

TITLE 28. INSURANCE

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

CHAPTER 142: DISPUTE RESOLUTION – BENEFIT CONTESTED CASE HEARING

Title 28 Texas Administrative Code (TAC) §§142.2 - 142.5, 142.7, 142.8, 142.10 - 142.14, 142.16, 142.18, and 142.20

1. INTRODUCTION. The commissioner of workers' compensation (commissioner), Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC §§142.2 - 142.5, 142.7, 142.8, 142.10 - 142.14, 142.16, 142.18, and 142.20. The amendments replace "hearing officer" with "administrative law judge," replace "commission" with "division," replace "division of hearings" with "division," and insert an omitted word into §142.20 to improve readability. The changes also include one style and usage change by inserting a comma after "facsimile" in §142.4. In addition, the amendments require administrative law judges (ALJs) to send notice to a party that fails to attend a scheduled contested case hearing indicating that the non-attending party, within 10 days of receipt of the notice, may show good cause for failing to attend. If the non-attending party timely demonstrates good cause, the hearing will be reset. Finally, the amendments specify that claimants who are neither represented by an attorney nor assisted by the Office of Injured Employee Counsel (OIEC) may make requests by contacting the division in any manner.

The amendments to §§142.2 - 142.4, 142.8, 142.10, 142.11, 142.13, 142.14, 142.16, 142.18, and 142.20 are adopted without changes to the proposed text as published in the November 2, 2018, issue of the *Texas Register* (43 TexReg 7319) and will not be republished. Amended §§142.5, 142.7, and 142.12 are adopted with corrections to spelling and changes to conform to grammatical and style conventions and are published below.

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 These amendments make conforming changes to DWC's rules, replace outdated references, and improve

readability. In addition, the amendments to §142.10 requires parties to comply with new §140.9 and states that a claimant who is neither represented by an attorney nor assisted by OIEC may request continuance of a hearing by contacting the division in any manner.

Also, the amendments to §142.11 requires ALJs to send notice to a party that failed to attend a scheduled contested case hearing that the non-attending party, within 10 days of receipt of the notice, may respond, in writing, to show good cause for failing to attend. Replies to the non-attending party's response are due within three days of receipt of the response. If the ALJ finds good cause, the hearing will be rescheduled. If the ALJ does not find good cause, or the non-attending party does not respond to the notice, the ALJ shall issue a decision based on the evidence presented at the hearing and may recommend the issuance of an administrative violation. Rule text that failure to attend a benefit contested case hearing without good cause is a Class C administrative violation is deleted because Labor Code §415.025 eliminated classes of penalties in 2005.

Requests for continuance require a showing of good cause. Formerly, if the party whose continuance request was denied subsequently failed to appear, but thereafter requested a new hearing within 10 days, a new hearing was set automatically. This result was inefficient and unfair to the other party who had spent time and money preparing for and attending the hearing. Requiring a showing of good cause in order for a party to receive a new hearing after the party fails to appear at a scheduled proceeding makes the standard consistent with the statutory standard for obtaining a

continuance. Under Labor Code §410.155(b), DWC may grant a continuance only if DWC determines that there is good cause for the continuance.

DWC amends §§142.5, 142.7, and 142.12 to conform with new §140.9 so that all DWC rules are consistent on the topic of requests from claimants who are neither represented by an attorney nor assisted by OIEC.

The division amends §142.4 to conform with new §140.9 that requires parties to provide copies of all requests to a presiding officer to both the attorney and the client.

During the last five years, the division has experienced an increased number and percentage of hearings in which a party failed to appear and then requested a new hearing. The amendments to §142.11 are appropriate to ensure that a new hearing is held only when there is a reasonable explanation for a party's failure to appear at the scheduled hearing.

3. SUMMARY OF COMMENTS AND AGENCY RESPONSE

The public comment period ended on December 3, 2018. No public hearing was requested.

General: Commenter expressed support for the proposal.

DWC Response: DWC appreciates the supportive comment.

4. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL

For: Office of Injured Employee Counsel

For, with changes: None

Against: None

Neither for nor against: None

5. STATUTORY AUTHORITY. The amendments are adopted under the authority of Labor Code §§402.00111, 402.00116, 402.00128, 402.0215, 402.061, 410.157, and 415.025.

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

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

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

Labor Code §402.0215 states that a reference to the division of hearings means the division of workers' compensation.

