Rule R602-1. General Provisions.

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R602-1-1. Time.

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing will be allowed.

R602-1-2. Witness Fees.

Each witness who shall appear before the Commission by its order shall receive from the Commission for his/her attendance fees and mileage as provided for witnesses by the Utah Rules of Civil Procedure. Otherwise, each party is required to subpoena witnesses at their own expense.

R602-1-3. Representatives at Adjudicative Proceedings.

1. Representatives who are not duly admitted and licensed to practice law in Utah shall not be allowed to appear on behalf of a party before the Adjudication Division.

2. Individuals who are parties to an adjudicative proceeding before the Adjudication Division may appear pro se.

3. Corporations who are parties to an adjudicative proceeding before the Adjudication Division shall be represented by legal counsel who are duly admitted to practice law in Utah.

R602-1-4. Filing of Documents.

1. All documents filed with the administrative law judge shall be filed with all other parties to the adjudicative proceeding and shall provide verification of mailing to, or service on, all parties to whom copies of the documents are mailed or personally delivered.

2. Parties shall not file courtesy copies with the Division.

R602-1-5. Official Record.

As contemplated by Section 34A-1-302 (3) the only official record of any formal or informal hearing conducted by the Division is the audio recording kept by the administrative law judge during the hearing. Any recording or record kept of a formal or informal hearing other than that kept by the administrative law judge shall not be used for any purpose requiring an official record of the proceedings as contemplated by Section 34A-1-302 (3).

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R602-2-1. Pleadings and Discovery.

A. Definitions.

1. "Commission" means the Labor Commission.

2. "Division" means the Division of Adjudication within the Labor Commission.

3. "Application for Hearing" means Adjudication Form 001 Application for Hearing Industrial Accident Claim, Adjudication Form 026 Application for Hearing Occupational Disease Claim, Adjudication Form 024 Application for Hearing Medical provider, Adjudication Form 025 Application for Dependent's Benefits and/or Burial Benefits Industrial Accident, Adjudication Form 027 Application for Dependent's Benefits and/or Burial Benefits Occupational Disease, or other ~~the~~ request for agency action complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102 et seq. filed by an employer or insurance carrier regarding a workers' compensation claim.

4. "Supporting medical documentation" means ~~a~~ Adjudication Form 113 Summary of Medical Record or other medical report or treatment note completed by a physician that indicates the presence or absence of a medical causal connection between benefits sought and the alleged industrial injury or occupational disease.

5. "Authorization to Release Medical Records" is ~~a~~ Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information ~~form~~ authorizing the injured workers' medical providers to provide medical records and other medical information to the Commission or a party.

6. "Supporting documents" means supporting medical documentation, Adjudication Form 307 Medical Treatment Provider List ~~list of medical providers~~, ~~Authorization to Release Medical Records~~ Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information and, when applicable, ~~an~~ Adjudication Form 152 Appointment of Counsel ~~Form~~.

7. "Petitioner" means the person or entity who has filed an Application for Hearing.

8. "Respondent" means the person or entity against whom the Application for Hearing was filed.

9. "Discovery motion" includes a motion to compel or a motion for protective order.

B. Application for Hearing.

1. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests with the injured worker, authorized representative of a deceased worker's estate, dependent of a deceased worker or medical provider, to initiate agency action by filing an appropriate Application for Hearing with the Division. Applications for hearing shall include an original~~, notarized~~ Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information ~~Authorization to Release Medical Records~~.

2. An employer, insurance carrier, or any other party with standing under the Workers' Compensation Act may obtain a hearing before the Adjudication Division by filing a request for agency action with the Division complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102 et seq..

3. All Applications for Hearing shall include ~~any available~~ supporting medical documentation of the claim where there is a dispute over medical issues. Applications for Hearing without supporting documentation and a properly completed ~~Authorization to Release Medical Records~~ Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information may not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided. In addition to respondent's answer, a respondent may file a motion to dismiss the Application for Hearing where there is no supporting medical documentation filed to demonstrate medical causation when such is at issue between the parties.

4. When an Application for Hearing with appropriate supporting documentation is filed with the Division, the Division shall forthwith mail to the respondents a copy of the Application for Hearing, supporting documents and Notice of Formal Adjudication and Order for Answer.

5. In cases where the injured worker is represented by an attorney, a completed and signed Adjudication Form 152 Appointment of Counsel form shall be filed with the Application for Hearing or upon retention of the attorney.

C. Answer.

1. The respondent(s) shall have 30 days from the date of mailing of the Order for Answer, to file a written answer to the Application for Hearing.

2. The answer shall admit or deny liability for the claim and shall state the reasons liability is denied. The answer shall state all affirmative defenses with sufficient accuracy and detail that the petitioner and the Division may be fully informed of the nature and substance of the defenses asserted.

3. All answers shall include a summary of benefits which have been paid to date on the claim, designating such payments by category, i.e. medical expenses, temporary total disability, permanent partial disability, etc.

4. When liability is denied based upon medical issues, copies of ~~all available~~ medical reports sufficient to support the denial of liability shall be filed with the answer.

5. If the answer filed by the respondents fails to sufficiently explain the basis of the denial, fails to include ~~available~~ medical reports or records to support the denial, or contains affirmative defenses without sufficient factual detail to support the affirmative defense, the Division may strike the answer filed and order the respondent to file within 20 days, a new answer which conforms with the requirements of this rule.

6. All answers must state whether the respondent is willing to mediate the claim.

7. Petitioners are allowed to timely amend the Application for Hearing, and respondents are allowed to timely amend the answer, as newly discovered information becomes available that would warrant the amendment. The parties shall not amend their pleadings later than 45 days prior to the scheduled hearing without leave of the administrative law judge.

8. Responses and answers to amended pleadings shall be filed within ten days of service of the amended pleading without further order of the Labor Commission.

D. Default.

1. If a respondent fails to file an answer as provided in Subsection C above, the Division may enter a default against the respondent.

2. If default is entered against a respondent, the Division may conduct any further proceedings necessary to take evidence and determine the issues raised by the Application for Hearing without the participation of the party in default pursuant to Section 63-4-209, Utah Code.

3. A default of a respondent shall not be construed to deprive the Employer's Reinsurance Fund or Uninsured Employers' Fund of any appropriate defenses.

4. The defaulted party may file a motion to set aside the default under the procedures set forth in Section 63G-4-209, Utah Code. The Adjudication Division shall set aside defaults upon written and signed stipulation of all parties to the action.

E. Waiver of Hearing.

1. The parties may, with the approval of the administrative law judge, waive their right to a hearing and enter into a stipulated set of facts, which may be submitted to the administrative law judge. The administrative law judge may use the stipulated facts, medical records and evidence in the record to make a final determination of liability or refer the matter to a Medical Panel for consideration of the medical issues pursuant to R602-2-2.

2. Stipulated facts shall include sufficient facts to address all the issues raised in the Application for Hearing and answer.

3. In cases where Medical Panel review is required, the administrative law judge may forward the evidence in the record, including but not limited to, medical records, fact stipulations, radiographs and deposition transcripts, to a medical panel for assistance in resolving the medical issues.

