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*Effective 9/20/15*

# Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205.

<b>Agency/Board/Commission:</b>	Tennessee Department of Labor and Workforce Development
<b>Division:</b>	Workers' Compensation
<b>Contact Person:</b>	Troy Haley
<b>Address:</b>	220 French Landing Drive, 1-B, Nashville, TN
<b>Zip:</b>	37243
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<b>Email:</b>	<a href="mailto:troy.haley@tn.gov">troy.haley@tn.gov</a>

**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

**Repeal**

Chapter Number	Chapter Title
0800-02-22	Board of Workers' Compensation Appeals
Rule Number	Rule Title
0800-02-22-.01	Filing the Request for Appeal
0800-02-22-.02	Docketing Appeal, Filing Briefs and Rendering Decision
0800-02-22-.03	Appeal of Workers' Compensation Cases Filed Against the State

**New**

Chapter Number	Chapter Title
0800-02-22	Workers' Compensation Appeals Board
Rule Number	Rule Title
0800-02-22-.01	Filing of Notice of Appeal
0800-02-22-.02	Appeal of an Interlocutory Order
0800-02-22-.03	Appeal of a Compensation Order
0800-02-22-.04	Oral Argument; Costs on Appeal; Settlement During Appeal
0800-02-22-.05	Appeal of Workers' Compensation Cases Filed Against the State

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 0800-02-22  
Board of Workers' Compensation Appeals/Workers' Compensation Appeals Board

Chapter 0800-02-22 Board of Workers' Compensation Appeals is repealed by deleting Rules 0800-02-22-.01, 0800-02-22-.02, and 0800-02-22-.03 in their entirety and by replacing them with new rules that shall read as follows:

Chapter 0800-02-22  
Workers' Compensation Appeals Board

Rule 0800-02-22-.01 Filing of Notice of Appeal

- (1) Any party may appeal any order of a workers' compensation judge by filing a notice of appeal, on a form approved by the Division, with the clerk of the court of workers' compensation claims, in accordance with Rule 0800-02-21-.02(14). Pursuant to Tennessee Code Annotated section 50-6-217(a)(1), the notice of appeal must be filed:
  - (a) Within seven (7) business days of the date an interlocutory order was entered by the workers' compensation judge; or
  - (b) Within thirty (30) calendar days of the date a compensation order was entered by the workers' compensation judge.
- (2) The appealing party shall serve a copy of the Notice of Appeal upon the opposing party or parties by any means as set forth in Rule 0800-02-21-.09.
- (3) Any notice of appeal that is not received by the clerk within the time provided by paragraph (1) shall be dismissed.
- (4) A notice of appeal of a compensation order that is not timely filed will not toll the time limit for filing an appeal to the Supreme Court pursuant to Tennessee Code Annotated section 50-6-225(a)(1) and Rule 4(a) of the Tennessee Rules of Appellate Procedure.

Authority: T.C.A. § 4-3-1409; T.C.A. § 50-6-217; T.C.A. § 50-6-225; T.C.A. § 50-6-233; T.C.A. § 50-6-237.

Rule 0800-02-22-.02 Appeal of an Interlocutory Order

- (1) If the appellant elects to file a position statement in support of an interlocutory appeal, the appellant shall file such position statement with the clerk of the court of workers' compensation claims within five (5) business days of the expiration of the time to file a transcript or statement of the evidence, specifying the issues presented for review and including any argument in support thereof. A party opposing the appeal shall file a response, if any, with the clerk of the court of workers' compensation claims within five (5) business days of the filing of the appellant's position statement.
- (2) The parties, having the responsibility to ensure a complete record on appeal, may have a transcript prepared by a licensed court reporter and file it with the clerk of the court of workers' compensation claims within ten (10) calendar days of the filing of the notice of appeal. Alternatively, the parties may file a statement of the evidence within ten (10) calendar days of the filing of the notice of appeal. The statement of the evidence must be approved by the judge before the record is submitted to the clerk of the appeals board. The clerk of the workers' compensation appeals board shall docket the appeal upon receipt of the record from the clerk of the court of workers' compensation claims and send a docketing notice to all parties.
- (3) Within seven (7) business days of the receipt of the record on appeal by the clerk of the workers' compensation appeals board, the appeals board shall review the record and enter an order

affirming, reversing, or modifying and remanding the interlocutory order of the workers' compensation judge. The order of the workers' compensation appeals board shall not be subject to further appeal.

- (a) If the appeals board affirms an interlocutory order awarding temporary disability or medical benefits, the employer shall begin making payments of benefits within five (5) business days from the date the order affirming the interlocutory order is issued by the appeals board. Failure to begin benefit payments within five (5) business days may result in the assessment of a civil penalty pursuant to Tennessee Code Annotated section 50-6-118.
- (b) Following the issuance of a decision affirming, reversing, or modifying and remanding an interlocutory order of temporary disability benefits, the claim shall continue in the manner provided by Tennessee Code Annotated section 50-6-239 and by these rules.

