

Subdivision (d) of section 300.13 amended to read as follows:

(d) The [b]Board file shall contain a copy of all stenographic minutes of hearings where the issue or issues raised in the application for review were covered, and the file shall only be considered by a [b]Board panel after the minutes covering the disputed issues are inserted in the file. The [review bureau] Board shall promptly make arrangements for the transcription of all minutes not heretofore inserted in the file, as set forth above, and such minutes shall be inserted in the file.

Subdivision (c) of section 300.15 of Title 12 NYCRR is amended to read as follows:

(c) An attorney or licensed representative who files an application for review or rehearing or reconsideration of an award of fees granted by a Workers' Compensation Law Judge or by the [b]Board shall on the same day mail to, or personally serve upon, the claimant a copy of such application [to the claimant], and shall submit to the [b]Board proof of service upon the claimant by affidavit or affirmation.

Subdivisions (b) and (c) of section 300.18 of Title 12 NYCRR are amended to read as follows:

(b) In the event that the appellant wishes additional minutes to be transcribed which heretofore have not been inserted in the file, the [b]Board shall make arrangements for the immediate transcription of the same, and a [typewritten] transcribed copy of the minutes shall be inserted in the file and a [photo or typewritten] transcribed copy shall be furnished to the appellant upon the payment of the fees as required by section 122 of the Workers' Compensation Law.

(c) The designation of portions of the file made on behalf of the respondent [b]Board shall be made by its [g]General [c]Counsel's [o]Office with the advice of the Attorney General. Each respondent, except for the [Workers' Compensation] Board, shall pay the fee as required by section 122 of the Workers' Compensation Law for the transcribing of any minutes not theretofore transcribed and designated by such respondents, and a

[typewritten] transcribed copy of said minutes shall be inserted in the file and a [typewritten] transcribed copy [or photocopy] furnished to the respondent requesting such minutes.

The opening paragraph and subdivisions (d), (e), (f), (i), (o) and (q) of section 300.19 of Title 12 NYCRR are amended to read as follows:

Interest on an award of compensation or death benefits shall, except where an award is affirmed on appeal, as provided for in section 24 of the Workers' Compensation Law, be computed from 30 days after the date of filing of the award made by the [b]Board until the date of payment of the award. The following shall apply solely to interest for medical bills rendered to an insurance carrier or an employer, and shall be in lieu of any other interest provided for in the Workers' Compensation Law and rules promulgated thereunder. Medical bills, as referred to herein, shall mean any bills for treatment by a physician, podiatrist, chiropractor or psychologist, but shall not include hospital bills.

(d) In the event a decision or award made by a Workers' Compensation Law [j]Judge, establishing the liability of the employer or carrier for the payment of a medical bill in whole or in part, is reviewed by a panel of the [b]Board, and such decision or award is affirmed, and it is determined that the amount of the bill is due and owing to the physician, podiatrist, chiropractor or psychologist in whole or in part, interest computed, commencing 30 days after the filing of such award made by the Workers' Compensation Law [j]Judge who originally decided the claim to the date of payment, shall be paid in addition to the amount found due and owing.

(e) In the case where a Workers' Compensation Law [j]Judge finds that the employer is not liable for the payment of the medical bill and the [b]Board on review established that the employer is liable, and the bill rendered is resolved in whole or in part in favor of the physician, podiatrist, chiropractor or psychologist, interest computed, commencing 30 days from the date of the filing of the award, establishing the amount due to

the physician, podiatrist, chiropractor or psychologist, to the date of payment, shall be paid in addition to the amount found due and owing.

(f) In the event the Workers' Compensation Law [j]Judge and the [b]Board find that the employer is not liable for the payment of the medical bill and the case is appealed to the courts, which reverse the [b]Board, and the bill of the physician, podiatrist, chiropractor or psychologist is resolved in whole or in part in favor of the physician, podiatrist, chiropractor or psychologist, interest computed, commencing 30 days from the date of the filing of the final award establishing the amount due to the physician, podiatrist, chiropractor or psychologist, to the date of payment, shall be paid in addition to the amount due and owing.

