

### **803 KAR 25:010. Procedure for adjustments of claims.**

RELATES TO: KRS 342.0011, 342.020, 342.033, 342.035, 342.040, 342.120, 342.1242, 342.125, 342.165, 342.185, 342.205, 342.260, 342.265, 342.267-342.275, 342.285, 342.290, 342.300-342.316, 342.320, 342.335, 342.340, 342.395, 342.610, 342.650, 342.710, 342.715, 342.730, 342.732, 342.760, 342.792

STATUTORY AUTHORITY: KRS 342.033, 342.260(1), 342.270(3), 342.285(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the commissioner to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 342. KRS 342.270(3) requires the commissioner to promulgate an administrative regulation establishing procedures for the resolution of claims. KRS 342.033 requires the commissioner to prescribe the format and content of written medical reports. KRS 342.285(1) requires the commissioner to promulgate an administrative regulation governing appeals to the Workers' Compensation Board. This administrative regulation establishes the procedure for the resolution of claims before an administrative law judge or Workers' Compensation Board.

#### Section 1. Definitions.

- (1) "Administrative law judge" or "ALJ" means an individual appointed pursuant to KRS 342.230(3).
- (2) "Board" is defined by KRS 342.0011(10).
- (3) "BRC" means benefit review conference as described in Section 13 of this administrative regulation.
- (4) "Civil Rule" or "CR" means the Kentucky Rules of Civil Procedure.
- (5) "Claim" means any claims including injury, hearing loss, or occupational disease.
- (6) "Commissioner" is defined by KRS 342.0011(9).
- (7) "Date of filing" means the date that:
  - (a) A pleading, motion, or other document is electronically filed with the commissioner at the Department of Workers' Claims (DWC) in Frankfort, Kentucky;
  - (b) A pleading, motion, order, opinion, or other document is received by the commissioner at the Department of Workers' Claims in Frankfort, Kentucky, except:
    1. Documents delivered to the offices of the Department of Workers' Claims after the office is closed at 4:30 p.m. or on the weekend, which shall be deemed filed the following business day; or
    2. Documents transmitted by United States registered (not certified) or express mail, or by other recognized mail carriers shall be deemed filed on the date the transmitting agency receives the document from the sender as noted by the transmitting agency on the outside of the container used for transmitting, within the time allowed for filing.
- (8) "Employer" is defined by KRS 342.630.
- (9) "Employer who has not secured payment of compensation" means any employer who employs an employee as defined by KRS 342.640 but has not complied with KRS 342.340.
- (10) "Jurisdictional deadline" means a deadline set by statute or administrative regulation that the Department of Workers' Claims cannot extend or change.
- (11) "Litigation Management System" or "LMS" means the electronic filing and document management system utilized in the filing and processing of workers' compensation claims in the Commonwealth of Kentucky.
- (12) "Notice of Filing of Application" means the notice issued by the commissioner stating that a claim has been filed, scheduling the date and time of the benefit review conference, and stating the week during which a hearing is to be held.

(13) "Signature" means actual personal handwritten signatures, and includes electronic signatures, which shall be treated as a personal signature for purposes of CR 11.

(14) "Special defenses" means defenses that shall be raised by special answer filed in accordance with Section 7(2)(d) of this administrative regulation.

(15) "Technical failure" means a failure of the Department of Workers' Claims hardware, software, or telecommunications facility that results in the impossibility for an external user to submit a filing electronically and does not include malfunctioning of an external user's equipment.

#### Section 2. Parties.

(1) Any interested party may file an original application for resolution of claim pursuant to KRS 342.270 or 342.316. The injured workers, or survivors, shall be designated as plaintiff. Adverse parties shall be designated as defendants.

(2) All persons shall be joined as plaintiffs in whom any right to any relief pursuant to KRS Chapter 342, arising out of the same transaction and occurrence, is alleged to exist. If a person refuses to join as a plaintiff, that person shall be joined as a defendant, and the fact of refusal to join as a plaintiff shall be pleaded.

(3)

(a) All persons shall be joined as defendants against whom the ultimate right to relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the alternative. An administrative law judge shall order, upon a proper showing, that a party be joined or dismissed.

(b) Joinder shall be sought by motion as soon as practicable after legal grounds for joinder are known. Notice of joinder and a copy of the claim file shall be served in the manner ordered by the administrative law judge.

#### Section 3. LMS Filings.

(1) Except as provided by subsection (2)(a) and (b) of this section and Section 4 of this administrative regulation, all pleadings, notices, orders, and other documents pertaining to a claim for workers' compensation benefits shall be filed utilizing the LMS.

(2) A document submitted electronically shall be deemed filed on the date filing is completed within the time frames set forth in paragraph (a) of this subsection. The filing party shall receive an electronic notification of the time and date filed.

(a) Pleadings, motions, orders, or other documents may be filed utilizing the LMS at any time the LMS is available. Periods of unavailability shall be pre-announced by the department. Inability to file during periods that were previously announced shall not constitute an excuse for a failure to file during a period.

(b) On or after July 1, 2017, paper or written pleadings, motions, or orders shall not be accepted for filing except for parties representing themselves.

(3) An electronically filed document using LMS shall bear the electronic signature of the filing party, if the party is representing himself or herself, or the filing party's attorney, as more fully described in paragraphs (a) and (b) of this subsection. The electronic signature of the filing party, if the party is representing himself or herself, or the filing party's attorney shall be treated as a personal signature and shall serve as a signature for purposes of CR 11, and all other purposes pursuant to the Kentucky Rules of Civil Procedure, and for any purpose for which a signature is required pursuant to this administrative regulation.

(a) An electronically filed document shall include a signature block setting forth the name, mailing address, phone number, fax number, and email address of the filing party, if the party is representing himself or herself, or the filing party's attorney.

(b) In addition, the name of the filing party, if the party is representing himself or herself, or of the filing party's attorney shall be preceded by an "/s/" and typed in the

space where the signature would otherwise appear. A handwritten signature shall be required for any paper or written filing.

(c) Affidavits and exhibits to pleadings with original handwritten signatures shall be scanned and filed in PDF or PDF/A format.

(4) Signatures of more than one (1) party required. A document requiring signatures of more than one (1) party shall be filed either by:

(a) Representing the consent of the other parties on the document by inserting in the location where each handwritten signature would otherwise appear the typed signature of each person, other than the filing party, preceded by an "/s/" and followed by the words "by permission" (e.g., "/s/ Jane Doe by permission"); or

(b) Electronically filing a scanned document containing all necessary signatures.

(5) Signatures of judges, board members, and designees of the commissioner. If the signature of a judge, board member, or designee of the commissioner is required on a document, an electronic signature may be used. The electronic signature shall be treated as the judge's, board member's, or designee's personal signature for purposes of CR 11, all other Kentucky Rules of Civil Procedure, and for any purpose required by this administrative regulation.

(6) Documents required to be notarized, acknowledged, verified, or made under oath. The signature on any document required to be notarized, acknowledged, verified, or made under oath shall be handwritten and scanned into the LMS. The scanned document shall be maintained as the official record, and the filing party shall retain the originally executed copy. The original paper copy may be required to be produced if the validity of the signature is challenged.

(7) Challenging or disputing authenticity.

(a) A non-filing signatory or party who disputes the authenticity of an electronically filed document with a non-attorney signature, or the authenticity of that document or the authenticity of an electronically filed document containing multiple signatures shall file an objection to the document within fourteen (14) days of service of the document. An objection to the document shall place the burden to respond on the non-objecting party and failure to do so shall result in the filing being stricken from the record.

(b) If a party wishes to challenge the authenticity of an electronically filed document or signature after the fourteen (14) day period, the party shall file a motion to seek a ruling, and show cause for the delayed challenge. If the challenge to authenticity is allowed, the non-moving party shall have the burden to prove authenticity. Failure to prove authenticity by the non-moving party shall result in the filing being stricken from the record.

(c) Challenges to authenticity filed without a valid basis shall be subject to sanctions pursuant to KRS 342.310 and Section 26 of this administrative regulation.

(8) Validity and enforceability of orders. All orders or opinions to be entered or issued shall be filed electronically, and shall have the same force and effect as if the judge or board member had affixed a signature to a paper copy of the order in a conventional manner.