Authority: T.C.A. § 4-3-1409; T.C.A. §50-6-118; T.C.A. § 50-6-217; T.C.A. § 50-6-225; T.C.A. § 50-6-233; T.C.A. § 50-6-237.

#### Rule 0800-02-22-.03 Appeal of a Compensation Order

- (1) Upon the filing of a notice of appeal of a compensation order, within fifteen (15) calendar days, the party that filed the notice of appeal shall file with the clerk of the court of workers' compensation claims a copy of the transcript of the proceedings before the workers' compensation court or shall file notice that no transcript will be provided. The appealing party shall serve a copy of this transcript or notice upon the opposing party or parties. The party may file a statement of the evidence in lieu of a transcript.
- (2) Upon receipt of the transcript of the proceedings, statement of the evidence, or notice that no transcript will be filed, the clerk of the court of workers' compensation claims shall forward a copy of the notice of appeal and the transcript or statement of the evidence, if any, or notice that no transcript will be filed, to the workers' compensation judge that issued the order.
- (3) Within ten (10) business days after receiving a copy of the notice of appeal and the transcript, or statement of the evidence, if any, or the notice that no transcript will be provided, the workers' compensation judge shall review the record in its entirety to ensure that it is complete and that it accurately reflects the proceedings at the hearing, and shall compile the contents of the record and forward the record to the clerk of the court of workers' compensation claims.
- (4) If a transcript or statement of the evidence is not timely filed, the workers' compensation judge may certify the record or proceedings if the judge believes that the record provides an accurate reflection of the proceedings that occurred at trial. If the judge determines that the record cannot be certified, the workers' compensation judge shall issue an order compelling the party who filed the notice of appeal to file a transcript, a statement of the evidence, or take such other action as is necessary for the trial judge to certify the record.
- (5) Upon receipt of the record, the clerk of the workers' compensation appeals board shall docket the appeal and shall send a docketing notice to all parties. The clerk of the appeals board shall forward the record to the appeals board for review.
- (6) The party who filed the notice of appeal shall have fifteen (15) calendar days after the issuance of the docketing notice provided in paragraph (5) to submit a brief to the appeals board for consideration. Any opposing party shall have fifteen (15) calendar days after the filing of the appellant's brief to file a brief in response. No reply briefs shall be filed. Briefs shall comply with the Practice and Procedure Guidelines of the Workers' Compensation Appeals Board.
- (7) Within forty-five (45) calendar days after the period for the filing of briefs ends, the board shall issue its decision affirming, reversing or modifying the order of the workers' compensation judge and shall remand the case for further proceedings.
  - (a) If the appeals board reverses or modifies and remands the case following an appeal of a compensation order, the clerk of the court of workers' compensation claims shall send a docketing notice to the parties, by regular or electronic mail, setting forth the procedure

for preparing for and scheduling any hearing, if necessary. The clerk shall also return the record to the previously assigned judge, unless otherwise directed by the Chief Judge.

- (b) If the appeals board affirms and certifies a compensation order as final, the time for filing an appeal to the supreme court pursuant to Tennessee Code Annotated section 50-6-225 shall begin to run on the date the order is certified as final by the appeals board. If no further appeal is filed, the compensation order shall become final and binding in thirty (30) calendar days after the decision of the appeals board is filed and any benefits provided through the compensation order shall be paid within five (5) business days after the compensation order becomes final.
- (8) Immediately upon the issuance of a decision on any appeal, the clerk of the workers' compensation appeals board shall forward a copy of the decision to the parties by regular or electronic mail and to the clerk of the court of workers' compensation claims.

Authority: T.C.A. § 4-3-1409; T.C.A. § 50-6-217; T.C.A. § 50-6-225; T.C.A. § 50-6-233; T.C.A. § 50-6-237.

#### Rule 0800-02-22-.04 Oral Argument, Costs on Appeal, Settlement During Appeal

- (1) The appeals board shall base its decision on a review of the record and the briefs or responses of the parties, if any. Evidence not contained in the record submitted to the clerk of the workers' compensation appeals board shall not be considered on appeal. No oral argument shall be allowed unless otherwise directed by the workers' compensation appeals board either upon its own motion or upon motion of a party. Any motion for oral argument filed by a party must state with specificity the reason or reasons the decision-making process would be aided by oral argument. Oral argument may be conducted telephonically, by video conference, or in person, at the direction of the appeals board.
- (2) No request to rehear or reconsider the decision of the appeals board may be filed by any party.
- (3) Costs on appeal may be assessed as ordered by the appeals board.
- (4) If the parties agree to settle the claim following the filing of the notice of appeal, the parties shall file a joint motion requesting the appeal be held in abeyance and the case be remanded to the workers' compensation judge to consider approval of the settlement. If the settlement is approved within thirty (30) calendar days of the filing of the order remanding the case, the parties shall file a joint motion seeking to dismiss the appeal. The motion shall provide for the assessment of costs on appeal and shall be accompanied by a copy of the order approving the settlement. If the proposed settlement is not approved within thirty (30) calendar days of the filing of the order remanding the case, the appeal shall proceed in accordance with any further order of the appeals board.
- (5) Once a notice of appeal has been filed with the state supreme court, the appeals board no longer has jurisdiction to rule on any issue. The clerk of the appeals board may not accept for filing any motion or other paper sought to be filed by any party following the filing of a notice of appeal to the state supreme court, unless and until the case is remanded to the workers' compensation trial court.
- (6) When it appears to the appeals board that an appeal was frivolous or taken solely for delay, the appeals board may, either upon motion of a party or of its own motion, award expenses, including reasonable attorney's fees, incurred by the appellee as a result of the appeal.

