

**CHAPTER 131. SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE BEFORE WORKERS' COMPENSATION JUDGES**

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**Authority**

The provisions of this Chapter 131 issued under the Workers' Compensation Act (77 P. S. §§ 1051—1066); amended under sections 401 and 435 of the Pennsylvania Workmen's Compensation Act (77 P. S. §§ 710 and 991); and section 2205 of The Administrative Code of 1929 (71 P. S. § 565), unless otherwise noted.

**Source**

The provisions of this Chapter 131 adopted November 6, 1981 effective November 7, 1981, 11 Pa.B. 4015, unless otherwise noted.

**Subchapter A. GENERAL PROVISIONS**

<b>Sec.</b>	
131.1.	Purpose.
131.2.	Scope.
131.3.	Waiver and modification of rules.
131.4.	Applicability of General Rules of Administrative Practice and Procedure.
131.5.	Definitions.

**§ 131.1. Purpose.**

(a) The purpose of this chapter is to promote, consistent with fairness and due process, the orderly and expeditious determination of proceedings before judges under the act and the Disease Law to implement the remedial intent of the act and the Disease Law.

(b) Subsection (a) supersedes 1 Pa. Code § 31.2 (relating to liberal construction).

**Authority**

The provisions of this § 131.1 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.1 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (207535).

**§ 131.2. Scope.**

(a) This chapter applies to proceedings before judges under the act and the Disease Law.

(b) Subsection (a) supersedes 1 Pa. Code § 31.1 (relating to scope of part).

**Authority**

The provisions of this § 131.2 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.2 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (207535) to (207536).

**§ 131.3. Waiver and modification of rules.**

(a) The judge may, for good cause, waive or modify a provision of this chapter upon motion of a party, agreement of all parties or upon the judge's own motion.

(b) Subsection (a) supersedes 1 Pa. Code §§ 33.61, 35.18, 35.54 and 35.55 and also supersedes 1 Pa. Code Chapter 35, Subchapter D.

**Authority**

The provisions of this § 131.3 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.3 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (207536).

**Notes of Decisions***Waiver Appropriate*

Employer does not argue how the late submission of the medical bills violated its due process rights or the notion of fair play. Employer's argument addresses only that such submission was a clear violation of the Special Rules of Administrative Practice and Procedure Before Referees. A review of the introduced bills, which the referee permitted to be submitted into evidence reveals that they are, indeed, causally connected to the work injury and are reasonable and necessary. Since the referee has the discretion to waive the requirements of the special rules and employer has not shown any prejudice as a result, the referee did not err in permitting the introduction into evidence of those bills which were causally related to claimant's work injury and were reasonable and necessary. *Nevin Trucking v. Workmen's Comp. Appeal Bd.*, 667 A.2d 262 (Pa. Cmwlth. 1995).

*Waiver of Rules*

Because parties act in reliance of various time limitations in the rules, it was error to retroactively modify the time requests of § 131.65 (relating to objections to taking of oral depositions) without agreement of all parties. *Plaughter v. Workers' Compensation Appeal Board*, 814 A.2d 1278 (Pa. Cmwlth. 2003).

Although § 134.3 permits a workers' compensation judge to waive or modify rules, the court looks with disfavor on oral amendment at the hearing to introduce new issues in special supersedeas cases. *Hinkle v. Workers' Compensation Appeal Board*, 808 A.2d 1036 (Pa. Cmwlth. 2002), appeal denied 827 A.2d 1203 (Pa. 2003).

**Cross References**

This section cited in 34 Pa. Code § 131.53a (relating to consolidated hearing procedure).



**§ 131.4. Applicability of General Rules of Administrative Practice and Procedure.**

(a) This chapter is intended to supersede 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure). The General Rules of Administrative Practice and Procedure are not applicable to activities of and proceedings before judges.

(b) Subsection (a) supersedes 1 Pa. Code § 31.4 (relating to information and special instructions).

**Authority**

The provisions of this § 131.4 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.4 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (207536) and (289731) to (289732).

**Notes of Decisions***"Of Record"*

Although there is no requirement that hearings be transcribed, they are still "of record," and it is error to consider evidence for which there is no indication on the record that it was offered or admitted. *Kimberly Clark Corp. v. Workers' Compensation Appeal Board*, 790 A.2d 1072 (Pa. Cmwlth 2001).

**§ 131.5. Definitions.**

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

*Act*—The Pennsylvania Workers' Compensation Act (77 P. S. §§ 1—1041.4 and 2501—2506).

*Additional defendant*—An insurance carrier, the Commonwealth or an employer, other than the insurance carrier or employer against which the original petition was filed, joined under this chapter.

*Bureau*—The Bureau of Workers' Compensation of the Department.