F. Discovery.

1. Upon filing the answer, the respondent and the petitioner may commence discovery. Discovery allowed under this rule may include interrogatories, requests

for production of documents, depositions, and medical examinations. Discovery shall not include requests for admissions. Appropriate discovery under this rule shall focus on matters relevant to the claims and defenses at issue in the case. All discovery requests are deemed continuing and shall be promptly supplemented by the responding party as information comes available.

2. Without leave of the administrative law judge, or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 25 in number, including all discrete subparts, to be answered by the party served. The frequency or extent of use of interrogatories, requests for production of documents, medical examinations and/or depositions shall be limited by the administrative law judge if it is determined that:

a. The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive;

b. The party seeking discovery has had ample opportunity by discovery in the action to obtain the discovery sought; or

c. The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the adjudication.

3. Upon reasonable notice, the respondent may require the petitioner to submit to a medical examination by a physician of the respondent's choice.

4. All parties may conduct depositions pursuant to the Utah Rules of Civil Procedure and Section 34A-1-308, Utah Code.

5. Requests for production of documents are allowed, but limited to matters relevant to the claims and defenses at issue in the case, and shall not include requests for documents provided with the petitioner's Application for Hearing, nor the respondents' answer.

6. Parties shall diligently pursue discovery so as not to delay the adjudication of the claim. If a hearing has been scheduled, discovery motions shall be filed no later than 45 days prior to the hearing unless leave of the administrative law judge is obtained.

7. Discovery motions shall contain copies of all relevant documents pertaining to the discovery at issue, such as mailing certificates and follow up requests for discovery. The responding party shall have 10 days from the date the discovery motion is mailed to file a response to the discovery motion.

8. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

9. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

G. Subpoenas.

1. Commission subpoena forms shall be used in all discovery proceedings to compel the attendance of witnesses. All subpoenas shall be signed by the administrative law judge assigned to the case, or the duty judge where the assigned judge is not available. Subpoenas to compel the attendance of witnesses shall be served at least 14 days prior to the hearing consistent with Utah Rule of Civil Procedure 45. Witness fees and mileage shall be paid by the party which subpoenas the witness.

2. A subpoena to produce records shall be served on the holder of the record at least 14 days prior to the date specified in the subpoena as provided in Utah Rule of Civil Procedure 45. All fees associated with the production of documents shall be paid by the party which subpoenas the record.

H. Medical Records Exhibit.

1. The parties are expected to exchange medical records during the discovery period.

2. Petitioner shall submit all relevant medical records contained in his/her possession to the respondent for the preparation of a joint medical records exhibit at least twenty (20) working days prior to the scheduled hearing.

3. The respondent shall prepare a joint medical record exhibit containing all relevant medical records. The medical record exhibit shall include all relevant treatment records that tend to prove or disprove a fact in issue. Hospital nurses' notes, duplicate materials, and other non-relevant materials need not be included in the medical record exhibit.

4. The medical records shall be indexed, paginated, arranged by medical care provider in chronological order and bound.

5. The medical record exhibit prepared by the respondent shall be delivered to the Division and the petitioner or petitioner's counsel at least ten (10) working days prior to the hearing. Late-filed medical records may or may not be admitted at the discretion of the administrative law judge by stipulation or for good cause shown.

6. The administrative law judge may require the respondent to submit an additional copy of the joint medical record exhibit in cases referred to a medical panel.

7. The petitioner is responsible to obtain radiographs and diagnostic films for review by the medical panel. The administrative law judge shall issue subpoenas where necessary to obtain radiology films.

I. Hearing.

1. Notices of hearing shall be mailed to the addresses of record of the parties. The parties shall provide current addresses to the Division for receipt of notices or risk the entry of default and loss of the opportunity to participate at the hearing.

2. Judgment may be entered without a hearing after default is entered or upon stipulation and waiver of a hearing by the parties.

3. No later than 45 days prior to the scheduled hearing, all parties shall file a signed pretrial disclosure form that identifies: (1) fact witnesses the parties actually intend to call at the hearing; (2) expert witnesses the parties actually intend to call at the hearing; (3) language translator the parties intend to use at the hearing; (4) exhibits, including reports, the parties intend to offer in evidence at the hearing; (5) the specific benefits or relief claimed by the petitioner; (6) the specific defenses that the respondent actually intends to litigate; (7) whether, or not, a party anticipates that the case will take more than four hours of hearing time; (8) the job categories or titles the respondents claim the petitioner is capable of performing if the claim is for permanent total disability, and; (9) any other issues that the parties intend to ask the administrative law judge to adjudicate. The administrative law judge may exclude witnesses, exhibits, evidence, claims, or defenses as appropriate of any party who fails to timely file a signed pre-trial disclosure form as set forth above. The parties shall supplement the pre-trial disclosure form with information that newly becomes available after filing the original form. The pre-trial disclosure form does not replace other discovery allowed under these rules.

4. If the petitioner requires the services of language translation during the hearing, the petitioner has the obligation of providing a person who can translate between the petitioner's native language and English during the hearing. If the respondents are dissatisfied with the proposed translator identified by the petitioner, the respondents may provide a qualified translator for the hearing at the respondent's expense.

5. The petitioner shall appear at the hearing prepared to outline the benefits sought, such as the periods for which compensation and medical benefits are sought, the amounts of unpaid medical bills, and a permanent partial disability rating, if applicable. If mileage reimbursement for travel to receive medical care is sought, the petitioner shall bring documentation of mileage, including the dates, the medical provider seen and the total mileage.

6. The respondent shall appear at the hearing prepared to address the merits of the petitioner's claim and provide evidence to support any defenses timely raised.

7. Parties are expected to be prepared to present their evidence on the date the hearing is scheduled. Requests for continuances may be granted or denied at the discretion of the administrative law judge for good cause shown. Lack of diligence in preparing for the hearing shall not constitute good cause for a continuance.

8. Subject to the continuing jurisdiction of the Labor Commission, the evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted without leave of the administrative law judge.

J. Motions-Time to Respond.

Responses to all motions other than discovery motions shall be filed within ten (10) days from the date the motion was filed with the Division. Reply memoranda shall be filed within seven (7) days from the date a response was filed with the Division.

K. Notices.

1. Orders and notices mailed by the Division to the last address of record provided by a party are deemed served on that party.

2. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

L. Form of Decisions.

Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63G-4-203 or 63G-4-208, Utah Code.

M. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an administrative law judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63G-4-301 and Section 34A-1-303, Utah Code. Unless a request for review is properly filed, the administrative law judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. If such a response is filed, the party filing the original request for review may reply within 10 calendar days of the date the response was filed. Thereafter the administrative law judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior Order by a Supplemental Order; or

c. Refer the entire case for review under Section 34A-2-801, Utah Code.

2. If the administrative law judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

N. Procedural Rules.

In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of Section 34A-2-802, Utah Code or as may be otherwise modified by these rules.

O. Requests for Reconsideration and Petitions for Judicial Review.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63G-4-302, Utah Code. Any petition for judicial review of final agency action shall be governed by the provisions of Section 63G-4-401, Utah Code.