Authority: T.C.A. § 4-3-1409; T.C.A. § 50-6-217; T.C.A. § 50-6-225; T.C.A. § 50-6-233; T.C.A. § 50-6-237.

#### Rule 0800-02-22-.05 Appeal of Workers' Compensation Cases Filed Against the State

The workers' compensation appeals board is without jurisdiction to consider an appeal of any decision of the claims commission either awarding or denying workers' compensation benefits to a state employee.

Authority: T.C.A. §§ 4-3-1409, 9-8-307, 9-8-402; T.C.A. § 50-6-217; T.C.A. § 50-6-233; T.C.A. § 50-6-237.  
Administrative History: Original rule filed April 1, 2014; effective June 30, 2014.

\* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

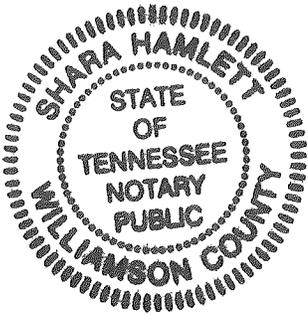
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 4/22/2015 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 4/22/15

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Division of Workers' Compensation



Subscribed and sworn to before me on: April 22, 2015

Notary Public Signature: Shara Hamlett

My commission expires on: January 24, 2016

All proposed 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.

Herbert H. Slatery III  
Herbert H. Slatery III  
Attorney General and Reporter  
6/11/2015 Date

**Department of State Use Only**

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Filed with the Department of State on: 6/22/15

Effective on: 9/20/15

Tre Hargett  
Tre Hargett  
Secretary of State

## Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

### PUBLIC COMMENTS AND RESPONSES

Comment: Three business days from the time that the appeal is filed is not enough time, in my opinion, to get a transcript and prepare an adequate brief regarding an interlocutory appeal. In fact, most of the time periods in here are too short, and, therefore, unrealistic.

Response: The Division agrees that three business days from the time the appeal is filed is not enough time to prepare a position statement in an interlocutory appeal. Rule 0800-02-22-.02(1) has been revised to provide that position statements must be filed within five business days of the expiration of the time to file a transcript or statement of the evidence. A party opposing the appeal shall file a response, if any, within five business days of the filing of the appellant's position statement.

Comment: I understood that the Division was going to tape-record the hearings (or at least provide the judges a tape recorder). I agree 3 days is quite short for an adequate statement, even for interlocutory issues. I assume the Division thinks this is a step up from the old RFA admin review, where there was no transcript and no separate appellant/appellee briefing deadlines. Any reason why these couldn't be extended to submit interlocutory briefs after the transcript is in?

Response: The Division agrees that three business days from the time the appeal is filed is not enough time to prepare a position statement in an interlocutory appeal. Rule 0800-02-22-.02(1) has been revised to provide that position statements must be filed within five business days of the expiration of the time to file a transcript or statement of the evidence. A party opposing the appeal shall file a response, if any, within five business days of the filing of the appellant's position statement.

Comment: It's interesting that the position statement has to be filed in 3 business days of the filing of the notice of appeal but the transcript doesn't have to be filed until within 10 calendar days of the filing of the notice of appeal. No attorney wants to submit a position statement without a reference to the transcript. To meet these deadlines an attorney would have to order a transcript in every case before the order is even entered just to make sure they're ready to appeal.

Response: The Division agrees that three business days from the time the appeal is filed is not enough time to prepare a position statement in an interlocutory appeal. Rule 0800-02-22-.02(1) has been revised to provide that position statements must be filed within five business days of the expiration of the time to file a transcript or statement of the evidence. A party opposing the appeal shall file a response, if any, within five business days of the filing of the appellant's position statement.

### **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule: The amended rules will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or for those in the construction industry at least one employee. There should be no additional costs associated with these rule changes.
2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record: There is no additional record keeping requirement or administrative cost associated with these rule changes.
3. A statement of the probable effect on impacted small businesses and consumers: These rules should not have any impact on consumers or small businesses.
4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of these rules.
5. Comparison of the proposed rule with any federal or state counterparts: None.
6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule: Exempting small businesses could frustrate the small business owners' access to the services provided by the Division's Appeals Board which would be counter-productive.

