

Title 20—Employees’ Benefits

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CHAPTER IV—EMPLOYEES' COMPENSATION APPEALS BOARD, DEPARTMENT OF LABOR

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PART 501—RULES OF PROCEDURE

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SOURCE: 27 FR 12186, Dec. 8, 1962, unless otherwise noted.

§ 501.1 Definitions.

(a) *Act* means the Federal Employees' Compensation Act and any statutory extension or application thereof.

(b) *Board* means the Employees' Compensation Appeals Board.

(c) *Office* means the Office of Workers' Compensation Programs and in the case of employees of the Canal Zone Government and of the Panama Canal Company, the Governor of the Canal Zone.

(d) *Director* means the Director of the Office and in the case of employees of the Canal Zone Government and of the Panama Canal Company, the Governor of the Canal Zone.

(e) *Party* means any person admitted and named as a party on the docket of the Board, including any intervenors.

(f) *Counsel* includes any person who is a member in good standing of the bar of the Supreme Court of the United States or the highest court of any State, territory, or the District of Columbia.

[27 FR 12186, Dec. 8, 1962, as amended at 29 FR 13519, Oct. 1, 1964]

§ 501.2 Scope and applicability of rules; composition and jurisdiction of the Board.

(a) The regulations in this part provide the rules of practice of the Board in hearing and deciding appeals from final decisions of the Office.

(b) The Board consists of three members appointed by the Secretary of Labor, one of whom is designated as Chairman of the Board and administrative officer.

(c) The Board has jurisdiction to consider and decide appeals from the final decision of the Office in any case arising under the Act. The Board may review all relevant questions of law, fact, and discretion in such cases. There shall be no appeal with respect to any interlocutory matter disposed of by the Office during the pendency of a case. The review of a case shall be limited to the evidence in the case record which was before the Office at the time of its final decision.

§ 501.3 Application for review.

(a) *Who may file.* Any person adversely affected by a final decision of the Director, or his duly authorized representative, may file an application for review of such decision by the Board.

(b) *Place of filing.* Any application for review shall be filed with the Clerk of the Board, Employees' Compensation Appeals Board, U.S. Department of Labor, Washington, DC 20210.

(c) *Form of application; contents.* An application for review should be filed with the Board upon Form AB-1 (Application for Review). Any application made without the use of the form shall contain the following information: The full name and address of the applicant, the name of the injured or deceased employee, the employing establishment, the case file number assigned to the case by the Office, a description of the particular injury involved, the date of the injury, the place of injury, and the date of the decision being appealed. If the applicant is being represented by another person in the proceeding, the name and address of such representative should be stated. Each application shall include a succinct statement indicating the contentions of the applicant and describing with particularity

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any findings of fact, conclusions of law, or exercise of (or failure to exercise) discretion complained of. Any application containing incomplete information shall be returned to the applicant with a description of the additional information needed and a reasonable opportunity for furnishing any such information shall be allowed.

(d) *Time for filing.* (1) Except as provided in paragraph (d)(2) of this section, any application for review by a person residing within the United States or Canada must be filed within 90 days from the date of issuance of the final decision of the Director, and any application for review by a person residing outside the United States or Canada must be filed within 180 days from the date of issuance.

(2) For good cause shown, the Board may in its discretion waive a failure to file an application within the time limitations provided in paragraph (d)(1) of this section, but for no longer than one year from the date of issuance of the final decision of the Director.

(3) *Date of filing—(i) Date or receipt.* Except as otherwise provided in this section, a notice of appeal is considered to have been filed only as of the date it is received in the office of the clerk of the Board.

(ii) *Date of mailing.* If the notice is sent by mail and the fixing of the date of delivery as the date of filing would render the appeal untimely, it will be considered to have been filed as of the date of mailing. The date appearing on the postmark (when available and legible) shall be prima facie evidence of the date of mailing. If there is no postmark or it is not legible, other evidence, such as, but not limited to, certified mail receipts, certificate of service and affidavits, may be used to establish the date of mailing.

(e) *Briefs and supporting statements.* Any application for review may be accompanied by a brief or supporting statement.

