

# WEST VIRGINIA CODE: §23-5-11

## **§23-5-11. Workers' Compensation Board of Review generally; administrative powers and duties of the board; effective until June 30, 2022.**

(a) On January 31, 2004, the Workers' Compensation Appeal Board heretofore established in this section is hereby abolished.

(b) There is created the "Workers' Compensation Board of Review", which may also be referred to as "the Board of Review" or "the board". Effective February 1, 2004, the Board of Review shall exercise exclusive jurisdiction over all appeals from the Workers' Compensation Office of Judges including any and all appeals pending with the board of Appeals on January 31, 2004.

(c) The board consists of three members.

(d) The Governor shall appoint, from names submitted by the "Workers' Compensation Board of Review Nominating Committee", with the advice and consent of the Senate, three qualified attorneys to serve as members of the Board of Review. If the Governor does not select a nominee for any vacant position from the names provided by the nominating committee, he or she shall notify the nominating committee of that circumstance and the committee shall provide additional names for consideration by the Governor. A member of the Board of Review may be removed by the Governor for official misconduct, incompetence, neglect of duty, gross immorality, or malfeasance, and then only after notice and opportunity to respond and present evidence. No more than two of the members of the board may be of the same political party. The members of the Board of Review shall be paid an annual salary of \$85,000: *Provided*, That on and after July 1, 2008, the Governor shall set the salary of the members of the board: *Provided, however*, That the annual salary of a member of the Board of Review shall not exceed \$110,000. Members are entitled to be reimbursed for actual and necessary travel expenses incurred in the discharge of official duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(e) The nominating committee consists of the following members: (1) The President of the West Virginia State Bar who serves as the chairperson of the committee; (2) an active member of the West Virginia State Bar Workers' Compensation Committee selected by the major trade association representing employers in this state; (3) an active member of the West Virginia State Bar Workers' Compensation Committee selected by the highest ranking officer of the major employee organization representing workers in this state; (4) the Dean of the West Virginia University School of Law; and (5) the Chairman of the Judicial Investigation Committee.

(f) The nominating committee is responsible for reviewing and evaluating candidates for possible appointment to the Board of Review by the Governor. In reviewing candidates, the nominating committee may accept comments from and request information from any person

or source.

(g) Each member of the nominating committee may submit up to three names of qualified candidates for each position on the Board of Review: *Provided*, That the member of the nominating committee selected by the major trade organization representing employers of this state shall submit at least one name of a qualified candidate for each position on the board who either is, or who represents, small business employers of this state. After careful review of the candidates, the committee shall select a minimum of one candidate for each position on the board.

(h) Of the initial appointments, one member shall be appointed for a term ending December 31, 2006; one member shall be appointed for a term ending December 31, 2008; and one member shall be appointed for a term ending December 31, 2010. Thereafter, the appointments shall be for six-year terms.

(i) A member of the Board of Review must, at the time he or she takes office and thereafter during his or her continuance in office, be a resident of this state, be a member in good standing of the West Virginia State Bar, have a minimum of 10 years' experience as an attorney admitted to practice law in this state prior to appointment and have a minimum of five years' experience in preparing and presenting cases or hearing actions and making decisions on the basis of the record of those hearings before administrative agencies, regulatory bodies, or courts of record at the federal, state, or local level.

(j) No member of the Board of Review may hold any other office, or accept any appointment or public trust, nor may he or she become a candidate for any elective public office or nomination thereto. Violation of this subsection requires the member to vacate his or her office. No member of the Board of Review may engage in the practice of law during his or her term of office.

(k) A vacancy occurring on the board other than by expiration of a term shall be filled in the manner original appointments were made, for the unexpired portion of the term.

(l) The board shall designate one of its members in rotation to be chairman of the board for as long as the board may determine by order made and entered of record. In the absence of the chairman, any other member designated by the members present shall act as chairman.

(m) The Board of Review shall meet as often as necessary to hold review hearings, at such times and places as the chairman may determine. Two members shall be present in order to conduct review hearings or other business. All decisions of the board shall be determined by a majority of the members of the board.

(n) The Board of Review shall make general rules regarding the pleading, including the form of the petition and any responsive pleadings, practice, and procedure to be used by the board.

(o) The Board of Review may hire a clerk and other professional and clerical staff necessary to carry out the requirements of this article. It is the duty of the clerk of the Board of Review to attend in person, or by deputy, all the sessions of the board, to obey its orders and directions, to take care of and preserve in an office, kept for the purpose, all records and papers of the board, and to perform other duties as prescribed by law or required of him or her by the board. All employees of the board serve at the will and pleasure of the board. The board's employees are exempt from the salary schedule or pay plan adopted by the Division of Personnel. All personnel of the Board of Review are under the supervision of the chairman of the Board of Review.

(p) If considered necessary by the board, the board may, through staffing or other resources, procure assistance in review of medical portions of decisions.

(q) Upon the conclusion of any hearing, or prior thereto with concurrence of the parties, the board shall promptly determine the matter and make an award in accordance with its determination.

(r) The award shall become a part of the commission file. A copy of the award shall be sent forthwith by mail to all parties in interest.

(s) The award is final when entered. The award shall contain a statement explaining the rights of the parties to an appeal to the Board of Review and the applicable time limitations involved.

(t) The board shall submit to the Insurance Commissioner a budget sufficient to adequately provide for the administrative and other operating expenses of the board.

(u) The board shall report monthly to the Industrial Council on the status of all claims on appeal.

(v) Effective upon termination of the commission, the Board of Review shall be transferred to the Insurance Commissioner which shall have the oversight and administrative authority heretofore provided to the executive director and the board of managers.

(w) This section is of no force and effect after June 30, 2022.