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These proposed rules will have little, if any, impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The new rules provide the proper procedures for appeals of determinations made by the Court of Workers' Compensation Claims to the Workers' Compensation Appeals Board. The deletion of prior Rules 0800-02-22-.01-.03 is a repeal.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 50-6-217 establishes the Workers' Compensation Appeals Board, and the above rules are established as the formal procedural rules of the Workers' Compensation Appeals Board.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All parties to a workers' compensation claim will be affected by the Rules of the Workers' Compensation Appeals Board. No entity has urged adoption or rejection of these rules.

Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None

- (D) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The overall effect of the new Appeals Board rules will have little fiscal impact. The effect of the changes from the prior deleted rules should also be negligible.

- (E) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Troy Haley, Administrative Attorney and Legislative Liaison

- (F) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Troy Haley, Administrative Attorney and Legislative Liaison

- (G) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Tennessee Division of Workers' Compensation  
220 French Landing Drive  
Floor 1-B  
(615) 532-0179  
[troy.haley@tn.gov](mailto:troy.haley@tn.gov)

(H) Any additional information relevant to the rule proposed for continuation that the committee requests.

None

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# Rulemaking Hearing Rule(s) Filing Form

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**Agency/Board/Commission:** Tennessee Department of Labor and Workforce Development  
**Division:** Workers' Compensation  
**Contact Person:** Troy Haley  
**Address:** 220 French Landing Drive, 1-B, Nashville, TN  
**Zip:** 37243  
**Phone:** 615-532-0179  
**Email:** [troy.haley@tn.gov](mailto:troy.haley@tn.gov)

**Revision Type (check all that apply):**

Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

**Repeal**

Chapter Number	Chapter Title
0800-02-22	Board of Workers' Compensation Appeals
Rule Number	Rule Title
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0800-02-22-.03	Appeal of Workers' Compensation Cases Filed Against the State

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0800-02-22-.05	Appeal of Workers' Compensation Cases Filed Against the State

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 0800-02-22  
Board of Workers' Compensation Appeals/Workers' Compensation Appeals Board

Chapter 0800-02-22 Board of Workers' Compensation Appeals is repealed by deleting Rules 0800-02-22-.01, 0800-02-22-.02, and 0800-02-22-.03 in their entirety and by replacing them with new rules that shall read as follows:

CHAPTER 0800-02-22  
BOARD OF WORKERS' COMPENSATION APPEALS

~~0800-02-22-.01 FILING THE REQUEST FOR APPEAL.~~

~~(1) Any party may appeal any order of a workers' compensation judge by filing a request for appeal, on a form approved by the Division, with the clerk. The request for appeal must be filed:~~

~~(a) Within seven (7) business days of the date the order was entered by the workers' compensation judge if the order appealed is interlocutory; or~~

~~(b) Within thirty (30) calendar days of the date the order was entered by the workers' compensation judge for appeal of a compensation order.~~

~~(2) A copy of the request for appeal must be served upon the opposing party.~~

~~(3) Upon receipt of a request for appeal of an interlocutory order, the clerk shall assemble the record from the judge and submit the appeal to the board of appeals for review. No transcript is required to be filed. Within seven (7) business days of the date the appeal is submitted to the board by the clerk, the board shall review the record and enter an opinion affirming or reversing the decision of the judge. The opinion of the appeals board shall not be subject to further appeal.~~

~~(4) For an appeal of a compensation order, within fifteen (15) calendar days after the request for appeal is filed, the party that filed the request for appeal shall file a copy of the transcript of the proceedings before the workers' compensation court or shall file notice that no transcript will be provided. A copy of this transcript or notice shall be served upon the opposing party. The party may file a statement of the evidence in lieu of a transcript. The following additional rules shall apply:~~

~~(a) Upon receipt of a request for appeal, the clerk shall forward a copy of the request for appeal and the transcript or statement of the evidence, if any, to the workers' compensation judge that issued the order.~~

~~(b) Within ten (10) business days after receiving a copy of the notice of appeal and the transcript or statement of the evidence, the judge shall review the information provided by the clerk and determine whether the transcript or statement of the evidence accurately reflects the proceedings at the hearing. Thereafter, the judge shall review the case record to ensure that it is complete, compile the contents of the record and forward the record to the clerk for submission to the board of appeals.~~

~~(c) If a transcript or statement of the evidence is not timely filed, the workers' compensation judge may certify the record of proceedings if the judge believes that the record provides an accurate reflection of the proceedings that occurred at trial. If the judge determines that the record cannot be certified, the workers' compensation judge may either deny the request for appeal or issue an order compelling the party who filed the appeal to provide a copy of the transcript or a statement of the evidence.~~

(5) Any request for appeal that is not received by the clerk within the time provided by paragraph (1) will be dismissed.