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

Labor Code §410.157 states that the commissioner shall adopt rules under which contested case hearings are conducted.

Labor Code §415.025 states that a reference to a particular class of violation shall be construed as an administrative penalty.

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

6. TEXT.

§142.2. Authority of the Administrative Law Judge

The administrative law judge is authorized to:

- (1) issue subpoenas;
- (2) rule on requests;
- (3) issue orders, including interlocutory orders;
- (4) use summary procedures as provided by §142.8 of this chapter (relating to Summary Procedures);
- (5) direct parties to appear at a prehearing conference to resolve evidentiary and procedural issues;
- (6) establish time limits for conducting a hearing;
- (7) administer oaths;
- (8) rule on the admissibility of evidence;
- (9) determine the relevancy, materiality, weight, and credibility of evidence;
- (10) request additional evidence;

(11) take official notice of the law of Texas and other jurisdictions, Texas city and county ordinances, the contents of the Texas Register, the rule of state agencies, facts that are judicially cognizable, and generally recognized facts within the division's specialized knowledge;

(12) examine parties and witnesses, and permit examination and cross-examination of parties and witnesses;

(13) recess, postpone, or dismiss a hearing; and

(14) take any other action as authorized by law, or as may facilitate the orderly conduct and disposition of the hearing.

§142.3. Ex Parte Communications

(a) No person, except as otherwise provided in subsection (c) of this section may communicate, either directly or indirectly, with the administrative law judge regarding any facts, issues, law or rules relating to the benefit contested case hearing after the hearing has been set, and until all administrative and judicial remedies have been exhausted, unless all parties to the hearing are present, except where the communication is:

(1) written; and

(2) delivered to all parties, as provided by §142.4 of this title (relating to Delivery of Copies to All Parties).

(b) Notwithstanding subsection (a) of this section, any of the individuals named in subsection (a) may communicate with the administrative law judge in any manner regarding procedural issues.

(c) An administrative law judge assigned to render a decision in a benefit contested case hearing, may communicate ex parte with other division employees for the purpose of utilizing their special skills or knowledge in evaluating the evidence.

§142.4. Delivery of Copies to all Parties

A party who sends a document relating to a benefit contested case hearing to the division shall also deliver copies of the document to all other parties as provided in §140.9 of this title (Requests by Parties). Delivery shall be accomplished by presenting in person, mailing by first class mail, facsimile, or electronic transmission. The document sent to the division shall contain a statement certifying delivery. The following statement of certification shall be used: "I hereby certify that I have on this _____ day of _____, _____, delivered a copy of the attached document to (state the names of all parties to whom a copy was delivered) by (state the manner of delivery)."

§142.5. Sequence of Proceedings to Resolve Benefit Disputes

(a) Usual sequence. Except as provided in this section, parties to a benefit dispute are required to attempt to resolve the dispute by mediation at a benefit review conference before proceeding to a contested case hearing or to arbitration by mutual election.

(b) Guidelines for proceeding directly to a benefit contested case hearing. Parties may proceed directly to a contested case hearing without attending a benefit review conference if the division determines that:

- (1) mediation would not prove effective to resolve the dispute;
- (2) necessary evidence cannot be obtained without subpoena; or
- (3) the situation of the parties or the nature of the facts or law of the case

is such that the overall policy of the Act would be advanced by proceeding directly to a contested case hearing.

(c) Requesting a hearing. A party may request that the division set a benefit contested case hearing. The request shall be made in the following manner:

(1) If the requester is a carrier, carrier representative, claimant represented by an attorney, or claimant assisted by OIEC, the request shall:

- (A) be made in writing and signed by the requestor;
- (B) identify and describe the disputed issue or issues;
- (C) state the reason for requesting the hearing;
- (D) be sent to the division; and
- (E) be delivered to all the other parties, as provided by §142.4 of

this chapter (relating to Delivery of Copies to All Parties).

(2) A claimant who is neither represented by an attorney nor assisted by OIEC may request a hearing by contacting the division in any manner.

(d) Division action on a request for hearing. The division will rule on the request and notify the parties. A ruling granting the request will include a notice of hearing, as

provided in §142.6 of this chapter (relating to Setting a Benefit Contested Case Hearing). A ruling denying the request may include a notice of benefit review conference.