*Bureau record*—Official copies of documents received by the Bureau, on forms prescribed by the Bureau, if forms prescribed by the Bureau are available, or official copies of documents received by the Bureau on forms prepared by a party if no forms prescribed by the Bureau are available, which record transactions between the parties and which are determined by the judge to pertain to the case.

*Challenge proceeding*—A proceeding governed by § 131.50a (relating to employee request for special supersedeas hearing under section 413(c) and (d) of the act).

*Claimant*—An individual who files a petition for, or otherwise receives, benefits under the act or the Disease Law.

*Defendant*—An employer, insurance carrier and the Commonwealth, unless specifically designated individually.

*Department*—The Department of Labor and Industry of the Commonwealth.

*Disease Law*—The Pennsylvania Occupational Disease Act (77 P. S. §§ 1201—1603).

*Insurer*—A workers' compensation insurance carrier or self-insured employer, as applicable.

*Judge*—A workers' compensation judge assigned by the Bureau as provided in section 401 of the act (77 P. S. § 701) or assigned by the Bureau to determine a petition filed under the Disease Law.

*Party*—A claimant, defendant, employer, insurance carrier, additional defendant and, if relevant, the Commonwealth. An act required or authorized by this chapter, to be done by or to a party, may be done by or to that party's counsel of record.

*Penalty proceeding*—A proceeding governed by section 435(d) of the act (77 P. S. § 991(d)).

*Records of work environment*—Records and documents relating to work place health, safety, hazards and exposure, including records or documents which may be obtained under the Worker and Community Right-to-Know Act (35 P. S. §§ 7301—7320) and 29 CFR 1901.1—1928.1027 (relating to Occupational Safety and Health Administration, Department of Labor).

*Statement previously made*—A written statement signed or otherwise adopted or approved by the persons making it, or a stenographic, mechanical, electrical, computer-generated or other recording, or transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded. The term does not include statements made by parties which are protected by the attorney-client privilege or which are protected as the work product of counsel.

*Supersedeas*—A temporary stay affecting a workers' compensation case.

(b) Subsection (a) supersedes 1 Pa. Code §§ 31.3 and 33.33 (relating to definitions; effect of service upon an attorney).

#### Authority

The provisions of this § 131.5 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.5 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (289732) and (220169).

**Notes of Decisions***Application*

This regulation is substantive and will not be applied retroactively. *Borman v. Workmen's Compensation Appeal Board*, 643 A.2d 780 (Pa. Cmwlth. 1994); appeal denied. *Bechtel Constr. Co. v. Borman*, 663 A.2d (Pa. 1995).

*Joinder*

A referee does not have jurisdiction to join an insurance agency in a workers' compensation case. Additional defendants, joined by a referee, must be insurance carriers. *Antimary v. Workmen's Compensation Appeal Board*, 655 A.2d 659 (Pa. Cmwlth. 1995).

The referee did not commit error or an abuse of discretion in granting four continuances to an employer who encountered delay in submitting medical reports to its expert witness. Further, the petitioner failed to demonstrate that she had been prejudiced by the grant of the continuances. *Kraushaar v. Workmen's Compensation Appeal Board*, 596 A.2d 1233 (Pa. Cmwlth. 1991); appeal denied 626 A.2d 1160 (Pa. 1992).

**Subchapter B. TIME**

## Sec.

- 131.11. Filing, service and proof of service.
- 131.12. Modification of time.
- 131.13. Continuances or postponements of hearings.
- 131.14. [Reserved].
- 131.15. Computation of time.

**§ 131.11. Filing, service and proof of service.**

(a) Whenever filing is required by this chapter, it is deemed complete upon delivery in person or, if by mail, upon deposit in the United States Mail, as evidenced by a United States Postal Service postmark, properly addressed, with postage or charges prepaid.

(b) Whenever service is required by this chapter, it is deemed complete upon delivery in person or, if by mail, upon deposit in the United States Mail, as evidenced by a United States Postal Service postmark, properly addressed, with postage or charges prepaid, except as provided in § 131.81(b) (relating to subpoenas).

(c) Any notice or other written communication required to be served upon or furnished to a party shall also be served upon or furnished to the party's attorney in the same manner as it is served upon the party.

(d) Whenever a proof of service is required by this chapter, the proof of service shall contain the following:

- (1) A statement of the date of service.
  - (2) The names of the judge and others served.
  - (3) The mailing address, the applicable zip code and the manner of service on the judge and others served.
- (e) Unless otherwise specifically provided in this chapter, whenever the filing or service is required to be made upon the Bureau, it shall be made to the principal office of the Bureau at: 1171 South Cameron Street, Harrisburg, Pennsylvania 17104-2501, (717) 783-5421, or another address and telephone number as may be published in the *Pennsylvania Bulletin*.
- (f) Subsections (a)—(e) supersede 1 Pa. Code §§ 31.5, 31.11, 31.13, 31.14, 31.26, 33.32 and 33.34—33.36.