(i) Where an arbitration committee determines that an insurance carrier or employer willfully failed to pay a reasonable portion of the medical bill being controverted, interest may be directed to be paid on that portion of the bill which should have been paid by the employer or carrier, computed commencing 30 days from the date the [f]bill was rendered. Where an issue of proration of a bill is presented for arbitration, no interest shall be added unless the employer or [his] its insurance carrier willfully failed to pay a reasonable portion of the medical bill at issue.

(o) Notwithstanding the foregoing provisions of this section or any provisions of this Title to the contrary, any award made by the [c]Chair, the [b]Board or an arbitration committee appointed by the [c]Chair to a physician, self-employed occupational or physical therapist, podiatrist, chiropractor or psychologist for the payment of medical bills for services rendered on or after October 1, 1994 shall include interest at the rate set forth in section 5004 of the Civil Practice Law and Rules but shall in any event not exceed 1-1/2 percent per month. Such interest shall be computed on the entire amount of the award from the 45th day after the bill was submitted to the insurance carrier or self-insured employer or from the 30th day after all other questions duly and timely raised in accordance with the provisions of the Workers' Compensation Law relating to the employer's liability for the payment of such amount shall have been finally determined adversely to the

employer, whichever is later, until the date of payment of the award. For purposes of this subdivision, the date on which all other questions duly and timely raised in accordance with the provisions of the Workers' Compensation Law shall have been finally determined adversely to the employer shall mean:

(1) the date of filing a decision by a Workers' Compensation Law [j]Judge establishing the employer's liability for the payment of a medical bill in whole or in part, if such decision is either not reviewed by a Board Panel or is affirmed by a Board Panel upon review; or

(2) the date of filing of a decision by the [b]Board on review establishing the employer's liability for the payment of a medical bill, if the decision by the Workers' Compensation Law [j]Judge did not establish the employer's liability for the payment of such bill; or

(3) the date of a decision by an appellate court establishing the employer's liability for the payment of a medical bill, if the decisions by the Workers' Compensation Law [j]Judge and the [b]Board did not establish the employer's liability for the payment of such bill.

(q) The foregoing provisions in this rule shall be inapplicable to the Uninsured Employers' Fund until liability for payment of compensation by such fund has been established pursuant to section 26-a of the Workers' Compensation Law, and awards for such medical bills have been made by the [b]Board and defaulted by the employer.

Subdivision (d) of section 300.22 of Title 12 NYCRR is amended to read as follows:

(d) Notwithstanding any other provisions of this section or section 300.23 of this Part, the following procedures shall apply when an employer or carrier is unsure of the extent of its liability for a claim of compensation made under the Workers' Compensation Law:

(1) If the employer or carrier is unsure of the extent of its liability for a claim of compensation, and elects to make temporary payments of compensation or payment for prescribed medicine pursuant to section 21-a of the

Workers' Compensation Law, the employer or carrier may, at any time prior to or after filing of form C-669 or form [RB-679] RFA-2 pursuant to subdivision (a), (b), (c) or (e) of this section, and prior to any decision of the [b]Board establishing or disallowing the claim, begin temporary payments of compensation and/or prescribed medicine and shall immediately transmit form C-669, if a new case or form [RB-679] RFA-2, if a reopened case, notifying the [b]Board that temporary payment of compensation and/or prescribed medicine has commenced. A copy of form C-669, or form [RB-679] RFA-2 in a case which has previously been established and closed, shall be transmitted to the claimant and the claimant's attorney or licensed representative, if any, simultaneously with transmittal to the [b]Board. Payments of temporary compensation and/or prescribed medicine shall be made without prejudice and without admitting liability.

(2) Upon receipt of form C-669 or form [RB-679] RFA-2, the [b]Board shall notify the employee that it has received a notice of payment of temporary compensation and/or prescribed medicine that payment of such compensation and the employee's acceptance thereof shall neither be an admission of liability by the employer or carrier nor prejudice the claim of the employee, and that payment of temporary compensation and/or prescribed medicine shall terminate upon either the lapse of one year from the date of first payment, or the filing of a notice of controversy, or the cessation of temporary payments by the employer or carrier upon the filing of form C-8/8.6, whichever is first. The [b]Board shall also notify the employee that he or she may be required to enter into a non-prejudicial agreement with the employer or carrier in order to ensure the continued payments of temporary compensation and or prescribed medicine.

