

## **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 - 142.16, 142.18, and 142.20**

**1. INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (division) proposes to amend 28 TAC §§142.2 - 142.5, 142.7, 142.8, 142.10-142.14, 142.16, 142.18, and 142.20. The proposed 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 proposed changes also include one style and usage change by inserting a comma after "facsimile" in §142.4. In addition, the proposed 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 proposed 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. An informal working draft of the rule text was published on the division's website on April 9, 2018, and the division received two comments.

**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.” The purpose of this proposal is to make conforming changes to the division’s rules, replace outdated references, and improve readability. In addition, the proposed amendment to §142.10 requires parties to comply with proposed 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 proposed amendment 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. Under the proposal, the current 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. Currently, however, if the party whose continuance request was denied subsequently fails to appear, but thereafter requests a new hearing within 10 days, a new hearing is set automatically.

This result is inefficient and unfair to the other party who has 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), the division may grant a continuance only if the division determines that there is good cause for the continuance.

The division proposes to amend §§142.5, 142.7, and 142.12 to conform with a proposed addition to Chapter 140 (new §140.9) so that all division rules are consistent on the topic of requests from claimants who are neither represented by an attorney nor assisted by OIEC.

The division proposes to amend §142.4 to conform with a proposed addition to Chapter 140 (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 fails to appear and then requests a new hearing. The proposed amendment to §142.11 is 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. FISCAL NOTE.** Mr. Kerry Sullivan, deputy commissioner for Hearings, has determined that for each year of the first five years the amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on

local employment or the local economy as a result of the proposal. Local government and state government as a covered regulated entity will be impacted in the same manner as persons required to comply with the proposed amendments, as described below.

**4. PUBLIC BENEFIT.** Mr. Sullivan has also determined that, for each year of the first five years amended §§142.2 - 142.5, 142.7, 142.8, 142.10-142.14, 142.16, 142.18, and 142.20 are in effect, there will be a number of public benefits. The public benefits anticipated as a result of the proposed amendments include clearer guidance to system participants by conforming the division's rules to the current statutory terminology. The public will also benefit from a fairer, more efficient dispute resolution process in which hearings are rescheduled and redone only when a party has good cause for failing to attend a scheduled proceeding.

**5. ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL.** Mr. Sullivan anticipates there will be no costs to comply with these rules. Placing reasonable limitations on holding new hearings after a party fails to appear will reduce the number of unnecessary hearing sessions and the costs associated with them.

Because the division has determined that the proposed amendments will have no costs to system participants, Government Code §2001.0045 does not apply.

**6. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.**

The division has determined that adoption of the proposed amendments will not have a direct, adverse economic impact on system participants who qualify as small or micro-businesses or rural communities who may be self-insured insurance carriers.

Therefore, the provisions of Government Code §2006.002(c) do not apply to this rule proposal.

**7. GOVERNMENT GROWTH IMPACT STATEMENT.** Government Code §2001.0221 requires that a state agency prepare a government growth impact statement describing the effects that a proposed rule may have during the first five years that the rule would be in effect. The division has determined that the proposed rule will not create or eliminate a government program, and will not require an increase or decrease in fees paid to the division. Implementation of the proposal will not require the creation or elimination of employee positions, and will not require an increase or decrease in future legislative appropriations to the division.

The proposal creates a new regulation in that it establishes procedures relating to hearings at which a party fails to appear. The proposal does not expand, limit, or repeal an existing regulation. The proposed rule does not change the number of individuals subject to the rule's applicability. The proposed rule will not significantly affect the state's economy. Any impact would be positive by making the dispute resolution process more efficient.

**8. TAKINGS IMPACT ASSESSMENT.** The division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. Therefore, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**9. REQUEST FOR PUBLIC COMMENT.** If you would like to submit written comments on this proposal, please submit your comments by 5:00 p.m. CST on December 3, 2018. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rulecomments@tdi.texas.gov](mailto:rulecomments@tdi.texas.gov) or by mail to Ashley Hyten, Texas Department of Insurance, Division of Workers' Compensation, Office of the General Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. If a hearing is held, the division will consider written comments and public testimony presented at the hearing.

**10. STATUTORY AUTHORITY.** Amended §§142.2 – 142.5, 142.7, 142.8, 142.10 – 142.14, 142.16, 142.18, and 142.20 are proposed 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 proposed amendment affect the Texas Workers' Compensation Act, Texas Labor Code, Title 5, Subtitle A.

## **11. TEXT.**

### **§142.2. Authority of the Administrative Law Judge [~~Hearing Officer~~]**

The administrative law judge [~~hearing officer~~] 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 [~~Commission'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 [~~hearing officer~~] 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) – (2) (No change.)

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

(c) An administrative law judge [~~A hearing officer~~] assigned to render a decision in a benefit contested case hearing, may communicate ex parte with other division [~~Commission~~] 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 [~~Commission~~] shall also deliver copies of the document to all other parties as provided in §140.9 of this title (Requests by Parties) [~~, or their representatives or attorneys~~]. Delivery shall be accomplished by presenting in person, mailing by first class mail, facsimile, or electronic transmission. The document sent to the division [~~Commission~~] 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 [~~Commission~~] 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 [~~Commission to~~] set a benefit contested case hearing. The request shall be made in the following manner:

(1) If the requester [~~party~~] is a carrier, carrier representative, claimant represented by an attorney, or claimant assisted by OIEC [~~represented~~], 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 [~~Commission~~]; 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 [~~An unrepresented claimant~~] may request a hearing by contacting the division [~~Commission~~] in any manner.