#### Authority

The provisions of this § 131.11 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

#### Source

The provisions of this § 131.11 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (220170).

#### Cross References

This section cited in 34 Pa. Code § 131.81 (relating to subpoenas).

### § 131.12. Modification of time.

- (a) Except for answers to petitions as set forth in § 131.33 (relating to answers except answers to petitions for joinder and challenge proceedings), the time fixed or the period of time prescribed in this chapter may, in the exercise of sound discretion and for good cause, be shortened or extended by the judge upon the judge's motion or at the request of a party.
- (b) Modifications of time, other than continuances or postponements of hearings, will be governed by the following:
- (1) Requests for extensions of time shall be filed at least 3 days before the time specified or as shortened or extended. Requests made within 3 days prior to the time specified or as shortened or extended may be considered if the judge is satisfied that the circumstances relating to the request occurred within those 3 days. After the expiration of the time specified, the act may be permitted to be done if reasonable grounds are shown for the failure to act within the time specified or as previously shortened or extended.
  - (2) Requests for extensions of time shall be made in writing and state the facts upon which the request rests. During the course of a hearing, the request may be made by oral motion to the judge.

- (3) Requests for extensions of time, except those made orally at a hearing, shall be filed with the judge, served upon all parties, and a proof of service of same shall be filed with the judge.
- (c) Subsections (a) and (b) supersede 1 Pa. Code §§ 31.6, 31.11, 31.15 and 35.18.

#### Authority

The provisions of this § 131.12 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

#### Source

The provisions of this § 131.12 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (220170) and (220587).

#### Cross References

This section cited in 34 Pa. Code § 131.61 (relating to exchange of information).

### § 131.13. Continuances or postponements of hearings.

- (a) It is the intent of this chapter to discourage repeated continuances or postponements of hearings.
- (b) Parties shall make every effort to avoid continuances or postponements by the prompt scheduling and submission of expert and medical testimony and by the prompt presentation of lay testimony.
- (c) A continuance or postponement may be granted as set forth in this chapter for substantial or compelling reasons at the discretion of the judge, if the continuance or postponement is consistent with this chapter and its purpose of providing an orderly and expeditious determination of proceedings before judges.
- (d) Requests for a continuance or postponement shall be:
- (1) Made in writing or at a hearing. If not made in writing or at a hearing, confirmed in writing as required by this subsection and served as required by subsection (h).
  - (2) Made not later than 10 calendar days prior to the hearing date, except as set forth in subsection (f).
- (e) Prior to the request for a continuance or a postponement, the party requesting the continuance or postponement shall ascertain the position of all counsel of record and unrepresented parties in the case relating to the continuance or postponement and shall advise the judge of the foregoing at the time of the request.
- (f) A request for a continuance or postponement made within 10 calendar days prior to the hearing date will not be considered unless the judge is satisfied

that circumstances relating to the requested continuance or postponement occurred within 10 calendar days of the hearing date.

(g) Requests for a continuance or postponement or written confirmation of the continuance or postponement shall contain at least the following information:

(1) The identity of the requesting party.

(2) A detailed statement of the position of all counsel of record and unrepresented parties on the request for a continuance or postponement or an explanation of why counsel of record or unrepresented parties could not be contacted.

(3) A detailed statement of the reasons why the continuance or postponement is requested and the date on which the need to request a continuance or postponement arose.

(4) A summary of prior continuances or postponements in the case, at whose request the continuances or postponements were granted and the position of other parties in each continuance or postponement.

(h) A party requesting or confirming in writing a request for a continuance or a postponement other than a request made at a hearing shall serve a copy of the request or the confirmation upon all counsel of record, unrepresented parties and the judge. Counsel requesting or confirming in writing a request for a continuance or a postponement shall serve a copy of the request or confirmation on counsel's client.

(i) Anyone requesting a continuance or postponement shall concurrently with the service of the request or the confirmation file a proof of service with the judge.

(j) In ruling on requests for a continuance or postponement, the judge may consider one or more of the following, giving consideration to subsection (a):

(1) The positions of the various parties relating to the request for a continuance or postponement.

(2) The number of prior continuances or postponements or denials of continuances or postponements and at whose request they were granted or denied.

(3) Whether the requested continuance or postponement will work an undue hardship on a party.

(4) The unavailability of the parties, witnesses or counsel.

(5) The illness or death of the parties or counsel or members of their immediate families.

(6) The desirability of unrepresented parties obtaining counsel.

(7) The necessity to replace the services of an expert witness who becomes unavailable.

(8) Another reason deemed to be substantial or compelling by the judge and consistent with this chapter and the purposes of the act and the Disease Law.

(k) A scheduling conflict in another tribunal may be considered but may or may not be determinative.