(9) Entry of orders or opinions. Immediately upon entry of an order or opinion, a notice shall be served electronically on all parties. A paper form of the order or opinion shall be served upon those parties not utilizing LMS.

#### Section 4. Technical Difficulty: Litigation Management System Unavailability.

(1) Jurisdictional Deadlines. A jurisdictional deadline shall not be extended. A technical failure, including a failure of LMS, shall not excuse a failure to comply with a jurisdictional deadline. The filing party shall insure that a document is timely filed to comply with jurisdictional deadlines and, if necessary to comply with those deadlines, the

filing party shall file the document conventionally accompanied by a certification of the necessity to do so in order to meet a jurisdictional deadline.

(2) Technical Failures.

(a) If a filing party experiences a technical failure, the filing party may file the document conventionally, if the document is accompanied by a certification, signed by the filing party, that the filing party has attempted to file the document electronically at least twice, with those unsuccessful attempts occurring at least one (1) hour apart.

(b) A filing party who suffers prejudice as a result of a technical failure as defined by Section 1(16) of this administrative regulation, or a filing party who cannot file a time-sensitive document electronically due to unforeseen technical difficulties, other than a document filed under a jurisdictional deadline, may seek relief from an administrative law judge. Parties may also enter into an agreed order deeming a document, other than one (1) filed under a jurisdictional deadline, timely filed.

Section 5. Pleadings.

(1) An application for resolution of claim and all other pleadings shall be signed or electronically signed when using LMS, and submitted in accordance with this administrative regulation.

(a) For each claim, an applicant shall submit a completed application for resolution of claim. If the claim involves a fatality, the applicant shall also submit a Form F within fifteen (15) days of the applicant's submission of the application.

(b) The applicant may include, if appropriate, a request for vocational rehabilitation, interlocutory relief, or a request for imposition of a safety penalty pursuant to KRS 342.165. The applicant shall also designate whether an interpreter will be required at the hearing, and shall specify the language and any specific dialect needed.

(2) The filing of an application and service through LMS shall satisfy all requirements for service pursuant to CR 5. All pleadings filed through the LMS shall be served upon all other parties electronically or by e-mail. If a party is represented, the pleading shall be served on that representative, at the party's or the representative's last known address. The parties, by agreement, may serve all pleadings upon each other by electronic means. A certificate of service indicating the date of service and electronically signed by the party shall appear on the face of the pleading. Notices of deposition, notices of physical examination, requests for and responses to requests for production of documents, and exchange of reports or records shall be served by e-mail upon the parties and shall not be filed with the commissioner.

(3) Documents filed or served outside of LMS.

(a) A document filed or served outside of LMS shall comply with this subsection.

(b) An application for resolution of claim shall be filed with sufficient copies for service on all parties. The commissioner shall make service by first class mail.

(c) All pleadings shall be served upon the commissioner through LMS or, if a party is unrepresented, by paper and shall be served upon all other parties by mailing a copy to the other parties or, if represented, to the parties' representative, at the party's or representative's last known address or, if agreed to, by electronic means. A certificate of service indicating the method and date of service and signed by the party shall appear on the face of the pleading. Notices of deposition and physical examination shall be served upon the parties and shall not be filed with the commissioner.

(d) After the application for resolution has been assigned to an administrative law judge, subsequent pleadings shall include, within the style of the claim and immediately before the claim number, "Before Administrative Law Judge (name)". Upon consolidation of claims, the most recent claim number shall be listed first.

(e)

1. All documents involved in an appeal to the Workers' Compensation Board shall include the language "Before Workers' Compensation Board" before the claim number within the style of the claim.
2. Parties shall insert the language "Appeals Branch" or "Workers' Compensation Board" on the outside of the envelope containing documents involved in an appeal.

#### Section 6. Motions.

(1) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in reply. Further memoranda (for example, reply to response) shall not be filed.

(2) Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating the facts.

(3) Every motion, the grounds of which depend upon the existence of facts that the moving party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.

(4) A response to a motion, other than to reopen pursuant to KRS 342.125 or for interlocutory relief, shall be filed within ten (10) days after the date of the filing of a motion. The administrative law judge shall rule on the motion no later than ten (10) days after the date for the filing of the response has passed.

(5)

(a) A motion to reopen shall be accompanied by as many of the following items as may be applicable:

1. A current medical release Form 106 executed by the plaintiff;
2. An affidavit evidencing the grounds to support reopening;
3. A current medical report showing a change in disability established by objective medical findings;
4. A copy of the opinion and award, settlement, voluntary agreed order, or agreed resolution sought to be reopened;
5. An affidavit certifying that a previous motion to reopen has not been made by the moving party, or if one (1) has previously been made, the date on which the previous motion was filed; or
6. A designation of evidence from the original record specifically identifying the relevant items of proof that are to be considered as part of the record during reopening.

(b)

1. The designation of evidence made by a party shall list only those items of evidence from the original record that are relevant to the matters raised on reopening.
2. The burden of completeness of the record shall rest with the parties to include so much of the original record, up to and including the award or order on reopening, as is necessary to permit the administrative law judge to compare the relevant evidence that existed in the original record with all subsequent evidence submitted by the parties.
3. Except for good cause shown at the time of the filing of the designation of evidence, a party shall not designate the entire original record from the claim for which reopening is being sought.

(6)

(a) The motion to reopen shall be served on all other parties consistent with the Kentucky Rules of Civil Procedure regarding service as provided under CR 4.01(a) or (b), by:

1. Registered mail or certified mail return receipt requested with instructions to the delivery postal employee to deliver to the addressee only and show the address

where delivered and the date of delivery; or

2. Causing the motion to be transferred for service by any person authorized, other than as in subparagraph 1. of this paragraph, to deliver the document, who shall serve it and whose return endorsed thereon shall be proof of the time and manner of service.

(b) The motion to reopen shall contain a certification of the method of service.

1. Any response shall be filed within twenty (20) days of filing the motion to reopen.

2. A response may contain a designation of evidence specifically identifying evidence from the original record not already listed by the moving party that is relevant to matters raised in a response.

3. An administrative law judge shall rule on the motion no sooner than five (5) days and no later than fifteen (15) days after the date for the filing of the response has passed.

(7) A motion for allowance of a plaintiff's attorney fee shall:

(a) Be made within thirty (30) days following the finality of the award, settlement, or agreed resolution upon which the fee request is based;

(b) Be served upon the adverse parties and the attorney's client;

(c) Set forth the fee requested and mathematical computations establishing that the request is within the limits set forth in KRS 342.320; and

(d) Be accompanied by:

1. An affidavit of counsel detailing the extent of the services rendered;

2. A signed and dated Form 109 as required by KRS 342.320(5); and

3. A copy of the signed and dated contingency fee contract.

(8) A motion for allowance of defendant's attorney's fee shall be:

(a) Filed within thirty (30) days following the finality of the decision; and

(b) Accompanied by an affidavit of counsel detailing:

1. The extent of the services rendered; and

2. The total amount to be charged.

(9) Vocational rehabilitation benefits may be requested in the initial claim filing or by subsequent motion.

(10) If a plaintiff is deceased, a motion to substitute party and continue benefits shall be filed.

