

TITLE 28. INSURANCE

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

CHAPTER 143. DISPUTE RESOLUTION REVIEW BY THE APPEALS PANEL

28 TAC §143.2

ADOPTION

1. INTRODUCTION.

The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance, Division of Workers' Compensation (Division) adopts an amendment to §143.2, relating to Description of the Appeal Proceeding, without changes to the proposed text as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5628). The section will not be republished.

In accordance with Government Code §2001.033, the Division's reasoned justification for the amendment is set out in this order, which includes the preamble. The preamble contains a summary of the factual basis of the rule, a summary of the comment received from an interested party, the name of the entity that commented and whether it was in support of or in opposition to the adoption of the rule, and the reason why the Division agrees or disagrees with the comment.

The Commissioner conducted a public hearing on the proposed amendment to §143.2 on September 20, 2011. There was no public testimony on this proposed amendment. The public comment period for the proposed amended rule ended on October 3, 2011 and the Division received one written public comment.

The Division also published an informal draft of the adopted amendment on the Division's website from June 27, 2011 until July 18, 2011, and received no informal comments on the amendment.

2. REASONED JUSTIFICATION.

The rule revision to §143.2 is necessary to implement certain legislative amendments made by House Bill 2605, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011 (HB 2605) affecting the Division's Appeals Panel. These legislative amendments delineate the types of cases on which the Appeals Panel may affirm and issue written decisions.

Specifically, HB 2605 amended Labor Code §410.203(b) and §410.204(a) to authorize the Appeals Panel to affirm the decision of the hearings officer in a case described by Labor Code §410.204(a-1). HB 2605 enacted Labor Code §410.204(a-1) which provides that an Appeals Panel may only issue a written decision in a case in which the panel affirms the decision of a hearings officer if the case: (1) is a case of first impression; (2) involves a recent change in law; or (3) involves errors at the contested case hearing that require correction but do not affect the outcome of the hearing, including findings of fact for which insufficient evidence exists, incorrect conclusions of law, findings of fact or conclusions of law regarding matters that were not properly before the hearings officer, and legal errors not otherwise described. This adopted amendment makes the Appeals Panel rule conform to these legislative amendments.

3. HOW THE SECTION WILL FUNCTION.

Section 143.2 lists actions the Appeals Panel may take on a case under review by the panel. The adopted amendment to this section adds to this list the authority to "affirm the decision

of the hearings officer in a case as described by Labor Code §410.204(a-1)." This addition conforms this rule to certain legislative amendments made by HB 2605 as stated above.

4. SUMMARY OF COMMENTS AND AGENCY'S RESPONSE.

§143.2(b)(3): A commenter agrees with the proposed addition which allows the Appeals Panel to affirm the decision of a hearing officer pursuant to Texas Labor Code §410.204(a-1).

Agency Response: The Division agrees. The language conforms to legislative amendments enacted under HB 2605 that delineate the types of cases on which the Division's Appeals Panel may affirm and issue written decisions.

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: Texas Mutual Insurance Company.

For, with changes: None.

Against: None.

Neither for or Against: None.

6. STATUTORY AUTHORITY.

The amendment is adopted under the Labor Code §§410.203, 410.204, 402.00116, 402.00111 and 402.061. Section 410.203 authorizes the Appeals Panel to affirm the decision of the hearings officer in a case described by Labor Code §410.204(a-1). Section 410.204(a) states that the Appeals Panel may issue a written decision on an affirmed case as described by Subsection (a-1) of that section. Section 410.204(a-1) provides that an appeals panel may only issue a written decision in a case in which the panel affirms the decision of a hearings officer if the case: (1) is a case of first impression; (2) involves a recent change in law; or (3) involves errors at

the contested case hearing that require correction but do not affect the outcome of the hearing, including findings of fact for which insufficient evidence exists, incorrect conclusions of law, findings of fact or conclusions of law regarding matters that were not properly before the hearing officer, and legal errors not otherwise described.

Section 402.00116 grants the powers and duties of chief executive and administrative officer to the Commissioner and the authority to enforce the Labor Code, Title 5, and other laws applicable to the Division or Commissioner.

Section 402.00111 provides that the Commissioner shall exercise all executive authority, including rulemaking authority, under the Labor Code, Title 5.

Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

7. TEXT.

§143.2. Description of the Appeal Proceeding.

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

(b) The appeals panel may:

- (1) reverse the decision of the hearing officer and render a new decision;
- (2) reverse the decision of the hearing officer and remand to the hearing officer for a second benefit contested case hearing, which shall be set as provided by §142.18 of this title (relating to Special Provisions for Cases on Remand from the Appeals Panel). The appeals panel may not remand a case more than once; or

(3) affirm the decision of a hearing officer in a case as described by Labor Code §410.204(a-1).

8. CERTIFICATION.

This agency hereby certifies that the adopted amendment has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on _____, 2011.

X

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

IT IS THEREFORE THE ORDER of the Commissioner of Workers' Compensation that the amendment to §143.2 specified herein, concerning Description of the Appeal Proceeding, is adopted.

AND IT IS SO ORDERED.

X

ROD BORDELON
COMMISSIONER OF WORKERS'
COMPENSATION

TITLE 28. INSURANCE
Part 2. Texas Department of Insurance,
Division of Workers' Compensation
Chapter 143. Dispute Resolution Review by the Appeals Panel

ATTEST:

X

Dirk Johnson
General Counsel

COMMISSIONER ORDER NO.