R602-2-2. Guidelines for Utilization of Medical Panel.

Pursuant to Section 34A-2-601, the Commission adopts the following guidelines in determining the necessity of submitting a case to a medical panel:

A. A panel will be utilized by the administrative law judge where one or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are:

1. Conflicting expert medical opinions related to causation of the injury or disease;

2. Conflicting expert medical opinion ~~reports~~ of permanent physical impairment which vary more than 5% of the whole person,

3. Conflicting expert medical opinions as to the temporary total cutoff date which vary more than 90 days;

4. Conflicting expert medical opinions related to a claim of permanent total disability, and/or

5. Medical expenses in controversy amounting to more than $10,000.

B. A hearing on objections to the panel report may be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the administrative law judge may, in lieu of a hearing, re-submit the new evidence to the panel for consideration and clarification.

C. ~~The administrative law judge may authorize an injured worker to be examined by another physician for the purpose of obtaining a further medical examination or evaluation pertaining to the medical issues involved, and to obtain a report addressing these medical issues in all cases where:~~

~~1. The treating physician has failed or refused to give an impairment rating, and/or~~

~~2. A substantial injustice may occur without such further evaluation.~~

~~D.~~ Any expenses of ~~the study and report of~~ a medical panel ~~or medical consultant and of their appearance at a hearing, as well as any expenses for further medical examination or evaluation,~~ as directed by the administrative law judge~~,~~ shall be paid from the Uninsured Employers' Fund~~,~~ as directed by Section 34A-2-601.

R602-2-3. Compensation for Medical Panel Services.

Compensation for medical panel services, including records review, examination, report preparation and testimony, shall be $112.50 per half hour for medical panel members and $125 per half hour for the medical panel chair.

R602-2-4. Attorney Fees.

A. Pursuant to Section 34A-1-309, the Commission adopts the following rule to regulate and fix reasonable fees for attorneys representing applicants in workers' compensation or occupational illness claims.

1. This rule applies to all fees awarded after July 1, 2007.

2. Fees awarded prior to the effective date of this rule are determined according to the prior version of this rule in effect on the date of the award.

B. Upon written agreement, when an attorney's services are limited to consultation, document preparation, document review, or review of settlement proposals, the attorney may charge the applicant an hourly fee of not more than $125 for time actually spent in providing such services, up to a maximum of four hours.

1. Commission approval is not required for attorneys fees charged under this subsection B. It is the applicant's responsibility to pay attorneys fees permitted by this subsection B.

2. In all other cases involving payment of applicants' attorneys fees which are not covered by this subsection B., the entire amount of such attorneys fees are subject to subsection C. or D. of this rule.

C. Except for legal services compensated under subsection B. of this rule, all legal services provided to applicants shall be compensated on a contingent fee basis.

1. For purposes of this subsection C., the following definitions and limitations apply:

a. The term "benefits" includes only death or disability compensation and interest accrued thereon.

b. Benefits are "generated" when paid as a result of legal services rendered after ~~an~~ Adjudication Form 152 Appointment of Counsel form is signed by the applicant. A copy of this form must be filed with the Commission by the applicant's attorney.

c. In no case shall an attorney collect fees calculated on more than the first 312 weeks of any and all combinations of workers' compensation benefits.

2. Fees and costs authorized by this subsection shall be deducted from the applicant's benefits and paid directly to the attorney on order of the Commission. A retainer in advance of a Commission approved fee is not allowed.

3. Attorney fees for benefits generated by the attorney's services shall be computed as follows:

a. For all legal services rendered through final Commission action, the fee shall be 25% of weekly benefits generated for the first $25,000, plus 20% of the weekly benefits generated in excess of $25,000 but not exceeding $50,000, plus 10% of the weekly benefits generated in excess of $50,000, to a maximum of $15,250.

b. For legal services rendered in prosecuting or defending an appeal before the Utah Court of Appeals, an attorney's fee shall be awarded amounting to 30% of the benefits in dispute before the Court of Appeals. This amount shall be added to any attorney's fee awarded under subsection C.3.a. for benefits not in dispute before the Court of Appeals. The total amount of fees awarded under subsection C.3.a. and this subsection C.3.b. shall not exceed $22,000;

c. For legal services rendered in prosecuting or defending an appeal before the Utah Supreme Court, an attorney's fee shall be awarded amounting to 35% of the benefits in dispute before the Supreme Court. This amount shall be added to any attorney's fee awarded under subsection C.3.a. and subsection C.3.b. for benefits not in dispute before the Supreme Court. The total amount of fees awarded under subsection C.3.a, subsection C.3.b. and this subsection C.3.c shall not exceed $27,000.

D. The following expenses, fees and costs shall be presumed to be reasonable and necessary and therefore reimbursable in a workers compensation claim:

1. Medical records and opinion costs;

2. Deposition transcription costs;

3. Vocational and Medical Expert Witness fees;

4. Hearing transcription costs;

5. Appellate filing fees; and

6. Appellate briefing expenses.

F. Other reasonable expenses, fees and costs may be awarded as reimbursable as the Commission may in its discretion decide~~s~~ in a particular workers compensation claim.

E. In "medical only" cases in which awards of attorneys' fees are authorized by Subsection 34A-1-309(4), the amount of such fees and costs shall be computed according to the provisions of subsection C and D.

Rule R602-3. Procedure and Standards for Approval of Assignment of Benefits.

As in effect on March 1, 2008

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R602-3-1. Policy, Scope and Authority.

A. Policy. Utah's workers' compensation system provides disability compensation to injured workers as a partial replacement for lost wages. These periodic payments allow injured workers to provide for the ongoing necessities of life--food, shelter and clothing--not only for themselves, but for their dependents. These periodic payments also prevent injured workers from becoming charges on public welfare or private charity.

The 2007 Utah Legislature reaffirmed and strengthened the foregoing policy of the workers' compensation system by enacting Senate Bill 109, "Transfers of Structured Settlements." Senate Bill 109 amended Section 34A-2-422 of the Utah Workers Compensation Act to specifically prohibit any transfer of workers' compensation payment rights unless the proposed transfer is first submitted to the Utah Labor Commission and approved by the Commission.

B. Scope. This rule establishes the procedural and substantive requirements for Commission approval of any request for transfer of workers' compensation payment rights. The Commission will not approve any transfer of workers' compensation payment rights in the absence of strict compliance with all procedural and substantive requirements of the Utah Workers' Compensation Act and this rule.

C. Statutory authority. The Commission enacts this rule pursuant to Subsection 34A-1-104(1) and Section 34A-1-304 of the Utah Labor Commission Act, Section 34A-2-422 of the Utah Workers' Compensation Act, and Subsection 63-46a-3(2) of the Utah Administrative Rulemaking Act.

R602-3-2. Benefits Subject to Assignment.

A. Commission approval a precondition to any action to transfer benefits. Subsection 34A-2-422(3) prohibits any transfer, or action to transfer, workers' compensation payment rights without prior Commission approval. The

Commission will not approve any proposed transfer that includes an advance of funds or property, or other similar action, without prior Commission review.