#### Section 7. Application for Resolution of a Claim and Response.

(1) The applicant shall file an application for resolution of an injury, occupational disease, hearing loss, or interlocutory relief claim through the LMS. At the time of, or within fifteen (15) days after the filing of the application, the following shall be filed:

(a) Form 104, Plaintiff's Employment History, to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the date of injury; upon written certification, supported by claimant's counsel, that claimant does not seek a total disability award, the twenty (20) year work history need not be submitted;

(b) Form 105, Plaintiff's Chronological Medical History, to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for the same body part claimed to have been injured;

(c) Medical release (Form 106);

(d) One (1) medical report, which may consist of legible, handwritten notes of the treating physician, and which shall include the following:

1. A description of the injury that is the basis of the claim;

2. A medical opinion establishing a causal relationship between the work-related events or the medical condition that is the subject of the claim; and

3. If a psychological condition is alleged, an additional medical report establishing the presence of a mental impairment or disorder;
  - (e) Documentation substantiating the plaintiff's preinjury and post injury wages; and
  - (f) Documentation establishing additional periods for which temporary total disability benefits are sought.
- (2)
- (a) Following the filing of an application for resolution of claim, or the sustaining of a motion to reopen, the commissioner shall issue a Notice of Filing of Application. Within forty-five (45) days of the date of the Notice of Filing of Application, each defendant shall file a notice of claim denial or acceptance. A notice of claim denial shall not be required to be filed by any party in a claim reopened pursuant to KRS 342.125.
  - (b) If a notice of claim denial is not filed, all allegations of the application shall be deemed admitted.
  - (c) The notice of claim denial shall set forth the following:
    1. All pertinent matters that are admitted and those that are denied; and
    2. If a claim is denied in whole or in part, a detailed summary of the basis for denial.
  - (d) In the notice of claim denial, a defendant shall if appropriate file a special answer to raise any special defenses in accordance with this paragraph. If a defendant raises the special defense under KRS 342.165, failure to comply with a safety law, administrative regulation, or rule, the defendant shall also file a completed Form SVE with the special answer and identify the safety device the employee failed to use or the lawful and reasonable order or administrative regulation of the commissioner or the employer for the safety of employees or the public which was not complied with.
    1. A special answer shall be filed within:
      - a. The forty-five (45) days for filing the Notice of Claim Denial; or forty-five (45) days of the date of the order joining the defendant as a party, if joinder occurs after the filing of the application for the resolution of the claim; or
      - b. Ten (10) days after discovery of facts supporting the defense if discovery could not have been had earlier in the exercise of due diligence.
    2. A special defense shall be waived if not timely raised.
    3. A special defense shall be pleaded if the defense arises under:
      - a. KRS 342.035(3), unreasonable failure to follow medical advice;
      - b. KRS 342.165, failure to comply with safety laws;
      - c. KRS 342.316(7) or 342.335, false statement on employment application;
      - d. KRS 342.395, voluntary rejection of KRS Chapter 342;
      - e. KRS 342.610(3), voluntary intoxication or self-infliction of injury;
      - f. KRS 342.710(5), refusal to accept rehabilitation services;
      - g. Running of periods of limitations or repose under KRS 342.185, 342.270, 342.316, or other applicable statute; or
      - h. Horseplay.
  - (e) Within forty-five (45) days of the issuance of the Notice of Filing of Application, the parties shall file a notice of disclosure, which shall contain:
    1. The names of all known witnesses and their addresses, if known, upon whom the party intends to rely except those already submitted into evidence;
    2. For plaintiff, if requested by defendant, wage information and wage records for all wages earned by the plaintiff, if any, subsequent to the injury, including any wages earned as of the date of service of the notice of disclosure while employed for any employer other than the one (1) for whom he or she was employed at the time of the injury; Plaintiff may provide a release for the information or records in lieu of providing those records;

3. For plaintiff, a listing of each employer, address, and dates of any employment, subsequent to the injury, as well as the nature of the employment, including a description of any physical requirements of the subsequent employment;
  4. For plaintiff, wage information for all wages earned, if any, for any employment for which the plaintiff was engaged concurrent to the time of the injury on a Form AWW-CON;
  5. If the plaintiff alleges a safety violation by the employer, a Form SVC shall be filed;
  6. For all parties, a list, with specificity, of all known and anticipated contested issues. Any subsequent addition of contested issues shall only be allowed upon motion to the ALJ establishing good cause as to why the issue could not have been listed earlier;
  7. For plaintiff, all known unpaid bills to the parties, including travel for medical treatment, co-pays, or direct payments by plaintiff for medical expenses for which plaintiff seeks payment or reimbursement. Actual copies of the bills and requests for reimbursement shall not be filed but shall be served upon opposing parties if requested;
  8. For each defendant, a completed Form AWW-1, Average Weekly Wage Certification, and itemization of any medical bills or medical expenses known to be disputed by the defendant, any submitted bills being considered but unpaid, and a total for all medical expenses paid as of the date application for resolution of the claim or motion to reopen is filed.
    - a. Actual copies of the bills and requests for reimbursement shall not be filed but shall be served upon opposing parties if requested.
    - b. If the plaintiff has earned wages for a defendant after the injury that is the subject of the litigation, the defendant shall provide post-injury wage information records on a Form AWW-POST.
    - c. Any party required to file an AWW shall include actual pay records to the extent available.
    - d. Upon request by plaintiff, defendant shall provide to plaintiff any statement, surveillance video, photographs, or recording of plaintiff. Further, upon plaintiff's request, and a showing of relevance, defendant shall provide the employee's employment file and OSHA history as it relates to the plaintiff's injury.
    - e. In a reopened claim, a Form AWW-1 shall not be required to be filed if an ALJ made a finding establishing the average weekly wage in a previous decision or if the pre-injury average weekly wage was previously stipulated by the parties unless a party seeks and is relieved from the original stipulation;
  9. For a newly joined party, except for a medical provider whose treatment or bills have been contested, within forty-five (45) days of the date of the order joining the new party, a notice of disclosure in accordance with the requirements in paragraph (e) of this subsection; and
  10. For each employer, a copy of any written job description setting out the physical requirements of the job.
- (f) All parties shall amend the notice of disclosure within ten (10) days after the identification of any additional witness, or receipt of information or documents that would have been disclosed at the time of the original filing had it then been known or available. Failure to comply may result in the exclusion of the witness.

#### Section 8. Discovery, Evidence, and Exchange of Records.

- (1) Proof taking and discovery for all parties shall begin from the date the commissioner issues the Notice of Filing of Application.
- (2)



- (a) Plaintiff and defendants shall take proof for a period of sixty (60) days from the date of the Notice of Filing of Application;
  - (b) After the sixty (60) day period, defendants shall take proof for an additional thirty (30) days; and
  - (c) After the defendant's thirty (30) day period, the plaintiff shall take rebuttal proof for an additional fifteen (15) days.
- (3) During the pendency of a claim, any party obtaining or possessing a medical or vocational report or records and relevant portions of hospital or educational records shall serve a copy of the report or records upon all other parties within ten (10) days following receipt of those reports or records or within ten (10) days of receipt of notice if assigned to an administrative law judge. Defendant employer may request Social Security, Armed Forces, VA records, vital statistics records, and other public records upon a showing of relevance. Failure to comply with this subsection may constitute grounds for exclusion of the reports or records as evidence.
- (4) All medical reports filed with the application for resolution of a claim shall be admitted into evidence without further order subject to the limitations of KRS 342.033 if:
- (a) An objection is not filed prior to or with the filing of the notice of claim denial; and
  - (b) The medical reports comply with Section 10 of this administrative regulation.

#### Section 9. Vocational Reports.

- (1) One (1) vocational re-port may be filed by notice and shall be admitted into evidence without further order and without the necessity of a deposition, if an objection is not filed.
- (2) Vocational reports shall be signed by the individual making the report.
- (3) Vocational reports shall include, within the body of the report or as an attachment, a statement of the qualifications of the person making the report.
- (4) An objection to the filing of a vocational report shall:
- (a) Be filed within ten (10) days of the filing of the notice or motion for admission; and
  - (b) State the grounds for the objection with particularity.
- (5) The filing party may file a response to the objection within ten (10) days and the administrative law judge shall rule on the objection within ten (10) days after the response is filed, or, if no response is filed, when the response was due to be filed.
- (6) If a vocational report is admitted as direct testimony, an adverse party may depose the reporting vocational witness in a timely manner as if on cross-examination at its own expense.

#### Section 10. Medical Reports.

- (1) A party shall not introduce direct testimony from more than two (2) physicians by medical report except upon a showing of good cause and prior approval by an administrative law judge.
- (2) Medical reports submitted through the LMS may utilize the web form creating a Form 107 or Form 108 for electronic filing, except an administrative law judge may permit the introduction of other reports that substantially comply with this section and do not exceed twenty-five (25) pages.
- (3) Medical reports shall be signed by the physician making the report, or the notice of filing shall be considered an affidavit from the physician or submitting party.
- (4) Medical reports shall include, within the body of the report or as an attachment, a statement of qualifications of the person making the report. If the qualifications of the physician who prepared the written medical report have been filed with the commissioner and the physician has been assigned a medical qualifications index number, reference may be made to the physicians index number in lieu of attaching qualifications along with a listing of the physician's specialty of practice.

