DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY

WORKERS' DISABILITY COMPENSATION AGENCY

WORKERS' DISABILITY COMPENSATION APPEALS COMMISSION

(By authority conferred on the chair of the commission by section 274 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.274, and Executive Reorganization Order Nos. 1996-2, 1999-3, 2002-1, 2003-1, and 2019-3, MCL 445.2001, 418.3, 445.2004, 445.2011, and 125.1998)

R 418.61 Scope.

Rule 1. These rules apply to practice and procedure before the workers' disability compensation appeals commission, or any successor to that body, in appeals taken under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941.

History: 2021 AACS.

R 418.62 Definitions.

Rule 2. As used in these rules:

(a) "Commission" means the workers' disability compensation appeals commission or any successor to that body.

(b) "Commissioner" means a member of the workers' disability compensation appeals commission or any successor to that body.

(c) "Director" means the director of the workers' disability compensation agency or any successor to that body. "Director" includes his or her duly authorized representative.

(d) "Electronic filing" means the process of submitting a document over the internet to the commission, including the State of Michigan File Transfer System (FTS), in accordance with the instructions available on the commission's website.

(e) "Electronic signature" means an electronic sound, symbol, or process, attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(i) An electronic signature may be a graphic representation of the signature.

(ii) The following forms are acceptable: "/s/ John Smith" or "/s/ John Smith, Attorney."

(f) "State of Michigan File Transfer System" (FTS) is an electronic computer-based system that facilitates the transmission of a computer file through a communication channel provided by this state from 1 computer system to another.

History: 2021 AACS.

R 418.63 Filings generally.

Rule 3. (1) All pleadings, transcripts, briefs, and other documents pertaining to an appeal must be filed with the commission. Each document must bear both of the following:

(a) The Board of Magistrate's case number or, if no case number has been assigned, the claimant's social security number with the first 5 digits redacted.

(b) The Commission's docket number, if assigned when the document is filed.

(2) Filing may be accomplished by any of the following:

(a) Hand delivery, mailing, or delivery service.

(b) Facsimile transmission.

(c) Any other means formally authorized by the commission, including electronic filing using the FTS.

(3) A document filed via facsimile transmission is deemed to have been filed on the day the document is received by the commission between 12:00:00 a.m. and 11:59:59 p.m. under then-prevailing time in Lansing, Michigan.

(4) A document filed via an approved electronic filing system is deemed to have been filed on the day the document is accepted by the system between 12:00:00 a.m. and 11:59:59 p.m. under then-prevailing time in Lansing, Michigan.

(5) Unless authorized by the commission pursuant to subrule (2)(c) of this rule, filing by e-mail is prohibited. Service on opposing counsel by e-mail is prohibited unless opposing counsel has agreed in advance, by written or e-mail correspondence, to accept such service.

(6) The commission shall recognize only 1 attorney for each party for the purpose of receiving correspondence and filing pleadings. The attorney for an appellant is the person signing the claim for review. The attorney for an appellee is the person who represented the appellee at the hearing or an attorney who first files an appearance for the appellee. Once an attorney is recognized in correspondence from the commission, a party may change the attorney by filing a stipulation between the current and the new attorney or by filing a motion.

(7) An attorney who has filed a claim for review or entered an appearance may withdraw only by order of the commission, upon motion filed and served upon all parties, including the client of the attorney seeking to withdraw.

(8) All parties representing themselves and all attorneys representing a party shall keep the commission informed of their current mailing addresses, telephone numbers, facsimile numbers, and email addresses.

(9) A required signature means a written signature, or an electronic signature.

History: 2021 AACS.

R 418.64 Filing of claim for review.

Rule 4. (1) An appeal to the commission begins when a party files a claim for review. Any party filing a claim for review is an appellant. All other parties are appellees, but their filings may also make them an appellant, cross appellant, or cross appellee. An appellant shall provide copies of the filing to all other parties at the time of filing with the commission, and shall certify to the commission that the required copies have been provided.

(2) Unless otherwise provided by the provisions of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, a claim for review is timely if received by the commission as follows:

(a) Not later than 30 days after the mailing date stamped or designated by the workers' disability compensation agency on the appealed decision or order, in the case of an appeal from the order of a workers' compensation magistrate.

(b) Not later than 15 days from the mailing date stamped or designated by the workers' disability compensation agency on the appealed decision or order, in the case of an appeal from an order of the director.

(3) A party does not become an appellant or cross appellant by the party's own labeling of its filings. The commission will determine the status of an appeal in question.

(4) The commission may grant additional time in which to file a claim for review from a decision of a workers' compensation magistrate, for sufficient cause shown. A party requesting further time shall file a written "Motion for Delayed Appeal" complying with R 418.68, stating why the claim for review is late.

History: 2021 AACS.

R 418.65 Cross appeals.

Rule 5. (1) A cross appeal must be received by the commission not later than 30 days after the cross appellant has first received a copy of an appellant's brief. A party filing a cross appeal is a cross appellant and all other parties are cross appellees. The cross appellant shall certify the date of first receipt of appellant's brief. The failure to so certify creates a rebuttable presumption that the cross appellant received the appellant's brief on the date the commission received that brief. The cross appellant shall provide all other parties with copies of the cross appeal at the time of filing with the commission, and shall certify to the commission that this has occurred.

(2) A cross appeal may not be filed before the cross appellant has received appellant's brief.

(3) A delayed cross appeal may not be filed. An extension of time to file a reply brief does not extend the time to file a cross appeal.

(4) The withdrawal or dismissal of the appellant's appeal extinguishes the cross appeal.

(5) A cross appeal must be filed on the claim for review form, and state that the cross appellant cross appeals the order from which an appellant has filed a claim for review.

(6) A document purporting to be a cross appeal that is not filed pursuant to the requirements of this rule is a claim for review.

