

## **803 KAR 2:170. Variances.**

RELATES TO: KRS 338.153

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.153 authorizes the granting of temporary and general variances from occupational safety and health standards to employers who can show that they are unable to comply with such standards by their effective dates, or they are providing conditions of employment as safe and healthful for those which would result from compliance with the terms of the standards. The following administrative regulation delineates the purpose and scope of the variances and the procedure to be followed when an employer wishes to be granted a variance.

Section 1. Purpose and Scope. (1) This administrative regulation contains rules or practice for administrative proceedings to grant variances and other relief under the Kentucky Occupational Safety and Health Act of 1972, KRS Chapter 338.

(2) These rules shall be construed to secure a prompt and just conclusion of proceedings subject thereto.

(3) The rules of practice in this administrative regulation do not apply to the granting of variances under KRS 338.153(2)(c).

Section 2. Definitions. As used in this administrative regulation, unless the context clearly requires otherwise:

(1) "Act" means KRS Chapter 338.

(2) "Person" means an individual, partnership, association, corporation, business trust, legal representative, an organized group of individuals, or an agency, authority, or instrumentality of the United States or of a state.

(3) "Party" means a person admitted to participate in a hearing conducted in accordance with Sections 14 and through 24 of this administrative regulation. An applicant for relief and any affected employee shall be entitled to be named parties. The Division of Occupational Safety and Health, represented by the commissioner shall be deemed to be a party without the necessity of being named.

(4) "Affected employee" means an employee who would be affected by the grant or denial of a variance, or any of his authorized representatives, such as his collective bargaining agent.

Section 3. Petitions for Amendments to the Administrative Regulation. Any person may at any time petition the Commissioner of the Department of Workplace Standards in writing to revise, amend, or revoke any provisions of this administrative regulation. The petition shall set forth either the terms or the substance of rule desired, with concise statement of the reasons thereof and the effects thereof.

Section 4. Amendments to this Administrative Regulation. The commissioner may at any time revise, amend, or revoke any provisions of this administrative regulation.

Section 5. Effect of Variances. All variances granted pursuant to this administrative regulation shall have only future effect. In his discretion, the commissioner may decline to entertain an application for a variance on a subject or issue concerning which a citation has been issued to the employer involved and proceeding on the citation or a related issue concerning a proposed penalty or period of abatement is pending before the Kentucky Occupational Safety and Health Review Commission until the completion of such proceeding.

Section 6. Public Notice of a Granted Variance. Every final action granting a variance under this administrative regulation shall be published in a newspaper of general circulation. Every such final action shall specify the alternative to the standard involved which the particular variance permits.

Section 7. Forms of Documents; Subscriptions; Copies. (1) No particular form is prescribed for applications and other papers which may be filed in proceedings under this administrative regulation. However, any applications and other papers shall be clearly legible. An original and six (6) copies of any application or other papers shall be filed. The original shall be typewritten. Clean carbon copies, or printed or processed copies are acceptable copies.

(2) Each application or other paper which is filed in proceedings under this administrative regulation shall be subscribed by the person filing the same or by his attorney or other authorized representative.

Section 8. Variances Under KRS 338.153(2)(a) (Temporary Variances). (1) Application for variance. Any employer, or class of employers, desiring a variance from a standard, or portion thereof, authorized by KRS 338.153(2)(a), may file a written application containing the information specified in subsection (2) of this section with the commissioner.

(2) An application filed pursuant to subsection (1) of this section shall include:

(a) The name and address of the applicant;

(b) The address of the place or places of employment involved;

(c) A specification of the standard or portion thereof from which the applicant seeks a variance;

(d) A representation by the applicant supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof by its effective date and a detailed statement of the reasons therefore;

(e) A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the standard;

(f) A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standard;

(g) A statement of the facts the applicant would show to establish that:

1. The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

2. He is taking all available steps to safeguard his employees against the hazards covered by the standard; and

3. He has an effective program for coming into compliance with the standard as quickly as practicable;

(h) Any request for a hearing, as provided in this administrative regulation;

(i) A statement that the applicant has informed his affected employees of application by giving a copy thereof to their authorized representative, posting a statement, giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted, and by other appropriate means; and

(j) A description of how affected employees have been informed of the application and of their right to petition the commissioner for a hearing.

(3) Interim order.

(a) Application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An applica-

tion for an interim order may include statements of fact and arguments as to why the order should be granted. The commissioner may rule *ex parte* upon the application.

