

TITLE 28. INSURANCE

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

CHAPTER 143: DISPUTE RESOLUTION REVIEW BY THE APPEALS PANEL

Title 28 Texas Administrative Code (TAC) §§143.1 - 143.5

1. INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (division) proposes to amend 28 TAC §§143.1 - 143.5. The proposed change replaces "hearing officer" with "administrative law judge." The proposed changes also include one style and usage change by moving "Government Code" before "§662.003" in §143.3. 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.

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.

4. PUBLIC BENEFIT. Mr. Sullivan has also determined that, for each year of the first five years amended §§143.1 - 143.5 are in effect, the public benefit will be harmonization of the division's rule language with that of the Texas Labor Code.

5. ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL. Mr. Sullivan anticipates that there will be no costs to comply with these amendments.

Government Code §2001.0045 requires a state agency to offset any costs associated with a proposed rule by: (1) repealing a rule imposing a total cost that is equal to or greater than that of the proposed rule; or (2) amending a rule to decrease the total cost imposed by an amount that is equal to or greater than the cost of the proposed rule. As stated, the division has determined that the proposed amendments will have no cost to system participants.

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 does not create a new regulation, expand an existing regulation, limit an existing regulation, or repeal an existing regulation. The number of individuals subject to the rule's applicability is neither increased nor decreased by the proposal, and the proposal has no impact on the state's economy.

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 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 §§143.1 - 143.5 are proposed under the authority of Labor Code §§402.00111, 402.00116, 402.00128, and 402.061.

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

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

11. TEXT.

§143.1. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Appellant--A party to a benefit contested case hearing who is dissatisfied with the decision of the administrative law judge [~~hearing officer~~], and files a request for review of that decision by the appeals panel.

(2) Request--The appellant's written appeal for review of the decision of an administrative law judge [~~a hearing officer~~].

(3) – (4) (No change.)

§143.2. Description of the Appeal Proceeding

(a) To review the decision of the administrative law judge [~~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 administrative law judge [~~hearing officer~~] and render a new decision;

(2) reverse the decision of the administrative law judge [~~hearing officer~~] and remand to the administrative law judge [~~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 an administrative law judge [~~a hearing officer~~] in a case as described by Labor Code §410.204(a-1).

§143.3. Requesting the Appeals Panel to Review the Decision of the

Administrative Law Judge [~~Hearing Officer~~]

(a) A party to a benefit contested case hearing who is dissatisfied with the decision of the administrative law judge [~~hearing officer~~] may request the appeals panel to review that decision. The request shall:

(1) (No change.)

(2) clearly and concisely rebut each issue in the administrative law judge's [~~hearing officer's~~] decision that the appellant wants reviewed, and state the relief the appellant wants granted;

(3) be filed with the Chief Clerk of Proceedings in the division's central office in Austin not later than the 15th day after receipt of the administrative law judge's [~~hearing officer's~~] decision. The administrative law judge's [~~hearing officer's~~] decision is deemed to have been received by the parties in accordance with §102.5 (relating to General Rules for Written Communications To and From the Commission) and §102.3 (relating to Computation of Time) of this title. Requests that are timely submitted to a division location other than the Chief Clerk of Proceedings, such as a local field office of the division, will be considered timely filed and forwarded to the division's appeals panel for consideration, but this may result in delay in the processing of the request. Untimely requests, regardless of whether they are filed with the Chief Clerk of Proceedings in the division's central office or in a different division field office, do not invoke the jurisdiction of the appeals panel and will not be reviewed by the appeals panel;

(4) – (5) (No change.)

(b) – (c) (No change.)

(d) A request for review by the appeals panel shall be filed not later than the 15th day after the appealing party is deemed to have received the administrative law judge's [~~hearing officer's~~] decision. Saturdays and Sundays and holidays listed in [~~§ 662.003,~~] Government Code §662.003[~~,~~] are not included in the computation of this 15-day period. A request made under this section shall be presumed to be timely filed or timely served with the division if it is:

(1) mailed on or before the 15th day after the date of deemed receipt of the administrative law judge's [~~hearing officer's~~] decision, as provided in subsection (a) of this section; and

(2) received by the division not later than the 20th day after the date of deemed receipt of the administrative law judge's [~~hearing officer's~~] decision.

§143.4. Responding to a Request for Review by the Appeals Panel

(a) The other party shall respond to the appellant's request. The response shall:

(1) (No change.)

(2) clearly and concisely support each issue in the administrative law judge's [~~hearing officer's~~] decision that the appellant has rebutted in the request, and state why the appellant's relief should not be granted;

(3) – (5) (No change.)

(b) – (c) (No change.)

§143.5. Decision of the Appeals Panel

(a) (No change.)

(b) If the appeals panel does not issue a written decision by the 45th day after the date the response was filed with the division, the administrative law judge's [~~hearing officer's~~] decision becomes final, constitutes the decision of the appeals panel, and, for the purpose of establishing the time for seeking judicial review, is deemed filed with the division on that day.

(c) Not later than the seventh day after the appeals panel files its decision with the division, or a decision is deemed filed, as provided in subsection (b) of this section, the division shall send to each party a copy of the decision, or a notice that the administrative law judge's [~~hearing officer's~~] decision has become final and constitutes the decision of the appeals panel.

(d) – (e) (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.

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