(e) Response. If a hearing is set upon request, the other party or parties may submit a response. The response shall:

- (1) be made in writing and signed;
- (2) describe and explain the party's position on the dispute or disputes;
- (3) be sent to the division no later than five days before the hearing; and
- (4) be delivered to all other parties, as provided by §142.4 of this title

(relating to Delivery of Copies to All Parties).

(f) A claimant who is neither represented by an attorney nor assisted by OIEC may respond by contacting the division in any manner.

§142.7. Statement of Disputes

(a) Statement of disputes. The statement of disputes is a written description of the benefit dispute or disputes to be considered by the administrative law judge. A dispute not expressly included in the statement of disputes will not be considered by the administrative law judge.

(b) Statement of disputes after a benefit review conference. The statement of disputes for a hearing held after a benefit review conference includes:

- (1) the benefit review officer's report, identifying the disputes remaining unresolved at the close of the benefit review conference;
- (2) the parties' responses, if any;

(3) additional disputes by unanimous consent, as provided by subsection (c) of this section; and

(4) additional disputes presented by a party, as provided by subsections (d) and (e) of this section, if the administrative law judge determines that the party has good cause.

(c) Party response to the benefit review officer's report. A party may submit a response to the disputes identified as unresolved in the benefit review officer's report.

The response shall:

(1) be in writing;

(2) describe and explain the party's position on the unresolved dispute or disputes;

(3) be sent to the division no later than 20 days after receiving the benefit review officer's report; and

(4) be delivered to all other parties, as provided by §142.4 of this title (relating to Delivery of Copies to All Parties).

(d) Additional disputes by unanimous consent. Parties may, by unanimous consent, submit for inclusion in the statement of disputes one or more disputes not identified as unresolved in the benefit review officer's report. Additional disputes submitted by consent shall:

(1) be made in writing;

- (2) identify the dispute and explain the party's position on it;
- (3) be signed by all parties;
- (4) be sent to the division no later than 10 days before the hearing; and
- (5) explain why the issue was not raised earlier.

(e) Additional disputes by permission of the administrative law judge. A party may request the administrative law judge to include in the statement of disputes one or more disputes not identified as unresolved in the benefit review officer's report. The administrative law judge will allow such amendment only on a determination of good cause.

(1) If the requester is a carrier, carrier representative, claimant represented by an attorney, or claimant assisted by OIEC, the request shall:

- (A) be made in writing;
- (B) identify and describe the dispute or disputes;
- (C) state the reason for the request;
- (D) be sent to the division no later than 15 days before the hearing;

and

(E) be delivered to all other parties, as provided by §142.4 of this title (relating to Delivery of Copies to All Parties).

(2) A claimant who is neither represented by an attorney nor assisted by OIEC may request additional disputes to be included in the statement of disputes by contacting the division in any manner no later than 15 days before the hearing.

(3) The administrative law judge will rule on the request, and notify the parties of the ruling.

(f) Statement of disputes without prior benefit review conference. The statement of disputes for a hearing held without a prior benefit review conference includes:

(1) the request for hearing, as described in §142.5(c) of this title (relating to Sequence of Proceedings To Resolve Benefit Disputes); and

(2) the other party's response, as described in §142.5(e) of this title (relating to Sequence of Proceedings To Resolve Benefit Disputes), if any.

§142.8. Summary Procedures

(a) In order to expedite the presentation of a case, the administrative law judge may allow summary procedures, including, but not limited to, the use of:

- (1) sworn witness statements;
- (2) summaries of evidence;
- (3) medical reports;
- (4) agreements; and
- (5) stipulations.

(b) The administrative law judge may allow the use of summary procedures:

(1) on its own motion; or

(2) at the request of a party. (c) A party may request the use of summary procedures in any manner and at any time before the hearing.

(c) A party may request the use of summary procedures in any manner and at any time before the hearing.

§142.10. Continuance

(a) As used in this chapter, continuance means postponing a hearing from the time or date set, and rescheduling it on a later time or date.

(b) The division may continue a hearing:

(1) on its own motion; or

(2) at the request of a party, if the administrative law judge determines the party has good cause.

(c) A request for continuance may be made before or during a hearing.