B. Transfer limited to benefits that are fixed and certain. Pursuant to Subsection 34A-2-422(3)(c), Commission approval of a transfer of workers' compensation payment rights is a "full and final resolution" of such payment rights. The Commission will, therefore, approve transfer of only those payment rights that are fixed and certain as a matter of law. The Commission will not approve the transfer of payment rights that are subject to modification under any provision of the Utah Workers' Compensation Act or other applicable law.

C. New petition required for additional transfers. A petition may not request Commission approval of future, open-ended or follow-up transfers of payment rights. A new petition must be submitted for approval of any such additional transfers.

D. Medical benefits. An injured worker is entitled to continuing medical care necessary to treat his or her work-related injuries. These medical benefits are, by their nature, contingent on the injured worker's future medical condition and progress in medical and pharmacological science. For these reasons, medical benefits are not "fixed and certain," and the Commission will not approve any request for transfer of medical benefits.

R602-3-3. Procedure for Requesting Approval.

A. Petition. The transferee shall fully complete the Commission's "Petition for Approval of Transfer of Payment Rights" form. The transferee shall then file the completed petition with the Commission's Adjudication Division. The Adjudication Division shall return to the transferee any petition that is not fully completed, signed, and accompanied with all required documentation.

B. Documentation. Subsection 34A-2-422(3)(b)(ii)(A) requires that the transferor of workers' compensation payment rights receive adequate notice of the workers' compensation benefits proposed to be transferred, as well as an explanation of the financial consequences of, and alternatives to, the proposed transfer. The Commission will therefore require the following documentation to accompany every Petition for Approval of Transfer of Payment Rights.

1. Notice and explanation. The transferee shall provide written notice and explanation of the proposed transfer to the transferor in writing, with receipt confirmed by the transferor's signature.

a. The notice and explanation must be in plain language. If the transferor is of limited English proficiency, the notice and explanation must also be provided in writing in the transferor's native language.

b. The notice and explanation must contain each of the following items in full detail:

i. A description of the specific workers' compensation payment rights proposed to be transferred;

ii. An explanation of the legal effect of the transfer;

iii. An explanation of all alternatives to the proposed transfer; and

iv. A recommendation that the transferor obtain independent professional advice regarding the advisability of the proposed transfer and the terms of the proposed transfer.

2. Disclosure of financial information. The transferee shall provide written disclosure of financial information regarding the proposed transfer to the transferor, with receipt confirmed by the transferor's signature.

a. The disclosure of financial information must be in plain language. If the transferor is of limited English proficiency, the disclosure must also be provided in writing in the transferor's native language.

b. The disclosure of financial information must contain each of the following items full detail:

i. The amount and due date of each payment to be transferred;

ii. The sum of all payments to be transferred;

iii. The present value of the payments to be transferred, computed in the same manner and using the same discount rate by which future annuity payments are discounted to present value for federal estate tax purposes;

iv. The gross amount payable by the transferee in exchange for the payments to be transferred;

v. The implied annual interest rate that the transferor would be paying if the transfer were viewed as a loan to the transferor of the net amount payable by the transferee, to be paid in installments corresponding to the transferred payments.

vi. An itemized listing any amount to be deducted from the gross payment, with detailed explanation of the reason for such deduction and the method for computing the deduction;

vii. The net amount to be paid to the transferee;

viii. The amount and method of calculation of any penalties or liquidated damages for which the transferor might be liable under the transfer agreement; and

ix. A statement of the tax consequences of the transfer.

3. Source of workers' compensation payment rights. The transferee shall provide an authenticated copy of the document(s) that establish the transferor's right to the workers' compensation payment rights that are proposed to be transferred.

4. All agreements between the transferor and transferee. All agreements between the transferor and transferee must be in writing and signed by both the transferor and the transferee. The transferee will provide true and correct copies of all such documents.

C. Notice to other interested parties. After the Adjudication Division has received a petition for approval of transfer of payment rights, and has determined that the petition is complete and is supported by all necessary documentation, the Division will mail copies of the petition and supporting documentation to the following:

1. Each party and attorney who participated in the underlying workers' compensation claim;

2. If the payment right to be transferred arises under a structured workers' compensation settlement, the issuer and owner of the annuity contract that funds the settlement;

3. Any other party having rights or obligations with respect to the payment rights proposed to be transferred;

4. An ombudsman designated by the Industrial Accidents Division for receipt of such petitions; and

5. Any other individual or entity the Division believes may have an interest in the proposed transfer.

D. Hearing. All Petitions for Approval of Transfer of Payment Rights will be assigned to the Director of the Adjudication Division for hearing.

1. The Director will conduct a formal evidentiary hearing on each petition to determine whether the petition should be approved. The hearing will be conducted in accordance with the requirements of the Utah Administrative Procedures Act.

2. No hearing on the merits of a petition will be scheduled prior to 60 days after the notices required by III.C of this rule have been mailed to all parties entitled to such notice.

3. Notice of hearing on the merits of a petition shall be provided to the transferor, the transferee, their attorneys, and all parties listed in III.C.1 through 4 of this rule.

4. The Director will conduct the hearing in such manner as the Director deems proper to obtain all information that may be material to approval or rejection of the proposed transfer.

E. Decision. After hearing, the Director will issue a written decision approving or denying the petition. The Director may approve a petition only if the Director finds:

1. The petition has been submitted in proper form with all required documentation;

2. The notice and explanation required by III.B.1 of this rule and the disclosure of financial information required by III.B.2 of this rule are correct, adequate, and understood by the transferor;

3. The agreement(s) between the transferor and transferee does not include any abusive provisions that are against the transferor's best interests. "Abusive provisions" include, but are not limited to, the following:

a. The transferor's confession of judgment or consent to entry of judgment;

b. Choice of forum or choice of law provisions requiring resolution of disputes in a forum other than the courts and administrative agencies of the State of Utah, or under the laws of a jurisdiction other than Utah; or

c. Requirements that transferors indemnify transferees or reimburse transferees for costs or expenses incurred in disputes between transferors and transferees.

4. The proposed transfer is in the best interest of the transferor, specifically taking into account:

a. The transferor's need for a continuing source of income to provide for future necessities;

b. The needs of the transferor's dependents for a continuing source of support from the transferor to provide for future necessities;

c. Whether the transferor's intended uses of the funds obtained as a result of the transfer are prudent and consistent with the underlying purposes of the workers' compensation system;

d. Whether the transferor possesses the ability to manage, preserve and properly apply the funds to be obtained through the transfer; and

e. Whether other alternatives exist that will better meet the legitimate needs of the transferor and/or satisfy the objectives of the workers' compensation system.

F. Appeal. Any interested party who has participated in the formal evidentiary hearing conducted pursuant to III.D of this rule may request agency review of the Director's decision by following the procedures established in Section 63G-4-301 of the Utah Administrative Procedures Act and Section 34A-1-303 of the Utah Labor Commission Act.

