WEST VIRGINIA CODE CHAPTER 23 ARTICLE 5

WV Legislature

§23-5-1. Notice by commission or self-insured employer of decision; procedures on claims; objections and hearing; effective until June 30, 2022.

[Repealed.]

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§23-5-1a. Notice by commission or self-insured employer of decision; procedures on claims; objections and hearing; effective July 1, 2022.

(a) The Insurance Commissioner, private carriers, and self-insured employers may determine all questions within their jurisdiction. In matters arising under §23-2C-8(c), and under §23-3-1 *et seq*. and §23-4-1 *et seq*. of this code, the Insurance Commissioner, private carriers, and self-insured employers, whichever is applicable, shall promptly review and investigate all claims. The parties to a claim are the claimant and, if applicable, the claimant's dependents, the employer, and, with respect to claims involving funds created in §23-2C-1 *et seq*. of this code for which he or she has been designated the administrator, the Insurance Commissioner. In claims in which the employer had coverage on the date of the injury or last exposure, the employer's carrier has sole authority to act on the employer's behalf in all aspects related to litigation of the claim. With regard to any issue which is ready for a decision, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall promptly send the decision to all parties, including the basis of its decision. As soon as practicable after receipt of any occupational pneumoconiosis or occupational disease claim or any injury claim in which temporary total benefits are being claimed, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall send the claimant a brochure approved by the Insurance Commissioner setting forth the claims process.

(b) (1) Except with regard to interlocutory matters, upon making any decision, upon making or refusing to make any award, or upon making any modification or change with respect to former findings or orders, as provided by §23-4-16 of this code, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall give notice, in writing, to the parties to the claim of its action. The notice shall state the time allowed for filing an objection to the finding. The action of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, is final unless an objection to the decision is properly filed within 60 days after the receipt of such decision. This time limitation is a condition of the right to litigate the finding or action and hence jurisdictional. Any objection shall be filed with the Workers' Compensation Board of Review, as provided in §23-5-8a and §23-5-8b of this code, with a copy served upon the parties to the claim, and other parties in accordance with the procedures set forth in §23-5-8a and §23-5-9a of this code. An employer may file an objection to a decision incorporating findings made by the Occupational Pneumoconiosis Board, decisions made by the Insurance Commissioner acting as administrator of claims involving funds created in §23-2C-1 *et seq*. of this code, or decisions entered pursuant to §23-4-7a(c)(1) of this code.

(2) (A) With respect to every application for benefits in which an objection to a decision to deny benefits is filed and the matter involves an issue as to whether the application was properly filed as a new claim or a reopening of a previous claim, the party that denied the application shall begin to make conditional payment of benefits and must promptly give notice to the Workers' Compensation Board of Review that another identifiable person may be liable. The Workers' Compensation Board of Review shall promptly order the appropriate

persons be joined as parties to the proceeding: *Provided*, That at any time during a proceeding in which conditional payments are being made in accordance with the provisions of this subsection, the Workers' Compensation Board of Review may, pending final determination of the person properly liable for payment of the claim, order that such conditional payments of benefits be paid by another party.

(B) Any conditional payment made pursuant to paragraph (A) of this subdivision shall not be deemed an admission or conclusive finding of liability of the person making such payments. When the Workers' Compensation Board of Review has made a determination as to the party properly liable for payment of the claim, the Board of Review shall direct any monetary adjustment or reimbursement between or among the Insurance Commissioner, private carriers, and self-insured employers as is necessary.

(c) The member of the Workers' Compensation Board of Review assigned to an objection, as provided in §23-5-9a(b) of this code, may direct that:

(1) An application for benefits be designated as a petition to reopen, effective as of the original date of filing;

(2) A petition to reopen be designated as an application for benefits, effective as of the original date of filing; or

(3) An application for benefits or petition to reopen filed with the Insurance Commissioner, private carrier, or self-insured employer be designated as an application or petition to reopen filed with another private carrier, self-insured employer, or Insurance Commissioner, effective as of the original date of filing.