(l) If a continuance or a postponement is granted, the judge may impose conditions and direct action by the parties which the judge deems reasonable under the circumstances.

(m) In addition to the conditions and actions referred to in subsection (l), the judge may:

(1) Determine why the proceeding should not be dismissed for lack of prosecution or grant the relief sought without the receipt of further evidence or testimony upon the making of appropriate findings of fact.

(2) Schedule a hearing to determine whether to impose penalties under section 435(d) of the act (77 P. S. § 991(d)) and issue an appropriate written order.

(3) Issue a written order modifying in whole or in part a supersedeas ordered or denial previously entered or modifying an order previously entered upon a showing of compliance with the directions of the judge.

(4) Issue a written order at the end of the case, in the case of a claim petition, with appropriate findings of fact, directing that interest be disallowed. The judge may limit the disallowance of interest to a specified period on good cause shown.

(5) Issue a written order with appropriate findings of fact closing the record and deciding a case if a party has unreasonably delayed the proceeding.

(n) Subsections (a)—(m) supersede 1 Pa. Code §§ 31.15, 33.33 and 35.102 (relating to extensions of time; effect of service upon an attorney; and hearing calendar).

#### Authority

The provisions of this § 131.13 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

#### Source

The provisions of this § 131.13 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (220587) to (220588) and (239521).

#### Cross References

This section cited in 34 Pa. Code § 131.54 (relating to manner and conduct of hearings); 34 Pa. Code § 131.61 (relating to exchange of documents and records); 34 Pa. Code § 131.68 (relating to discovery of records); and 34 Pa. Code § 131.70 (relating to discovery of statements of parties or witnesses).

**§ 131.14. [Reserved].****Source**

The provisions of this § 131.14 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; reserved March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401. Immediately preceding text appears at serial page (65670).

**§ 131.15. Computation of time.**

(a) Except as otherwise provided by law, in computing a period of time prescribed or allowed by this chapter, the day of the act, event or default after which the designated period of times begins to run may not be included. The last day of the period so computed shall be included, unless it is Saturday, Sunday or a legal holiday in this Commonwealth, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday nor a legal holiday. A part-day holiday shall be considered as other days and not as a legal holiday. Intermediate Saturdays, Sundays and legal holidays shall be included in the computation.

(b) Subsection (a) supersedes 1 Pa. Code § 31.12 (relating to computation of time).

**Authority**

The provisions of this § 131.15 issued under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.15 adopted December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043.

**Subchapter C. FORMAL PROCEEDINGS****GENERAL**

Sec.	
131.21.	Identifying number.
131.22.	Transfer of cases or petitions on agreement of all parties.
131.23.	[Reserved].
131.24.	Recusal of judge.
131.25—131.29.	[Reserved].

**PLEADINGS**

131.31.	Form of pleadings.
131.32.	Petitions except petitions for joinder and penalty proceedings.
131.33.	Answers except to petitions for joinder and penalty proceedings.

- 131.34. Other filings.
- 131.35. Amendments to pleadings.
- 131.36. Joinder.
- 131.37—131.39. [Reserved].
- 131.40. Frivolous pleadings.

### **SUPERSEDEAS**

- 131.41. Request for supersedeas or reconsideration of supersedeas.
- 131.42. Evidence relating to supersedeas.
- 131.43. Disposition of request for supersedeas.
- 131.44—131.48. [Reserved].
- 131.49. Disposition of automatic request for special supersedeas under section 413(a.1) of the act (77 P. S. § 774(1)).
- 131.50. Return to work—modification or suspension.
- 131.50a. Employee request for special supersedeas hearing under section 413(c) and (d) of the act.

### **HEARING PROCEDURE**

- 131.51. Assembly of medical records.
- 131.52. First hearing procedures.
- 131.53. Procedures subsequent to the first hearing.
- 131.53a. Consolidated hearing procedure.
- 131.54. Manner and conduct of hearings.
- 131.55. Attorney's fees and costs.
- 131.56. [Reserved].
- 131.57. Compromise and release agreements.
- 131.58. Informal conferences.

### **EXCHANGE OF INFORMATION AND DEPOSITIONS AND DISCOVERY**

- 131.61. Exchange of information.
- 131.62. Oral depositions.
- 131.63. Time for taking oral depositions.
- 131.64. Notice of oral depositions.
- 131.65. Objections to taking of oral depositions.
- 131.66. Admissibility of oral depositions.
- 131.67. Expenses of taking depositions.
- 131.68. Discovery of records.
- 131.69. Form of deposition affidavit.
- 131.70. Discovery of statements of parties or witnesses.

**SUBPOENAS**

131.81. Subpoenas.

**STIPULATIONS**

131.91. Stipulations of fact.

**BRIEFS, FINDINGS OF FACT, CLOSE OF RECORD  
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131.101. Briefs, findings of fact and close of record.  
131.102. Oral argument.