(6) A request for appeal that is not timely filed will not toll the statute of limitations for filing an appeal to the Supreme Court pursuant to T.C.A. § 50-6-225(a)(1).

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 80, 83, and 106.  
Administrative History: Original rule filed April 1, 2014; effective June 30, 2014.

~~Rule 0800-02-22-.02 DOCKETING APPEAL, FILING BRIEFS AND RENDERING DECISION.~~

~~(1) The board of workers' compensation appeals will docket the appeal upon receipt of the record from the clerk of the court of workers' compensation claims.~~

~~(2) After the record is received by the board, the appeal shall be docketed and assigned to an appeals board judge for review. A docketing notice shall be sent to all parties.~~

~~(3) For appeals of compensation orders, the parties shall have fifteen (15) calendar days after the docketing notice provided in paragraph (2) is issued to submit briefs to the board for consideration. Review on appeal of interlocutory orders shall be on the record and briefing shall not be required. However, any party opposing the appeal of an interlocutory order may submit a response, in accordance with rules provided by the board, for consideration.~~

~~(4) After the fifteen (15) calendar day period for the filing of briefs ends, or for appeals of interlocutory orders, after the appeal is filed, the board shall issue its decisions either certifying the order of the workers' compensation judge or remanding the case for further proceedings within:~~

~~(a) Seven (7) business days for an appeal of an interlocutory order awarding or denying temporary disability or medical benefits; or~~

~~(b) Forty-five (45) calendar days for an appeal of a compensation order issued pursuant to T.C.A. § 50-6-239(c)(2).~~

~~(5) In rendering its decision, the board shall base its decision on a review of the record and the briefs or responses of the parties, if any. No oral argument shall be allowed.~~

~~(6) Immediately upon issuing a decision on any appeal, the board shall forward a copy of the decision to the parties by regular or electronic mail.~~

~~(7) Interlocutory orders.~~

~~(a) If the board affirms an interlocutory order awarding temporary disability or medical benefits, the employer shall begin making payments of benefits within five (5) business days from the date the opinion affirming the order is issued by the appeals board. Failure to begin benefit payments within five (5) business days may result in the assessment of a civil penalty pursuant to T.C.A. § 50-6-118.~~

~~(b) Following the issuance of a decision either affirming or remanding an interlocutory order of temporary disability benefits, the claim shall continue in the manner provided by T.C.A. § 50-6-239 and by these rules.~~

~~(8) Compensation orders.~~

~~(a) If the board remands the case following an appeal of a compensation order, the clerk shall send a docketing notice to the parties, by regular or electronic mail, setting forth the procedure for preparing for and scheduling the hearing. The clerk shall also return the record to the previously assigned judge, unless otherwise directed by the Chief Judge.~~

~~(b) If the board certifies a compensation order as final, the time for filing an appeal to the supreme court pursuant to T.C.A. § 50-6-225 shall begin to run on the date the order is certified as final by the board. If no further appeal is filed, the compensation order shall become final and binding in thirty (30) calendar days and the benefits provided through the compensation order must be paid within five (5) business days after the order becomes final.~~

~~Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 80, 83, and 106.  
Administrative History: Original rule filed April 1, 2014; effective June 30, 2014.~~

~~Rule 0800-02-22-.03 APPEAL OF WORKERS' COMPENSATION CASES FILED AGAINST THE STATE.~~

~~The board of workers' compensation appeals is without jurisdiction to consider an appeal of any decision of the claims commission either awarding or denying workers' compensation benefits to a state employee.~~

~~Authority: T.C.A. §§ 4-3-1409, 9-8-307, and 9-8-402. Administrative History: Original rule filed April 1, 2014; effective June 30, 2014.~~

Chapter 0800-02-22  
Workers' Compensation Appeals Board

Rule 0800-02-22-.01 Filing of Notice of Appeal

- (1) Any party may appeal any order of a workers' compensation judge by filing a notice of appeal, on a form approved by the Division, with the clerk of the court of workers' compensation claims, in accordance with Rule 0800-02-21-.02(14). Pursuant to Tennessee Code Annotated section 50-6-217(a)(1), the notice of appeal must be filed:
  - (a) Within seven (7) business days of the date an interlocutory order was entered by the workers' compensation judge; or
  - (b) Within thirty (30) calendar days of the date a compensation order was entered by the workers' compensation judge.
- (2) The appealing party shall serve a copy of the Notice of Appeal upon the opposing party or parties by any means as set forth in Rule 0800-02-21-.09.
- (3) Any notice of appeal that is not received by the clerk within the time provided by paragraph (1) shall be dismissed.
- (4) A notice of appeal of a compensation order that is not timely filed will not toll the time limit for filing an appeal to the Supreme Court pursuant to Tennessee Code Annotated section 50-6-225(a)(1) and Rule 4(a) of the Tennessee Rules of Appellate Procedure.