- (5) Narratives in medical reports shall be typewritten. Other portions, including spirometric tracings, shall be clearly legible.
- (6) Notices of filing or motions to file medical reports shall list the impairment rating assigned in the medical report or record in the body of the notice or motion.
- (a) Upon notice, a party may file evidence from two (2) physicians in accordance with KRS 342.033, either by deposition or medical report, which shall be admitted into evidence without further order if an objection is not filed.
  - (b) An objection to the filing of a medical report shall be filed within ten (10) days of the filing of the notice or the motion for admission.
  - (c) Grounds for the objection shall be stated with particularity.
  - (d) The party seeking introduction of the medical report may file a response within ten (10) days after the filing of the objection.
  - (e) The administrative law judge shall rule on the objection within ten (10) days of the response or the date the response is due.
- (7) Medical records that are not submitted under subsection (2) of this section may be submitted by notice that identifies the records, the person or medical facility that produced the records, and the relevance of the records to the claim. Records submitted in excess of twenty (20) pages shall provide an indexed table of contents generally identifying the contents of each page. Failure to provide an indexed table of contents shall result in rejection of the records, which shall not be filed or considered as evidence.
- (8) If a medical report is admitted as direct testimony, an adverse party may depose the reporting physician in a timely manner as if on cross-examination at its own expense.

#### Section 11. Medical Evaluations Pursuant to KRS 342.315.

- (1) All persons claiming benefits for hearing loss or occupational disease shall be referred by the commissioner for a medical evaluation in accordance with contracts entered into between the commissioner and the University of Kentucky and University of Louisville medical schools.
- (2) In all other claims, the commissioner or an administrative law judge may direct appointment by the commissioner of a university medical evaluator.
- (3) Upon referral for medical evaluation under this section, a party may tender additional relevant medical treatment records and diagnostic studies to the administrative law judge or to the commissioner for determination of relevancy and submission to the evaluator. The administrative law judge or the commissioner shall provide notice to the parties of the material submitted to the evaluator. This additional information shall not be filed of record. The additional medical information shall be:
- (a) Submitted to the administrative law judge or to the commissioner within fourteen (14) days following an order for medical evaluation pursuant to KRS 342.315 or KRS 342.316;
  - (b) Clearly legible;
  - (c) Indexed;
  - (d) Furnished in chronological order;
  - (e) Timely furnished to all other parties within ten (10) days following receipt of the medical information; and
  - (f) Accompanied by a summary that is filed of record and served upon all parties. The summary shall:
    - 1. Identify the medical provider;
    - 2. Include the date of medical services; and
    - 3. Include the nature of medical services provided.
- (4) Upon the scheduling of an evaluation, the commissioner shall provide notice to all parties and the employer shall forward to the plaintiff necessary travel expenses as required by KRS 342.315(4). Upon completion of the evaluation, the commissioner shall

provide copies of the report to all parties and shall file the original report in the claim record to be considered as evidence.

(5) The administrative law judge shall allow timely cross-examination of a medical evaluator appointed by the commissioner at the expense of the moving party.

(6) Unjustified failure by the plaintiff to attend the scheduled medical evaluation may be grounds for dismissal, payment of a no-show fee, suspension of the claim pursuant to KRS 342.205(3), sanctions, or any combination of these penalties, unless good cause is shown for the failure.

(7) Failure by the employer or its insurance carrier to pay travel expenses within seven (7) working days prior to the scheduled medical evaluation or to pay the cost of the exam within thirty (30) days of the receipt of a statement of charges for the exam may result in sanctions, payment of failure to appear charges, or unfair claims practice penalties unless good cause is shown for the failure or delay.

#### Section 12. Interlocutory Relief.

(1) A party may seek interlocutory relief at the time of the initial claim application or by motion requesting:

- (a) Interim payment of income benefits for total disability pursuant to KRS 342.730(1)(a);
- (b) Medical benefits pursuant to KRS 342.020; or
- (c) Rehabilitation services pursuant to KRS 342.710.

(2) If interlocutory relief is requested prior to or at the time the application for resolution of claim is filed, the commissioner shall issue an order allowing the responding party twenty (20) days to respond to the request.

(a) Upon receipt of the response, the commissioner shall assign the claim to an ALJ for resolution of the request for interlocutory relief.

(b) The ALJ to whom the interlocutory relief request is assigned may schedule a hearing to be held within thirty-five (35) days of the order assigning the claim for resolution.

(c) The ALJ shall issue a decision regarding interlocutory relief within twenty (20) days after the date of the hearing.

(d) If no hearing is held, the ALJ shall issue a decision within twenty (20) days after the date the response is filed, or twenty (20) days after the date the response is due if no response is filed.

(e) If the request for interlocutory relief is denied, the claim shall be referred to the commissioner for reassignment of the claim for resolution by another ALJ.

(f) If the request for interlocutory relief for income benefits is granted, the claim shall be placed in abeyance. The plaintiff shall provide a status report every sixty (60) days, or sooner if circumstances warrant or upon order by the ALJ, updating his or her current status. Upon motion and a showing of cause, or upon the ALJ's own motion, interlocutory relief shall be terminated and the claim removed from abeyance. Failure to file a timely status report may constitute cause to terminate interlocutory relief. Interlocutory relief, once awarded, shall continue until the ALJ issues an order of termination of interlocutory relief. The order terminating interlocutory relief shall also contain a provision for referral to the commissioner for reassignment of the claim for resolution by another ALJ.

(3)

(a) If a motion for interlocutory relief is filed after the claim is assigned to an ALJ, he or she shall within ten (10) days issue an order requiring a response to the request for interlocutory relief be served within twenty (20) days from the date of the order, and refer it to the commissioner for assignment to an ALJ for the sole purpose of considering the request for interlocutory relief.

(b) Upon receipt of the response, the ALJ may schedule a hearing to be held within thirty-five (35) days of receipt of the response. The hearing may be held telephonically, by video, or by other electronic means, if the parties agree or a party demonstrates good cause as to why the party cannot appear at the hearing in person.

(c) Upon completion of the hearing, an ALJ shall issue a decision within twenty (20) days.

(d) If the hearing is waived, an ALJ shall issue a decision within twenty (20) days after the date the response is filed, or twenty (20) days after the response is due if no response is filed.

(4)

(a) Entitlement to interlocutory relief shall be established by means of affidavit, deposition, hearing testimony, or other means of record demonstrating the requesting party:

1. Is eligible under KRS Chapter 342;

2. Will suffer immediate and irreparable injury, loss, or damage pending a final decision on the application; and

3. Is likely to succeed on the merits based upon the evidence introduced by the parties.

(b) Rehabilitation services may be ordered while the claim is pending upon a showing that immediate provision of services will substantially increase the probability that the plaintiff will return to work.

(5) Benefits awarded pursuant to an interlocutory order shall not be terminated except upon entry of an order issued by an administrative law judge. Failure to pay benefits under an interlocutory order or termination of benefits ordered pursuant to an interlocutory order without prior approval of the ALJ shall constitute grounds for a violation of the Unfair Claims Settlement Practices Act at KRS 342.267, and for sanctions pursuant to KRS 342.310 and Section 26 of this administrative regulation, unless good cause is shown for failure to do so.

(6) If interlocutory relief is requested in the application for benefits, an assignment to an ALJ shall not be made on other issues and a scheduling order shall not be issued until a ruling has been made on the interlocutory relief request, unless the requesting party shows that delay will result in irreparable harm.

(7) An attorney's fee in the amounts authorized by KRS 342.320 that does not exceed twenty (20) percent of the weekly income benefits awarded pursuant to a request for interlocutory relief may be granted. The approved fee shall be deducted in equal amounts from the weekly income benefits awarded and shall be paid directly to the attorney.

### Section 13. Benefit Review Conferences.

(1) The purpose of the BRC shall be to expedite the processing of the claim and to avoid if possible the need for a hearing.

(2) The BRC shall be an informal proceeding.

(3) The date, time, and place for the BRC shall be stated on the Notice of Filing of Application issued by the commissioner.

(4) The plaintiff and his or her representative, the defendant or its representative, and the representatives of all other parties shall attend the BRC.

(5) If the defendant is insured or a qualified self-insured, a representative of the carrier or self-insured employer with settlement authority shall be present or available by telephone during the BRC. Failure to comply with this provision may result in the imposition of sanctions.

(6) The administrative law judge may upon motion waive the plaintiff's attendance at the BRC for good cause shown.

