

TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 143: DISPUTE RESOLUTION REVIEW BY THE APPEALS PANEL

Title 28 Texas Administrative Code (TAC) §§143.1 - 143.5

1. INTRODUCTION. The commissioner of workers' compensation (commissioner), Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC §§143.1 - 143.5. The changes replace "hearing officer" with "administrative law judge." The changes also include one style and usage change by moving "Government Code" before "§662.003" in §143.3. The amendments are adopted without changes to the proposed text as published in the November 2, 2018, issue of the *Texas Register* (43 TexReg 7325). The public comment period ended on December 3, 2018. No public hearing was requested.

2. BACKGROUND AND PURPOSE. House Bill (HB) 2111, enacted by the 85th Texas Legislature, Regular Session, replaced all references to "hearing officer" in the Texas Workers' Compensation Act with "administrative law judge." These amendments make conforming changes to DWC's rules.

3. SUMMARY OF COMMENTS AND AGENCY RESPONSE

General: Commenter expressed support for the proposal.

DWC Response: DWC appreciates the supportive comment.

4. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL

For: Office of Injured Employee Counsel

For, with changes: None

Against: None

Neither for nor against: None

5. STATUTORY AUTHORITY. The amendments are adopted under the authority of Labor Code §§402.00111, 402.00116, 402.00128, and 402.061.

Labor Code §402.00111 states that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under the Texas Workers' Compensation Act.

Labor Code §402.00116 states that the commissioner of workers' compensation is the division's chief executive and administrative officer and shall administer and enforce the Texas Workers' Compensation Act, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the division or the commissioner of workers' compensation.

Labor Code §402.00128 states that the commissioner of workers' compensation shall conduct the daily operations of the division and otherwise implement division policy and, among other functions, may delegate; assess and enforce penalties; and enter appropriate orders.

Labor Code §402.061 states that the commissioner shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

The adopted amendments affect the Texas Workers' Compensation Act, Texas Labor Code, Title 5, Subtitle A.

6. TEXT.

§143.1. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Appellant--A party to a benefit contested case hearing who is dissatisfied with the decision of the administrative law judge, and files a request for review of that decision by the appeals panel.

(2) Request--The appellant's written appeal for review of the decision of an administrative law judge.

(3) Respondent--The other party to a benefit contested case hearing who must file a response to the appellant's request.

(4) Response--The respondent's written answer to the appellant's request.

§143.2. Description of the Appeal Proceeding

(a) To review the decision of the administrative law judge, the appeals panel considers the appellant's request, the respondent's response, and the record of the benefit contested case hearing. The parties do not appear in person before the panel.

(b) The appeals panel may:

(1) reverse the decision of the administrative law judge and render a new decision;

(2) reverse the decision of the administrative law judge and remand to the administrative law judge for a second benefit contested case hearing, which shall be set

as provided by §142.18 of this title (relating to Special Provisions for Cases on Remand from the Appeals Panel). The appeals panel may not remand a case more than once; or

(3) affirm the decision of an administrative law judge in a case as described by Labor Code §410.204(a-1).

§143.3. Requesting the Appeals Panel to Review the Decision of the Administrative Law Judge

(a) A party to a benefit contested case hearing who is dissatisfied with the decision of the administrative law judge may request the appeals panel to review that decision. The request shall:

(1) be in writing;

(2) clearly and concisely rebut each issue in the administrative law judge's decision that the appellant wants reviewed, and state the relief the appellant wants granted;

(3) be filed with the Chief Clerk of Proceedings in the division's central office in Austin not later than the 15th day after receipt of the administrative law judge's decision. The administrative law judge's decision is deemed to have been received by the parties in accordance with §102.5 (relating to General Rules for Written Communications To and From the Commission) and §102.3 (relating to Computation of Time) of this title. Requests that are timely submitted to a division location other than the Chief Clerk of Proceedings, such as a local field office of the division, will be considered timely filed and forwarded to the division's appeals panel for consideration,

but this may result in delay in the processing of the request. Untimely requests, regardless of whether they are filed with the Chief Clerk of Proceedings in the division's central office or in a different division field office, do not invoke the jurisdiction of the appeals panel and will not be reviewed by the appeals panel;

(4) be served on the other party or parties on the same day filed with the division; and

(5) contain a statement certifying that a copy has been served on the other party or parties in person, mailed by certified mail, return receipt requested, or transmitted by verifiable means. A certificate in substantially the following form shall be used: "I hereby certify that I have on this ____ day of _____, _____, served a copy of the attached request for appeal on _____

(state the name of the other party or parties on whom a copy was served) by

_____ (state the manner of service)."

_____ Signature

(b) If it is not clear from the request for review that the party has properly served a copy of the request on the other party or parties, the division will provide a copy of the request expeditiously.