(1) A request made before a hearing by a carrier, carrier representative, claimant represented by an attorney, or claimant assisted by OIEC shall:

(A) be in writing;

(B) state the reason for continuing the hearing;

(C) be sent to the division no later than five days before the hearing; and

(D) be delivered to all parties, as provided by §142.4 of this title (relating to Delivery of Copies to All Parties).

(2) A claimant who is neither represented by an attorney nor assisted by OIEC may request a continuance before a hearing by contacting the division in any manner.

(3) A party may orally request a continuance during a hearing. In addition to showing good cause, the party must show that a continuance will not prejudice the rights of the other parties.

(d) The administrative law judge will rule on the request, and notify all parties of the ruling. A ruling granting the continuance will include notice of the date, time, and location of the rescheduled hearing.

§142.11. Failure To Attend a Benefit Contested Case Hearing

(a) When a party fails to attend a scheduled contested case hearing for which proper notice was provided, the administrative law judge shall proceed with the scheduled hearing. Following the close of evidence, the administrative law judge shall send written notice that the non-attending party has 10 days from the date of receipt of the notice to respond in writing and show good cause for the party's failure to attend.

(b) Other parties to the proceeding may reply, in writing, to the non-attending party's response within three days of receipt of the response.

(c) The administrative law judge shall issue a written ruling based on the filings allowed under subsections (a) and (b) of this section. If the administrative law judge

determines that good cause exists for the failure to attend, the hearing will be rescheduled. If good cause is not found, or if the non-attending party does not respond to the notice, the administrative law judge shall issue a decision based on the evidence presented at the hearing and may recommend the issuance of an administrative violation.

§142.12. Subpoena

(a) Definitions. The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Evidence - Testimony or documents, including books, papers, and tangible things.

(2) Service - Delivery of a subpoena by an authorized individual to the person to whom it is addressed.

(3) Subpoena - A division order issued by the administrative law judge requiring a person to attend or to produce evidence at a deposition (deposition subpoena) or at a hearing (hearing subpoena).

(b) How issued. The division may issue a subpoena:

(1) on its own motion; or

(2) at the request of a party, if the administrative law judge determines the party has a good cause.

(c) Request for subpoena. A party may request a subpoena in the following manner:

(1) If the requester is a carrier, carrier representative, claimant represented by an attorney, or claimant assisted by OIEC, the request shall:

(A) be in writing;

(B) identify the evidence to be produced, and explain why it is relevant to a disputed issue;

(C) state whether the subpoena is for a deposition or a hearing;

(D) be sent to the division; and

(E) be delivered to all parties, as provided by §142.4 of this chapter (relating to Delivery of Copies to All Parties).

(2) A claimant who is neither represented by an attorney nor assisted by OIEC may request a subpoena by contacting the division in any manner, and may also request the division to arrange for service, if service will be at no cost to the division.

(d) Special provisions for hearing subpoenas. A request for a hearing subpoena shall be sent to the division and delivered to the parties, as provided by §142.4 of this chapter (relating to Delivery of Copies to All Parties), no later than 10 days before the hearing. The administrative law judge may deny a request for a hearing subpoena upon a determination that the testimony may be adequately obtained by deposition or written affidavit.

(e) Service. Upon granting a request and issuing a subpoena, the administrative law judge shall:

(1) return it to the requester for service, according to §176.5, Texas Rules of Civil Procedure; or

(2) send it to the appropriate sheriff or constable, or any person who is not a party and is 18 years of age or older for service, if a claimant who is neither represented by an attorney nor assisted by OIEC has requested the division to arrange for service, as provided by subsection (c)(2) of this section.

(f) Costs.

(1) Except as provided by subsection (c)(2) of this section, the party requesting the subpoena is responsible for all costs associated with the subpoena, including service, witness fees, and mileage.

(2) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to attend a hearing or deposition to give testimony or produce documents is entitled to receive from the party requesting the subpoena:

(A) a fee of \$30 a day for each day or part of a day the person is necessarily present as a witness or deponent;

(B) mileage at the rate set for state employees in the General Appropriations Act, for going to, and returning from the place of the hearing or the place

of the deposition, if the place is more than 25 miles from the person's place of residence; and

(C) fees for providing expert testimony relating to medical issues shall be paid according to guidelines established by the division pursuant to the Texas Labor Code, Chapter 413.

(g) A subpoena may be enforced in the manner provided by the Government Code §2001.201 and the Texas Labor Code.

