

# WEST VIRGINIA CODE: §23-5-12

## **§23-5-12. Appeal to board; procedure; remand and supplemental hearing; effective until June 30, 2022.**

(a) Any employer, employee, claimant, or dependent who shall feel aggrieved at any final action of the administrative law judge taken after a hearing held in accordance with the provisions of §23-5-9 of this code shall have the right to appeal to the board created in §23-11-1 of this code for a review of such action. The Workers' Compensation Commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, shall likewise have the right to appeal to the board any final action taken by the administrative law judge. The aggrieved party shall file a written notice of appeal with the Board of Review, with a copy to the Office of Judges, within 30 days after receipt of notice of the action complained of or, in any event, regardless of notice, within 60 days after the date of the action complained of, and unless the notice of appeal is filed within the time specified, no appeal shall be allowed, the time limitation is a condition of the right to appeal and hence jurisdictional. The board shall notify the other parties immediately upon the filing of a notice of appeal. The notice of appeal shall state the ground for review and whether oral argument is requested. The Office of Judges, after receiving a copy of the notice of appeal, shall forthwith make up a transcript of the proceedings before the Office of Judges and certify and transmit it to the board. The certificate shall incorporate a brief recital of the proceedings in the case and recite each order entered and the date thereof.

(b) The board shall set a time and place for the hearing of arguments on each claim and shall notify the interested parties thereof. The review by the board shall be based upon the record submitted to it and such oral argument as may be requested and received. The board may affirm, reverse, modify, or supplement the decision of the administrative law judge and make such disposition of the case as it determines to be appropriate. Briefs may be filed by the interested parties in accordance with the rules of procedure prescribed by the board. The board may affirm the order or decision of the administrative law judge or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the administrative law judge if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative law judge's findings are:

- (1) In violation of statutory provisions; or
- (2) In excess of the statutory authority or jurisdiction of the administrative law judge; or
- (3) Made upon unlawful procedures; or
- (4) Affected by other error of law; or
- (5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole

record; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(c) After a review of the case, the board shall issue a written decision and send a copy by mail to the parties.

(1) All decisions, findings of fact and conclusions of law of the Board of Review shall be in writing and state with specificity the laws and facts relied upon to sustain, reverse, or modify the administrative law judge's decision.

(2) Decisions of the Board of Review shall be made by a majority vote of the Board of Review.

(3) A decision of the Board of Review is binding upon the executive director and the commission and the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, with respect to the parties involved in the particular appeal. The executive director, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, shall have the right to seek judicial review of a board of review decision irrespective of whether or not he or she appeared or participated in the appeal to the Board of Review.

(d) Instead of affirming, reversing, or modifying the decision of the administrative law judge, the board may, upon motion of any party or upon its own motion, for good cause shown, to be set forth in the order of the board, remand the case to the chief administrative law judge for the taking of such new, additional, or further evidence as in the opinion of the board may be necessary for a full and complete development of the facts of the case. In the event the board shall remand the case to the chief administrative law judge for the taking of further evidence, the administrative law judge shall proceed to take new, additional, or further evidence in accordance with any instruction given by the board within 30 days after receipt of the order remanding the case. The chief administrative law judge shall give to the interested parties at least 10 days' written notice of the supplemental hearing, unless the taking of evidence is postponed by agreement of parties, or by the administrative law judge for good cause. After the completion of a supplemental hearing, the administrative law judge shall, within 60 days, render his or her decision affirming, reversing, or modifying the former action of the administrative law judge. The decision shall be appealable to and proceeded with by the Board of Review in the same manner as other appeals. In addition, upon a finding of good cause, the board may remand the case to the Workers' Compensation Commission, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, for further development. Any decision made by the commission, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, following a remand shall be subject to objection to the Office of Judges and not to the board. The board may remand any case as often as in its opinion is necessary for a full development and just decision of the case.

(e) All appeals from the action of the administrative law judge shall be decided by the board at the same session at which they are heard, unless good cause for delay thereof be shown and entered of record.

(f) In all proceedings before the board, any party may be represented by counsel.

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