(7) A transcript of the BRC shall not be made.

(8) Representatives of all parties shall have authority to re-solve disputed issues and settle the claim at the BRC.

(9)

(a) The plaintiff shall bring to the BRC copies of known unpaid medical bills not previously provided and documentation of out-of-pocket expenses including travel for medical treatments. Absent a showing of good cause, failure to do so may constitute a waiver to claim payment for those bills.

(b) Each defendant shall bring copies of known medical bills not previously provided and medical expenses presented to them, their insurer or representative known to be unpaid or disputed including travel expenses. Absent a showing of good cause, failure to do so may constitute a waiver to challenge those bills.

(10) A party seeking postponement of a BRC shall file a motion at least fifteen (15) days prior to the date of the conference and shall demonstrate good cause for the postponement.

(11) If at the conclusion of the BRC the parties have not reached agreement on all the issues, the administrative law judge shall:

(a) Prepare a final BRC memorandum and order including stipulations and identification of all issues, which shall be signed by all parties or if represented, their counsel, and the administrative law judge; and

(b) Schedule a final hearing.

(12) Only contested issues shall be the subject of further proceedings.

(13) Upon motion with good cause shown, the administrative law judge may order that additional discovery or proof be taken between the BRC and the date of the hearing and may limit the number of witnesses to be presented at the hearing.

#### Section 14. Evidence - Rules Applicable.

(1) The Rules of Evidence prescribed by the Kentucky Supreme Court shall apply in all proceedings before an administrative law judge except as varied by specific statute and this administrative regulation.

(2)

(a) Any party may file as evidence before the administrative law judge pertinent material and relevant portions of:

1. Hospital records, which shall be limited to emergency room records, history, physical and discharge summary, operative notes, and reports of specialized testing; and

2. Educational, Office of Vital Statistics, Armed Forces, Social Security, and other public records.

(b) An opinion of a physician that is expressed in these records shall not be considered by an administrative law judge in violation of the limitation on the number of physician's opinions established in KRS 342.033.

(c) If the records or reports submitted exceed twenty (20) pages, the party attempting to file those records or reports into evidence shall include an indexed table of contents generally identifying the contents.

(d) An appropriate release shall be included to permit opposing parties the ability to obtain complete copies of the records.

#### Section 15. Extensions of Proof Time.

(1) An extension of time for producing evidence may be granted upon showing of circumstances that prevent timely introduction.

(2) A motion for extension of time shall be filed no later than five (5) days before the deadline sought to be extended.

(3) The motion or supporting affidavits shall set forth:

(a) The efforts to produce the evidence in a timely manner;

- (b) Facts which prevented timely production; and
  - (c) The date of availability of the evidence, the probability of its production, and the materiality of the evidence.
- (4) In the absence of compelling circumstances, only one (1) extension of thirty (30) days shall be granted to each side for completion of discovery or proof by deposition.
- (5) The granting of an extension of time for completion of discovery or proof shall:
- (a) Enlarge the time to all:
    - 1. Plaintiffs if the extension is granted to a plaintiff; and
    - 2. Defendants if an extension is granted to a defendant;
  - (b) Extend the time of the adverse party automatically except if the extension is for rebuttal proof; and
  - (c) Be limited to the introduction of evidence cited as the basis for the requested extension of time.

#### Section 16. Stipulation of Facts.

- (1) Refusal to stipulate facts that are not genuinely in issue shall warrant imposition of sanctions as established in Section 26 of this administrative regulation. An assertion that a party has not had sufficient opportunity to ascertain relevant facts shall not be considered "good cause" in the absence of due diligence.
- (2) Upon cause shown, a party may be relieved of a stipulation if the motion for relief is filed at least ten (10) days prior to the date of the hearing, or as soon as practicable after discovery that the stipulation was erroneous.
- (3) Upon granting relief from a stipulation, the administrative law judge may grant a continuance of the hearing and additional proof time.

#### Section 17. Discovery and Depositions.

- (1) Discovery and the taking of depositions shall be in accordance with the provisions of Kentucky Rules of Civil Procedure 26 to 37, except for Rules 27, 33, and 36, which shall not apply to practice before the administrative law judges or the board.
- (2) Depositions may be taken by telephone if the reporter administering the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given. Notice of a telephonic deposition shall relate the following information:
- (a) That the deposition is to be taken by telephone;
  - (b) The address and telephone number from which the call will be placed to the witness;
  - (c) The address and telephone number of the place where the witness will answer the deposition call; and
  - (d) Whether opposing parties may participate in the deposition either at the place where the deposition is being given, at the place the telephone call is placed to the witness, or by conference call. If a party elects to participate by conference call, that party shall contribute proportionate costs of the conference call.
- (3) A party seeking a subpoena from an ALJ shall prepare a subpoena or subpoena duces tecum, and provide it to the ALJ to whom the case is assigned, or if no assignment has been made then it shall be sent to the chief administrative law judge. Except for good cause shown, a subpoena shall be requested a minimum of ten (10) days prior to the date of the appearance being requested. A motion shall not be filed. A subpoena shall be served in accordance with Kentucky Rules of Civil Procedure 5.02, 45.03, or 45.05, whichever is applicable.
- (4) The commissioner shall establish a medical qualifications index.
- (a) An index number shall be assigned to a physician upon the filing of the physician's qualifications.

(b) Any physician who has been assigned an index number may offer the assigned number in lieu of stating qualifications.

(c) Qualifications shall be revised or updated by submitting revisions to the commissioner.

(d) A party may inquire further into the qualifications of a physician.

(e) If the physician's qualifications have not previously been filed into the index maintained by the commissioner, the filing party shall provide sufficient information containing the physician's qualifications, and request the physician be included in the index and a number issued.

(5) Discovery requests and responses to the requests shall not be submitted into the record.

Section 18. Informal Conference. Prior to the hearing, the ALJ may conduct an informal conference either at a hearing site, telephonically, or by other electronic means to inquire about remaining contested issues, and who will testify at the hearing.

Section 19. Hearings.

(1) At the hearing, the parties shall present proof concerning contested issues. If the plaintiff or plaintiff's counsel fails to appear, the administrative law judge may dismiss the case for want of prosecution, or if good cause is shown, the hearing may be continued.

(2) At the conclusion of the hearing, the administrative law judge may hold oral arguments, order briefs, or proceed to final decision.

(3) Briefs shall not exceed fifteen (15) pages in length. Reply briefs shall be limited to five (5) pages. Permission to increase the length of a brief shall be sought by motion.

(4) The administrative law judge may announce his decision at the conclusion of the hearing or shall defer decision until rendering a written opinion.

(5) A decision shall be rendered no later than sixty (60) days following the hearing.

(6) The time of filing a petition for reconsideration or notice of appeal shall not begin to run until after the date of filing of the written opinion.

(7) An opinion or other final order of an administrative law judge shall not be deemed final until the administrative law judge opinion is entered into LMS, or, if mailed, by certificate of service from the Office of the ALJ or Department of Workers' Claims with a certification that mailing was sent to:

(a) An attorney who has entered an appearance for a party; or

(b) The party if an attorney has not entered an appearance.

(8) The parties with approval of the administrative law judge may waive a final hearing. Waiver of a final hearing shall require agreement of all parties and the administrative law judge. The claim shall be taken under submission as of the date of the order allowing the waiver of hearing. A decision shall be rendered no later than sixty (60) days following the date of the order allowing the waiver of hearing.

Section 20. Petitions for Reconsideration.

(1) If applicable, a party shall file a petition for reconsideration within fourteen (14) days of the filing of a decision, order, or award of an administrative law judge and clearly state the patent error that the petitioner seeks to have corrected and setting forth the authorities upon which petitioner relies. The party filing the petition for reconsideration shall tender a proposed order granting the relief requested.

(2) A response shall be served within ten (10) days after the date of filing of the petition.

(3) The administrative law judge shall act upon the petition within ten (10) days after the response is due.

Section 21. Settlements.

(1) Unless the settlement agreement is completed and tendered to the ALJ for immediate approval at the BRC, informal conference, or hearing, or unless the ALJ orders otherwise, the party drafting the settlement agreement shall provide the signed original to the adverse party no later than fifteen (15) days after the date the parties agree to settle. The agreement shall be signed by all parties and tendered to the ALJ for approval no later than thirty (30) days after the date the parties agreed to settle absent a showing of good cause.