[27 FR 12186, Dec. 8, 1982, as amended at 53 FR 49491, Dec. 7, 1988]

§ 501.4 Transmittal of record.

(a) The Board shall serve upon the Director a copy of each application for review and any brief or supporting statement accompanying it. Within 60

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days from the date of such service, the Director, through his legal representative, the Solicitor of Labor, shall transmit to the Board the record of the proceeding to which the application refers and a statement in support of his decision, or other pleading, as appropriate, signed on his behalf by his legal representative.

(b) On application of the Director, the Board may in its discretion extend the 60-day time for submittal to the Board of the record of proceedings and accompanying statement or pleading.

[42 FR 62471, Dec. 13, 1977]

§ 501.5 Oral argument.

(a) *Notice.* Whenever any party requests an opportunity to present oral argument the Board shall schedule the case for argument. Each party shall be notified at least 10 days before the date of argument. The notice shall state the issues to be heard, as determined by the Board.

(b) *Time allowed.* Generally not more than 1 hour shall be allowed for oral argument by any party although in appropriate cases the Board may in its discretion extend or shorten the time allowed.

(c) *Failure to respond to notice.* Failure to respond to a notice of oral argument shall not prejudice the rights of any party to the proceeding. The Board in its discretion may set the case for further argument upon notice or it may proceed to dispose of the appeal pursuant to § 501.6.

§ 501.6 Decisions.

(a) The decision of the Board shall contain a written opinion setting forth the reasons for the action taken and an appropriate order. The decision may consist of affirmance, reversal, remand for further development of the evidence, or other appropriate action. A copy of the decision shall be sent by the Board to all parties in interest. The case record shall be returned to the Director with a copy of the decision.

(b) A decision of not less than two members shall be the decision of the Board.

(c) The decision of the Board shall be final as to the subject matter appealed and such decision shall not be subject to review, except by the Board.

(d) The decision of the Board shall be final upon the expiration of 30 days from the date of the filing of the order, unless the Board shall in its order fix a different period of time or reconsideration by the Board is granted.

§ 501.7 Petition for reconsideration.

(a) *Procedure for filing.* A petition for reconsideration of a decision of the Board may be filed with the Board within 30 days from the date of the order, or, if another period is specified in the order, then prior to the time when the order becomes final. The petition shall state the grounds relied upon, including any matters claimed to have been erroneously decided and shall specify the alleged errors. The petition may be in letter form.

(b) *Answer; procedure for disposition of petitions.* Upon the filing of a petition for reconsideration, each of the other parties to the proceeding may file an answer thereto within such time as may be fixed by the Board. If reconsideration should be granted, reargument upon reasonable notice may be allowed in the discretion of the Board. After reconsideration of a case the Board shall either grant or deny the petition.

§ 501.8 Docket of proceedings; inspection of docket and records.

(a) *Maintenance of docket.* A docket of all proceedings shall be maintained by the Board. Each proceeding shall be assigned a number in chronological order upon the date on which an application for review is received. Each proceeding shall be generally considered in the order in which it is docketed, although for good cause shown the Board may advance the order in which a particular case is to be considered. Correspondence or further applications in connection with any pending case shall refer to the docket number of that case.

(b) *Inspection of docket and records.* The docket of the Board shall be open to public inspection. The Board shall publish its decisions in such form as to be readily available for inspection, and shall allow the public inspection thereof at the permanent location of the Board. Inspection of the papers and documents included in the case record of any proceeding before the Board shall be permitted or denied in accord-

ance with the standards provided in § 1.22 of this title. The Chairman of the Board shall exercise the functions prescribed in 29 CFR 70.74a.

[27 FR 12186, Dec. 8, 1962, as amended at 37 FR 26710, Dec. 15, 1972]

§ 501.9 Regulation of proceedings.

The proceedings shall be conducted under the supervision of the Chairman or Acting Chairman, who shall regulate such matters as the granting of continuances, acceptance of briefs and other procedural matters.

§ 501.10 Number of copies of pleadings and related documents; service; computation of time.

(a) Except as provided in paragraph (b) of this section, any application, pleading, petition, brief or other memorandum shall be filed in duplicate (original and 1 copy) with the Board; the Board shall serve the copy upon the other party.