KEY

workers' compensation, administrative procedures, hearings, settlements

Date of Enactment or Last Substantive Amendment

February 7, 2008

Authorizing, Implemented, or Interpreted Law

34A-1-104(1); 34A-1-301 et seq.; 34A-4-304; 34A-2-422; 63-46a-3(2); 63G-4-102 et seq.

Rule R602-4. Procedures for Termination of Temporary Total Disability Compensation Pursuant to Reemployment Under Section 34A-2-410.5.

As in effect on July 1, 2008

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- R602-4-1. Statutory Authority.
- R602-4-2. Applicability of Rule.
- R602-4-3. Termination of Disability Compensation Pursuant to Section 34A-2-410.5.
- R602-4-4. Adjudication of Actions Commenced Pursuant to Section 34A-2-410.5.
- R602-4-4.1. Mediation.
- R602-4-4.2. Pleadings and Discovery.
- KEY
- Date of Enactment or Last Substantive Amendment
- Notice of Continuation
- Authorizing, Implemented, or Interpreted Law

R602-4-1. Statutory Authority:

Section 34A-2-410.5 provides a procedure for an employer or the employer's insurance carrier to file an application for hearing with the Division of Adjudication requesting reduction or termination of an employee's disability compensation and allows the Commission to make rules related to the procedure for requesting a hearing under this section.

R602-4-2. Applicability of Rule.

The provisions of R602-4 pertaining to applications for hearing pursuant Section 34A-2-410.5 supersede the Administrative Rules contained in R602-2, 602-3, R602-5, R602-7 and R602-8 as to any actions brought pursuant to Section 34A-2-410.5.

R602-4-3. Termination of Disability Compensation Pursuant to Section 34A-2-410.5.

An employer or employer's insurance carrier shall not terminate or reduce an employee's disability compensation pursuant to Section 34A-2-410.5 prior to issuance of a final order issued by the Labor Commission ordering the reduction or termination.

R602-4-4. Adjudication of Actions Commenced Pursuant to Section 34A-2-410.5.

R602-4-4.1. Mediation.

Prior to filing an application for hearing for termination or reduction of compensation benefits pursuant to Section 34A-2-410.5 the petitioner must file with the Division of Adjudication a certificate from the Industrial Accidents Division (Certificate of Mediation Adjudication Form 401) that the parties engaged in mediation through the Industrial Accidents Division. Form 401 must be signed and dated by a mediator or other authorized person designated by the Industrial Accidents Division.

R602-4-4.2. Pleadings and Discovery.

A. Definitions.

1. "Commission" means the Labor Commission.

2. "Division" means the Division of Adjudication within the Labor Commission.

3. "Application for Hearing" means the Application for Hearing for Termination or Reduction of Compensation form (Adjudication Form 402) together with a Certificate of Mediation (Adjudication Form 401), all supporting documents, proof of service and Notice of Request for Termination or Reduction of Compensation (Adjudication Form 404) which together constitute the request for agency action regarding termination or reduction of benefits pursuant to Section 34A-2-410.5.

4. "Supporting medical documentation" means any medical report or treatment note completed by a medical provider or physician that references, describes or otherwise sets forth the employee's medical or functional capacities, restrictions and/or abilities.

5. "Supporting documents" means supporting medical documentation, Certificate of Mediation (Adjudication Form 401), Persons with Knowledge List (Adjudication Form 403), all documents in any way related to reasons identified for the requested termination or reduction whether tending to prove or disprove the same and all documents describing the respondents' work duties during his or her employment with petitioner.

6. "Proof of Service" means an acceptance of service of the Application for Hearing with all supporting documents signed and dated by the respondent, or a return receipt for certified mail signed by respondent signifying receipt of the Application for Hearing with all supporting documents, or a return of service for personal service of the Application for Hearing with all supporting documents upon respondent served according to Utah Rule of Civil Procedure 4(d)(1).

6. “Persons with Knowledge List” (Adjudication Form 403) means a list of any person who may have knowledge of the events and/or circumstances relating to the reasons for the request to terminate or reduce compensation whether tending to prove or disprove the reason(s) set forth in the Application for Hearing. The Persons with Knowledge list must specify the full name, address and phone number of the person if known, a short statement of the knowledge believed possessed by the person and a statement as to whether or not the petitioner will actually produce the person with knowledge as a witness at the evidentiary hearing.

7. “Notice of Request for Termination or Reduction of Compensation” means Adjudication Form 404.

8. "Petitioner" means the employer or insurance carrier who has filed an Application for Hearing.

9. "Respondent" means the employee against whom the Application for Hearing was filed.

B. Application for Hearing.

1. Whenever termination or reduction of compensation is requested by a petitioner pursuant to Section 34A-2-410.5. the burden rests with the petitioner to initiate agency action by filing an Application for Hearing with the Division. Applications for Hearing are not deemed filed pursuant to Section 34A-2-410.5 (4) and (5) until the petitioner files with the Division a completed Application for Hearing (Adjudication form 402 Adjudication Form 502 together with a Certificate of Mediation (Adjudication Form 401), all supporting documents, proof of service and Notice of Request for Termination or Reduction of Compensation (Adjudication Form 404).

2. A completed proof of service form together with the Application for Hearing and supporting documents filed with the Division satisfies the notice requirement set forth in Section 34A-2-410.5 (4)(c).

3. In cases where the respondent is represented by an attorney, a completed and signed Appointment of Counsel form shall be filed upon retention of the attorney.

C. Discovery.

1. Fifteen (15) days prior to a hearing scheduled after the filing of an Application for Hearing the respondent shall mail to or otherwise serve on the petitioner a list of all witnesses that respondent will produce at the hearing. This rule assumes without disclosure on the witness list that respondent will be available to testify. The respondent will also mail to or otherwise serve on the petitioner a copy of all exhibits not otherwise in the possession of the petitioner that the respondent intends to submit as evidence at the hearing.

2. Testimony of witnesses, other than respondent, or exhibits not disclosed with the Application for Hearing or pursuant to R602-4-4.2.C.1. shall not be admitted into evidence at the hearing. Failure of a party to produce a witness disclosed as one to be produced shall create a presumption that the witness would have testified adverse to the

party failing to produce the witness unless the party proves by a preponderance of the evidence that the witness failed to obey a properly served subpoena for attendance.

3. Other than the disclosures required with the Application for Hearing and under R602-4-4.2.C.1., or voluntary exchanges of information, the parties are not permitted discovery by other means including interrogatories, requests for production of documents, depositions or requests for admission.

4. Use of subpoenas is allowed to compel the attendance of witnesses but not for the obtaining of documents or attendance at depositions. Commission subpoena forms shall be used to compel the attendance of witnesses. All subpoenas shall be signed by the administrative law judge assigned to the case, or the duty judge where the assigned judge is not available.

D. Defaults and Motions.

1. Defaults in proceedings under Section 34A-2-410.5 shall only be issued at the time of hearing based on nonattendance of a party at the hearing.

2. Motions will only be considered at the time of hearing.

R602-4-4.3. Hearings.

A. Time of Hearings.
A hearing on an Application for Hearing filed pursuant to Section 34A-2-410.5. will be set within 30 days of the date the Application for Hearing is filed with the Division.