(2) Payment shall be made within twenty-one (21) calendar days after the date of the order approving settlement. Payment for settlements and past due benefits shall be mailed to the last known address of plaintiff's counsel, if represented.

(3) Failure to satisfy the time requirements in subsection (2) of this section, if the defendant or defendant's counsel is primarily at fault, may result in the addition of twelve (12) percent interest per annum on all benefits agreed upon in the settlement for any period of delay beyond the time prescribed in subsection (2) of this section.

(4) Parties who settle future periodic payments in a lump sum shall use the discount factor computed in accordance with KRS 342.265(3).

(5) Parties who reach an agreement pursuant to KRS 342.265 shall file the agreement on the applicable form as listed in this subsection and, if not filed electronically, that form shall include the original signatures of the parties:

(a) Form 110-F, Agreement as to Compensation and Order Approving Settlement-Fatality; or

(b) Form 110-I, Agreement as to Compensation and Order Approving Settlement;

(c) Form 110-ODHLCWP, Agreement as to Compensation and Order Approving Settlement.

(6) A settlement agreement that contains information or provisions that are outside the provisions and purview of KRS Chapter 342 shall not be approved and shall be returned to the parties.

## Section 22. Review of Administrative Law Judge Decisions.

(1) General.

(a) Pursuant to KRS 342.285(1), decisions of administrative law judges shall be subject to review by the Workers' Compensation Board in accordance with the procedures set out in this administrative regulation.

(b) Parties shall insert the language "Appeals Branch" or "Workers' Compensation Board" on the outside of an envelope containing documents filed in an appeal to the board.

(2) Time and format of notice of appeal.

(a) Within thirty (30) days of the date a final award, order, or decision rendered by an administrative law judge pursuant to KRS 342.275(2) is filed, any party aggrieved by that award, order, or decision may file a notice of appeal to the Workers' Compensation Board.

(b) As used in this section, a final award, order, or decision shall be determined in accordance with Civil Rule 54.02(1) and (2).

(c) The notice of appeal shall:

1. Denote the appealing party as the petitioner;

2. Denote all parties against whom the appeal is taken as respondents;

3. Name the administrative law judge who rendered the award, order, or decision appealed from as a respondent;

4. If appropriate pursuant to KRS 342.120 or 342.1242, name the director of the Division of Workers' Compensation Funds as a respondent;

5. Include the claim number; and

6. State the date of the final award, order, or decision appealed.



- (d) Cross-appeal.
  - 1. Any party may file a cross-appeal through notice of cross-appeal filed within ten (10) days after the notice of appeal is served.
  - 2. A cross-appeal shall designate the parties as stated in the notice of appeal.
- (e) Failure to file the notice within the time allowed shall require dismissal of the appeal.
- (3) Format of petitioner's brief.
  - (a) Petitioner's brief shall be filed within thirty (30) days of the filing of the notice of appeal.
  - (b) Petitioner's brief shall be filed with the commissioner of the Department of Workers' Claims.
  - (c) The petitioner's brief shall conform in all respects to Civil Rule 7.02(4).
- (4) Petitioner's brief. The petitioner's brief shall designate the parties as petitioner (or petitioners) and respondent (or respondents) and shall be drafted in the manner established in this subsection.
  - (a)
    - 1. The name of each petitioner and each respondent shall be included in the brief.
    - 2. The petitioner shall specifically designate as respondents all adverse parties.
    - 3. The administrative law judge who rendered the award, order, or decision appealed from shall be named as a respondent.
  - (b) The workers' compensation claim number, or numbers, shall be set forth in all pleadings before the Workers' Compensation Board.
  - (c) The petitioner's brief shall state the date of entry of the final award, order, or decision by the administrative law judge.
  - (d) The petitioner's brief shall state whether any matters remain in litigation between the parties in any forum or court other than those for which an appeal is being sought.
  - (e) The petitioner's brief shall include a statement of the "Need for Oral Argument", designating whether the party requests an argument to be heard orally before the board and, if so, a brief statement setting out the reason or reasons for the request.
  - (f) The petitioner's brief shall include a "Statement of Benefits Pending Review", which shall set forth whether the benefits designated to be paid by the award, order, or decision for which review is being sought have been instituted pursuant to KRS 342.300.
  - (g) The organization and contents of the petitioner's brief for review shall be as established in this paragraph.
    - 1. A brief "Introduction" shall indicate the nature of the case.
    - 2. A "Statement of Points and Authorities" shall set forth, succinctly and in the order in which they are discussed in the body of the argument, the petitioner's contentions with respect to each issue of law on which he relies for a reversal, listing under each the authority cited on that point and the respective pages of the brief on which the argument appears and on which the authorities are cited. This requirement may be eliminated for briefs of five (5) or less pages.
    - 3. A "Statement of the Case" shall consist of a chronological summary of the facts and procedural events necessary to an understanding of the issues presented by the appeal, with ample reference to the specific pages of the record supporting each of the statements narrated in the summary.
    - 4. An "Argument" shall:
      - a. Conform with the statement of points and authorities, with ample supportive references to the record and citations of authority pertinent to each issue of law; and
      - b. Contain, at the beginning of the argument, a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in

what manner.

5. A "Conclusion" shall set forth the specific relief sought from the board.

6. An "Appendix" shall contain:

a. Copies of cases cited from federal courts and foreign jurisdictions, if any, upon which reliance is made; and

b. Copies of prior board opinions in accordance with subsection (10) of this section.

7. Civil Rule 76.28(4)(c) shall govern the use of unpublished opinions of the Court of Appeals or Supreme Court.

(5) Respondent's brief, combined brief, or cross-petitioner's brief.

(a) Each respondent shall file an original brief, or combined brief if cross-petition or cross-petitioner's brief, within thirty (30) days of the date on which the petitioner's brief was filed with the commissioner of the Department of Workers' Claims.

(b) Respondent's brief shall include a statement of the "Need for Oral Argument" similar to the statement required of the petitioner by subsection (4)(e) of this section.

(c) The respondent's brief shall include a "Statement of Benefits Pending Review" similar to the statement required of the petitioner by subsection (4)(f) of this section.

(d) Respondent's counter-argument shall follow the organization and content of the petitioner's brief as set forth in subsection (4)(g) of this section.

(6) Reply brief.

(a) If applicable, the petitioner may file a reply brief within ten (10) days after the date on which the respondent's brief was served or due, whichever is earlier.

(b) The organization and contents of the reply brief shall be as provided in Civil Rule 76.12(4)(e), except that an index or contents page shall not be required.

(c) If a cross-appeal has been filed, the cross-petitioner's reply brief may be served within ten (10) days after the date on which the last cross-respondent's brief was served or due, whichever is earlier.

(7) Certification. The petitioner's brief, respondent's brief, and reply brief shall be signed by each party or his counsel and that signature shall constitute a certification that the statements contained in the document are true and made in good faith, or if not filed through LMS, bear an original signature of each party or his counsel with a written certification the statements contained in the document are true and made in good faith, and that service has been made upon opposing parties with identification of the manner of service.

(8) Service of notice of appeal, cross-appeal, petitioner's brief, respondent's brief, and reply briefs on adverse parties.

(a) Before filing a notice of appeal, cross-appeal, or any brief with the commissioner of the Department of Workers' Claims, a party shall serve, in the manner provided by Civil Rule 5.02, or electronically as set forth in this administrative regulation, a copy of the document on each adverse party.

(b) Every brief filed in an appeal to the Workers' Compensation Board shall bear, on the front cover, a signed statement, in accordance with Civil Rule 5.03 by the attorney or party that service has been made in conformity to this administrative regulation. The statement shall identify by name each person served.

(c) The name of each attorney, or an unrepresented party, submitting a document to the Workers' Compensation Board along with a current address, email address, and telephone number shall appear following its "conclusion".

(d) If the respondent is also a cross-petitioner, the respondent may file a combined brief or separate cross-petitioner's brief that shall address issues raised by the cross-appeal.

(e) If a separate cross-petitioner's brief is filed, the format shall be the same as a respondent's brief.

(9) Except for good cause shown, any motion for extension of time to file a brief shall be filed not later than five (5) days prior to the date the brief is due.