**DECISIONS**

131.111. Decision of judges.  
131.112. Correction or amendment of decision.

**PENALTY PROCEEDINGS**

131.121. Penalty proceedings in pending cases.  
131.122. Other penalty proceedings.

**GENERAL**

**§ 131.21. Identifying number.**

(a) Pleadings, documents and other submittals filed in a proceeding shall be identified by an identifying number assigned by the Bureau.

(b) Subsection (a) supersedes 1 Pa. Code § 31.5, 33.1 and 33.51 (relating to communications and filings generally; title; and docket).

**Authority**

The provisions of this § 131.21 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.21 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (207546).

**§ 131.22. Transfer of cases or petitions on agreement of all parties.**

(a) If the transfer of the case is agreed to by the Bureau, the parties and the judge, the Bureau will promptly reassign the case or petition. Notice of reassignment will be given to all parties.

(b) Transfer or reassignment under subsection (a) will take place prior to the date of the first hearing unless circumstances dictate otherwise.

**Authority**

The provisions of this § 131.22 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.22 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (207546).

**Notes of Decisions***Notice of Reassignment*

Although the Bureau of Workers' Compensation is authorized to substitute one referee for another in a workers' compensation proceeding pursuant to 77 P. S. § 851, under the Bureau's own regulations, it must provide notice and opportunity for the parties to object before a reassignment can occur. Because the Bureau failed to follow its rules and procedures the claimant was precluded from raising objections to the substitutions in accordance with the law; thus, the Workmen's Compensation Appeal Board's order must be reversed. *Izzi v. Workmen's Compensation Appeal Bd.*, 654 A.2d 176 (Pa. Cmwlth. 1995); affirmed 747 A.2d 1289 (Pa. 2000).

**§ 131.23. [Reserved].****Source**

The provisions of this § 131.23 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; reserved March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401. Immediately preceding text appears at serial page (132284).

**§ 131.24. Recusal of judge.**

(a) The judge may recuse himself on the judge's own motion.

(b) A party may file a motion for recusal, which shall be addressed to the judge to whom the proceeding has been assigned. The judge will conduct an evidentiary hearing and issue a decision within 15 days following receipt of the evi-

dentiary hearing transcript and post-hearing submissions of the parties. The decision will be interlocutory, unless the judge certifies the record for immediate appeal to the Board.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.54, 35.55, 35.186, 35.190 and 35.225 and also supersede 1 Pa. Code, Subchapter D.

**Authority**

The provisions of this § 131.24 adopted under the sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.24 adopted December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043.

**§§ 131.25—131.29. [Reserved].**

**Source**

The provisions of these §§ 131.25—131.29 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; reserved March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401. Immediately preceding text appears at serial pages (132284) and (65774).

**§ 131.30. Consolidation.**

(a) Where proceedings involve a common question of law or fact, the judge may consolidate the proceedings for hearing on all matters in issue, and may make any appropriate orders concerning the conduct of the proceedings to avoid any unnecessary costs or delay.

(b) Subsection (a) supersedes 1 Pa. Code § 35.45 (relating to consolidation).

**Authority**

The provisions of this § 131.30 issued under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.30 adopted December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043.

**PLEADINGS**

**§ 131.31. Form of pleadings.**

(a) All proceedings, except challenges under sections 413(c) and 413(d) of the act (77 P. S. §§ 774.2 and 774.3), shall be initiated by petition.

(b) Subsection (a) supersedes 1 Pa. Code §§ 33.1—33.4, 33.11, 33.12 and 35.17.

**Authority**

The provisions of this § 131.31 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.31 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (246923) to (246924).

**Notes of Decisions***Service of Process*

Since neither the employer nor its insurance carrier was ever properly served by the workers compensation claimant, there was understandably a delay in filing the employer's answer to the petition and the employer most certainly had an adequate excuse for the late filing of its answer under 77 P. S. § 821. *Abex Corp. v. Workmen's Compensation Appeal Bd.*, 665 A.2d 845 (Pa. Cmwlth. 1995); appeal denied 681 A.2d 1343 (Pa. 1996).

**§ 131.32. Petitions except petitions for joinder and challenge proceedings.**

- (a) Petitions shall be in the form prescribed by the Bureau.
- (b) If the petition is filed on a Bureau petition form, an original and the number of copies specified on the petition form shall be filed with the Bureau. If there is no applicable Bureau petition form available, an original of the petition shall be filed with the Bureau. The Bureau will serve a notice of assignment specifying the judge to whom the petition has been assigned. The notice will be served on the parties named in the petition.
- (c) Concurrently with filing the petition with the Bureau, the moving party shall serve a copy of the petition on all other parties, including the insurance carrier, if the insurance carrier is known, and on the attorneys of all other parties, if the attorneys are known.
- (d) The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.
- (e) Subsections (a)—(d) supersede 1 Pa. Code §§ 31.26, 33.15, 33.21—33.23, 33.31, 33.32, 33.37, 35.1, 35.2, 35.5—35.7, 35.9—35.11, 35.14, 35.17—35.20, 35.23, 35.24 and 35.27—35.32.