Authority: T.C.A. § 4-3-1409; T.C.A. § 50-6-217; T.C.A. § 50-6-225; T.C.A. § 50-6-233; T.C.A. § 50-6-237.

Rule 0800-02-22-.02 Appeal of an Interlocutory Order

- (1) If the appellant elects to file a position statement in support of an interlocutory appeal, the appellant shall file such position statement with the clerk of the court of workers' compensation claims within five (5) business days of the expiration of the time to file a transcript or statement of the evidence, specifying the issues presented for review and including any argument in support thereof. A party opposing the appeal shall file a response, if any, with the clerk of the court of workers' compensation claims within five (5) business days of the filing of the appellant's position statement.
- (2) The parties, having the responsibility to ensure a complete record on appeal, may have a transcript prepared by a licensed court reporter and file it with the clerk of the court of workers'

compensation claims within ten (10) calendar days of the filing of the notice of appeal. Alternatively, the parties may file a statement of the evidence within ten (10) calendar days of the filing of the notice of appeal. The statement of the evidence must be approved by the judge before the record is submitted to the clerk of the appeals board. The clerk of the workers' compensation appeals board shall docket the appeal upon receipt of the record from the clerk of the court of workers' compensation claims and send a docketing notice to all parties.

- (3) Within seven (7) business days of the receipt of the record on appeal by the clerk of the workers' compensation appeals board, the appeals board shall review the record and enter an order affirming, reversing, or modifying and remanding the interlocutory order of the workers' compensation judge. The order of the workers' compensation appeals board shall not be subject to further appeal.
  - (a) If the appeals board affirms an interlocutory order awarding temporary disability or medical benefits, the employer shall begin making payments of benefits within five (5) business days from the date the order affirming the interlocutory order is issued by the appeals board. Failure to begin benefit payments within five (5) business days may result in the assessment of a civil penalty pursuant to Tennessee Code Annotated section 50-6-118.
  - (b) Following the issuance of a decision affirming, reversing, or modifying and remanding an interlocutory order of temporary disability benefits, the claim shall continue in the manner provided by Tennessee Code Annotated section 50-6-239 and by these rules.

Authority: T.C.A. § 4-3-1409; T.C.A. §50-6-118; T.C.A. § 50-6-217; T.C.A. § 50-6-225; T.C.A. § 50-6-233; T.C.A. § 50-6-237.

Rule 0800-02-22-.03 Appeal of a Compensation Order

- (1) Upon the filing of a notice of appeal of a compensation order, within fifteen (15) calendar days, the party that filed the notice of appeal shall file with the clerk of the court of workers' compensation claims a copy of the transcript of the proceedings before the workers' compensation court or shall file notice that no transcript will be provided. The appealing party shall serve a copy of this transcript or notice upon the opposing party or parties. The party may file a statement of the evidence in lieu of a transcript.
- (2) Upon receipt of the transcript of the proceedings, statement of the evidence, or notice that no transcript will be filed, the clerk of the court of workers' compensation claims shall forward a copy of the notice of appeal and the transcript or statement of the evidence, if any, or notice that no transcript will be filed, to the workers' compensation judge that issued the order.
- (3) Within ten (10) business days after receiving a copy of the notice of appeal and the transcript, or statement of the evidence, if any, or the notice that no transcript will be provided, the workers' compensation judge shall review the record in its entirety to ensure that it is complete and that it accurately reflects the proceedings at the hearing, and shall compile the contents of the record and forward the record to the clerk of the court of workers' compensation claims.
- (4) If a transcript or statement of the evidence is not timely filed, the workers' compensation judge may certify the record or proceedings if the judge believes that the record provides an accurate reflection of the proceedings that occurred at trial. If the judge determines that the record cannot be certified, the workers' compensation judge shall issue an order compelling the party who filed the notice of appeal to file a transcript, a statement of the evidence, or take such other action as is necessary for the trial judge to certify the record.
- (5) Upon receipt of the record, the clerk of the workers' compensation appeals board shall docket the appeal and shall send a docketing notice to all parties. The clerk of the appeals board shall forward the record to the appeals board for review.
- (6) The party who filed the notice of appeal shall have fifteen (15) calendar days after the issuance of the docketing notice provided in paragraph (5) to submit a brief to the appeals board for

consideration. Any opposing party shall have fifteen (15) calendar days after the filing of the appellant's brief to file a brief in response. No reply briefs shall be filed. Briefs shall comply with the Practice and Procedure Guidelines of the Workers' Compensation Appeals Board.