(3) An employer or carrier may cease making temporary payments of compensation and/or prescribed medicine by delivering to the [b]Board and the employee, within five days after the last payment, a notice of termination of payments of temporary compensation on form C-8/8.6. If the employer or carrier is now accepting liability for the claim, it shall deliver form C-8/8.6 only. If the employer or carrier is now controverting the claim, it shall file form C-7 simultaneously with form C-8/8.6 or within 10 days after delivery

of form C-8/8.6. In any case in which temporary payments of compensation and/or prescribed medicine have been made and form C-669 or form [RB-679] RFA-2 has been delivered to the [b]Board advising that temporary payments without prejudice have commenced, form C-7 is not required to be filed within 25 days from the date of transmittal of the notice of indexing provided, however, that if the employer or carrier cease making temporary payments of compensation and/or prescribed medicine, the filing of a C-7 within 25 days of the date of transmittal of notice of indexing as prescribed in subdivision (c) of this section or within 10 days after delivery of notice that temporary payments of compensation and/or prescribed medicine have terminated, whichever is later, shall be deemed timely for the purposes of paragraph (b) of subdivision 2 of section 25 of the Workers' Compensation Law.

(4) If the employer or carrier does not deliver a notice of termination on form C-8/8.6 to the [b]Board within one year from the commencement of payment of temporary compensation and/or prescribed medicine, the employer or carrier shall be deemed to have admitted liability for the claim, and a decision shall be issued establishing the claim.

(5) The information required in forms C-669, [RB-679] RFA-2 and C-8/8.6 shall be typewritten or entered by computer.

Subdivision (e) of section 300.22 of Title 12 NYCRR is amended to read as follows:

(e) Except as provided in subdivision (d) of this section, the following procedures and forms shall apply when there is an application by a claimant to reopen a case previously established and closed by the [b]Board. Pursuant to section 300.15(b) of this Part, when the claimant makes an application to reopen a case previously established and is represented by an attorney or licensed representative, such attorney or licensed representative shall on the same day transmit a copy of the application to the employer or carrier. When the claimant makes such application and is not represented by an attorney or licensed representative, the chair, upon receipt of the

application, shall transmit a copy of the application to the employer or its carrier. An employer or its carrier shall file prescribed form [RB-679] RFA-2 with the chair within 25 days after the employer or its carrier receives an application to reopen a case previously established and closed by the [b]Board. The employer or its carrier shall indicate on the form whether payment for compensation and/or medical treatment has commenced, the claim is controverted, or the claim is not controverted but payment has not begun. When a claim is controverted or payment has not begun in an uncontroverted claim, the reason or reasons therefore shall clearly be stated on such form. A copy of the form [RB-679] RFA-2 must be transmitted to the claimant and his or her attorney or licensed representative, if any, simultaneously with the filing with the [c]Chair. An employer or carrier which fails to comply with the requirements of this subdivision shall be subject to penalties pursuant to Section 25 of the Workers' Compensation Law.

Subdivision (a) of section 300.23 of Title 12 NYCRR is amended to read as follows:

(a) In any case where the carrier or employer has made payment without waiting for an award by the [b]Board, the filing of a form [C-8] C-8/8.6 with the [c]Chair[man] by a carrier or an employer is not authority to suspend or reduce payments of compensation for temporary or permanent disability in an open and pending claim unless there accompanies it supporting evidence that the suspension or reduction of payment is in order, such as:

(1) a copy of the payroll report if the compensation rate is not based on information contained in the C-2 and is below the maximum;

(2) medical or other reports (including notice of return to work) justifying the suspension or reduction of payments, or by indicating on such notice the name and date of the medical or other reports, if they have been previously filed.