(b) Notice of denial of application. If an application filed pursuant to paragraph (a) of this subsection is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by a brief statement of the grounds therefore.

(c) Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published in a newspaper of general circulation. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

Section 9. Variances Under KRS 338.153(1) (Permanent Variances). (1) Application for variance. Any employer or class of employers desiring a variance from a standard, or portion thereof, authorized by KRS 338.153(1), may file a written application containing the information specified in subsection (2) of this section with the commissioner.

(2) Contents. An application filed pursuant to subsection (1) of this section shall include:

(a) The name and address of the applicant;

(b) The address of the place or places of employment involved;

(c) A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the applicant;

(d) A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide employment and places of employment to employees which are as safe and healthful as those required by the standard from which a variation is sought;

(e) A certification that the applicant has informed his employees of his application:

1. Giving a copy thereof to their authorized representative;

2. Posting a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of such summary, the posting of the application itself); and

3. By other appropriate means;

(f) Any request for a hearing, as provided in this administrative regulation; and

(g) A description of how employees have been informed of the application and of their right to petition the commissioner for a hearing.

(3) Interim order.

(a) Application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The commissioner may rule *ex parte* upon the application.

(b) Notice of denial of application. If an application filed pursuant to paragraph (a) of this subsection is denied, the applicant shall be given prompt notice of denial, which shall include, or be accompanied by a brief statement of the grounds therefore.

(c) Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published in a newspaper of general circulation. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

Section 10. Modification, Revocation, and Renewal of Rules or Orders. (1) Modification or revocation. An affected employer or an affected employee may apply in writing to the commissioner for

a modification or revocation of a rule or order issued under KRS 338.153. The application shall contain:

- (a) The name and address of the applicant;
  - (b) A description of the relief which is sought;
  - (c) A statement setting forth with particularity the grounds for relief;
  - (d) If the applicant is an employer, a certification that the applicant has informed his affected employees of the application by:
    1. Giving a copy thereof to their authorized representative;
    2. Posting at the place or places where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself); and
    3. Other appropriate means.
  - (e) If the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer; and
  - (f) Any request for a hearing, as provided in this administrative regulation.
- (2) The commissioner may on his own motion proceed to modify or revoke a rule or order issued under KRS 338.153. In such event, the commissioner shall cause to be published in a newspaper of general circulation a notice of his intention, affording interested persons an opportunity to submit written data, views, or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing, and shall taken such other action as may be appropriate to give actual notice to affected employees. Any request for a hearing shall include a short and plain statement of:
- (a) How the proposed modification or revocation would affect the requesting party; and
  - (b) What the requesting party would seek to show on the subjects or issues involved.
- (3) Renewal. Any final rule or order issued under KRS 338.153 may be renewed or extended as permitted by the applicable section and in the manner prescribed for its issuance.

#### Section 11. Action on Applications. (1) Defective applications.

- (a) If an application filed pursuant to this administrative regulation does not conform to the applicable section, the commissioner may deny the application.
  - (b) Prompt notice of the denial of an application shall be given to the applicant.
  - (c) A notice of denial shall include, or be accompanied by, a brief statement of the grounds for the denial.
  - (d) A denial of an application pursuant to this subsection shall be without prejudice to the filing of another application.
- (2) Adequate applications.
- (a) If an application has not been denied pursuant to subsection (1) of this section, the commissioner shall cause to be published in a newspaper of general circulation a notice of the filing of the application.
  - (b) A notice of the filing of an application shall include:
    1. The terms, or an accurate summary, of the application;
    2. An invitation to interested persons to submit within a stated period of time written data, views, or arguments regarding the application; and
    3. Information to affected employers and employees of any right to request a hearing on the application.

Section 12. Requests for Hearings on Applications. (1) Request for hearing. Within the time allowed by a notice of the filing of an application, any affected employer or employee may file with the commissioner, in quadruplicate, a request for a hearing on the application.

(2) Contents of a request for a hearing. A request for a hearing filed pursuant to subsection (1) of this section shall include:

- (a) A concise statement of facts showing how the employer or employee would be affected by the relief applied for;
- (b) A specification of any statement or representation in the application which is denied, and a concise summary of the evidence that would be adduced in support of each denial; and
- (c) Any views or arguments on any issue of fact or law presented.

Section 13. Consolidation of Proceedings. The commissioner on his own motion or that of any party may consolidate or contemporaneously consider two (2) or more proceedings which involve the same or closely related issues.