(10) Form of citations.

(a) All citations to Kentucky statutes and reported decisions of the Court of Appeals and Supreme Court shall conform to the requirements of Civil Rule 76.12(4)(g).

(b) All citations to Kentucky unpublished decisions shall conform to the requirements of Civil Rule 76.28(4)(c).

(c) Citations to prior decisions of the board shall include the style of the case, the appropriate claim or case number, and the date the decision was rendered.

(11) Number of Pages.

(a) The petitioner's brief and the respondent's brief shall be limited to twenty (20) total pages, including those items required by this section. The appendix shall not count against the page limit.

(b) Reply briefs shall be limited to five (5) pages.

(c) Combined briefs shall be limited to twenty-five (25) total pages, including those items required by this section. The appendix shall not count against the page limit.

(d) The parties shall make every effort to comply with the above page limitations.

(e) Permission to increase the length of a brief shall be sought by motion, but shall only be granted upon a showing of good cause.

(12) Sanctions. Failure of a party to file a brief conforming to the requirements of this administrative regulation, or failure of a party to timely file a response may be grounds for the imposition of one (1) or more of the following sanctions:

(a) Affirmation or reversal of the final order;

(b) Rejection of a brief that does not conform as to organization or content, with leave to refile in proper form within ten (10) days of the date returned. If timely refile occurs, the filing shall date back to the date of the original filing;

(c) Striking of an untimely response;

(d) A fine of not more than \$500; or

(e) Dismissal.

(13) Motions.

(a) A motion, response, or objection shall be filed with the commissioner of the Department of Workers' Claims in accordance with Section 3 of this administrative regulation, and shall bear the designation of Appeals Branch or Workers' Compensation Board.

(b) The style of the case, including the claim number and title of the motion or pleading, shall appear on the first page of the motion or pleading.

(c) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in response. To be considered, a response shall be filed within ten (10) days of the motion. Further responses shall not be filed.

(d) Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating those facts.

(e) Every motion and response, the grounds of which depend upon the existence of facts that the moving or responding party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.

(f) Before filing a motion or pleading with the commissioner of the Department of Workers' Claims, a party shall serve, in the manner provided by Civil Rule 5.02 or as set forth in this administrative regulation, a copy of the document on each adverse party.

(g) The filing of a motion to dismiss an appeal shall stay the remaining time for the filing of a responsive pleading. If the petitioner's brief has been previously filed and a

motion to dismiss has been overruled, the respondent shall have fifteen (15) days from the order to file a respondent's brief.

(h) Except for motions that call for final disposition of an appeal, any board member designated by the chairman may dispose of a motion. An intermediate order may be issued on the signature of any board member.

(14) Oral arguments.

(a) Upon motion of a party or within its discretion, the board may order an oral argument on the merits in a case appealed from a decision, award, or order of an administrative law judge.

(b) Oral arguments shall occur on a date and at a time and location specified by the board.

(c) Appeals designated for oral argument shall be held in abeyance and all subsequent appeal time in the case shall be calculated from the date of the oral argument.

(15) Continuation of benefits pending appeal.

(a) Benefits awarded by an administrative law judge that are not contested shall be paid during the pendency of an appeal. A motion requesting the payment of these benefits shall not be required. Uncontested benefits shall include income benefits at an amount lesser than what was awarded if the issue on appeal addresses the amount of benefits to be awarded as opposed to the entitlement to income benefits.

(b) Upon the motion of a party pursuant to KRS 342.300, the board may order payment of benefits pending appeal in conformity with the award, decision, or order appealed from.

(c) Entitlement to relief pursuant to KRS 342.300 shall be granted upon motion establishing:

1. The probability of the existence in fact of:

a. Financial loss;

b. Privation, suffering, or adversity resulting from insufficient income; or

c. Detriment to the moving party's property or health if payment of benefits is not instituted; and

2. That there exists a reasonable likelihood that the moving party will prevail on appeal.

(d) Any response to a motion for continuation of an award pending appeal shall be served within ten (10) days from the date of the request and, thereafter, the request shall be ripe for a decision.

(e) Entitlement to relief by the moving party and responses shall be shown by:

1. Affidavit if the grounds for the motion or response depend upon the existence of facts not in evidence; or

2. Supporting memorandum citing to evidence existing within the record and making reference to the place in the record where that evidence is found.

(16) Decisions.

(a) The board shall:

1. Enter its decision affirming, modifying, or setting aside the order appealed from; or

2. Remand the claim to an administrative law judge for further proceedings.

(b) Motions for reconsideration shall not be permitted.

(c) The decision of the administrative law judge shall be affirmed if:

1. A board member is unable to sit on a decision; and

2. The remaining two (2) board members cannot reach an agreement on a final disposition.

(17) Appeal from board decisions. If applicable, pursuant to KRS 342.290, the decision of the board shall be appealed to the Kentucky Court of Appeals as provided in Civil Rule 76.25.

(18) If the parties agree to settle a claim while it is on appeal to the board, the original agreement signed by all parties, along with a motion to place the appeal in abeyance and to remand to the ALJ, shall be filed. An action shall not be taken by an ALJ until an order is issued by the board holding the appeal in abeyance, and remanding the claim to the ALJ for approval of the settlement agreement. Once the settlement agreement is approved, the appeal shall be removed from abeyance, and dismissed if all issues on appeal have been resolved. If issues remain for decision subsequent to the approval of the settlement agreement, the board shall remove the appeal from abeyance and establish a briefing schedule.

Section 23. Coverage - Insured Status. Upon the filing of an application for resolution of claim, the commissioner shall ascertain whether the employer or any other person against whom a claim is filed and who is not exempted by KRS 342.650 has secured payment of compensation by obtaining insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. If an employer does not have insurance coverage or qualify as a self-insurer, the commissioner shall notify the administrative law judge and all parties by service of a certification of no coverage.

Section 24. Withdrawal of Records and Disposition of Exhibits.

(1) A portion of any original record of the office shall not be withdrawn except upon an order of the commissioner, an administrative law judge, or a member of the board.

(2)

(a) All physical exhibits, including x-rays, shall be disposed of sixty (60) days after the order resolving the claim has become final except x-rays filed in coal workers' pneumoconiosis claims, which shall be returned to the party who filed the x-ray.

(b) A party filing an exhibit may make arrangements to claim an exhibit prior to that time.

(c)

1. If an unclaimed exhibit has no money value, it shall be destroyed.

2. If an unclaimed exhibit has a value of more than \$100, it shall be sold as surplus property.

3. If an unclaimed exhibit has a value of less than \$100, it shall be donated to the appropriate state agency.

4. If an unclaimed exhibit has historic value, it shall be sent to the state archives.

Section 25. Time for Payment of Benefits in Litigated Claims.

(1) If a disputed claim is litigated and an opinion, order, or award is entered awarding benefits to a claimant and no appeal is taken that prevents finality of the opinion, order, or award, payment shall be made in accordance with this subsection.

(a) All past benefits due under the award shall be paid no later than twenty-one (21) days after expiration of the last appeal date unless otherwise ordered by an ALJ.

(b) Any attorney fee shall be paid no later than thirty (30) days after the date of the administrative law judge's order approving the fee unless otherwise ordered by an ALJ.

(c) If plaintiff is represented by counsel, payment for past due benefits shall be mailed to the last known address of plaintiff's attorney.

(2) If an appeal is taken from an opinion, order, or award awarding benefits to a claimant, any benefits shall be paid no later than twenty-one (21) days after the decision becomes final and no further appeal can be taken. Any attorney fee shall be paid no later than thirty (30) days after the decision becomes final, or the date of the ALJ's order approving fee, whichever is later unless otherwise ordered by an ALJ.

(3) Failure to comply with this section may be grounds for sanctions pursuant to Section 26 of this administrative regulation, unless good cause is shown for the failure.

Section 26. Sanctions.

(1) Pursuant to KRS 342.310, an administrative law judge or the board may assess costs upon a determination that the proceedings have been brought, prosecuted, or defended without reasonable grounds.

(2) A sanction may be assessed against an offending attorney or representative rather than against the party.

(3) If a party is a governmental agency and attorney's fees are assessed, the fees shall include fees for the services of an attorney in public employment, measured by the reasonable cost of similar services had a private attorney been retained.