(d) Where an employer files an objection to a written decision entered pursuant to a finding of the Occupational Pneumoconiosis Board, a decision on a claim made by the Insurance Commissioner acting as the administrator of a fund created in §23-2C-1 *et seq*. of this code, or decisions entered pursuant to §23-4-7a(c)(1) of this code, and the employer does not prevail in its objection, and in the event the claimant is required to attend a hearing by subpoena, or agreement of counsel, or at the express direction of Workers' Compensation Board of Review, then the claimant, in addition to reasonable traveling and other expenses, shall be reimbursed for loss of wages incurred by the claimant in attending the hearing.

(e) The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may amend, correct, or set aside any order or decision on any issue entered by it which, at the time of issuance or any time after that, is discovered to be defective, or clearly erroneous, or the result of mistake, clerical error, or fraud, or with respect to any order or decision denying benefits, otherwise not supported by the evidence: *Provided*, That any objection filed prior to entry of the amended decision is an objection to the amended decision unless and until the Workers' Compensation Board of Review enters an order dismissing the objection as moot in light of the amendment. Jurisdiction to issue an amended decision pursuant to this subsection continues until the expiration of two years from the date

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of a decision to which the amendment is made unless the decision is sooner affected by an action of the Workers' Compensation Board of Review or a judicial officer or body: *Provided, however*, That corrective actions in the case of fraud may be taken at any time.

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

WV Legislature

§23-5-2. Application by employee for further adjustment of claim; objection to modification; hearing.

In any case where an injured employee makes application in writing for a further adjustment of his or her claim under the provisions of §23-4-16 of this code and the application discloses cause for a further adjustment, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall make the modifications or changes with respect to former findings or orders in the claim that are justified. Any party dissatisfied with any modification or change made by the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, is, upon proper and timely objection, entitled to a hearing, as provided in §23-5-9a of this code.

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§23-5-3. Refusal to reopen claim; notice; objection; effective until June 30, 2022.

[Repealed.]

WV Legislature

§23-5-3a. Refusal to reopen claim; notice; objection; effective July 1, 2022.

(a) If it appears to the Insurance Commissioner, private insurance carriers, and self-insured employers, whichever is applicable, that an application filed under §23-5-2a of this code fails to disclose a progression or aggravation in the claimant's condition, or some other fact or facts which were not previously considered in its former findings, and which would entitle the claimant to greater benefits than the claimant has already received, the Insurance Commissioner, private insurance carriers, and self-insured employers, whichever is applicable, shall, within a reasonable time, notify the claimant and the employer that the application fails to establish a prima facie cause for reopening the claim. The notice shall be in writing stating the reasons for denial and the time allowed for objection to the decision of the commission. The claimant may, within 60 days after receipt of the notice, object in writing to the finding. Unless the objection is filed within the 60-day period, no objection shall be allowed. This time limitation is a condition of the right to objection and hence jurisdictional. Upon receipt of an objection, the Workers' Compensation Board of Review shall afford the claimant an evidentiary hearing as provided in §23-5-9a of this code.

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

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§23-5-4. Application by employer for modification of award; objection to modification; hearing.

In any case in which an employer makes application in writing for a modification of any award previously made to an employee of the employer, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall make a decision upon the application. If the application discloses cause for a further adjustment, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall, after due notice to the employee, make the modifications or changes with respect to former findings or orders that are justified. Any party dissatisfied with any modification or change made or by the denial of an application for modification is, upon proper and timely objection, entitled to a hearing as provided in §23-5-9a of this code.

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§23-5-5. Refusal of modification; notice; objection; effective until June 30, 2022.

[Repealed.]

WV Legislature

§23-5-5a. Refusal of modification; notice; objection; effective July 1, 2022.