§142.13. Discovery

(a) Description of discovery. As used in this chapter, discovery is the process by which a party may, before the hearing, obtain evidence relating to the disputed issue or issues from the other parties and witnesses. If the evidence is not produced voluntarily, the party may request a subpoena, as provided in §142.12 of this title (relating to Subpoena). Discovery includes:

(1) parties' exchange of documentary evidence;

(2) interrogatories, as prescribed by §142.19 of this title (relating to Interrogatories); and

(3) witness depositions, as follows:

(A) a health care provider may be deposed only on written questions; and

(B) other witnesses may be deposed within their county of residence or employment, orally or on written questions, if the administrative law judge determines the party has good cause to request such testimony.

(b) Sequence of discovery. Parties shall exchange documentary evidence in their possession not previously exchanged, as described in subsection (c) of this section, before requesting additional discovery by interrogatory, as described in subsection (d) of this section, or deposition, as described in subsection (e) of this section. Additional discovery shall be limited to evidence not exchanged, or not readily derived from evidence exchanged.

(c) Parties' exchange of documentary evidence.

(1) Except as provided in subsection (g) of this section, no later than 15 days after the benefit review conference, parties shall exchange with one another the following information:

(A) all medical reports and reports of expert witnesses who will testify at the hearing;

(B) all medical records;

(C) any witness statements;

(D) the identity and location of any witness known to have knowledge of relevant facts; and

(E) all photographs or other documents which a party intends to offer into evidence at the hearing.

(2) Thereafter, parties shall exchange additional documentary evidence as it becomes available.

(3) Parties shall bring all documentary evidence not previously exchanged to the hearing in sufficient copies for exchange. The administrative law judge shall make a determination whether good cause exists for a party not having previously exchanged such information or documents to introduce such evidence at the hearing.

(d) Interrogatories. Interrogatories as prescribed by §142.19 of this title (relating to Interrogatories) may be used to elicit information from claimants and insurance carriers. Except as provided in subsection (g) of this section, interrogatories shall be presented no later than 20 days before the hearing, unless otherwise agreed. Answers to interrogatories shall be exchanged no later than five days after receipt of the interrogatories. Answers to interrogatories shall be made under oath.

(e) Witness deposition. A party wishing to depose a witness shall request permission for deposition from the administrative law judge. The request shall:

- (1) be made in writing;
- (2) identify the witness to be deposed;
- (3) state why the testimony is needed;
- (4) propose a date, time, and place for taking the deposition;

(5) include a copy of the questions to be asked, if the deposition is to be on written questions;

(6) if needed, include a request for subpoena, as provided by §142.12 of this title (relating to Subpoena);

(7) be filed with the division no later than 10 days before the hearing; and

(8) be delivered to all parties, as provided by §142.4 of this title (relating to Delivery of Copies to All Parties).

(f) Additional discovery. The administrative law judge may grant a party permission to conduct discovery beyond that described previously upon a showing of good cause at a hearing held for this purpose.

(g) Time for discovery when the hearing is expedited or held without a prior benefit review conference. The notice setting an expedited hearing, or a hearing held without a prior benefit review conference, shall include time limits for completion of discovery.

§142.14. Permission To Use Court Reporter

(a) A party may request permission to have the hearing recorded by a court reporter provided by the party. The party may select, and must bear the cost of, the court reporter.

(b) A request for permission to use a court reporter may be made in any manner and at any time before the hearing. The administrative law judge will rule on the request, and notify the parties only if the request is denied.

(c) A copy of the court reporter's audiotape, or transcript, if produced, shall be furnished to the division at no charge.

§142.16. Decision

(a) After the record closes, the administrative law judge shall issue a decision on benefits. The decision shall:

(1) be in writing;

(2) include findings of fact and conclusions of law; a determination of whether benefits are due; and, if so, an award of benefits due; and (3) be signed by the administrative law judge.

(3) be signed by the administrative law judge.

(b) On a form prescribed by the division the administrative law judge shall issue a separate written decision regarding attorney's fees and any matter related to attorney fees. A decision on income or medical benefits may include an interlocutory order at the discretion of the administrative law judge.

(c) No later than the tenth day after the close of the hearing, the administrative law judge shall file all decisions with the division.

(d) No later than seven days after filing the decision, the division shall furnish to the parties, by first class mail or personal delivery:

(1) a file-stamped copy of the decision; and

(2) a statement specifying the place, manner, and time period within which an appeal must be filed.