**Authority**

The provisions of this § 131.32 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.32 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (246924).

**Notes of Decisions**

Workers' compensation judge committed an error of law by assuming that a late answer by an employer is justified, regardless of the delay by the employer, whenever a claimant fails to serve the employer with a copy of the petition at the time it is filed with the Bureau. *Ghee v. Workmen's Compensation Appeal Board*, 705 A.2d 487 (Pa. Cmwlth. 1997); appeal denied 725 A.2d 184 (Pa. 1998).

**Cross References**

This section cited in 34 Pa. Code § 131.121 (relating to penalty proceedings initiated by a party).

**§ 131.33. Answers except answers to petitions for joinder and challenge proceedings.**

(a) Answers to all petitions except petitions for joinder and challenge proceedings shall be filed in accordance with section 416 of the act (77 P. S. § 821) within 20 days after the date of assignment by the Bureau to the judge.

(b) If the answer is filed on a Bureau answer form, an original and the number of copies specified on the answer form shall be filed with the judge to whom the petition has been assigned. If there is no applicable Bureau answer form available, an original of the answer shall be filed with the judge to whom the petition has been assigned.

(c) Concurrently with filing the answer with the judge, the responding party shall serve a copy of the answer on unrepresented parties and on counsel of record.

(d) An answer shall admit or deny each averment of fact in the petition or any part of the averment to which it is responsive. A party denying only a part of the averment shall specify so much of it as is admitted and shall deny the remainder. Where applicable, admissions and denials in an answer shall refer to the specific paragraph in which the averment admitted or denied is set forth.

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 33.15, 33.37, 35.35—35.41, 35.54, 35.55 and 35.161 and also supersede 1 Pa. Code Chapter 35, Subchapter D.

**Authority**

The provisions of this § 131.33 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.33 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; reserved March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (246924) and (289733).

**Notes of Decisions***Late Answer*

A failure by an employer to file its answer within 15 days after a copy of the claim petition has been served will result in the employer admitting all of the allegations in the petition and preclude the employer from disputing those facts at the hearing. *Straub v. Workmen's Compensation Appeal Board*, 538 A.2d 965 (Pa. Cmwlth. 1988); affirmed 598 A.2d 27 (Pa. 1991). (**Editor's Note:** The court cited to former § 131.22 which dealt with filing answers.)

**Cross References**

This section cited in 34 Pa. Code § 131.12 (relating to modification of time); and 34 Pa. Code § 131.121 (relating to penalty proceedings initiated by a party).

**§ 131.34. Other filings.**

(a) Unless otherwise specifically provided by this chapter, the party filing or submitting a document to the judge shall serve an original on the judge and shall serve a copy on unrepresented parties and counsel of record.

(b) Subsection (a) supersedes 1 Pa. Code §§ 31.24, 31.25, 33.42, 35.51 and 35.169.

**Authority**

The provisions of this § 131.34 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.34 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (289733).

**Cross References**

This section cited in 34 Pa. Code § 131.55 (relating to attorney fees and costs); and 34 Pa. Code § 131.81 (relating to subpoenas).

**§ 131.35. Amendments to pleadings.**

(a) A party has the right to amend a pleading at any time in a proceeding before a judge, unless the judge determines that another party has established prejudice as a result of the amendment.

(b) Subsection (a) supersedes 1 Pa. Code §§ 33.41, 33.42, 35.40 and 35.48—35.51.

**Authority**

The provisions of this § 131.35 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.35 adopted March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (289733) to (289734).

**Notes of Decisions***Prejudice*

The workers' compensation judge's decision not to allow an amendment to the claimant's petition to include a specific loss claim after the close of the record because it would prejudice her employers by depriving them of a full and fair opportunity to litigate the issue of the alleged specific loss, was not abuse of discretion. *Roberts v. Workers' Compensation Appeal Board*, 719 A.2d 847 (Pa. Cmwlth. 1998).

An amendment to petition filed after expiration of statute of limitations is not per se prejudicial; party opposing amendment must show prejudice. *Shafer v. Workmen's Compensation Appeal Board*, 621 A.2d 1125 (Pa. Cmwlth. 1993).

The employer failed to establish that it would be prejudiced by the amendment of claimant's petition setting forth an alternative theory of causation. The information upon which the amendment is based was in the employer's possession since the original claim was filed. The claimant need not demonstrate the employer's fraud as a basis for the amendment. *Mauger and Co. v. Workmen's Compensation Appeal Board*, 598 A.2d 1035 (Pa. Cmwlth. 1991).