(a) If in any case it appears to the Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, that the application filed pursuant to §23-5-4 of this code fails to disclose some fact or facts which were not previously considered in former findings, and which would entitle the employer to any modification of the previous award, the Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, shall, within 60 days from the receipt of the application, notify the claimant and employer that the application fails to establish a just cause for modification of the award. The notice shall be in writing stating the reasons for denial and the time allowed for objection to the decision of the Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable. The employer may, within 30 days after receipt of the notice, object in writing to the decision. Unless the objection is filed within the 30-day period, no objection shall be allowed. This time limitation is a condition of the right to objection and hence jurisdictional. Upon receipt of the objection, the Workers' Compensation Board of Review shall afford the employer an evidentiary hearing as provided in §23-5-9 of this code.

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

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§23-5-6. Time periods for objections and appeals; extensions; effective until June 30, 2022.

[Repealed.]

WV Legislature

§23-5-6a. Time periods for objections and appeals; extensions; effective July 1, 2022.

(a) Notwithstanding the fact that the time periods set forth for objections, protests, and appeals to or from the Workers' Compensation Board of Review are jurisdictional, the periods may be extended or excused upon application of either party within a period of time equal to the applicable period by requesting an extension of the time period showing good cause or excusable neglect, accompanied by the objection or appeal petition. In exercising discretion, the Workers' Compensation Board of Review or court, as the case may be, shall consider whether the applicant was represented by counsel and whether timely and proper notice was actually received by the applicant or the applicant's representative.

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

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§23-5-7. Compromise and settlement.

(a) The claimant, the employer, and the Workers' Compensation Commission, the successor to the commission, other private insurance carriers, and self-insured employers, Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may negotiate a final settlement of any and all issues in a claim wherever the claim is in the administrative or appellate processes: *Provided*, That in the settlement of medical benefits for nonorthopedic occupational disease claims, the claimant shall be represented by legal counsel: *Provided, however*, That for the purposes of this section, the term "nonorthopedic occupational disease claim" does not include an occupational hearing loss or hearing impairment claim. If the employer is not active in the claim, the commission, the successor to the commission, other private insurance carriers, and self-insured employers, Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may negotiate a final settlement with the claimant and the settlement shall be made a part of the claim record. Except in cases of fraud, no issue that is the subject of an approved settlement agreement may be reopened by any party, including the commission, the successor to the commission, other private insurance carriers, and self-insured employers, Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable. Any settlement agreement may provide for a lump-sum payment or a structured payment plan, or any combination thereof, or any other basis as the parties may agree. If a self-insured employer later fails to make the agreed-upon payment, the commission Insurance Commissioner shall assume the obligation to make the payments and shall recover the amounts paid or to be paid from the self-insured employer and its sureties or guarantors, or both, as provided in §23-2-5 or §23-2-5a of this code.

(b) Each settlement agreement shall provide the toll-free number of the West Virginia State Bar Association and shall provide the injured worker with five business days to revoke the executed agreement. The Insurance Commissioner may void settlement agreements entered into by an unrepresented injured worker which are determined to be unconscionable pursuant to criteria established by rule of the commissioner.

(c) The amendments to this section enacted during the regular session of the Legislature, 2015, apply to all settlement agreements executed after the effective date.

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§23-5-8. Designation of Office of Administrative Law Judges; powers of chief administrative law judge; effective until June 30, 2022.

[Repealed.]

WV Legislature

§23-5-8a. Transfer of powers and duties of the Office of Administrative Law Judges to the Workers' Compensation Board of Review; powers of the Workers' Compensation Board of Review in relation to review of objections; effective July 1, 2022.

(a) The Workers' Compensation Office of Administrative Law Judges, referred to as the Office of Judges, shall terminate on or before October 1, 2022, as provided in §23-5-8b of this code. All powers and duties of the Office of Judges to review objections, protests, or any other matter authorized by this chapter, shall be transferred to the Workers' Compensation Board of Review on July 1, 2022: *Provided*, That any objection or other matter filed pursuant to this chapter and pending before the Office of Judges upon its termination, in which a final decision has not been issued, shall also be transferred to the Workers' Compensation Board of Review as provided in §23-5-8b of this code.

