

## Benefits Review Board, Labor

## § 801.304

(d) Upon application of the Chairman of the Board, the Secretary may designate up to four Department of Labor administrative law judges to serve as temporary Board members in addition to the five permanent Board members. Up to four such temporary members may serve at any one time. The term of any temporary Board member shall not exceed 1 year from date of appointment.

### § 801.202 Interim appointments.

(a) *Acting Chairman.* In the event that the Chairman of the Board is temporarily disabled or unavailable to perform his or her duties as prescribed in this chapter VII, he or she shall designate a permanent member to serve as Acting Chairman until such time as the Secretary designates an Acting Chairman. In the event that the Chairman is physically unable to make such designation, the next senior permanent member shall serve as Acting Chairman until such time as the Secretary of Labor designates an Acting Chairman.

(b) *Interim members.* In the event that a permanent member of the Board is temporarily unable to carry out his or her responsibilities because of disqualification, illness, or for any other reason, the Secretary of Labor may, in his or her discretion, appoint a qualified individual to serve in the place of such permanent member for the duration of that permanent member's inability to serve.

### § 801.203 Disqualification of Board Members.

(a) During the period in which the Chairman or the other members serve on the Board, they shall be subject to the Department's regulations governing ethics and conduct set forth at 20 CFR part 0.

(b) Notice of any objection which a party may have to any Board member who will participate in the proceeding shall be made by such party at the earliest opportunity. The Board member shall consider such objection and shall, in his or her discretion, either proceed with the case or withdraw.

## ACTION BY THE BOARD

### § 801.301 Quorum and votes of the permanent Board; panels within the Board.

(a) For the purpose of carrying out its functions under the Acts, whenever action is taken by the entire permanent Board sitting en banc, three permanent members of the Board shall constitute a quorum, and official action of the permanent Board can be taken only on the concurring vote of at least three permanent members.

(b) The Board may delegate any or all of its powers except en banc review to panels of three members. Each panel shall consist of at least two permanent members. Two members of the panel shall constitute a quorum and official panel action can be taken only on the concurring vote of two members of the panel.

(c) A panel decision shall stand unless vacated or modified by the concurring vote of at least three permanent members sitting en banc.

(d) En banc action is not available in cases arising under the District of Columbia Workmen's Compensation Act.

### § 801.302 Procedural rules.

Procedural rules for performance by the Board of its review functions and for insuring an adequate record for any judicial review of its orders, and such amendments to the rules as may be necessary from time to time, shall be promulgated by the Deputy Secretary. Such rules shall incorporate and implement the procedural requirements of section 21(b) of the Longshore and Harbor Workers' Compensation Act.

### § 801.303 Location of Board's proceedings.

The Board shall hold its proceedings at 200 Constitution Avenue, NW., Room N-5101, Washington, DC 20210, unless for good cause the Board orders that proceedings in a particular matter be held in another location.

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### § 801.304 Business hours.

The office of the Clerk of the Board at Washington, DC shall be open from 8:30 a.m.-5:00 p.m. on all days, except

## § 801.401

Saturdays, Sundays, and legal holidays, for the purpose of receiving notices of appeal, petitions for review, other pleadings, motions, and other papers.

### REPRESENTATION

#### § 801.401 Representation before the Board.

On any issues requiring representation of the Secretary, the Director, Office of Workers' Compensation Programs, a deputy commissioner, or an administrative law judge before the Board, such representation shall be provided by attorneys designated by the Solicitor of Labor. Representation of all other persons before the Board shall be as provided by the rules of practice and procedure promulgated under § 801.302 (see part 802 of this chapter).

#### § 801.402 Representation of Board in court proceedings.

Except in proceedings in the Supreme Court of the United States, any representation of the Benefits Review Board in court proceedings shall be by attorneys designated by the Solicitor of Labor.

## PART 802—RULES OF PRACTICE AND PROCEDURE

### Subpart A—General Provisions

#### INTRODUCTORY

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- 802.101 Purpose and scope of this part.
- 802.102 Applicability of part 801 of this chapter.
- 802.103 Powers of the Board.
- 802.104 Consolidation; severance.
- 802.105 Stay of payment pending appeal.

### Subpart B—Preview Procedures

#### COMMENCING APPEAL: PARTIES

- 802.201 Who may file an appeal.
- 802.202 Appearances by attorneys and other authorized persons; denial or authority to appear.
- 802.203 Fees for services.

#### NOTICE OF APPEAL

- 802.204 Place for filing notice of appeal.
- 802.205 Time for filing.
- 802.206 Effect of motion for reconsideration on time for appeal.

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- 802.207 When a notice of appeal is considered to have been filed in the office of the Clerk of the Board.
- 802.208 Contents of notice of appeal.
- 802.209 Transmittal of record to the Board.

#### INITIAL PROCESSING

- 802.210 Acknowledgment of notice of appeal.
- 802.211 Petition for review.
- 802.212 Response to petition for review.
- 802.213 Reply briefs.
- 802.214 Intervention.
- 802.215 Additional briefs.
- 802.216 Service and form of papers.
- 802.217 Waiver of time limitations for filing.
- 802.218 Failure to file papers; order to show cause.
- 802.219 Motions to the Board; orders.
- 802.220 Party not represented by an attorney; informal procedure.
- 802.221 Computation of time.

### Subpart C—Procedure for Review

#### ACTION BY THE BOARD

- 802.301 Scope of review.
- 802.302 Docketing of appeals.

#### ORAL ARGUMENT BEFORE THE BOARD

- 802.303 Decision; no oral argument.
- 802.304 Purpose of oral argument.
- 802.305 Request for oral argument.
- 802.306 Action on request for oral argument.
- 802.307 Notice of oral argument.
- 802.308 Conduct of oral argument.
- 802.309 Absence of parties.

### Subpart D—Completion of Board Review

#### DISMISSALS

- 802.401 Dismissal by application of party.
- 802.402 Dismissal by abandonment.

#### DECISION OF THE BOARD

- 802.403 Issuance of decisions; service.
- 802.404 Scope and content of Board decisions.
- 802.405 Remand.
- 802.406 Finality of Board decisions.

#### RECONSIDERATION

- 802.407 Reconsideration of Board decisions.
- 802.408 Notice of request for reconsideration.
- 802.409 Grant or denial of request.

#### JUDICIAL REVIEW

- 802.410 Judicial review of Board decisions.
- 802.411 Certification of record for judicial review.

AUTHORITY: 5 U.S.C. 301; 30 U.S.C. 901 *et seq.*; 33 U.S.C. 901 *et seq.*; Reorganization Plan No. 6 of 1950, 15 FR 3174; Secretary of Labor's Order 38-72, 38 FR 90, January 3, 1973.