrator in an amount to be determined
10 in the agreement referred to in part 5229.0410, subpart 3, that
11 is with the administrator.

12 C. The requesting party must provide the
13 administrator with copies of the request and supporting
14 documents for the arbitrator, for each arbitration advisor, and
15 for the administrator's records.

16 D. The requesting party must, at the same time as
17 filing the request, serve copies of the request and all attached
18 documents on each self-insured employer or employer/insurer from
19 which equitable apportionment is sought, as well as the employee
20 and the employee's attorney, if any.

21 Subp. 2. Determining arbitration panel. Upon receipt of
22 the request for arbitration and after ascertaining that the
23 requirements of Minnesota Statutes, section 176.191, subdivision
24 5, have been met, the administrator must start the process under
25 part 5229.0420 for determining the panel to hear the
26 arbitration. When the panel is determined, the administrator
27 must notify the arbitrator and forward copies of the request and
28 documents to the members of the panel.

29 Subp. 3. Responses to arbitration request. Within 90 days
30 of receiving the administrator's receipt of a copy of the
31 arbitration request and supporting documents, each party among
32 which equitable apportionment is sought or from which
33 contribution or reimbursement is sought must submit to the
34 administrator its response to the arbitration request.

35 A. Responses must include:

36 (1) a written brief or explanation of the party's

1 position;

2 (2) any relevant medical evidence in support of
3 its position;

4 (3) any other evidence or documentation pertinent
5 to the case;

6 (4) that party's request for oral argument or
7 special handling, if any; and

8 (5) the name of the party's desired arbitration
9 advisor, if any.

10 B. The responding party must provide the
11 administrator with copies of the ~~request~~ response and supporting
12 documents for the arbitrator, for each arbitration advisor, and
13 for the administrator's records. The administrator shall
14 forward a copy of the response and supporting documents to each
15 party.

16 C. When the 90-day period following the arbitration
17 request has passed, or when the panel is determined, whichever
18 is later, the administrator must forward the responsive
19 documents to the members of the panel.

20 5229.0600 ARBITRATOR.

21 Subpart 1. **Powers of arbitrator.** The arbitrator for a
22 particular case has sole authority to determine whether the
23 matter will be heard upon oral argument, whether extensions of
24 time are warranted, or whether further information is required
25 on the files and from the parties. The arbitrator also has sole
26 authority to determine the appropriate resolution of the matter,
27 within the scope of parts 5229.0100 to 5229.0700, and to order
28 payment according to the apportionment decision. The arbitrator
29 has the power of subpoena of the commissioner of the Department
30 of Labor and Industry and of an arbitrator under Minnesota
31 Statutes, section 572.14, paragraph (a), to obtain information
32 necessary to a determination of this equitable apportionment
33 dispute.

34 Subp. 2. **Arbitration advisor's role.** The role of an
35 arbitration advisor is solely to explain ~~facts~~, and clarify the

1 positions of the parties, and advise the arbitrator as to the
2 relevant facts and, if the arbitration advisor is a licensed
3 attorney, also as to the applicable law. An arbitration advisor
4 has no power to make the final determination and, if the
5 arbitration advisor is not a licensed attorney, shall not advise
6 the arbitrator in any manner constituting the unauthorized
7 practice of law.

8 Subp. 3. **Binding effect.** The determination of the
9 arbitrator is final and binding on the parties in accordance
10 with Minnesota Statutes, section 176.191, subdivision 5, and may
11 be vacated only in accordance with Minnesota Statutes, chapter
12 572, the Uniform Arbitration Act.

13 5229.0700 ARBITRATION PROCEDURE.

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

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

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

26 C. Unless extraordinary circumstances require
27 otherwise, the first oral argument or first meeting of the panel
28 must take place within ~~90~~ 60 days of the date for final
29 submission of the response.

30 Subp. 2. **Submission of additional materials.** If, upon
31 review of the materials submitted by the parties, the arbitrator
32 determines that further evidentiary materials are required, the
33 arbitrator may order the parties to submit these materials and
34 may set a date by which these materials must be submitted. In
35 no case may the deadline for submission of additional evidence

1 be greater than ~~±20~~ 90 days from the arbitrator's order to
2 submit materials.

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

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

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

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

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

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

24 Subp. 5. **Neutral physician.** Following the conclusion of
25 oral argument, if any, or the final meeting of the panel, the
26 arbitrator may promptly render a decision in accordance with
27 subpart 6, or may first render a determination on the facts of
28 the case and submit those facts to a neutral physician for an
29 apportionment opinion. The arbitrator will notify the neutral
30 physician of the number of days within which the opinion must be
31 received in order to be used and, therefore, payable. The last
32 oral argument or meeting of the panel, or review of the neutral
33 physician's opinion by the panel if that opinion was sought,
34 must occur within 60 days of the first oral argument or meeting
35 of the panel unless extraordinary circumstances require
36 otherwise.

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

5 B. The neutral physician must be determined:

6 (1) if the parties agree, by agreement of the
7 parties; or

8 (2) if the parties do not agree, by the
9 arbitrator after the arbitrator has considered the objections
10 for cause made by any of the parties.

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

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

27 A. a statement of the facts as determined by the
28 arbitrator;

29 B. the apportionment decision;

30 C. the application of the apportionment decision;

31 D. a brief explanation of the basis for the decision;

32 E. an order requiring the parties to make pro rata
33 payment of arbitration costs and fees in accordance with the
34 apportionment decision, including reimbursement by the parties
35 of their apportioned share of the arbitration administration fee
36 or any other costs or fees, to any party that initially paid the

1 costs or fees. As provided in Minnesota Statutes, section
2 176.191, subdivision 5, expenses of witnesses, including the
3 employee, are a cost of the arbitration. Each party shall pay
4 its own attorney fees for the arbitration, except any employee
5 attorney fee under Minnesota Statutes, section 176.191,
6 subdivision 8, which is a cost or fee of the arbitration; and
7 F. any other information as the case merits.

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