

Rulemaking Hearing Rules
of
The Tennessee Department of Labor and Workforce Development
Division of Workers' Compensation
Penalty Program

Chapter 0800-2-13
Penalty Program

Amendments

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0800-2-13-.02 Investigation of Unpaid or Untimely Paid Workers' Compensation Benefits

Subparagraph (b) of paragraph (4) of rule 0800-2-13-.02 Investigation of Unpaid or Untimely Paid
Workers' Compensation Benefits is amended by adding a semicolon (“;”) and the word “or” after the word
“employee” in part 2., and by adding a new part 3. so that, as amended, the subparagraph shall read:

2. all workers' compensation benefits owed to an employee under the Workers' Compensation Law have been and continue to be timely paid to the employee; or
3. the employer or insurer has acted diligently, as determined by the Commissioner or Commissioner's Designee, to obtain necessary information to process the claim and has not been able to obtain it.

Authority: T.C.A. §§50-6-118, 50-6-205, 50-6-233, 50-6-238, 50-6-412, and 50-6-801

Paragraph (5) of rule 0800-2-13-.02 Investigation of Unpaid or Untimely Paid Workers' Compensation Benefits is amended by adding the phrase “A benefit is paid on the date the employer or insurer places the benefits into the mail for delivery to the injured employee.” after the word “paid” and the punctuation period “.” and before the word “After” so that as amended the subparagraph shall read:

- (5) In deciding whether a benefit is unpaid or untimely paid, compensation shall be deemed promptly paid if the first payment is made fifteen (15) calendar days after the employer has knowledge of the injury and every subsequent payment is made within consecutive fifteen (15) calendar day increments, until all temporary benefits have been paid. A benefit is paid on the date the employer or insurer places the benefits into the mail for delivery to the injured employee. After twenty (20) calendar days from the date of the employer's knowledge of any disability that would qualify for benefits, the twenty-five percent (25%) penalty will attach to all payments unpaid or untimely paid.

Authority: T.C.A. §§50-6-118, 50-6-205, 50-6-233, 50-6-238, 50-6-412, and 50-6-801

0800-2-13-.03 Departmental Actions

Subparagraph (a) of paragraph (1) of rule 0800-2-13-.03 Departmental Actions is amended by adding a semicolon (“;”) and the word “or” after the word “Law” in part 2., and by adding a new part 3., so that, as amended, the subparagraph shall read:

2. the employer or insurer does not owe any workers’ compensation benefits under the Workers’ Compensation Law; or
3. in the sole discretion of the Commissioner or the Commissioner’s Designee, the Commissioner or Commissioner’s Designee finds that the employer or insurer has acted diligently to obtain necessary information to process the claim and has not been able to obtain it.

Authority: T.C.A. §§50-6-118, 50-6-205, 50-6-233, 50-6-238, 50-6-412, and 50-6-801

Paragraph (3) of rule 0800-2-13-.03 Departmental Actions is amended by adding a comma (“;”) and the phrase “or the Commissioner’s Designee” and a second comma (“;”) after the word “Commissioner” and before the word “shall” so that as amended the paragraph shall read:

- (3) The Commissioner, or the Commissioner’s Designee, shall have the sole discretion not to issue a penalty even if the technical requirements of subparagraph (1)(b) are satisfied.

Authority: T.C.A. §§50-6-118, 50-6-205, 50-6-233, 50-6-238, 50-6-412, and 50-6-801

0800-2-13-.04 Administrative Appeal of an Agency Decision Assessing a Civil Penalty for Unpaid or Untimely Paid Workers’ Compensation Benefits

Rule 0800-2-13-.04 Administrative Appeal of an Agency Decision Assessing a Civil Penalty for Unpaid or Untimely Paid Workers’ Compensation Benefits is amended by inserting a new paragraph (1) and by renumbering the existing paragraphs, so that, as amended, the rule shall read:

0800-2-13-.04 Administrative Appeal of an Agency Decision Assessing a Civil Penalty for Unpaid or Untimely Paid Workers’ Compensation Benefits

- (1) An employer or insurer assessed a civil penalty for unpaid or untimely paid worker’s compensation benefits has the right to file, in writing, with a copy to the employee or their representative, a petition for informal reconsideration by the Commissioner or Commissioner’s Designee, other than the specialist who issued the Agency Decision, to determine if the civil penalty should have been assessed. However, the filing of the petition shall not be a prerequisite for requesting a contested case hearing, and the fifteen calendar day period for a party to request a contested case hearing shall not be tolled by the filing of a petition for informal reconsideration. The petition for informal reconsideration shall be made in writing by an employer or insurer which has been assessed a civil penalty for unpaid or untimely paid workers’ compensation benefits and shall be filed with the Designee who issued the Agency Decision assessing the civil penalty within seven (7) calendar days of the date upon which the Agency Decision was issued.
- (2) An employer or insurer assessed a civil penalty for unpaid or untimely paid workers’ compensation benefits has the right to request a contested case hearing to determine if the civil penalty should have been assessed.

- (3) The request for a hearing shall be made in writing by an employer or insurer which has been assessed a civil penalty for unpaid or untimely paid workers' compensation benefits.
- (4) Any request for a hearing shall be filed with the Designee who issued the Agency Decision assessing the penalty within fifteen (15) calendar days of the date upon which the Agency Decision was issued. Failure to file a request for a hearing within fifteen (15) calendar days of the date of entry of the agency decision shall result in the Agency Decision becoming a Final Order not subject to further review.
- (5) The Commissioner, Commissioner's Designee, or an agency member appointed by the Commissioner shall have authority to hear the matter as a contested case and determine if the civil penalty assessed for unpaid or untimely paid workers compensation benefits should have been assessed.
- (6) Upon receipt of a timely request for a hearing, the Commissioner shall issue a Notice of Hearing to the employer or insurer.

Authority: T.C.A. §§50-6-118, 50-6-205, 50-6-233, 50-6-238, 50-6-412, and 50-6-801

Legal contact and/or party who will approve final copy for publication:

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Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:

Peter B. Halverstadt
Director, Penalty Program
TN Dept. of Labor & Workforce Development

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Labor and Workforce Development on the _____ day of _____, 2006.

Further more, I certify that the provisions of T.C.A. §4-5-222 have been fully complied with, that the rules are properly presented for filing, a notice of rulemaking hearing has been filed in the Department of State on 23rd day of August, 2005 and such notice of rulemaking hearing having been published in the September, 2005 issue of the Tennessee Administrative Register, and such rulemaking hearing having been conducted pursuant thereto on the 28th day of October, 2005.

James G. Neeley
Commissioner
Department of Labor and Workforce Development

Subscribed and sworn to before me this the _____ day of _____, 2006.

Notary Public

My commission expires on the _____ day of _____, 200____.

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Paul G. Summers
Attorney General and Reporter

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 26th day of April, 2006, and will become effective on the 10th day of July, 2006.