(b) Pursuant to §23-5-11a(n) of this code, the Workers' Compensation Board of Review shall employ hearing examiners and other personnel that are necessary for the proper conduct of a system of administrative review of objections to decisions of the Insurance Commissioner, private carriers, and self-insured employers, whichever is applicable, made pursuant to the provisions of §23-5-1a of this code and issued after June 30, 2022. All hearing examiners hired by the Workers' Compensation Board of Review shall be persons who have been admitted to the practice of law in this state and shall also have had at least four years of experience as an attorney. The chair of the Workers' Compensation Board of Review shall supervise hearing examiners and other personnel of the board, which collectively shall be referred to in this chapter as the Workers' Compensation Board of Review.

(c) The Workers' Compensation Board of Review has the power to hear and determine all objections in accordance with the provisions of this article, establish a procedure for the hearing of objections, take oaths, examine witnesses, issue subpoenas, establish the amount of witness fees, keep records, and make reports that are necessary for reviewing objections, and exercise any additional powers, including the delegation of powers to hearing examiners that are necessary for the proper conduct of a system of administrative review of objections. The chair of the Workers' Compensation Board of Review shall make reports that are requested of him or her by the Insurance Commissioner.

(d) Effective upon termination of the Office of Judges, the Insurance Commissioner shall have oversight and administrative authority over the Workers' Compensation Board of Review as heretofore provided to the Insurance Commissioner over the Office of Judges.

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

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§23-5-8b. Transfer of jurisdiction to review objections to Workers' Compensation Board of Review; termination of Office of Judges; appeals of board decisions to Intermediate Court of Appeals; effective July 1, 2022.

(a) The Office of Judges has no jurisdiction to review objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, made pursuant to the provisions of this chapter and issued after June 30, 2022. The Workers' Compensation Board of Review has exclusive jurisdiction to review objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, made pursuant to the provisions of this chapter and issued after June 30, 2022.

(b) On or before September 30, 2022, the Office of Judges shall issue a final decision in, or otherwise dispose of, each and every objection or other matter pending before the Office of Judges. If the Office of Judges does not issue a final decision or otherwise dispose of any objection or other matter pending before the Office of Judges on or before September 30, 2022, the objection or other matter shall be transferred to the Workers' Compensation Board of Review. For any objections transferred from the Office of Judges to the Workers' Compensation Board of Review, the Board of Review shall adopt any existing records of proceedings in the Office of Judges, conduct further proceedings, and collect evidence as it determines to be necessary, and issue a final decision or otherwise dispose of the case according to the procedural rules promulgated pursuant to §23-5-11a(m) of this code.

(c) Upon the Office of Judges' disposition of every matter pending before the office, or on October 1, 2022, whichever occurs earlier, the Office of Judges is terminated.

(d) The West Virginia Intermediate Court of Appeals, created in §51-11-1 *et seq*. of this code, has exclusive appellate jurisdiction over the following:

(1) Decisions or orders issued by the Office of Judges after June 30, 2022, and prior to its termination; and

(2) All final orders or decisions issued by the Workers' Compensation Board of Review after June 30, 2022.

(e) Notwithstanding the requirements of this section, the Workers' Compensation Board of Review shall review and decide all remaining appeals filed with the Board of Review, of Office of Judges' decisions issued prior to June 30, 2022, according to the procedure and requirements for such appeals heretofore provided in this article.

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

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§23-5-9. Hearings on objections to Insurance Commissioner; private carrier or self-insured employer decisions; mediation; remand; effective until June 30, 2022.

[Repealed.]

WV Legislature

§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 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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§23-5-10. Appeal from administrative law judge decision to appeal board; effective until June 30, 2022.

[Repealed.]

WV Legislature

§23-5-10a. Appeal from a Workers' Compensation Board of Review decision to the Intermediate Court of Appeals; effective July 1, 2022.