B. Notice.

Notice of hearings shall be sent by the Division by regular mail to the addresses of petitioner(s) and the respondent set forth on the Application for Hearing. A party is obligated to immediately notify the Division of any change or correction of the address of the party from that listed on the Application for Hearing. Failure of a party to immediately notify the Division of any change in address will not excuse the party from the obligations set forth in any notice from the Division by reason of undelivered mail. If a party is represented by an attorney as disclosed on the Application for Hearing, notice of the hearing will also be sent to the attorney so disclosed. Where an attorney appears of record on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

C. Conducting Hearings.

All hearings on Applications for Hearing filed pursuant to Section 34A-2-410.5. shall be conducted by an administrative law judge as formal evidentiary hearings and shall be recorded. After conducting a formal evidentiary hearing on the application for hearing filed pursuant to Section 34A-2-410.5 an administrative law judge shall issue Findings of

Fact, Conclusions of Law and Order within 45 days from the date the application for hearing was filed by the petitioner. Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63G-4-203 or 63G-4-208, Utah Code.

D. Close of Evidentiary Record.

The evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted thereafter.

E. Motions for Review.

Any party to an adjudicative proceeding may obtain review of an Order issued by an administrative law judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63G-4-301 and Section 34A-1-303, Utah Code. The request for review may be directed to either the commissioner of the Commission or the appeals board of the Commission. Unless a request for review is properly filed, the administrative law judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. If such a response is filed, the party filing the original request for review may reply within 10 calendar days of the date the response was filed. Thereafter the administrative law judge shall refer the entire case for review under Section 34A-2-801, Utah Code.

G. Requests for Reconsideration and Petitions for Judicial Review.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63G-4-302, Utah Code. Any petition for judicial review of final agency action shall be governed by the provisions of Section 63G-4-401, Utah Code.

KEY

workers' compensation, administrative procedures, hearings, settlements

Date of Enactment or Last Substantive Amendment

July 1, 2008, 2008

Authorizing, Implemented, or Interpreted Law

34A-1-104(1) et seq.; 34A-2-410.5;

Rule R602-5. Procedures for Resolving Disputes Regarding “Cooperation” and “Diligent Pursuit” Under

Section 34A-2-413 (6)(iii) and Section 34A-2-413 (9) Consistent With Utah Administrative Code 612-1-10.D.4.

As in effect on July 1, 2008

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- R602-5-1. Statutory Authority.
- R602-5-2. Applicability of Rule.
- R602-5-3. Adjudication of Actions Commenced Pursuant to Section 34A-2-413 (6)(e)(iii) and R612-1-10.D.4.
- R602-5-4. Adjudication of Actions Commenced Pursuant to Section 34A-2-410.5.
- R602-5-3.1. Mediation.
- R602-5-3.2. Pleadings and Discovery.
- R602-5-4.2. Pleadings and Discovery.
- R 605-5-5. Motions for Review.
- R605-5-5.1. Requests for Reconsideration and Petitions for Judicial Review.
- KEY
- Date of Enactment or Last Substantive Amendment
- Notice of Continuation
- Authorizing, Implemented, or Interpreted Law

R602-5-1. Statutory Authority:

Section 34A-2-413(6) (e) (iii) states an administrative law judge shall make a final decision of permanent total disability based on an employer's failure to diligently pursue an approved reemployment plan. Section 34A-2-413 (9) states that an administrative law judge shall dismiss a claim for benefits based on an employee's failure to fully cooperate with an approved reemployment plan. Section 34A-1-104 allows the Commission to make rules related to the procedure for requesting a hearing under this section.

R602-5-2. Applicability of Rule.

The provisions of R602-5 pertaining to applications for hearing pursuant Section 34A-2-413 (6) (e) (iii) and Section 34A-2-413 (9) supersede the Administrative Rules contained in R602-2, R602-3, R602-4, R602-7 and R602-8 as to any actions brought pursuant to Section 34A-2-413 (6) (e) (iii) and Section 34A-2-413 (9)

R602-5-3. Adjudication of Actions Commenced Pursuant to Section 34A-2-413 (6)(e)(iii) and R612-1-10.D.4.

R602-5-3.1. Mediation.

Prior to filing an application for a final determination of permanent total disability based on an employer's failure to diligently pursue the reemployment plan pursuant to Section 34A-2-413 (6)(e)(iii) the petitioner shall file with the Division of Adjudication a certificate from the Industrial Accidents Division (Certificate of Mediation Adjudication Form 401) that the parties engaged in mediation through the Industrial Accidents Division. Form 401 must be signed and dated by a mediator or other authorized person designated by the Industrial Accidents Division.

R602-5-3.2. Pleadings and Discovery.

A. Definitions.

1. "Commission" means the Labor Commission.

2. "Division" means the Division of Adjudication within the Labor Commission.

3. "Application for Hearing" means the Application for Hearing for Final Determination of Permanent Total Disability form (Adjudication Form 502) together with a Certificate of Mediation (Adjudication Form 401), all supporting documents and proof of service which together constitute the request for agency action regarding termination or reduction of benefits pursuant to Section 34A-2-410.5.

4. "Supporting medical documentation" means any medical report or treatment note completed by a medical provider or physician that references, describes or otherwise sets forth the employee's medical or functional capacities, restrictions and/or abilities.

5. "Supporting documents" means supporting medical documentation, Certificate of Mediation (Adjudication Form 401), Persons with Knowledge List (Adjudication Form 403), an outline of the specific instances of lack of diligence as required by R612-1-10.D.4. and all documents in any way related to reasons identified for the requested final determination of permanent total disability whether tending to prove or disprove the same.

6. "Proof of Service" means an acceptance of service of the Application for Hearing with all supporting documents signed and dated by the respondent, or a return receipt for certified mail signed by respondent signifying receipt of the Application for Hearing with all supporting documents, or a return of service for personal service of the Application for Hearing with all supporting documents upon respondent served according to Utah Rule of Civil Procedure 4(d)(1).

7. "Persons with Knowledge List" (Adjudication Form 403) means a list of any person who may have knowledge of the events and/or circumstances relating to the reasons for the issuance of a finale determination of permanent total disability compensation whether tending to prove or disprove the reason(s) set forth in the Application for Hearing. The Persons with Knowledge list must specify the full name, address and phone number of the person if known, a short statement of the knowledge believed possessed by the person and a statement as to whether or not the

petitioner will actually produce the person with knowledge as a witness at the evidentiary hearing.

7. "Petitioner" means the petitioner in the original case determining permanent total disability.

8. "Respondent" means the respondent in the original case determining permanent total disability.

B. Application for Hearing.

1. Whenever a final determination of permanent total disability is requested by petitioner pursuant to Section 34A-2-413 (6) (e) (iii), the burden rests with the petitioner to initiate agency action by filing an Application for Hearing with the Division. Applications for Hearing are not deemed filed pursuant to Section 34A-2-413 (6) (e) (iii) until the petitioner files with the Division a completed Application for Hearing (Adjudication form 502 together with a Certificate of Mediation (Adjudication Form 401), all supporting documents and proof of service.