(4) Failure of a party to timely file a pleading or document or failure to comply with the procedures required by this administrative regulation may be treated by an administrative law judge or the board as prosecuting or defending without reasonable grounds.

#### Section 27. Payment of Compensation from Uninsured Employers' Fund.

(1) Payment from the Uninsured Employers' Fund of compensation shall be made upon the determination by an administrative law judge that the responsible employer failed to secure payment of compensation as provided by KRS 342.340; and

(a) Thirty (30) days have expired since the finality of an award or issuance of an interlocutory relief order and a party in interest certifies the responsible employer has failed to initiate payments in accordance with that award;

(b) Upon showing that the responsible employer has filed a petition under any section of the Federal Bankruptcy Code; or

(c) The plaintiff or any other party in interest has filed in the circuit court of the county where the injury occurred an action pursuant to KRS 342.305 to enforce payment of the award against the uninsured employer, and there has been default in payment of the judgment by the employer.

(2) The plaintiff may by motion and affidavit demonstrate compliance with this section and request an administrative law judge to order payment from the Uninsured Employers' Fund in accordance with KRS 342.760.

(3) This section shall not be construed to prohibit the voluntary payment of compensation by an employer, or any other person liable for the payment, who has failed to secure payment of compensation as provided by KRS Chapter 342, the compromise and settlement of a claim, or the payment of bene-fits by the Special Fund or Coal Workers' Pneumoconiosis Fund.

Section 28. Forms. The Department of Workers' Claims shall not accept applications or forms in use prior to the forms required by and incorporated by reference in this administrative regulation. Outdated applications or forms submitted may be rejected and returned to the applicant or person submitting the form. If the application or form is resubmitted on the proper form within twenty (20) days of the date it was returned, the filing shall date back to the date the application or form was first received by the commissioner. Otherwise, the date of the second receipt shall be the filing date.

#### Section 29. Request for Participation by the Kentucky Coal Workers' Pneumoconiosis Fund.

(1) Following a final award or order approving settlement of a claim that is eligible for participation by the Kentucky Coal Workers' Pneumoconiosis Fund pursuant to KRS 342.1242(1), the employer shall file a written request for participation with the Kentucky Coal Workers' Pneumoconiosis Fund within thirty (30) days and shall serve copies of the request on all other parties.

(2) A written request for participation with the Kentucky Coal Workers' Pneumoconiosis Fund shall be in writing and include the following documents:

(a) Plaintiff's application for resolution of claim;

(b) Defendant's notice of resistance, notice of claim denial or acceptance, and any special answer;

- (c) All medical evidence upon which the award or settlement was based;
  - (d) The notice of consensus issued by the commissioner, if rendered;
  - (e) Final opinion or order of an administrative law judge determining liability for benefits or settlement agreement and order approving settlement agreement;
  - (f) If an administrative law judge's award was appealed, the appellate opinions; and
  - (g) If the request for participation includes retraining incentive benefits under KRS 342.732, a certification by the requesting party that the plaintiff meets the relevant statutory criteria.
- (3) If the request for participation is based upon the settlement of a claim, the employer shall submit a settlement agreement that represents liability exclusively for coal workers' pneumoconiosis benefits, and does not include any sums for other claims that the plaintiff may have against the employer.
- (4) In claims arising under KRS 342.792, if the employer fails to submit a request for participation within thirty (30) days of the final award or order approving settlement, the plaintiff or an administrative law judge may file a written request for participation with the Kentucky Coal Workers' Pneumoconiosis Fund within sixty (60) days of the final award or order approving settlement.
- (5) Within thirty (30) days following receipt of a completed request for participation, the director of the Kentucky Coal Workers' Pneumoconiosis Fund shall notify the employer and all other parties of acceptance or denial of the request.
- (6) A denial shall be in writing and based upon any of the following findings by the director:
- (a) Failure to file a written request for participation within the time limits specified in this administrative regulation without good cause;
  - (b) The employer failed to defend the claim;
  - (c) The employer entered into a settlement agreement not supported by the medical evidence, or that includes sums for claims other than coal workers' pneumoconiosis or that was procured by fraud or mistake; or
  - (d) The award or settlement was for retraining incentive benefits and the request for participation did not include the training or education certification required by this administrative regulation.
- (7) Denial of a request for participation may be appealed by any party to an administrative law judge within thirty (30) days following receipt of the denial.
- (8) The administrative law judge shall:
- (a) Determine if the denial was arbitrary, capricious, or in excess of the statutory authority of the director; and
  - (b) Not reexamine the weight assigned to evidence by an administrative law judge in an award.
- (9) Except in claims under KRS 342.792, the employer shall promptly commence payment on all of the liability pursuant to the award or order and shall continue until the liability of the Kentucky Coal Workers' Pneumoconiosis Fund is established.
- (a) This duty of prompt payment shall continue during pendency of an appeal from denial of a request for participation.
  - (b) In claims arising from KRS 342.792, the Kentucky Coal Workers' Pneumoconiosis Fund shall promptly commence payment upon its acceptance of the claim.
- (10)
- (a) Except in claims under KRS 342.792, upon an appeal from the denial of a request for participation, if the Kentucky Coal Workers' Pneumoconiosis Fund does not prevail, it shall reimburse the employer for its proportionate share of the liability with interest accrued from the date of denial.
  - (b) In an appeal of a denial in a claim arising under KRS 342.792, in which the Kentucky Coal Workers' Pneumoconiosis Fund does not prevail, the fund shall

commence payment pursuant to the opinion and award or order approving settlement with interest accrued from the date of the denial. All interest shall be paid at the rate established in KRS 342.040.

Section 30. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) "Application for Resolution of a Claim - Injury", February 2020;
  - (b) "Application for Resolution of a Claim - Occupational Disease", February 2020;
  - (c) "Application for Resolution of a Claim - Hearing Loss", February 2020;
  - (d) "Application for Resolution of a Claim - Interlocutory Relief", October 2016;
  - (e) Form 104, "Plaintiff's Employment History", October 2016;
  - (f) Form 105, "Plaintiff's Chronological Medical History", October 2016;
  - (g) Form 106, "Medical Waiver and Consent", July 2003;
  - (h) Form 107, "Medical Report of Injury/Hearing Loss/Psychological Condition", October 2016;
  - (i) Form 108, "Medical Report of Occupational Disease", October 2016;
  - (j) Form 109, "Attorney Fee Election", March 15, 1995;
  - (k) Form 110-I, "Agreement as to Compensation and Order Approving Settlement", February 2020;
  - (l) Form 110-ODHLCWP, "Agreement as to Compensation and Order Approving Settlement", February 2020;
  - (m) Form 110-F, "Agreement as to Compensation and order Approving Settlement - Fatality", October 2016;
  - (n) "Notice of Claim Denial or Acceptance", October 2016;
  - (o) Form 112, "Medical Dispute", February 2020;
  - (p) Form AWW-1, "Average Weekly Wage Certification", October 2016;
  - (q) Form AWW-CON, "Average Weekly Wage Certification - Concurrent", October 2016;
  - (r) Form AWW-POST, "Average Weekly Wage Certification of Post Injury", October 2016;
  - (s) Form F, "Fatality", October 2016;
  - (t) Form SVC, "Safety Violation Alleged by Plaintiff/Employee", October 2016; and
  - (u) Form SVE, "Safety Violation Alleged by Department/Employer", October 2016;
  - (v) Form MTR, "Motion to Reopen", February 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(21 Ky.R. 2576; 3032; eff. 6-15-1995; 22 Ky.R. 2071; eff. 7-5-1996; 23 Ky.R. 3958; 24 Ky.R. 349; eff. 7-17-1997; 24 Ky.R. 2436; eff. 7-13-1998; 27 Ky.R. 1084; 1478; eff. 12-21-2000; 28 Ky.R. 1216; 1638; eff. 1-14-2002; 29 Ky.R. 552; 945; eff. 10-16-2002; 30 Ky.R. 94; 648; eff. 10-31-2003; 32 Ky.R. 142; 487; eff. 10-7-2005; 33 Ky.R. 236; 770; eff. 10-6-2006; 42 Ky.R. 2634; 43 Ky.R. 28; 404; eff. 10-7-2016; 46 Ky.R. 337; 47 Ky.R. 337, 531; eff. 12-1-2020.)