(c) A party may make a conditional request for review by the appeals panel even if the overall contested case hearing decision is favorable. A timely request that indicates that the filing party seeks consideration only if the opposing party files a request for review will not be treated as a request for review unless an opposing party

timely files a request. If an opposing party does file a timely request, the conditional request will be treated as a cross-appeal.

(d) A request for review by the appeals panel shall be filed not later than the 15th day after the appealing party is deemed to have received the administrative law judge's decision. Saturdays and Sundays and holidays listed in Government Code §662.003 are not included in the computation of this 15-day period. A request made under this section shall be presumed to be timely filed or timely served with the division if it is:

(1) mailed on or before the 15th day after the date of deemed receipt of the administrative law judge's decision, as provided in subsection (a) of this section; and

(2) received by the division not later than the 20th day after the date of deemed receipt of the administrative law judge's decision.

§143.4. Responding to a Request for Review by the Appeals Panel

(a) The other party shall respond to the appellant's request. The response shall:

(1) be in writing;

(2) clearly and concisely support each issue in the administrative law judge's decision that the appellant has rebutted in the request, and state why the appellant's relief should not be granted;

(3) be filed with the Chief Clerk of Proceedings in the division's central office in Austin not later than the 15th day after receipt of the appellant's appeal. The appellant's appeal is deemed received in accordance with §102.5 (relating to General

Rules for Written Communications To and From the Commission, §102.4 (relating to General Rules for Non-Commission Communications) and §102.3 (relating to Computation of Time) of this title. Responses that are timely submitted to a division location other than the Chief Clerk of Proceedings, such as a local field office of the division, will be considered filed timely and forwarded to the division's appeals panel for consideration, but this may result in delay in the processing of the response. Untimely responses, regardless of whether they are filed with the Chief Clerk of Proceedings or in a different division office, will not be reviewed by the appeals panel;

(4) be served on the other party or parties on the same day filed with the division; and

(5) contain a statement certifying that a copy has been served on the other party or parties in person, mailed by certified mail, return receipt requested, or transmitted by verifiable means. A certificate in substantially the following form shall be used: "I hereby certify that I have on this ____ day of _____, _____, served a copy of the attached response to a request for appeal on _____ (state the name of the other party or parties on whom a copy was served) by _____ (state the manner of service)." _____ Signature

(b) If it is not clear from the response that the party has properly served a copy of the response on the other party or parties, the division shall provide a copy of the response expeditiously.

(c) A response to the appellant's request with the division shall be filed not later than the 15th day after the responding party is deemed to have received the appellant's request. Saturdays and Sundays and holidays listed in §662.003, Government Code, are not included in the computation of this 15-day period. A response made under this section shall be presumed to be timely filed with the division if it is:

(1) mailed on or before the 15th day after the date of deemed receipt of the appellant's request, as provided in subsection (a) of this section; and

(2) received by the division not later than the 20th day after the date of deemed receipt of the appellant's request.

§143.5. Decision of the Appeals Panel

(a) Not later than the 45th day after the date the response was filed with the division, the appeals panel will issue its written decision, concluding with a separate paragraph stating words to the effect: "The true corporate name of the insurance carrier is (NAME IN BOLD PRINT) and the name and address of its registered agent for service of process is (NAME AND ADDRESS IN BOLD PRINT)", and file a copy with the division.

(b) If the appeals panel does not issue a written decision by the 45th day after the date the response was filed with the division, the administrative law judge's decision becomes final, constitutes the decision of the appeals panel, and, for the purpose of establishing the time for seeking judicial review, is deemed filed with the division on that day.

(c) Not later than the seventh day after the appeals panel files its decision with the division, or a decision is deemed filed, as provided in subsection (b) of this section, the division shall send to each party a copy of the decision, or a notice that the administrative law judge's decision has become final and constitutes the decision of the appeals panel.

(d) A decision of the appeals panel that is not appealed for judicial review, as provided by the Texas Labor Code §410.252, et seq., becomes final on the 46th day after the division mailed the party the decision of the appeals panel. For purposes of this section the mailing date is considered to be the fifth day after the date the decision of the appeals panel was filed by the division.

(e) A decision of the appeals panel that is appealed for judicial review is binding on the parties for the duration of the judicial review.

7. CERTIFICATION. The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Issued at Austin, Texas, on December 17, 2018.

X

Nicholas Canaday III
General Counsel
Texas Department of Insurance,
Division of Workers' Compensation

The commissioner adopts amendments to §§143.1 – 143.5.

Cassie Brown
Commissioner of Workers' Compensation

COMMISSIONER'S ORDER NO. _____

ATTEST:

X

Nicholas Canaday III
General Counsel
Texas Department of Insurance, Division of Workers' Compensation

COMMISSIONER'S ORDER NO. _____