2. A completed proof of service form together with the Application for Hearing and supporting documents filed with the Division satisfies the request for agency action requirement set forth in Section 63G-4-201.

3. In cases where the petitioner is represented by an attorney, a completed and signed Appointment of Counsel form (Adjudication Form 152) shall be filed upon retention of the attorney.

C. Discovery.

1. Fifteen (15) days prior to a hearing scheduled after the filing of an Application for Hearing the respondent shall mail to or otherwise serve on the petitioner a list of all witnesses that respondent will produce at the hearing. The respondent will also mail to or otherwise serve on the petitioner a copy of all exhibits not otherwise in the possession of the petitioner that the respondent intends to submit as evidence at the hearing.

2. Testimony of witnesses, other than petitioner, or exhibits not disclosed with the Application for Hearing or pursuant to R602-5-4.2.C.1. shall not be admitted into evidence at the hearing. Failure of a party to produce a witness disclosed as one to be produced shall create a presumption that the witness would have testified adverse to the party failing to produce the witness unless the party proves by a preponderance of the evidence that the witness failed to obey a properly served subpoena for attendance.

3. Other than the disclosures required with the Application for Hearing and under R605-5-3. C.1., or voluntary exchanges of information, the parties are not permitted discovery by other means including interrogatories, requests for production of documents, depositions or requests for admission.

4. Use of subpoenas is allowed to compel the attendance of witnesses but not for the obtaining of documents or attendance at depositions. Commission subpoena forms

shall be used to compel the attendance of witnesses. All subpoenas shall be signed by the administrative law judge assigned to the case, or the duty judge where the assigned judge is not available.

D. Defaults and Motions.

1. Defaults in proceedings under Section 34A-2-413 (6) (e) (iii) and as set forth in R612-1-10.D.4. shall only be ordered at the time of hearing based on nonattendance of a party at the hearing.

2. Motions will only be considered at the time of hearing.

R602-5-3.3. Hearings.

A. Time of Hearings.

A hearing on an Application for Hearing filed pursuant to Section 34A-2-413 (6) (e) (iii) and as set forth in R612-1-10.D.4. will be set within 30 days of the date the Application for Hearing is filed with the Division.

B. Notice.

Notice of hearings shall be sent by the Division by regular mail to the addresses of petitioner and the respondent(s) set forth on the Application for Hearing. A Party is obligated to immediately notify the Division of any change or correction of the address of the party from that listed on the Application for Hearing. Failure of a party to immediately notify the Division of any change in address will not excuse the party from the obligations set forth in any notice from the Division by reason of undelivered mail. If a party is represented by an attorney as disclosed on the Application for Hearing or Appointment of Counsel, notice of the hearing will also be sent to the attorney so disclosed. Where an attorney appears of record on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

C. Conducting Hearings.

All hearings on Applications for Hearing filed pursuant to Section 34A-2-413 (6) (e) (iii) and as set forth in R612-1-10.D.4. shall be conducted by an administrative law judge as formal evidentiary hearings and shall be recorded. After conducting a formal evidentiary hearing on the application for hearing filed pursuant to Section 34A-2-413 (6) (e) (iii) and as set forth in R612-1-10.D.4. an administrative law judge shall issue Findings of Fact, Conclusions of Law and Order within 45 days from the date the application for hearing was filed by the petitioner. Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63G-4-203 or 63G-4-208, Utah Code.

D. Close of Evidentiary Record.

The evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted thereafter.

R602-5-4. Adjudication of Actions for Dismissal of Claim for Benefits Commenced Pursuant to Section 34A-2-413 (9) and R612-1-10.D.4.

R602-5-4.1. Mediation.

Prior to filing an application for hearing for dismissal of claim for benefits pursuant to Section 34A-2-413 (9) the respondent(s) must file with the Division of Adjudication a certificate from the Industrial Accidents Division (Certificate of Mediation Adjudication Form 401) that the parties engaged in mediation through the Industrial Accidents Division. Form 401 must be signed and dated by a mediator or other authorized person designated by the Industrial Accidents Division.

R602-5-4.2. Pleadings and Discovery.

A. Definitions.

1. "Commission" means the Labor Commission.

2. "Division" means the Division of Adjudication within the Labor Commission.

3. "Application for Hearing" means the Application for Hearing for Termination or Reduction of Compensation form (Adjudication Form 602) together with a Certificate of Mediation (Adjudication Form 401), all supporting documents and proof of service which together constitute the request for agency action regarding termination or reduction of benefits pursuant to Section 34A-2-413 (9).4. "Supporting medical documentation" means any medical report or treatment note completed by a medical provider or physician that references, describes or otherwise sets forth the employee’s medical or functional capacities, restrictions and/or abilities.

5. "Supporting documents" means supporting medical documentation, Certificate of Mediation (Adjudication Form 401), Persons with Knowledge List (Adjudication Form 403), an outline of the specific instances of non-cooperation as required by R612-1-10.D.4. and all documents in any way related to reasons identified for the requested termination whether tending to prove or disprove the same and all documents describing the petitioner’s work duties during his or her employment with respondent.

6. “Proof of Service” means an acceptance of service of the Application for Hearing with all supporting documents signed and dated by the petitioner, or a return receipt for certified mail signed by petitioner signifying receipt of the Application for Hearing with all supporting documents, or a return of service for personal service of the Application for Hearing with all supporting documents upon petitioner served according to Utah Rule of Civil Procedure 4(d)(1).

6. “Persons with Knowledge List” (Adjudication Form 403) means a list of any person who may have knowledge of the events and/or circumstances relating to the reasons for the request to terminate or reduce compensation whether tending to prove or disprove the reason(s) set forth in the Application for Hearing. The Persons with Knowledge list must specify the full name, address and phone number of the person if known, a short statement of the knowledge believed possessed by the person and a statement as to whether or not the petitioner will actually produce the person with knowledge as a witness at the evidentiary hearing.

7. "Petitioner" means the petitioner in the original case determining permanent total disability.

8. "Respondent" means the respondent in the original case determining permanent total disability.

B. Application for Hearing.

1. Whenever a dismissal of claim for benefits is requested by respondent(s) pursuant to Section 34A-2-413 (9) the burden rests with the respondent(s) to initiate agency action by filing an Application for Hearing with the Division. Applications for Hearing are not deemed filed pursuant to Section 34A-2-413 (9) and R612-1-10.D.4. until the respondent(s) files with the Division a completed Application for Hearing (Adjudication form 602) together with a Certificate of Mediation (Adjudication Form 401), all supporting documents and proof of service.

2. A completed proof of service form together with the Application for Hearing and supporting documents filed with the Division satisfies the request for agency action requirement set forth in Section 63G-4-201.

3. In cases where the petitioner is represented by an attorney, a completed and signed Appointment of Counsel form (Adjudication Form 152) shall be filed upon retention of the attorney.

C. Discovery.

1. Fifteen (15) days prior to a hearing scheduled after the filing of an Application for Hearing the petitioner shall mail to or otherwise serve on the respondent a list of all witnesses that petitioner will produce at the hearing. This rule assumes without disclosure on the witness list that petitioner will be available to testify. The petitioner will also mail to or otherwise serve on the respondent a copy of all exhibits not otherwise in the possession of the respondent that the petitioner intends to submit as evidence at the hearing.

