

Section 300.13 of Title 12 NYCRR is amended as follows:

300.13 Administrative Review, Full Board Review, and Applications for Board Reconsideration

a. Definitions

(1) "Administrative Review" means an administrative appeal from a decision of a Compensation Claims Referee, under section twenty-three of the workers' compensation law, or an administrative appeal of a finalized administrative determination as set forth in part three-hundred [twelve] thirteen of this chapter.

(2) "Full Board Review" means an administrative appeal from a decision of the Board pursuant to section twenty three of the workers' compensation law. Such review is discretionary unless a board member dissents from the ruling regarding a finding other than the issue of whether to appoint an impartial medical specialist. Upon notice to the claimant, his or her legal representative, if any, the employer or carrier or Special Fund, the full board may review any case on its own motion.

(3) "Filing" means an application has been received by the Board at the designated point of receipt. Upon posting on the Board's website, the Chair may prescribe the format and method for filing and service including, among other methods, electronic, mail or fax service.

(4) "Necessary Parties of Interest" means, for the purposes of this section, claimants, self-insured employers, private insurance carriers, the state insurance fund, special funds, no-fault carriers per section one hundred forty-two 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.

b. Requests for Administrative Review and Requests for Full Board Review filed pursuant to Workers' Compensation Law Section 23, and Requests for Reconsideration of a Board Panel decision pursuant to Section 300.14 of this Part.

(1) Application format. Unless submitted by an unrepresented claimant, an application to the Board for administrative review of a decision by a Workers' Compensation Law Judge shall be in the format as prescribed by the Chair. The application in the format prescribed by the Chair must be filled out completely by the appellant, except that the requirement to utilize the application format shall not be imposed upon a claimant who is unrepresented.

(i) Unless otherwise specified by the Chair, the appellant may attach a legal brief of up to eight pages in length, in 12-point font, with one inch margins, on 8.5 inch by 11 paper. A brief longer than eight pages will not be considered, unless the appellant specifies, in

writing, why the legal argument could not have been made within eight pages. In no event shall a brief longer than fifteen pages be considered.

(ii) Documents that are present in the Board's electronic case folder at the time the administrative review is submitted shall not be, included with or attached to the application. The Board may reject applications for review by an appellant, or an attorney or licensed representative of the appellant, who attaches documents that are already in the case folder at the time of the application.

(iii) If the appellant seeks to introduce additional documentary evidence in the administrative appeal that was not presented before the Workers' Compensation Law Judge, the appellant must submit a sworn affidavit, setting forth the evidence, and explaining why it could not have been presented before the Workers' Compensation Law Judge. The Board has discretion to accept or deny such newly filed evidence. Newly filed evidence submitted without the affidavit will not be considered by the Board panel.

(2) The application for administrative review:

(i) shall specify the issues and grounds for the appeal;

(ii) shall specify the objection or exception that was interposed to the ruling, and when the objection or exception was interposed;

(iii) shall, when filed by an employer or carrier, specify which payments are continuing pending resolution of the administrative appeal, and which payments are stayed pursuant to section twenty-three and subdivision three (f) of section twenty-five of the Workers' Compensation Law;

(iv) shall include proof of service upon all necessary parties of interest, in the format prescribed by the Chair. Service upon a party who is not adverse to the interest of the appellant may not render the appeal defective as such party is not a necessary party of interest. Failure to properly serve a necessary party shall be deemed defective service and the application may be rejected by the Board.

(A) Proof of service in the format prescribed by the Chair shall specify the papers served, the person who was served, the date, and method of service including the actual address, email address or fax number where service was transmitted. An affidavit, affirmation, or other satisfactory proof of service as prescribed by the Chair, shall be submitted with the Application for Administrative Review to the Board. The affidavit, affirmation, or other proof of service must certify that all service was completed within thirty days from the filing of the decision that is the subject of the Application for Administrative Review.