Subdivision (b)(2) of section 300.23 of Title 12 NYCRR is amended to read as follows:

(2) the [c]Chair[man], upon receipt of above, has scheduled a hearing on the issue within 20 days during any period when regular hearings are scheduled, and there is a determination by the referee and finding that such suspension or reduction is justified. At said hearing, if either party fails to appear or fails to submit any evidence as to the above issue, the [referee]Workers' Compensation Law Judge shall take such action as he or she deems proper under the circumstances including continuation, suspension or reduction of the award. Cases at hearing points which do not have regularly scheduled hearings within the 20 days, may be scheduled at another available hearing point.

Notwithstanding any provision to the contrary in this subdivision, the employer or carrier upon the filing of a form [C-8] C-8/8.6 may suspend or reduce such payments where a notice of return to work (form C-11), or other written substantial legal evidence of claimant's return to work, has been filed with the [c]Chair[man], or where the supporting evidence submitted therewith includes payroll records for at least two calendar weeks which warrant such suspension or reduction, or where the claimant's medical evidence indicates that the claimant has no disability.

Subdivision (e) of section 300.23 of Title 12 NYCRR is amended to read as follows:

(e) In any case in which a penalty has been imposed arising out of the failure to make payment of compensation according to the terms of the award within 10 days thereafter, the employer or [his]its insurance carrier must file notice with the [c]Chair[man], on [b]Board form [C-8] C-8/8.6, of the payment of such penalty within 10 days after the imposition thereof.

Subdivision (a) of section 300.27 of Title 12 NYCRR is amended to read as follows:

(a) Regular meetings of the [b]Board shall be held monthly, except in the month of August, at the office of

the [b]Board in [New York City] Albany, beginning at 10 o'clock in the forenoon on the third Tuesday of the month unless the third Tuesday is a legal holiday, in which event the regular meeting for that month shall be held on the Tuesday next following which is not a legal holiday. Notwithstanding the foregoing, the [b]Board, at a regular meeting, or the [c]Chair, in writing filed with the secretary, may provide that a particular subsequent regular meeting or meetings of the [b]Board may be held at any office of the [b]Board at a time and day or days other than as above specified.

Subdivision (f) of section 300.27 of Title 12 NYCRR is amended to read as follows:

(f) At each regular meeting of the [b]Board, the attorney [supervising Workers' Compensation Law judge] responsible for overseeing adjudication, or his or her designee, [in his or her absence, the senior Workers' Compensation Law judge] shall report, orally or in writing, on the conduct [of Workers' Compensation Law judge hearings] and the status of the adjudication of claims by the Board [Workers' Compensation Law judge hearing work], as the [b]Board may require.

Section 300.28 of Title 12 NYCRR is repealed as obsolete.

Section 300.29 of Title 12 NYCRR is amended to read as follows:

Any party liable for the payment of a compensation award may modify the distribution of such payment without the necessity of a [referee]Workers' Compensation Law Judge hearing or notice of decision where such modification is made in order to comply with an income execution or income deduction issued pursuant to an order of support as defined in CPLR 5241 and CPLR 5242 which has been served upon said party. Where said party is otherwise required to file a form [C-8] C-8/8.6, a form [C-8] C-8/8.6 and a copy of the income execution or income deduction shall be filed with the [c]Chair[man] with proof of mailing of copies thereof

upon the claimant and [his/her]his or her legal representative (if any). Any modification of payment made in compliance with an income execution or income deduction order for support enforcement issued pursuant to an order of support as defined in CPLR 5241 and CPLR 5242 shall not be grounds for imposition of a penalty under the Workers' Compensation Law, so long as the monies paid in compliance with the income execution or income deduction order are limited to those monies which would have been paid to the claimant, after payment of any liens for attorney or licensed representative fees, or for prior payment made by a disability benefits carrier, or for advance payments of compensation by an employer.

Paragraph (1) of subdivision (a) of section 303.3 of Title 12 NYCRR is amended to read as follows:

(1) the [c]Chair, [vice-chair] Vice Chair and members of the Workers' Compensation Board;

Paragraph (4) of subdivision (a) of section 303.3 of Title 12 NYCRR is amended to read as follows:

(4) the [e]Executive [d]Director, [d]Deputy [e]Executive [d]Directors] and members of the [b]Board of [c]Commissioners of the State Insurance Fund.