(a) The employer, claimant, Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, may appeal to the West Virginia Intermediate Court of Appeals, created by §51-11-1 *et seq*. of this code, for a review of a decision by the Workers' Compensation Board of Review. No appeal or review shall lie unless application is made within 30 days of receipt of notice of the Workers' Compensation Board of Review's final action or in any event within 60 days of the date of such final action, regardless of notice and, unless the application for appeal or review is filed within the time specified, no such appeal or review shall be allowed, such time limitation being hereby declared to be a condition of the right of such appeal or review and hence jurisdictional.

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

WV Legislature

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

[Repealed.]

WV Legislature

§23-5-11a. Workers' Compensation Board of Review generally; administrative powers and duties of the board.

(a) The "Workers' Compensation Board of Review", which may also be referred to as "the Board of Review" or "the board" is hereby continued and granted exclusive jurisdiction over all objections to decisions of the Insurance Commissioner, private carriers, and self-insured employers, whichever is applicable, including any and all matters that were pending before the former Office of Judges after September 30, 2022.

(b) The board shall consist of at least three members and not exceed a total of five members.

(c) The Governor shall appoint, with the advice and consent of the Senate, attorneys qualified in accordance with subsection (f) of this section to serve as members of the Board of Review. 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. If the board consists of five members, no more than three of the members may be of the same political party. If the board consists of three or four members, no more than two of the members may be of the same political party. The Governor shall set the salary of the members of the board: *Provided*, That the annual salary of a member of the Board of Review shall not exceed $125,000. 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.

(d) Of the initial appointments of the two additional seats created during the 2021 Regular Session, one member shall be appointed for a term ending December 31, 2025; one member shall be appointed for a term ending December 31, 2027. Thereafter, the appointments shall be for six-year terms. Notwithstanding any other provision of this code to the contrary, the term of a member shall expire pursuant to this subsection unless the member is reappointed by the Governor as set forth in subsection (c) of this section.

(e) 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.

(f) 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.

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(g) 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.

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

(i) The Board of Review shall meet as often as necessary to conduct the board's administrative business and make rules of practice and procedure, at such times and places as the chair may determine. Two members shall be present in order to conduct administrative business and make rules of practice and procedure. All decisions of the board upon administrative matters, pursuant to this section, shall be determined by a majority of the members of the board. In the event of a tie vote, the chair shall cast the deciding vote.

(j) The Board of Review shall, from time to time, promulgate rules of practice and procedure for the review and determination of all objections filed with the board. The board does not have the power to initiate or to promulgate legislative rules as that phrase is defined in §29A-3-1 *et seq*. of this code. Any rules adopted pursuant to this section which are applicable to the provisions of this article are not subject to §29A-3-9 through §29A-3-16 of this code. The board shall follow the remaining provisions of chapter 29A of this code for giving notice to the public of its actions and the holding of hearings or receiving of comments on the rules.

(k) The Board of Review may hire a clerk, hearing examiners, 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: Provided, That for the purpose of any applicable Division of Personnel class specifications, hearing examiners must be classified under a class with "attorney" in the class title. All personnel of the Board of Review are under the supervision of the chair of the Board of Review.

(l) The administrative expenses of the Board of Review shall be included within the annual budget of the Insurance Commissioner, and the Insurance Commissioner shall have administrative authority and oversight over the Board of Review.

(m) The amendments to this section made during the 2021 Regular Session of the Legislature shall become effective on July 1, 2022: Provided, That the board is authorized to promulgate rules and hire staff, pursuant to subsection (k) and (l) of this section, respectively, prior to July 1, 2022, to the extent necessary to comply with the requirements of this article that shall become effective on that date.

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

[Repealed.]

WV Legislature

§23-5-12a. Appeal of board decisions to the Intermediate Court of Appeals; procedure; remand and supplemental hearing; effective July 1, 2022.