(b) Instead of filing the duplicate of any such document with the Board, the party submitting it may serve the duplicate or copy directly upon the Director and make a notation to that effect upon the copy filed with the Board.

(c) Any notice or order required under this part to be given or served shall be by certified or registered mail or by personal service.

(d) *Computation of Time.* (1) In computing any period of time prescribed or allowed by these rules or by direction of the Board, the first day counted shall be the day after the event from which the time period begins to run, and the last day for filing shall be included in the computation. If the last day for filing falls on a Saturday, Sunday, or Federal holiday, the first working day thereafter shall be the last day for timely filing. For purposes of computing the time for filing a notice of appeal or a petition for reconsideration, the event which commences the running of the time period shall be construed as occurring on the date the relevant decision is issued, and not the date the decision is actually received.

(2) Whenever a paper is served on the Board by mail, paragraph (d)(1) of this section will be deemed complied with if the envelope containing the paper is

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postmarked within the time period allowed, computed as in paragraph (d)(1) of this section. If there is no postmark, or it is not legible, other evidence, such as, but not limited to, certified mail receipts, certificate of service and affidavits, may be used to establish the date of mailing.

(3) A waiver or an extension of the time limitations for filing a paper, other than a notice of appeal or a petition for reconsideration, may be requested by motion.

[27 FR 12186, Dec. 8, 1962, as amended at 53 FR 49491, Dec. 7, 1988]

§ 501.11 Appearances.

(a) *Representation.* In any proceeding before the Board, a party may appear in person, or by counsel or any other duly authorized person, including any accredited representative of an employee organization. No person shall be recognized as representing an appellant or intervenor unless there shall be filed with the Board a statement in writing, signed by the party to be represented, authorizing such representation. Such representative when accepted shall continue to be recognized unless he should abandon such capacity, withdraw, or the appellant or intervenor directs otherwise.

(b) *Former members of the Board; other employees of the Department of Labor.* A former member of the Board shall not be allowed to participate as counsel or other representative before the Board in any proceeding until two years from the termination of his status as a Board member. The practice of other former employees of the Department of Labor are governed by 29 CFR 2.2 and 2.3.

(c) *Debarment of counsel or other representative.* Whenever in any proceeding the Board finds that a person acting as counsel or other representative for any party to the proceeding is guilty of unethical or unprofessional conduct, the Board may order that such person be excluded from further acting as counsel or other representative in such proceeding. An appeal may be taken to the Secretary of Labor from such an order, but the proceeding shall not be delayed or suspended pending disposition of the appeal, although the Board may suspend the proceeding for a reasonable

time for the purpose of enabling the party to obtain different counsel or other representative. Whenever the Board has issued an order precluding a person from further acting as counsel or other representative in a proceeding, the Board shall within a reasonable time thereafter submit to the Secretary of Labor a report of the facts and circumstances surrounding the issuance of the order, and shall recommend what action the Secretary of Labor should take in regard to the appearance of such person as counsel or other representative in other proceedings before the Board. Before any action is taken debarring such person as counsel or representative from other proceedings, he shall be furnished notice and opportunity to be heard on the matter.

(d) *Fees.* No claim for legal or other service rendered in respect to a proceeding before the Board to or on account of any person, shall be valid unless approved by the Board or by a member thereof. No contract for a stipulated fee or for a fee upon a contingent basis shall be recognized by the Board, and no fee for service shall be approved except upon an application to the Board supported by a sufficient statement of the extent and character of the necessary work done before the Board on behalf of the interested party. Except where such representation is gratuitous, the fee approved by the Board, or by a member thereof, shall be reasonably commensurate with the actual necessary work performed by such representative, taking into account the capacity in which the representative has appeared, the amount of the compensation involved, and the circumstances of the appellant.

§ 501.12 Intervention.

The Board may permit any person whose rights may be affected by any proceeding before the Board to intervene therein whenever such person shows in a written petition to intervene that such rights are so affected. The petition should state with precision and particularity (a) the rights affected; and (b) the nature of any argument he intends to make.

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§ 501.13 Place of proceedings.

The Board shall sit in Washington,
DC.