*Liberal Construction*

The rule allowing amendments to pleadings, like all rules governing pleadings in workers' compensation cases, it is to be liberally construed. *Thomas v. Workers' Compensation Appeal Board*, 787 A.2d 1128 (Pa. Cmwlth. 2001).

**§ 131.36. Joinder.**

(a) A party desiring to join another defendant to assert a claim relevant to the pending petition may do so as a matter of right by filing a petition for joinder.

(b) A petition for joinder shall set forth the identity of employers and insurance carriers sought to be joined and the reasons for joining a particular employer or insurance carrier as well as the specific facts and the legal basis for the joinder.

(c) The petition for joinder shall have attached to it copies of petitions and answers previously filed and a list of the dates and locations of all prior hearings held and depositions taken.

(d) An original and the number of copies specified on the Bureau petition for joinder form shall be filed no later than 20 days after the first hearing at which evidence is received regarding the reason for which joinder is sought, unless the time is extended by the judge for good cause shown.

(e) The petition for joinder shall be filed with the Bureau and an original of any answer shall be filed with the office of the judge to whom the case has been assigned.

(f) An answer to a petition for joinder shall be filed in accordance with section 416 of the act (77 P. S. § 821) within 20 days after the date of assignment by the Bureau to the judge and may include a motion to strike.

(g) A party filing a petition for joinder or an answer to it shall serve unrepresented parties and counsel of record.

(h) A proof of service shall be attached to the petition for joinder or answer.

(i) After joinder, the original petition shall be deemed amended to assert a claim of the claimant against an additional defendant. The additional defendant is liable to any other party as the judge orders. The additional defendant shall have the same rights and responsibilities under this chapter as the original defendant.

(j) The judge may strike the petition for joinder, and the judge may order the severance or separate hearing of a claim presented therein, or as a result of the joinder.

(k) The judge will issue an order when the motion to strike a petition for joinder is granted.

(l) An order to strike a petition for joinder does not preclude or delay further proceedings before the judge.

(m) Subsections (a)—(l) supersede 1 Pa. Code §§ 31.5, 33.41, 33.42, 35.11, 35.35, 35.40, 35.48—35.51, 35.54 and 35.55 and also supersede 1 Pa. Code Chapter 35, Subchapter D.

#### Authority

The provisions of this § 131.35 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

#### Source

The provisions of this § 131.36 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (289734).

#### Notes of Decisions

##### *Answer to Joinder Petition*

An additional defendant's duty to file an answer is permissive, not mandatory; therefore, the failure to timely file an answer to a joinder petition does not result in deemed admission to the allegations in the joinder petition. *E.W. Bowman, Inc. v. Workers' Compensation Appeal Board*, 809 A.2d 447 (Pa. Cmwlth. 2002), order affirmed 844 A.2d 1216 (Pa. 2004).

##### *Denial of Petition*

Although an additional party was joined, since, simultaneous therewith, the workers' compensation judge denied the claim petition after finding the claimant was not disabled due to a work-related

occupational disease, the additional defendant was not subject to the claims as provided in § 131.36(i). *Neidlinger v. Workers' Compensation Appeal Bd.*, 798 A.2d 334 (Pa. Cmwlth. 2002).

### §§ 131.37—131.39. [Reserved].

#### Source

The provisions of these §§ 131.37—131.39 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; reserved March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401. Immediately preceding text appears at serial pages (65676) to (65677).

### § 131.40. Frivolous pleadings.

If a judge determines after a hearing that a petition or other pleading is frivolous, the judge may, upon the judge's own motion or upon motion by a party, issue a decision dismissing the petition or pleading or issue some other decision within the judge's discretion.

#### Authority

The provisions of this § 131.40 issued under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

#### Source

The provisions of this § 131.40 adopted December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043.

## SUPERSEDEAS

### § 131.41. Request for supersedeas or reconsideration of supersedeas.

(a) When a petition contains a request for supersedeas, or when a request for supersedeas is made, the judge may rule on the request only after a hearing.

(b) After a hearing, the judge may grant or deny the request for supersedeas in whole or in part. The grant or denial may be for specified or indefinite periods and may be subject to conditions that the judge orders to implement the intent of the act, Disease Law or this chapter. If a supersedeas has been granted or denied in whole or in part, the judge may, upon request and after hearing, review and modify the grant or denial as warranted.

(c) The decision of a judge on a request for or reconsideration of a supersedeas is an interlocutory order.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 35.190 and 35.225 (relating to appeals to agency head from rulings of presiding officers; and interlocutory orders).

#### Authority

The provisions of this § 131.41 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.41 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (222315).

**§ 131.42. Evidence relating to supersedeas.**

(a) A party has the right to submit, and the judge may consider, one or more of the following solely in relation to a request for supersedeas.