- (7) Within forty-five (45) calendar days after the period for the filing of briefs ends, the board shall issue its decision affirming, reversing or modifying the order of the workers' compensation judge and shall remand the case for further proceedings.
  - (a) If the appeals board reverses or modifies and remands the case following an appeal of a compensation order, the clerk of the court of workers' compensation claims shall send a docketing notice to the parties, by regular or electronic mail, setting forth the procedure for preparing for and scheduling any hearing, if necessary. The clerk shall also return the record to the previously assigned judge, unless otherwise directed by the Chief Judge.
  - (b) If the appeals board affirms and certifies a compensation order as final, the time for filing an appeal to the supreme court pursuant to Tennessee Code Annotated section 50-6-225 shall begin to run on the date the order is certified as final by the appeals board. If no further appeal is filed, the compensation order shall become final and binding in thirty (30) calendar days after the decision of the appeals board is filed and any benefits provided through the compensation order shall be paid within five (5) business days after the compensation order becomes final.
- (8) Immediately upon the issuance of a decision on any appeal, the clerk of the workers' compensation appeals board shall forward a copy of the decision to the parties by regular or electronic mail and to the clerk of the court of workers' compensation claims.

Authority: T.C.A. § 4-3-1409; T.C.A. § 50-6-217; T.C.A. § 50-6-225; T.C.A. § 50-6-233; T.C.A. § 50-6-237.

#### Rule 0800-02-22-.04 Oral Argument, Costs on Appeal, Settlement During Appeal

- (1) The appeals board shall base its decision on a review of the record and the briefs or responses of the parties, if any. Evidence not contained in the record submitted to the clerk of the workers' compensation appeals board shall not be considered on appeal. No oral argument shall be allowed unless otherwise directed by the workers' compensation appeals board either upon its own motion or upon motion of a party. Any motion for oral argument filed by a party must state with specificity the reason or reasons the decision-making process would be aided by oral argument. Oral argument may be conducted telephonically, by video conference, or in person, at the direction of the appeals board.
- (2) No request to rehear or reconsider the decision of the appeals board may be filed by any party.
- (3) Costs on appeal may be assessed as ordered by the appeals board.
- (4) If the parties agree to settle the claim following the filing of the notice of appeal, the parties shall file a joint motion requesting the appeal be held in abeyance and the case be remanded to the workers' compensation judge to consider approval of the settlement. If the settlement is approved within thirty (30) calendar days of the filing of the order remanding the case, the parties shall file a joint motion seeking to dismiss the appeal. The motion shall provide for the assessment of costs on appeal and shall be accompanied by a copy of the order approving the settlement. If the proposed settlement is not approved within thirty (30) calendar days of the filing of the order remanding the case, the appeal shall proceed in accordance with any further order of the appeals board.
- (5) Once a notice of appeal has been filed with the state supreme court, the appeals board no longer has jurisdiction to rule on any issue. The clerk of the appeals board may not accept for filing any motion or other paper sought to be filed by any party following the filing of a notice of appeal to the state supreme court, unless and until the case is remanded to the workers' compensation trial court.

- (6) When it appears to the appeals board that an appeal was frivolous or taken solely for delay, the appeals board may, either upon motion of a party or of its own motion, award expenses, including reasonable attorney's fees, incurred by the appellee as a result of the appeal.

Authority: T.C.A. § 4-3-1409; T.C.A. § 50-6-217; T.C.A. § 50-6-225; T.C.A. § 50-6-233; T.C.A. § 50-6-237.

Rule 0800-02-22-.05 Appeal of Workers' Compensation Cases Filed Against the State

The workers' compensation appeals board is without jurisdiction to consider an appeal of any decision of the claims commission either awarding or denying workers' compensation benefits to a state employee.

Authority: T.C.A. §§ 4-3-1409, 9-8-307, 9-8-402; T.C.A. § 50-6-217; T.C.A. § 50-6-233; T.C.A. § 50-6-237.

Administrative History: Original rule filed April 1, 2014; effective June 30, 2014.

\* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on \_\_\_\_\_ (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Division of Workers' Compensation

Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

My commission expires on: \_\_\_\_\_

All proposed 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.

\_\_\_\_\_  
Herbert H. Slatery III  
Attorney General and Reporter  
\_\_\_\_\_  
Date

**Department of State Use Only**

Filed with the Department of State on: \_\_\_\_\_

Effective on: \_\_\_\_\_

\_\_\_\_\_  
Tre Hargett  
Secretary of State

RECEIVED  
2015 JUN 22 AM 11:54  
SECRETARY OF STATE  
PUBLICATIONS

## Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

### PUBLIC COMMENTS AND RESPONSES

Comment: Three business days from the time that the appeal is filed is not enough time, in my opinion, to get a transcript and prepare an adequate brief regarding an interlocutory appeal. In fact, most of the time periods in here are too short, and, therefore, unrealistic.

Response: The Division agrees that three business days from the time the appeal is filed is not enough time to prepare a position statement in an interlocutory appeal. Rule 0800-02-22-.02(1) has been revised to provide that position statements must be filed within five business days of the expiration of the time to file a transcript or statement of the evidence. A party opposing the appeal shall file a response, if any, within five business days of the filing of the appellant's position statement.