2. Testimony of witnesses other than petitioner or exhibits not disclosed with the Application for Hearing or pursuant to R602-5-4.2.C.1. shall not be admitted into evidence at the hearing. Failure of a party to produce a witness disclosed as one to be produced shall create a presumption that the witness would have testified adverse to the party failing to produce the witness unless the party proves by a preponderance of the evidence that the witness failed to obey a properly served subpoena for attendance.

3. Other than the disclosures required with the Application for Hearing and under R602-5-4.2.C.1. or voluntary exchanges of information the parties are not permitted discovery by other means including interrogatories, requests for production of documents, depositions or requests for admission.

4. Use of subpoenas is allowed to compel the attendance of witnesses but not for the obtaining of documents or attendance at depositions. Commission subpoena forms shall be used to compel the attendance of witnesses. All subpoenas shall be signed by the administrative law judge assigned to the case, or the duty judge where the assigned judge is not available.

D. Defaults and Motions.

1. Defaults in proceedings under Section 34A-2-413 (9) and R612-1-10.D.4. shall only be ordered at the time of hearing based on nonattendance of a party at the hearing.

2. Motions will only be considered at the time of hearing.

R602-5-4.3. Hearings.

A. Time of Hearings.

A hearing on an Application for Hearing filed pursuant to Section 34A-2-413 (9) and R612-1-10.D.4. will be set within 30 days of the date the Application for Hearing is filed with the Division.

B. Notice.

Notice of hearings shall be sent by the Division by regular mail to the addresses of petitioner(s) and the respondent set forth on the Application for Hearing. A party is obligated to immediately notify the Division of any change or correction of the address of the party from that listed on the Application for Hearing. Failure of a party to immediately notify the Division of any change in address will not excuse the party from the obligations set forth in any notice from the Division by reason of undelivered mail. If a party is represented by an attorney as disclosed on the Application for Hearing or Appointment of Counsel, notice of the hearing will also be sent to the attorney so disclosed. Where an attorney appears of record on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

C. Conducting Hearings.

All hearings on Applications for Hearing filed pursuant to Section 34A-2-413 (9) and R612-1-10.D.4. shall be conducted by an administrative law judge as formal evidentiary

hearings and shall be recorded. After conducting a formal evidentiary hearing on the application for hearing filed pursuant to Section 34A-2-413 (9) and R612-1-10.D.4. an administrative law judge shall issue Findings of Fact, Conclusions of Law and Order within 45 days from the date the application for hearing was filed by the respondent. Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63G-4-203 or 63G-4-208, Utah Code.

D. Close of Evidentiary Record.

The evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted thereafter.

R 605-5-5. Motions for Review.

Any party to an adjudicative proceeding conducted pursuant to R605 may obtain review of an Order issued by an administrative law judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63G-4-301 and Section 34A-1-303, Utah Code. The request for review may be directed to either the commissioner of the Commission or the appeals board of the Commission. Unless a request for review is properly filed, the administrative law judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. If such a response is filed, the party filing the original request for review may reply within 10 calendar days of the date the response was filed. Thereafter the administrative law judge shall refer the entire case for review under Section 34A-2-801, Utah Code.

R605-5-5.1. Requests for Reconsideration and Petitions for Judicial Review.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63G-4-302, Utah Code. Any petition for judicial review of final agency action shall be governed by the provisions of Section 63G-4-401, Utah Code.

KEY

workers' compensation, administrative procedures, hearings,

Date of Enactment or Last Substantive Amendment

July 1, 2008, 2008

Authorizing, Implemented, or Interpreted Law

34A-1-104(1) et seq.; Section 34A-2-413 (6)(e)(iii); Section 34A-2-413 (9).

Rule R602-6. Procedures Applicable for Approval of Settlement Agreements in Workers’ Compensation.

As in effect on July 1, 2008

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- R602-6-1. Statutory Authority.
- R602-6-2. Applicability of Rule.
- R602-6-3 General Considerations
- R602-6-3. Procedures for Approval of Settlement Cases in Workers’ Compensation.

R602-6. Settlement Agreements.

1. Statutory authority:

Section 34A-2-420 requires the Commission to review all agreements for the settlement or commutation of claims for workers' compensation or occupational disease benefits and grants the Commission discretion to approve such agreements. The Commission's authority under Section 34A-2-420 applies to all claims arising under the Utah Workers' Compensation Act or Occupational Disease Act, regardless of the date of accident or occupational disease. This rule sets forth the requirements for Commission approval of such agreements.

2. Applicability of Rule:

This Rule 602-6 applies to settlements of all claims under the Workers’ Compensation Act.

3. General Considerations:

Settlement agreements may be appropriate in claims of disputed validity or when the parties' interests are served by payment of benefits in a manner different than otherwise prescribed by the workers' compensation laws. However, settlement agreements must also fulfill the underlying purposes of the workers' compensation laws. Once approved by the Commission, settlement agreements are permanently binding on the parties. The Commission will not approve any proposed settlement that is manifestly unjust.

4. Procedure:

a. Parties interested in a present or potential workers' compensation claim, whether or not an application for hearing has been filed, may submit their settlement agreement to the Commission for review and approval. The Commission may delegate its authority to review and approve such agreements.

b. Each settlement agreement shall be in writing, executed by each party and such party's attorney, if any, and shall include a proposed order for Commission approval of the agreement.

c. Each settlement agreement shall set forth the nature of the claim being settled and what claims are in dispute, if any.

d. Each settlement agreement shall contain a statement that each party understands that the agreement is permanent, binding and constitutes full and final settlement of any right the claimant may otherwise have to future benefits, including medical benefits. The Commission may establish an approved form for complying with the foregoing disclosure requirement.

e. Attorneys' fees shall be allowed as provided by Rule R602-2-4. Each settlement agreement shall describe the amount to be paid to claimant's counsel as attorney's fees and costs, the manner in which such amounts are computed and the method of payment thereof.

f. The settlement agreement may provide for payment of benefits through insurance contract or by other third parties if the Commission determines a) such payment provisions are secure and b) such payment provisions do not relieve the parties of their underlying liability for payments required by the agreement.

g. Upon receipt of a proposed settlement agreement meeting the requirements of this rule, the Commission shall review such proposed agreement:

h. As needed, the Commission may contact the parties and others to obtain further information about the proposed settlement;

i. If the Commission determines that a proposed settlement agreement conforms with this rule, the Commission shall approve such agreement and notify the parties in writing.

j. If the Commission determines that a proposed settlement agreement does not comply with this rule, the Commission shall notify the parties in writing of its reasons for rejecting the proposed agreement.

k. The Commission shall retain a record of its action on all settlement agreements submitted to it for approval.

KEY

workers' compensation, administrative procedures, hearings, settlements

Date of Enactment or Last Substantive Amendment

July 1, 2008, 2008

Authorizing, Implemented, or Interpreted Law