WEST VIRGINIA CODE: §23-5-9A

§23-5-9a. Hearings on objections to Insurance Commissioner; private carrier, or self-insured employer decisions; mediation; remand; effective July 1, 2022.

(a) Objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, made pursuant to the provisions of §23-5-1a of this code, shall be filed with the Workers' Compensation Board of Review. Upon receipt of an objection, the Workers' Compensation Board of Review shall notify the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, and all other parties of the filing of the objection. The Workers' Compensation Board of Review shall establish by rule, promulgated in accordance with the provisions of §23-5-11a(m) of this code, an adjudicatory process that enables parties to present evidence in support of their positions and provides an expeditious resolution of the objection. The employer, the claimant, the Insurance Commissioner, the private carrier, or the self-insured employer, whichever is applicable, shall be notified of any hearing at least 10 days in advance.

(b) The chair of the Workers' Compensation Board of Review shall assign, on a rotating basis, a member of the Board of Review to preside over the review process and issue a decision in each objection that is properly filed with the Board of Review. The member of the Workers' Compensation Board of Review assigned to an objection shall review evidence, conduct proceedings, and develop a record as is necessary for a full and thorough review of the objection: *Provided*, That the board member may delegate such duties to a hearing examiner employed by the Board of Review, pursuant to §23-5-8a and §23-5-11a(n) of this code: *Provided, however*, That any order or decision of the Board of Review must be issued and signed by the member of the Board assigned to the objection, as provided in subsection (e) of this section: *Provided further*, That a time frame order, continuance order, show cause order, failure to prosecute order, or other interlocutory order as permitted by the Workers' Compensation Board of Review's procedural rules may be issued and signed by a hearing examiner only, and is not subject to the general requirement that orders be issued and signed by a member of the board.

(c) The Workers' Compensation Board of Review shall establish a program for mediation to be conducted in accordance with the requirements of Rule 25 of the West Virginia Trial Court Rules. The parties may agree that the result of the mediation is binding. A case may be referred to mediation by the Board of Review member assigned to the objection on his or her own motion, on motion of a party, or by agreement of the parties. Upon issuance of an order for mediation, the Workers' Compensation Board of Review shall assign a mediator from a list of qualified mediators maintained by the West Virginia State Bar.

(d) The Workers' Compensation Board of Review shall keep full and complete records of all proceedings concerning an objection. Subject to the rules of practice and procedure promulgated pursuant to §23-5-11a(m) of this code, the record upon which the matter shall be decided shall include any evidence submitted by a party to the Workers' Compensation

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Board of Review and evidence taken at hearings conducted by the Board of Review. The record may include evidence or documents submitted in electronic form or other appropriate medium in accordance with the rules of practice and procedure. The Workers' Compensation Board of Review is not bound by the usual common law or statutory rules of evidence.

(e) All hearings shall be conducted as determined by the Workers' Compensation Board of Review according to the rules of practice and procedure promulgated pursuant to §23-5-11a(m) of this code. If a hearing examiner reviews an objection, the hearing examiner shall, at the conclusion of the review process, submit the designated record to the member of the Workers' Compensation Board of Review to whom the objection is assigned, along with the hearing examiner's recommendation of a decision affirming, reversing, or modifying the action that was subject to the objection. Upon consideration of the designated record and, if applicable, the recommendation of the hearing examiner, the member of the Workers' Compensation Board of Review assigned to the objection shall, based on the determination of the facts of the case and applicable law, render a decision affirming, reversing, or modifying the action that was subject to the objection. The decision shall contain findings of fact and conclusions of law, shall be signed by the member of the Workers' Compensation Board of Review rendering the decision, and shall be mailed to all parties.

(f) The Workers' Compensation Board of Review may remand a claim to the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, for further development of the facts or administrative matters as, in the opinion of the member of the board of review assigned to the objection, may be necessary for a full and complete disposition of the case. The member of the Workers' Compensation Board of Review assigned to the objection shall establish a time within which the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, must report back to the board of review.

(g) The decision of the Workers' Compensation Board of Review regarding any objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, is final, and benefits shall be paid or denied in accordance with the decision, unless an order staying the payment of benefits is specifically entered by a court with appellate jurisdiction over the decision or by the member of the Office of Judges who granted the benefits. A stay with respect to any medical treatment or rehabilitation authorized by the Workers' Compensation Board of Review may not be granted. If the decision is subsequently appealed and reversed in accordance with the procedures set forth in this article, and any overpayment of benefits occurs as a result of the reversal, the overpayment may be recovered pursuant to the provisions of §23-4-1c(h) or §23-4-1d(d) of this code, as applicable.

(h) This section becomes effective on July 1, 2022.

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