History: 2021 AACS.

R 418.66 Briefing deadlines without filing transcript.

Rule 6. (1) For purposes of briefing deadlines, a transcript is considered to be filed as follows:

(a) If a record was not made of the hearing, a transcript is considered to have been filed on the same day the claim for review is filed.

(b) If the commission accepts a stipulation of all parties to proceed without the filing of a transcript, a transcript is considered to have been filed on the date the commission accepts the stipulation.

(2) When no transcript is required pursuant to this rule, all parties are considered to have received the transcript on the date the claim for review is filed.

History: 2021 AACS.

R 418.67 Briefs; titles; filing.

Rule 7. (1) A brief must be entitled “appellant’s brief,” “appellee’s brief,” “cross appellant’s brief,” or “cross appellee’s brief,” or must be otherwise appropriately designated.

(2) An appellant’s brief must be filed with the commission not more than 30 days after the transcript is filed. Where there are multiple transcripts, the 30-day period begins to run on the date the commission receives the last transcript.

(3) A cross appellant’s brief must be filed with the commission not more than 30 days after the cross appellant receives an appellant’s brief and a copy of the transcript.

(4) An appellee or a cross appellee need not file a brief. If the appellee or cross appellee wishes to do so, that brief must be filed with the commission within 30 days after first receipt of the appellant’s or cross appellant’s brief, with certification of the date of receipt. The failure to so certify creates a rebuttable presumption that receipt of appellant’s or cross-appellant’s brief occurred on the date the commission received the original document.

(5) The commission, in its discretion and for sufficient cause shown, may grant further time in which to file any brief.

(6) The commission may allow a party to file a supplemental brief. A supplemental brief may not raise new issues.

(7) Any party filing any brief shall certify in writing to the commission that a copy of this brief has been served upon all parties or their counsel, and the date and manner of the service.

History: 2021 AACS.

R 418.68 Motion practice.

Rule 8. (1) All motions must be in writing.

(2) A party filing a motion shall provide all other parties with a copy of the motion at the time of filing and shall certify to the commission that the party has done so.

(3) A party has 21 days from the date the motion was filed with the commission to file a response to the motion, and shall certify that a copy of the response has been provided to all other parties. The commission may consider a request to extend the time to file a response to a motion, if the request is filed before the motion is submitted to the panel for disposition. Such a request must be made in the form of a motion.

(4) After the expiration of the time for filing a response to a motion, the motion will be submitted to a panel for disposition.

(5) A motion or response to a motion representing the existence of facts not in the record or not within the personal knowledge of the signer of the motion or response must be supported by an affidavit signed by an individual with such personal knowledge, or those factual assertions may be disregarded.

History: 2021 AACS.

R 418.69 Disqualification and recusal.

Rule 9. (1) A commissioner may be recused, or disqualified, from a case based on the existence of bias, prejudice, interest, or any other cause provided for in this rule.

(2) A commissioner may be recused in any proceeding in which the impartiality of the commissioner might reasonably be questioned, including, but not limited to, instances in which the commissioner:

(a) Has a personal bias or prejudice concerning a party or a party's attorney.

(b) Has personal knowledge of disputed evidentiary facts concerning the proceeding.

(c) Has been consulted or employed as an attorney in the matter in controversy.

(d) Is or was a party.

(e) Was, within the preceding 2 years, a partner of or in an employment relationship with a party.

(f) Was, within the preceding 2 years, attorney for a party or a member of a law firm representing a party.

(g) Has been a material witness concerning the matter in controversy.

(3) A commissioner may also be recused in any proceeding in which the commissioner, the commissioner's spouse, a person within the third degree of relationship to either of them, or the spouse of such a person is:

(a) A party to the proceeding, or an officer, director, or trustee of a party.

(b) Acting as a lawyer in the proceeding.

(c) Known by the commissioner to have a more than de minimis financial interest that could be substantially affected by the proceeding.

(d) To the commissioner's knowledge, likely to be a material witness in the proceeding.

(4) A commissioner may be disqualified for any other reason provided by law.

(5) A commissioner who would otherwise be recused under this rule may disclose to the parties in writing the basis of disqualification and may ask the parties and their attorneys to consider, outside the commissioner's presence, whether they wish to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, all parties agree that the commissioner should not be disqualified, the commissioner may participate in the proceeding. The existence of the agreement must be incorporated into the hearing record.

(6) Any party seeking to disqualify a commissioner shall so move within 30 days after receiving notice that the commissioner will participate in the proceeding or upon discovering facts establishing grounds for disqualification, whichever is later. A motion for recusal must be made in writing and accompanied by an affidavit setting forth definite and specific allegations demonstrating the facts upon which the motion for disqualification is based. An untimely motion may be granted for good cause shown. If a motion is not timely filed, the commission may consider the untimeliness in deciding whether to grant the motion.

(7) The challenged commissioner shall decide the motion. If the challenged commissioner denies the motion, the challenging party may, within 14 days, submit to the challenged commissioner or the commission chairperson a request that the motion be referred for decision to another commissioner assigned by the chairperson subject to the following:

(a) If the chairperson is the challenged commissioner or if the chairperson has an acknowledged conflict of interest, the commissioner whose participation is not being challenged shall decide the motion.

(b) If the challenged commissioner is the only commissioner with no acknowledged conflict of interest, the motion must be referred to the workers' compensation board of magistrates for decision by either the chairperson or another magistrate designated by the chairperson.

(c) Consideration of a referred motion shall be *de novo*.

History: 2021 AACS.

R 418.70 Extensions of time to comply with rules.

Rule 10. The commission may grant extensions of time to a party to comply with any of these rules for sufficient cause shown, except as otherwise provided in these rules.

History: 2021 AACS.