Comment: I understood that the Division was going to tape-record the hearings (or at least provide the judges a tape recorder). I agree 3 days is quite short for an adequate statement, even for interlocutory issues. I assume the Division thinks this is a step up from the old RFA admin review, where there was no transcript and no separate appellant/appellee briefing deadlines. Any reason why these couldn't be extended to submit interlocutory briefs after the transcript is in?

Response: The Division agrees that three business days from the time the appeal is filed is not enough time to prepare a position statement in an interlocutory appeal. Rule 0800-02-22-.02(1) has been revised to provide that position statements must be filed within five business days of the expiration of the time to file a transcript or statement of the evidence. A party opposing the appeal shall file a response, if any, within five business days of the filing of the appellant's position statement.

Comment: It's interesting that the position statement has to be filed in 3 business days of the filing of the notice of appeal but the transcript doesn't have to be filed until within 10 calendar days of the filing of the notice of appeal. No attorney wants to submit a position statement without a reference to the transcript. To meet these deadlines an attorney would have to order a transcript in every case before the order is even entered just to make sure they're ready to appeal.

Response: The Division agrees that three business days from the time the appeal is filed is not enough time to prepare a position statement in an interlocutory appeal. Rule 0800-02-22-.02(1) has been revised to provide that position statements must be filed within five business days of the expiration of the time to file a transcript or statement of the evidence. A party opposing the appeal shall file a response, if any, within five business days of the filing of the appellant's position statement.

### **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule: The amended rules will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or for those in the construction industry at least one employee. There should be no additional costs associated with these rule changes.
2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record: There is no additional record keeping requirement or administrative cost associated with these rule changes.
3. A statement of the probable effect on impacted small businesses and consumers: These rules should not have any impact on consumers or small businesses.
4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of these rules.
5. Comparison of the proposed rule with any federal or state counterparts: None.
6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule: Exempting small businesses could frustrate the small business owners' access to the services provided by the Division's Appeals Board which would be counter-productive.

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These proposed rules will have little, if any, impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The new rules provide the proper procedures for appeals of determinations made by the Court of Workers' Compensation Claims to the Workers' Compensation Appeals Board. The deletion of prior Rules 0800-02-22-.01-.03 is a repeal.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 50-6-217 establishes the Workers' Compensation Appeals Board, and the above rules are established as the formal procedural rules of the Workers' Compensation Appeals Board.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All parties to a workers' compensation claim will be affected by the Rules of the Workers' Compensation Appeals Board. No entity has urged adoption or rejection of these rules.

Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None

- (D)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The overall effect of the new Appeals Board rules will have little fiscal impact. The effect of the changes from the prior deleted rules should also be negligible.

- (E)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Troy Haley, Administrative Attorney and Legislative Liaison

- (F)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Troy Haley, Administrative Attorney and Legislative Liaison

- (G)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Tennessee Division of Workers' Compensation.  
220 French Landing Drive  
Floor 1-B  
(615) 532-0179  
troy.haley@tn.gov

**(H)** Any additional information relevant to the rule proposed for continuation that the committee requests.

None



**STATE OF TENNESSEE**  
**BUREAU OF WORKERS' COMPENSATION**  
**DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT**  
220 FRENCH LANDING DRIVE  
NASHVILLE, TENNESSEE 37243  
(615) 741-2395  
1-800-332-2667

September 24, 2015

**TO:** Cody York, Director of Publications  
Office of the Tennessee Secretary of State

**FROM:** Troy Haley, Administrative Attorney and Legislative Liaison  
Tennessee Bureau of Workers' Compensation, Department of Labor and  
Workforce Development

**RE:** Correction of typographical error in Rule Filing

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Hello Cody:

The Workers' Compensation Appeals Board rules filed by the Bureau of Workers' Compensation on June 22, 2015, which have a "Rule ID" of 5967, and which went into effect on September 20, 2015, contain a numbering error that needs to be corrected before the rules are published. Rule 0800-02-22-.01(1), stated in part: "Pursuant to Tennessee Code Annotated section 50-6-217(a)(1), the notice of appeal must be filed . . ." Because of a numbering change in the Code (the online version in LexisNexis has already been updated to reflect the 2015 legislative changes), TCA § 50-6-217(a)(1) is now § 50-6-217(a)(2).

The language in Rule 0800-02-22-.01(1) that references TCA § 50-6-217(a)(1) noted above should be deleted and a reference to TCA § 50-6-217(a)(2) should be substituted in its place. Please confirm that this correction will be made through the publication process.

I apologize for any inconvenience this has caused and thank you for the assistance in correcting it. I included a copy of the filed rules.

If you would like to discuss, please call me at (615) 532-0179.

Very truly yours,

A handwritten signature in blue ink that reads "Troy Haley". The signature is fluid and cursive, with the first name "Troy" and last name "Haley" clearly distinguishable.

Troy Haley  
Administrative Attorney and  
Legislative Liaison  
Bureau of Workers' Compensation