Section 14. Notice of Hearing. (1) Service. Upon request for a hearing as provided in this administrative regulation, or upon his own initiative, the commissioner shall serve, or cause to be served, a reasonable notice of hearing.

(2) Contents. A notice of hearing served under subsection (1) of this section shall include:

- (a) The time, place, and nature of the hearing;
- (b) The legal authority under which the hearing is to be held;
- (c) A specification of issues of fact and law; and
- (d) A designation of a hearing examiner as an authorized representative of the commissioner is the commissioner is not going to conduct the hearing.

(3) Referral to hearing examiner. A copy of a notice of hearing served pursuant to subsection (1) of this section shall be referred to the hearing examiner designated therein, together with the original application and any written request for a hearing thereon filed pursuant to this administrative regulation.

Section 15. Manner of Service. Service of any document upon any party may be made by personal delivery of, or by mailing, a copy of the document to the last known address of the party. The person serving the document shall certify to the manner and the date of the service.

Section 16. Hearing Examiners; Powers and Duties. (1) Powers. The commissioner or a hearing examiner designated by the commissioner to preside over a hearing shall have all powers necessary or appropriate to conduct a fair, full, and impartial hearing, including the following:

- (a) To administer oaths and affirmations;
- (b) To rule upon offers of proof and receive relevant evidence;
- (c) To provide for discovery and to determine its scope;
- (d) To regulate the course of the hearing and the conduct of the parties and their counsel therein;
- (e) To consider and rule upon procedural requests;
- (f) To hold conferences for the settlement or simplification of the issues by consent of the parties;
- (g) To make, or to cause to be made, an inspection of the employment or place of employment involved;
- (h) To make decisions in accordance with KRS Chapter 338;
- (i) To take any other appropriate action authorized by KRS Chapter 338 or any administrative regulation issued pursuant thereto.

(2) Private consultation. Except to the extent required for the disposition of ex parte matters, a hearing examiner may not consult a person or party on any fact at issue, unless upon notice and opportunity for all parties to participate.

(3) Disqualification.

(a) When a hearing examiner deems himself disqualified to preside over a particular hearing, he shall withdraw therefrom by notice on the record directed to the commissioner.

(b) Any party who deems a hearing examiner for any reason to be disqualified to preside, or to continue to preside, over a particular hearing, may file with the commissioner a motion to disqualify and remove the hearing examiner, such motion to be supported by affidavits setting forth all alleged grounds for disqualification. The commissioner shall rule upon the motion.

(4) Contumacious conduct; failure or refusal to appear or obey the rulings of a presiding hearing examiner.

(a) Contumacious conduct at any hearing before the hearing examiner shall be grounds for conclusion of the hearing.

(b) If a witness or a party refuses to answer a question after being directed to do so, or refuses to obey an order to provide or permit discovery, the hearing examiner may make such orders with regard to the refusal as are just and appropriate, including an order denying the application of an applicant or regulating the contents of the record of the hearing.

(c) Referral to Kentucky Rules of Civil Procedure. On any procedural question not regulated by this administrative regulation, a hearing examiner shall be guided to the extent practicable by any pertinent provisions of the Kentucky Rules of Civil Procedure.

Section 17. Prehearing Conferences. (1) Convening a conference. Upon his own motion or the motion of a party, the hearing examiner may direct the parties or their counsel to meet with him for a conference to consider:

(a) Simplification of the issues;

(b) Necessity or desirability of amendments to documents for purposes of clarification, simplification, or limitation;

(c) Stipulations, admissions of fact, and of contents and authenticity of documents;

(d) Limitation of the number of parties and of expert witnesses; and

(e) Such other matters as may tend to expedite the disposition of the proceeding, and to assure a just conclusion thereof.

(2) Record of conference. The hearing examiner shall make an order which recites the action taken at the conference; the amendments allowed to any documents which have been filed, and the agreements made between the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order when entered controls the subsequent course of the hearing, unless modified at the hearing, to prevent manifest injustice.

Section 18. Consent Findings and Rules or Orders. (1) General. At any time before the reception of evidence in any hearings, or during any hearing a reasonable opportunity may be afforded to permit negotiation by the parties of an agreement containing consent findings and a rule or order disposing of the whole or any part of the proceeding. The allowance of such opportunity and the duration thereof shall be in the discretion of the presiding hearing examiner, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement which will result in a just disposition of the issues involved.