(a) Any employer, employee, claimant, or dependent who shall feel aggrieved by a decision of the Workers' Compensation Board of Review shall have the right to appeal to the West Virginia Intermediate Court of Appeals, created by §51-11-1 *et seq*. of this code, for a review of such action. The Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, shall likewise have the right to appeal to the Intermediate Court of Appeals any final action taken by the Workers' Compensation Board of Review. The aggrieved party shall file a written notice of appeal with the Intermediate Court of Appeals, with a copy to the Workers' Compensation Board of Review, 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: *Provided*, That unless the notice of appeal is filed within the time specified, no appeal shall be allowed: *Provided, however*, That 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 grounds for review and whether oral argument is requested. The Workers' Compensation Board of Review, after receiving a copy of the notice of appeal, shall forthwith make up a transcript of any proceedings before the board of review and certify and transmit it to the Intermediate Court of Appeals. The certificate shall incorporate a brief recital of the proceedings in the matter and recite each order entered or decision issued and the date thereof.

(b) The Intermediate Court of Appeals 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 court shall be based upon the record submitted to it and such oral argument as may be requested and received. The Intermediate Court of Appeals may affirm, reverse, modify, or supplement the decision of the Workers' Compensation Board of Review 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 court. The Intermediate Court of Appeals may affirm the order or decision of the Workers' Compensation Board of Review or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the Workers' Compensation Board of Review, if the substantial rights of the petitioner or petitioners have been prejudiced because the Board of Review's findings are:

(1) In violation of statutory provisions;

(2) In excess of the statutory authority or jurisdiction of the Board of Review;

(3) Made upon unlawful procedures;

(4) Affected by other error of law;

(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 Intermediate Court of Appeals 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 Intermediate Court of Appeals shall be in writing and state with specificity the laws and facts relied upon to sustain, reverse, or modify the Board of Review's decision.

(2) A decision of the Intermediate Court of Appeals is binding upon the Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, with respect to the parties involved in the particular appeal. The Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, shall have the right to seek judicial review of a final decision of the Intermediate Court of Appeals, pursuant to §51-11-10 of this code, irrespective of whether the party appeared or participated in the appeal to the Intermediate Court of Appeals.

(d) Instead of affirming, reversing, or modifying the decision of the Workers' Compensation Board of Review, the Intermediate Court of Appeals may, upon motion of any party or upon its own motion, for good cause shown, to be set forth in the order of the court, remand the case to the Board of Review for the taking of such new, additional, or further evidence as in the opinion of the court considers necessary for a full and complete development of the facts of the case. In the event the Intermediate Court of Appeals shall remand the case to the Board of Review for the taking of further evidence, the Board of Review shall proceed to take new, additional, or further evidence in accordance with any instruction given by the court within 30 days after receipt of the order remanding the case. The Workers' Compensation Board of Review 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 Board of Review for good cause. After the completion of a supplemental hearing, the Workers' Compensation Board of Review shall, within 60 days, render its decision affirming, reversing, or modifying the former action of the Workers' Compensation Board of Review. The decision shall be appealable to, and proceeded with, by the Intermediate Court of Appeals in the same manner as other appeals. In addition, upon a finding of good cause, the court may remand the case to the Insurance Commissioner, other private insurance carriers, or self-insured employers, whichever is applicable, for further development. Any decision made by the Insurance Commissioner, other private insurance carriers, or self-insured employers, whichever is applicable, following a remand, shall be subject to objection to the Workers' Compensation Board of Review and not to the Intermediate Court of Appeals. The Intermediate Court of Appeals may remand any case as often as, in its opinion, is necessary for a full development and just decision of the case.

(e) In all proceedings before the Intermediate Court of Appeals, any party may be

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represented by counsel.

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

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§23-5-13. Continuances and supplemental hearings; claims not to be denied on technicalities; effective until June 30, 2022.

[Repealed.]

WV Legislature

§23-5-13a. Continuances and supplemental hearings; claims not to be denied on technicalities; effective July 1, 2022.

(a) It is the policy of this chapter that the rights of claimants for workers' compensation be determined as speedily and expeditiously as possible to the end that those incapacitated by injuries and the dependents of deceased workers may receive benefits as quickly as possible in view of the severe economic hardships which immediately befall the families of injured or deceased workers. Therefore, the criteria for continuances and supplemental hearings "for good cause shown" are to be strictly construed by the Workers' Compensation Board of Review and its authorized representatives to prevent delay when granting or denying continuances and supplemental hearings. It is also the policy of this chapter to prohibit the denial of just claims of injured or deceased workers or their dependents on technicalities.

