

803 KAR 25:015. Issuance of citations and procedure in workers' compensation enforcement hearings.

RELATES TO: KRS Chapter 13B, 342.990

STATUTORY AUTHORITY: KRS 13B.090(3), 13B.170, 342.260, 342.990(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes administrative agencies to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 13B governing administrative hearings. KRS 342.260 requires the Executive Director of the Office of Workers' Claims to promulgate administrative regulations necessary to carry on the work of the office and administrative law judges. KRS 13B.070(3) requires administrative agencies to promulgate administrative regulations to set forth specific procedures to facilitate informal settlement of matters. KRS 342.260(3) requires processes and procedures to be as summary and simple as reasonably possible. This administrative regulation establishes procedures for enforcement hearings under KRS Chapter 342.

Section 1. Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(2) The definition of "hearing officer" shall be governed by KRS 13B.010(7).

(3) "Working day" means a day that falls on a Monday through Friday, with the exception of a state or federal holiday, or other day on which the Office of Workers' Claims is officially closed for business.

Section 2. (1) Prior to issuing a notice of citation and penalty, the executive director may issue a show cause order to a person who has allegedly violated KRS Chapter 342 to appear at an informal conference to show cause why a citation should not be issued.

(2) The show cause order shall include the following:

(a) Detailed explanation of alleged violations;

(b) Statutes that were allegedly violated; and

(c) Date, time and place of show cause informal conference.

(d) If the executive director is not presiding over the informal conference, the name of the presiding hearing officer.

(3) The person issued a show cause order shall be present on the specified date, time and place and show cause why a citation should not be issued.

(4) The executive director or hearing officer shall gather relevant evidence concerning the alleged violations of KRS Chapter 342 from a representative of the Office of Workers' Claims and the person to whom the show cause order was issued.

(5) If the executive director is presiding over the informal conference and the parties wish to resolve the matter informally without the necessity of a citation and a formal hearing, an agreement may be entered.

(6) If a hearing officer is presiding over the informal conference and the parties wish to resolve the matter informally without the necessity of a citation and formal hearing, a recommended agreed order shall be submitted to the executive director for approval.

(7) If the parties do not resolve the matter by agreement and a hearing officer presides over the informal conference, the hearing officer shall issue a recommended order which includes his findings of fact, conclusions of law, and recommended disposition to the executive director as to whether a citation should be issued.

(8) The executive director shall review the evidence and if applicable the recommended order and either:

(a) Issue a citation for a violation of KRS Chapter 342;

- (b) Issue a statement that no citation is warranted; or
- (c) Request additional evidence for further review.

Section 3. Issuance of Citation and Notice of Contest. (1) If the executive director initiates enforcement of a civil penalty pursuant to KRS 342.990, the "notice of citation and penalty" shall be delivered to the appropriate party by certified mail or hand-delivered by authorized personnel of the Office of Workers' Claims.

(2) The party to whom a notice of citation and penalty has been delivered may contest the citation and penalty by filing a written "notice of contest" with the executive director within fifteen (15) working days of the receipt of the notice of citation and penalty.

(3) A notice of contest shall state the following:

(a) Grounds of the contest; and

(b) Whether the fact of a violation or level of the civil penalty, or both, is being contested.

(4) If a notice of contest is not timely filed, the citation shall be deemed final and the penalty due for payment.

Section 4. Assignment to Administrative Law Judge; Prehearing Procedure. (1) As soon as practicable upon receipt of a notice of contest, the executive director shall direct the chief administrative law judge to assign the matter to an administrative law judge for a hearing.

(2) In accordance with KRS 342.990(5), the administrative law judge may require parties to file a stipulation of uncontested facts not later than five (5) working days prior to the scheduled hearing date.

(3) The administrative law judge may require each party to file a witness and exhibit list described in KRS 13B.090(3) not later than five (5) working days prior to the scheduled hearing date with the administrative law judge and all other parties.

Section 5. Formal Hearing. (1) An administrative law judge shall preside over the conduct of the formal hearing and shall regulate the course of the proceeding in accordance with KRS Chapter 13B and any prehearing order issued by the administrative law judge.

(2) A party may submit proof at the formal hearing through the use of depositions, if the other parties received timely notice and had the opportunity to attend.

Section 6. Orders. (1) The administrative law judge shall determine if the executive director's citation was properly assessed and issue a final order in accordance with KRS 342.990(5) and 13B.120.

(2) The administrative law judge's final order shall be appealable to the Franklin Circuit Court in accordance with KRS 342.990(6) and 13B.140.

Section 7. Appeal/Payment of Fine. (1) If a party does not file a petition of appeal pursuant to KRS 342.990 and 13B.140, the order shall be deemed final and the civil penalty assessed in the order shall be due.

(2) A civil penalty that is not appealed to the Franklin Circuit Court shall be paid by certified check or money order payable to the Kentucky State Treasurer. The fine shall be mailed to the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601 ATTN: Enforcement Docket. (23 Ky.R. 1475; 2987; eff. 2-10-1997; 24 Ky.R. 1571; eff. 3-16-1998; TAm eff. 8-9-2007.)