

Paragraph (4) of Subsection (a) of Section 300.13 is amended to read as follows:

(4) **Necessary Parties of Interest** means, for the purposes of this section, claimants, self-insured employers, uninsured employers until the liability of the uninsured employer's fund is established, private insurance carriers, the state insurance fund, special funds, no-fault carriers when granted standing by being allowed to fully participate in a hearing [per section 142 of the Workers' Compensation Law], or any surety, including but not limited to the uninsured employer's fund, and the liquidation bureau. Treating Medical Providers and Independent Medical Examiners are not parties of interest and may not make filings, oral arguments, or otherwise participate in the administrative review process. Attorneys and licensed hearing representatives are not necessary parties of interest under this rule, except that an attorney or representative is a necessary party in an appeal that concerns the amount of a fee payable to an attorney or representative or a penalty imposed against an attorney or licensed hearing representative. A claimant's attorney or licensed hearing representative, properly designated by the claimant as his or her representative, shall receive a copy of any applications or rebuttals filed under this section.

Subparagraph (i) of Paragraph (4) of Subsection (b) of Section 300.13 is amended to read as follows:

(i) By letter issued by the Chair or the Chair's designee or by decision of the Board panel when the appellant, other than a claimant who is not represented, does not comply with prescribed formatting, completion [and] or service submission requirements;

Subsection (c) of Section 300.13 is amended to read as follows:

(c) Rebuttal. A party adverse to the application for administrative review may file a rebuttal to such application for review. The rebuttal shall be in writing and, for parties other than an unrepresented claimant, shall be [accompanied by a cover sheet] in the format prescribed by the Chair. The rebuttal shall conform to the requirements for requests for administrative review set forth in subdivision (b) of this section. Such rebuttal shall be served on the Board and all necessary parties within 30 days after service of the application for review together with proof of service upon all necessary parties in the form and format prescribed by the Chair.

Section 300.14 of Title 12 of NYCRR is amended as follows:

Section 300.14. Application for rehearing or reopening

(a) Application may be made by any party in interest for rehearing or reopening of a claim. Such application must [indicate that] demonstrate that such application is in the interest of justice, must comply with the requirements set forth in section 300.13 of this Part, except that the requirement to utilize the format of the application prescribed by the chair shall not be imposed upon a claimant who is unrepresented. In addition, such application must identify at least one of the following as the basis for the application:

(1) [certain] material evidence is now available that was not available for presentation before the board at the time the issue was resolved by finalized proposed decision, notice of decision or memorandum of decision [of hearing, is now available]; or

(2) proof of a change in condition material to the issue is involved [; or

(3) it would be in the interest of justice].

(b) Such application must be made within [a reasonable time] thirty days after the applicant has [had] knowledge of the [facts constituting the grounds] material evidence or proof of change of condition upon which such application is made. The board may in its discretion deny such application without a hearing thereon or may require the applicant to submit further proof before finally passing upon said application.

(1) [Allegations as to] Applicants requesting a rehearing or reopening based on newly discovered material evidence [as basis for such application] must [be substantiated by supporting affidavits] submit a sworn affidavit setting forth the material evidence, explaining why such material evidence was not available when the issue was previously resolved, describing when and how the material evidence was obtained, and setting forth the administrative relief requested. A claimant who is not represented may set forth the required information without sworn affidavit.

(2)[The data to be submitted in connection with an allegation that there has been "a change in condition", as required by paragraph (a)(2) of this section, must, except as hereinafter provided, be in the form of] Applicants requesting a rehearing or reopening based on proof of a change in condition must submit a verified medical report, on the form prescribed by the Chair, prepared as a result of an examination held after [the expiration of a substantial period subsequent to] the closing of the case. This report must clearly state the objective findings and explain how the condition has changed and when the condition changed.

[If such an examination cannot be had, a rehearing may be granted upon the presentation of information in affidavit form, which would indicate that a material change in the degree of disability has taken place subsequent to the closing of the case.]

(c) If the board in its discretion grants the application and orders reopening and rehearing, the case may be referred [to an appropriate calendar for the taking of evidence] for further development of the record and [for] such further consideration as appears warranted. [When a case or any issue therein is so referred to a referee, he] Upon such referral, the Workers' Compensation Law Judge shall [thereupon] receive such evidence as is specified in the [order] decision of the board panel and [he] may then consider the case in the light of the evidence previously introduced, together with that presented at the rehearing, and may then render a decision upon the completed record, unless the [order of submission] decision of the Board Panel limited the [referee] Workers' Compensation Law Judge to the taking of evidence and the returning of the transcribed completed record to the board for review and decision.

(d) An application for rehearing or reopening will not be considered when:

(1) indemnity benefits have been previously exhausted under paragraph w of subdivision 3 of section 15;

(2) an application for reopening or rehearing has previously been denied with respect to the same material evidence or reported change of condition; or

(3) an application for discretionary full Board review has been denied with respect to the same issue.