(2) Contents. Any agreement containing consent findings and rule or order disposing of a proceeding shall also provide:

(a) That the rule or order shall have the same force and effect as if made after a full hearing;

(b) That the entire record on which any rule or order may be based shall consist solely of the application and the agreement;

(c) A waiver of any further procedural steps before the hearing examiner and the commissioner; and

(d) A waiver of any right to challenge or contest the validity of the findings and of the rule or order made in accordance with the agreement.

(3) Submission. On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(a) Submit the proposed agreement to the presiding hearing examiner for his consideration; or

(b) Inform the presiding hearing examiner that agreement cannot be reached.

(4) Disposition. In the event an agreement containing consent findings and rule or order is submitted within the time allowed therefore, the presiding hearing examiner may accept such agreement by issuing his decision based upon the agreed findings.

#### Section 19. Discovery. (1) Depositions.

(a) For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by deposition. Depositions may be taken orally or upon written interrogatories before any person designated by the presiding hearing examiner and having power to administer oaths.

(b) Application. Any party desiring to take the deposition of a witness may make application in writing to the presiding hearing examiner, setting forth:

1. The reasons why such deposition should be taken;

2. The time when, the place where, and the name and post office address of the person before whom the deposition is to be taken;

3. The name and address of each witness; and

4. The subject matter concerning which each witness is expected to testify.

(c) Notice. Such notice as the presiding hearing examiner may order shall be given by the party taking the deposition to every other party.

(d) Taking and receiving in evidence. Each witness testifying upon deposition shall have the right to cross-examine him. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him, and certified by the officer before whom the deposition is taken. Thereafter, the officer shall seal the deposition, with two (2) copies thereof, in an envelope and mail the same by registered mail to the presiding hearing examiner. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present, represented at the taking of the deposition or who had due notice thereof.

(e) No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance exist at the time of hearing.

(2) Other discovery. Whenever appropriate to a just disposition of any issue in a hearing, the presiding hearing examiner may allow discovery by any other appropriate procedure, such as by written interrogatories upon a party, production of documents by a party, or by entry for inspection of the employment or place of employment involved.

Section 20. Hearings. (1) Order of proceeding. Except as may be ordered otherwise by the presiding hearing examiner, the party applicant for relief shall proceed first at a hearing.

(2) Burden of proof. The party applicant shall have the burden of proof.

(3) Evidence.

(a) Admissibility. A party shall be entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but a

presiding examiner shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) Testimony of witnesses. The testimony of a witness shall be upon oath or affirmation administered by the presiding hearing examiner.

(c) Objections. If a party objects to the admission or rejection of any evidence, or to the limitation of the scope of any examination or cross-examination, or to the failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the presiding hearing examiner may be relied upon subsequently in a proceeding.

(d) Exceptions. Formal exception to an adverse ruling is not required.

(4) Official notice. Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice or concerning which the Division of Occupational Safety and Health by reason of its functions is presumed to be expert: provided, that the parties shall be given adequate notice, at the hearing or by reference in the presiding hearing examiner's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary.

(5) Transcript. Hearings shall be stenographically reported. Copies of the transcript may be obtained by the parties upon written application filed with the reporter, and upon the payment of fees at the rate provided in the agreement with the reporter.

Section 21. Decisions of Hearing Examiners. (1) Proposed findings of fact, conclusions, and rules or orders. Within ten (10) days after receipt of notice that the transcript of the testimony has been filed or such additional time as the presiding hearing examiner may allow, each party may file with the hearing examiner proposed findings of fact, conclusions of law, and rule or order, together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs shall be served on all other parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(2) Decision of the hearing examiner. Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and rule or order, the presiding hearing examiner shall make and serve upon each party his decision, which shall become final upon the 20th day after service thereof, unless exceptions are filed thereto, as provided in Section 22 of this administrative regulation. The decision of the hearing examiner shall include:

(a) A statement of findings and conclusions, with reasons and bases therefore, upon each material issue of fact, law, or discretion presented on the record; and

(b) The appropriate rule, order, relief, or denial thereof. The decision of the hearing examiner shall be based upon a consideration of the whole record and shall state all facts officially noticed and relied upon. It shall be made on the basis of a preponderance of reliable and probative evidence.