(B) There is no requirement that each party be served in the same manner. Service is deemed timely if completed by the party of interest within thirty days of the filing of the decision by the Board.

(C) Unless the Chair directs service by electronic means, the appellant must certify in the affidavit or affirmation of service, that the party served provided explicit permission to receive service by fax, email, or other electronic means.

(D) When the administrative appeal is filed by the carrier, self-insured employer, or other payor or potential payor, service shall be upon the claimant, and claimant's attorney or representative, and other necessary parties in interest.

(E) Service upon a party who is not adverse to the interest of the appellant is optional, and failure to properly serve an optional party shall not be deemed to render the appeal defective.

(v) Shall include any additional fee request in the format prescribed by the Chair for fee requests. Failure to request an additional fee in the prescribed format shall result in waiver of such fee.

(3) Filing with the Board.

(i) The application shall be filed with the board within thirty days after the notice of the filing of the decision. All filings must be made using methods designated, permitted, and prescribed by the Chair. If more than one filing option is permitted by the Chair, the appellant shall choose one method for filing. Any duplicate filings may be deemed to be raising or continuing an issue without reasonable grounds, and may subject the appellant to assessments under 114-a(3) of the Workers' Compensation Law.

(ii) Method of filing the application:

(A) By mail shall be sent to the Board's designated Centralized Mailing Address;

(B) By fax shall be sent to the Board's designated Centralized Fax Number;

(C) By email shall be sent to the Board's designated email address for claims documents;

(D) By electronic means shall be filed in the method and manner prescribed by the Chair. An application that is submitted by electronic means in accordance with this subparagraph shall not be deemed filed with the Board until such submission is received and acknowledged by the Board.

(iii) The Chair may prescribe and require the format and the methods of filing of administrative appeals, including by electronic means, and may set the requirements to include various data fields, except that claimants who are unrepresented are exempt from the requirement to file electronically.

(4) Denial of review. The application for review may be denied under the following circumstances:

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

(ii) By decision of the Board panel, when the appellant does not file the application within thirty days;

(iii) By decision of the Board panel, when the appellant does not properly file the application with the Board;

(iv) By decision of the Board panel, when the appellant does not provide proper proof of timely service upon a necessary party in interest other than a party who is not adverse to the appellant. When the appellant fails to supply proper proof of timely service upon a necessary party.

(A) When a rebuttal is submitted, the necessary party shall raise the issue of defective service in its rebuttal. Failure to raise the issue of defective service in the rebuttal shall constitute a waiver of the issue.

(B) When no rebuttal is filed, the Board may consider whether the application was defectively served, and if so, the Board may deny review without decision.

(v) By decision of the Board Panel, where the appellant did not interpose a specific objection or exception to a ruling or award by a workers' compensation law judge.

(A) Where a decision is made at a hearing, the appellant did not preserve a specific objection to the ruling or award at the hearing on the record.

(B) Where proceedings occur off-calendar, such as at a deposition, the appellant did not preserve objections on the record at the start of or conclusion of the proceeding as to qualifications of the deponent, or admissibility of any medical report or report of independent medical examination.

(C) No objection to findings made by reserved decision that have not been previously made at a hearing, need be interposed prior to filing of an application for review.

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) herein. Such rebuttal shall be served on the Board and all necessary parties within thirty 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.

d. The Board shall have the verbatim records of all hearings and proceedings placed in the case file it maintains in a readable, viewable or audible format where the issue or issues raised in the application for review were covered, and the case file shall only be considered by a Board Panel after the verbatim records covering the disputed issues are inserted in the case file.

e. Stay of Payments. There is no stay of any payment due to the claimant or the Board upon a filing of an application for full Board review.

f. When a claimant is not represented, the Board shall have discretion to waive the requirements contained in this section. An unrepresented claimant, who subsequently retains counsel, may have the procedural requirements of this section waived for the time when he or she was unrepresented.