(d) Division [~~Commission~~] action on a request for hearing. The division [~~Commission~~] 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 [~~Commission~~] 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 [~~An unrepresented claimant~~] may respond by contacting the division [~~Commission~~] 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 [~~hearing officer~~]. A dispute not expressly included in the statement of disputes will not be considered by the administrative law judge [~~hearing officer~~].

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

(1) – (3) (No change.)

(4) additional disputes presented by a party, as provided by subsections (d) and (e) of this section, if the administrative law judge [~~hearing officer~~] 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 [~~commission~~] 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, explain the party's position on it;

(3) be signed by all parties;

(4) be sent to the division [~~commission~~] 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 [~~hearing officer~~]. A party may request the administrative law judge [~~hearing officer~~] 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 [~~hearing officer~~] will allow such amendment only on a determination of good cause.

(1) If the requester [~~party~~] is a carrier, carrier representative, claimant represented by an attorney, or claimant assisted by OIEC [~~represented~~], 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 [~~commission~~] 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 [~~An unrepresented claimant~~] may request additional disputes to be included in the statement of disputes by contacting the division [~~commission~~] in any manner no later than 15 days before the hearing.

(3) The administrative law judge [~~hearing officer~~] will rule on the request, and notify the parties of the ruling.

(f) (No change.)

### **§142.8. Summary Procedures**

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

(1) – (5) (No change.)

(b) The administrative law judge [~~hearing officer~~] may allow the use of summary procedures:

(1) – (2) (No change.)

(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 [~~commission~~] may continue a hearing:

(1) on its own motion; or

(2) at the request of a party, if the administrative law judge [~~hearing officer~~] 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 [~~represented party before a hearing~~] shall:

(A) be in writing;

(B) state the reason for continuing the hearing;

(C) be sent to the division [~~commission~~] 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 [An unrepresented claimant] may request a continuance before a hearing by contacting the division [commission] 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 [hearing officer] 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 ten days from the date of receipt of the notice to respond in writing and show good cause for the party's failure to attend.  
~~[Failure to attend a benefit contested case hearing without good cause, as determined by the hearing officer, is a Class C administrative violation, with a penalty not to exceed \$1,000.]~~

(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) – (2) (No change.)

(3) Subpoena - A division [~~Commission~~] order issued by the administrative law judge [~~hearing officer~~] 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 [~~Commission~~] may issue a subpoena:

(1) (No change.)

(2) at the request of a party, if the administrative law judge [~~hearing officer~~] 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 [party] is a carrier, carrier representative, claimant represented by an attorney, or claimant assisted by OIEC [represented], 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 [Commission]; 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 [An unrepresented claimant] may request a subpoena by contacting the division [Commission] in any manner, and may also request the division [Commission] to arrange for service, if service will be at no cost to the division [Commission].

(d) Special provisions for hearing subpoenas. A request for a hearing subpoena shall be sent to the division [Commission] and delivered to the parties, as provided by §142.4 of this chapter (relating to Delivery of Copies to All Parties), no later than ten days before the hearing. The administrative law judge [hearing officer] 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 [~~hearing officer~~] 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 [~~an unrepresented claimant~~] has requested the division [~~Commission~~] to arrange for service, as provided by paragraph [~~subsection~~] (c)(2) of this section.

(f) Costs.

(1) Except as provided by paragraph [~~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 [~~Commission~~] pursuant to the Texas Labor Code, Chapter 413.

(g) A subpoena may be enforced in the manner provided by the Government Code §2001.201 [~~§201.204~~] 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) – (2) (No change.)

(3) witness depositions, as follows:

(A) (No change.)

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

(b) (No change.)

(c) Parties' exchange of documentary evidence.

(1) – (2) (No change.)

(3) Parties shall bring all documentary evidence not previously exchanged to the hearing in sufficient copies for exchange. The administrative law judge [~~hearing officer~~] 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) (No change.)

(e) Witness deposition. A party wishing to depose a witness shall request permission for deposition from the administrative law judge [~~hearing officer~~]. 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 [~~commission~~] 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 [~~hearing officer~~] 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) (No change.)

#### **§142.14. Permission To Use Court Reporter**

(a) (No change.)

(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 [~~hearing officer~~] 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 [~~commission~~] at no charge.

#### **§142.16. Decision**

(a) After the record closes, the administrative law judge [~~hearing officer~~] shall issue a decision on benefits. The decision shall:

(1) – (2) (No change.)

(3) be signed by the administrative law judge [~~hearing officer~~].

(b) On a form prescribed by the division [~~Commission~~] the administrative law judge [~~hearing officer~~] 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 [~~hearing officer~~].

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

(d) (No change.)

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

(f) – (j) (No change.)

#### **§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 [~~a hearing officer's~~] decision and remands the case for further consideration, the division [~~commission~~] 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 [~~commission~~] 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) (No change.)

**§142.20. Interlocutory Orders**

(a) The administrative law judge [~~hearing officer~~] 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) (No change.)

(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 [~~hearing officer's~~] decision and renders a decision;

(3) – (4) (No change.)

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

(d) – (g) (No change.)

**12. 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 October 17, 2018.

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Nicholas Canaday III  
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Division of Workers' Compensation