(e) A decision issued under this section shall be effective and binding on the date signed by the administrative law judge unless superceded by an interlocutory order contained in the decision, if any.

(f) A decision regarding benefits not appealed to the appeals panel, as provided by the Texas Labor Code, §410.202 and Chapter 143 of this title, becomes final on the sixteenth day after the date received from the division of hearings. Parties shall comply with a final decision or order within 20 days of the date it becomes final as provided by the Texas Labor Code, §410.208.

(g) A decision regarding benefits appealed to the appeals panel as provided by the Texas Labor Code, §410.202 and Chapter 143 of this title, is binding on the parties and payable during an appeal to the appeals panel unless superceded by an interlocutory order contained in the decision, if any.

(h) Parties shall comply with a decision regarding benefits appealed to the appeals panel that does not contain an interlocutory order by issuing and delivering payment of accrued and unpaid income benefits no later than the fifth day after filing a

written request for appeal with the appeals panel as provided by the Texas Labor Code, §410.202, and Chapter 143 of this title.

(i) Payment of accrued and unpaid income benefits paid in accordance with a decision shall include interest pursuant to the Texas Labor Code, §408.064 and §408.081.

(j) Payment of medical benefits pursuant to a decision shall be made in accordance with Chapters 408 and 413 of the Texas Labor Code.

§142.18. Special Provisions for Cases on Remand from the Appeals Panel

(a) Priority setting for case on remand from appeals panel. When the appeals panel reverses an administrative law judge's decision and remands the case for further consideration, the division shall set the hearing to be held within 30 days of the date of the appeals panel's decision.

(b) Notice of hearing. After setting a hearing under this section, the division shall furnish, by first class mail or personal delivery, written notice of the date, time, and location to the parties. The notice shall be furnished at least 20 days before the hearing.

(c) Statement of issues. For cases on remand from the appeals panel, the statement of issues includes:

- (1) the decision of the appeals panel; and
- (2) the parties' responses, if any.

§142.20. Interlocutory Orders

(a) The administrative law judge may enter an interlocutory order to pay all or part of income benefits or medical benefits.

(b) An interlocutory order contained in a decision supercedes the decision as it pertains to the payment of income benefits or medical benefits and remains in effect until:

(1) the decision becomes final in accordance with §142.16(f) of this title (relating to the Decision);

(2) the decision of the appeals panel is issued pursuant to the Texas Labor Code, §410.204, and Chapter 143 of this title, if appealed to the appeals panel as provided by the Texas Labor Code, §410.202

, and Chapter 143 of this title and the decision and order are affirmed or an appeals panel decision reverses the administrative law judge's decision and renders a decision;

(3) reversed or modified by an agreement or settlement, as provided by §147.7 of this title (relating to Effect on Previously-Entered Decisions and Orders); or

(4) reversed or modified by a subsequent interlocutory order or decision issued after remand from the appeals panel pursuant to the Texas Labor Code, §410.203, and Chapter 143 of this title.

(c) An interlocutory order for payment of income benefits or medical benefits shall be effective on the date signed by the administrative law judge.

(d) A party shall comply with an interlocutory order by issuing and delivering payment of accrued and unpaid income benefits no later than the fifth day after receiving the interlocutory order to pay accrued and unpaid benefits, and shall pay benefits in accordance with the interlocutory order as and when they accrue.

(e) Payment of accrued and unpaid income benefits paid in accordance with an interlocutory order shall include interest pursuant to the Texas Labor Code, §408.064 and §408.081.

(f) Payment of medical benefits pursuant to an interlocutory order shall be made in accordance with Chapters 408 and 413 of the Texas Labor Code.

(g) An interlocutory order contained in a decision will be distributed to the parties as provided by §142.16 of this title (relating to the Decision).

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

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

X

Nicholas Canaday III

General Counsel
Texas Department of Insurance,
Division of Workers' Compensation

The commissioner adopts amendments to §§142.2 – 142.5, 142.7, 142.8, 142.10 – 142.14, 142.16, 142.18, and 142.20.

Cassie Brown
Commissioner of Workers' Compensation

COMMISSIONER'S ORDER NO. _____

ATTEST:

X

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

COMMISSIONER'S ORDER NO. _____