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

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§23-5-14. Disqualification of board members.

In any matter wherein a member of the Workers' Compensation Board of Review is a party, or is personally interested in the results thereof, or is a beneficiary therein, or is connected with a beneficiary therein, he or she shall be disqualified from participating in the hearing and determination of any objection to decisions of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable.

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§23-5-15. Appeals from final decisions of board to Supreme Court of Appeals of West Virginia prior to July 1, 2022; procedure; costs.

[Repealed.]

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§23-5-16. Fees of attorney for claimant; unlawful charging or receiving of attorney fees; effective until June 30, 2022.

[Repealed.]

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§23-5-16a. Fees of attorney for claimant; unlawful charging or receiving of attorney fees.

(a) An attorney's fee in excess of 20 percent of any award granted may not be charged or received by an attorney for a claimant or dependent. In no case may the fee received by the attorney of the claimant or dependent be in excess of 20 percent of the benefits, to be paid during a period of 208 weeks. The interest on disability or dependent benefits, as provided in this chapter, may not be considered as part of the award in determining the attorney's fee. However, any contract entered into in excess of 20 percent of the benefits to be paid during a period of 208 weeks, as herein provided, is unlawful and unenforceable as contrary to the public policy of this state and any fee charged or received by an attorney in violation thereof is an unlawful practice and renders the attorney subject to disciplinary action.

(b) On a final settlement an attorney may charge a fee not to exceed 20 percent of the total value of the medical and indemnity benefits: *Provided*, That this attorney's fee, when combined with any fees previously charged or received by the attorney for permanent partial disability or permanent total disability benefits may not exceed 20 percent of an award of benefits to be paid during a period of 208 weeks.

(c) Except attorney's fees and costs recoverable pursuant to §23-2C-21(c) of this code, an attorney's fee for successful recovery of denied medical benefits may be charged or received by an attorney and paid by the private carrier or self-insured employer, for a claimant or dependent under this section. In no event may attorney's fees and costs be awarded pursuant to both this section and §23-2C-21(c) of this code.

(1) If a claimant successfully prevails in a proceeding relating to a denial of medical benefits brought before the Insurance Commissioner, other private carrier, or self-insured employer, whichever is applicable, as a result of utilization review, arbitration, mediation, or other proceedings, or a combination thereof, relating to denial of medical benefits before the Workers' Compensation Board of Review, or a court, there shall additionally be charged against the private carriers or self-insured employers, whichever is applicable, the reasonable costs and reasonable hourly attorney's fees of the claimant. Following the successful resolution of the denial in favor of the claimant, a fee petition shall be submitted by the claimant's attorney to the Insurance Commissioner or his or her successors, arbitrators, mediator, the Workers' Compensation Board of Review, or a court, whichever enters a final decision on the issue. An attorney representing a claimant must submit a claim for attorney's fees and costs within 30 days following a decision in which the claimant prevails and the order becomes final.

(2) The Insurance Commissioner or his or her successors, arbitrators, mediators, the Workers' Compensation Board of Review, or a court shall enter an order within 30 days awarding reasonable attorney's fees not to exceed $125 per hour and reasonable costs of the claimant to be paid by the private carriers or self-insured employers, whichever is applicable, which shall be paid as directed. In no event may an award of the claimant's attorney's fees under this subsection exceed $500 per litigated medical issue, not to exceed

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$2,500 in a claim.

(3) In determining the reasonableness of the attorney's fees to be awarded, the Insurance Commissioner, arbitrator, mediator, Workers' Compensation Board of Review, or court shall consider the experience of the attorney, the complexity of the issue, the hours expended, and the contingent nature of the fee.

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

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§23-5-17.

Repealed.

Acts, 2009 Reg. Sess., Ch. 222.

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§23-5-18.

Repealed.

Acts, 2009 Reg. Sess., Ch. 222.

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