Section 303.5 of Title 12 NYCRR is amended to read as follows:

Claims of designated officers and employees shall be filed in the same manner as any other claim for compensation under the Workers' Compensation Law. When a claim has been filed, and an issue of fact or law arises, the [c]Chair shall appoint an arbitrator in accordance with the provisions of section 303.6 of this Part.

Subdivisions (a) and (b) of section 303.6 of Title 12 NYCRR are amended to read as follows:

(a) All issues of law or fact pertaining to claims filed by a designated officer or employee shall be resolved by an arbitrator, appointed by the [c]Chair, who shall not be an officer or employee of the [Workers'

Compensation] Board or the State Insurance Fund. Such issues shall include disputed bills of health care providers for treatment of the designated officer or employee that would otherwise be determined by a Workers' Compensation Law Judge and the liability of the Special Disability Fund pursuant to sections 15(8) and 25-a of the Workers' Compensation Law. Such arbitrators shall have the same powers and duties as those accorded Workers' Compensation Law Judges under the Workers' Compensation Law, including powers delegated by the [c]Chair.

(b) Within 14 days [of]after receiving notification of a case subject to arbitration hereunder, the [c]Chair shall appoint an arbitrator to hear the matter and resolve the issues presented. The interested parties shall be given prompt notice of such appointment.

Subdivision (d) of section 303.7 of Title 12 NYCRR is amended to read as follows:

(d) appropriate records shall be maintained for all claims. All records shall be transferred to the [Workers' Compensation] Board upon completion of the arbitration;

Subdivisions (b) and (c) of section 303.9 of Title 12 NYCRR are amended to read as follows:

(b) Within 30 days after notice of the filing of an award or decision by an arbitrator, any party in interest may, by notice filed with the [c]Chair, request review of such decision by a panel of three arbitrators (the appeal panel). The award or decision shall be subject to review by such appeal panel in the same manner and to the same extent as a decision [by] of a Workers' Compensation Law Judge may be reviewed by the [Workers' Compensation] Board pursuant to section 23 of the Workers' Compensation Law.

(c) In addition to reviewing the decisions of arbitrators, an appeal panel shall resolve any issue in [respect of] relation to the claims of designated officers or employees that would normally be resolved, in [respect of] relation to the claims of non-designated officers or employees, by a three-member Board panel, including

applications for the re-opening of cases.

Paragraphs (1), (2), and (3) of subdivision (d) of section 303.9 of Title 12 NYCRR are amended to read as follows:

(1) one arbitrator nominated by the [c]Chair;

(2) one arbitrator nominated by a recognized alternative dispute resolution organization designated by the [c]Chair; and

(3) one arbitrator nominated by an employee organization certified pursuant to article 14 of the Civil Service Law to represent the collective bargaining unit of the injured employee, or if the injured officer or employee is not represented by a collective bargaining unit, by [the same]a recognized alternative dispute resolution organization. [for]For purposes of organizing the work of the appeal panel, the arbitrator nominated pursuant to paragraph (2) of this subdivision shall serve as panel chair.

Subdivision (g) of section 303.9 of Title 12 NYCRR is amended to read as follows:

(g) A party in interest may seek review of such award or decision of an [arbitration]appeal panel only by taking appeal thereof to the [appellate division]Appellate Division of the Supreme Court, [third department]Third Department, and the Court of Appeals as provided for decisions of the Workers' Compensation Board pursuant to section 23 of the Workers' Compensation Law.

Section 310.1 of Title 12 NYCRR is repealed as obsolete, section 310.2 is renumbered section 310.1 and renumbered section 310.1 is amended to read as follows:

[310.2] 310.1 Penalties for refusal or neglect of an employer to file a report of injury.

Upon notification to the [secretary]Secretary of the Board that an employer has refused or neglected to file a report as required by Workers' Compensation Law section 110, an administrative hearing to consider imposition of a penalty of not more than \$2,500 shall be held before an employee of the [board]Board designated by the [chair]Chair to conduct such hearing.