Section 22. Exceptions. Within twenty (20) days after service of a decision of a presiding hearing examiner, any party may file with the hearing examiner written exceptions thereto with supporting reasons. Such exceptions shall refer to the specific findings of fact, conclusions of law, or terms of the rule or order excepted to, the specific pages of transcript relevant to the suggestions, and shall suggest corrected findings or fact, conclusions of law, or terms of the rule or order. Upon receipt of any exceptions, the hearing examiner shall fix a time for filing any objections to the exceptions and any supporting reasons.

Section 23. Transmission of Record. If exceptions are filed, the hearing examiner shall transmit the record of the proceeding to the commissioner for review. The record shall include: the application, any request for hearing thereon, motions and requests filed in written form, rulings thereon,



the transcript of the testimony taken at the hearing, together with the exhibits admitted in evidence, any documents or papers filed in connection with prehearing conference, such proposed findings of fact, conclusions of law, rules or orders, and supporting reasons, as may have been filed, the hearing examiner's decision, and such exceptions, statements of objections, and briefs in support thereof, as may have been filed in the proceeding.

Section 24. Decision of the Commissioner of the Department of Workplace Standards. If exceptions to a decision of a hearing examiner are taken pursuant to Section 22 of this administrative regulation, the commissioner shall upon consideration thereof, together with the record references and authorities cited in support thereof, and any objections to exceptions and supporting reasons, make his decision. The decision may affirm, modify, or set aside, in whole or part, the findings, conclusions, and the rule or order contained in the decision of the presiding hearing examiner, and shall include a statement of reasons or bases for the actions taken on each exception presented.

Section 25. Motion for Summary Decision. (1) Any party may, at least twenty (20) days before the date fixed for any hearing under Sections 14 through 24 of this administrative regulation, move with or without supporting affidavits for a summary decision in his favor on all or any part of the proceeding. Any other party may, within ten (10) days after service of the motion, serve opposing affidavits or countermove for summary decision. The presiding examiner may, in his discretion, set the matter for argument and call for the submission of briefs.

(2) The filing of any documents under subsection (1) of this section shall be with the hearing examiner, and copies of any such documents shall be served in accordance with Section 15 of this administrative regulation.

(3) The hearing examiner may grant such motion if the pleadings, affidavits, material obtained by discovery or otherwise obtained, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. The hearing examiner may deny such motion whenever the moving party denies access to information by means of discovery to a party opposing the motion.

(4) Affidavits shall set forth such facts as would be admissible in evidence in a Kentucky court of law and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of this pleading; his response must set forth specific facts showing that there is genuine issue of fact for the hearing.

(5) Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the hearing examiner may deny the motion for summary decision or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.

(6) The denial of all or any part of a motion for summary decision by the hearing examiner shall not be subject to interlocutory appeal to the commissioner unless the hearing examiner certified in writing:

(a) That the ruling involves an important question of law or policy as to which there is substantial ground for difference of opinion; and

(b) That an immediate appeal from the ruling may materially advance the ultimate termination of the proceeding. The allowance of such an interlocutory appeal shall not stay the proceeding before the hearing examiner unless the commissioner shall so order.

Section 26. Summary Decision. (1) No genuine issue of material fact.

(a) Where no genuine issue a material fact is found to have been raised, the hearing examiner

may issue an initial decision to become final twenty (20) days after service thereof, unless, within such period of time any party has filed written exceptions to the decision. If any timely exception is filed, the hearing examiner shall fix a time for filing any supporting reasons. Thereafter, the commissioner, after consideration of the exceptions and any supporting briefs filed therewith and of any objections to the exceptions and any supporting reasons, may issue a final decision.

(b) An initial decision and a final decision made under this subsection shall include a statement of:

1. Findings and conclusions, and the reasons or bases thereof, on all issues presented; and
2. The terms and conditions of the rule or order made.

(2) Hearings on issues of fact, where a genuine material question of fact is raised, the hearing examiner shall, and in any other case he may, set the case for an evidentiary hearing in accordance with Sections 14 through 24 of this administrative regulation.

Section 27. Effect of Appeal of a Hearing Examiner's Decision. A hearing examiner's decision under this administrative regulation shall not be operative pending a decision on appeal by the commissioner.

Section 28. Finality for Purposes of Judicial Review. Only a decision by the commissioner shall be deemed final agency action for purposes of judicial review. (OSH 115; 1 Ky.R. 163; eff. 12-11-74; TAm eff. 8-9-2007; TAm eff. 9-8-2011.)