- (1) Testimony of a party or witness.
- (2) The report of a physician.
- (3) The records of a physician, hospital, clinic or similar entity.
- (4) The written statements or reports of another person expected to be called by a party at the hearing of the case.
- (5) The report of an organization or governmental body or agency stating the right of the claimant to receive, be denied, have increased or decreased benefits, and the amount of the benefits being paid or payable to the claimant.
- (6) Other materials relevant to the request for supersedeas.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.137, 35.138, 35.161, 35.162 and 35.166.

**Authority**

The provisions of this § 131.42 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.42 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (222315) to (222316).

**Notes of Decisions***Insufficient Evidence*

A worker's compensation judge has discretion to grant a supersedeas based on the evidence presented. A Claimant's failure to present additional evidence in the form of oral testimony or other written reports did not render a hearing constitutionally infirm. *Jenkins v. Workmen's Compensation Appeal Board*, 677 A.2d 1288 (Pa. Cmwlth. 1996); appeal denied 725 A.2d 184 (Pa. 1998).

**§ 131.43. Disposition of request for supersedeas.**

(a) The judge hearing the request for supersedeas will, within 14 days of the hearing, issue a written decision on the request for supersedeas, if granted. Unless a supersedeas is granted by a written order, it will be deemed denied from the date of filing of the request.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.190 and 35.225 (relating to appeals to agency head from rulings of presiding officers; and interlocutory orders).

**Authority**

The provisions of this § 131.43 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.43 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (222316).

**§§ 131.44—131.48. [Reserved].**

**Source**

The provisions of these §§ 131.44—131.48 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; reserved March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401. Immediately preceding text appears at serial pages (65678) to (65679) and (99591) to (99592).

**§ 131.49. Disposition of automatic request for special supersedeas under section 413(a.1) of the act (77 P. S. § 774(1)).**

(a) The filing of a petition alleging full recovery, accompanied by a physician's affidavit to that effect, which was prepared in connection with an examination of the employee no more than 21 days from the filing of the petition, shall act as an automatic request for supersedeas.

(b) A special supersedeas hearing will be held within 21 days of the assignment of the petition filed under this section.

(c) The judge will approve the request for supersedeas if prima facie evidence of a change in the medical status or of any other fact which would serve to modify or terminate the payment of compensation is submitted at the hearing, unless the employee establishes by a preponderance of the evidence a likelihood of prevailing on the merits of the employee's defense. In making this determination the judge will consider the physician's affidavit alleging full recovery and may consider the following:

- (1) The report of the physician.
- (2) The testimony of a party or witness.
- (3) The records of a physician, hospital or clinic or other similar entity.
- (4) The written statements or reports of another person expected to be called by a party at the hearing of the case.
- (5) Other evidence relevant to the request for supersedeas.

(d) If the judge to whom the special supersedeas request has been assigned fails to hold a hearing within 21 days of assignment of the request to the judge

or fails to issue a written order within 7 days of the hearing of the supersedeas request, the automatic request for supersedeas will be deemed denied. The automatic request for supersedeas will remain denied until the judge issues a written order granting the supersedeas, in whole or in part.

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.137, 35.138, 35.161, 35.162, 35.166, 35.190 and 35.225.

#### Authority

The provisions of this § 131.49 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

#### Source

The provisions of this § 131.49 adopted January 16, 1998, effective January 17, 1998, 28 Pa.B. 329; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (239523) to (239524).

### § 131.50. Return to work—modification or suspension.

(a) If an employee returns to work, the insurer may modify or suspend the workers' compensation benefits.

(b) The insurer shall complete and file the form prescribed by the Bureau. The form shall be provided to the employee, employee's counsel, if known, and the Bureau within 7 days of the effective date of the suspension or modification of the workers' compensation benefits.

(c) When the insurer previously modified or suspended the employee's benefits under sections 413(c) or 413(d) of the act (77 P. S. §§ 774.2 and 774.3), to effectuate a subsequent modification or suspension of the employee's workers' compensation benefits, the insurer shall file the form specified in subsection (b), indicating the change in the employee's wages and corresponding change in the employee's workers' compensation benefits.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 33.33 (relating to effect of service upon an attorney).

#### Authority

The provisions of this § 131.50 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

#### Source

The provisions of this § 131.50 adopted January 16, 1998, effective January 17, 1998, 28 Pa.B. 329; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (239524).

#### Notes of Decisions

##### *Reinstatement of Benefits*

If the WCJ fails to hold a hearing within 21 days or fails to issue a written order approving suspension or modification of benefits within 14 days of the hearing, the insurer shall reinstate benefits; however, employee only entitled to receive partial disability benefits to avoid being paid more than he earned at his time-of-injury job, a violation of the Workers' Compensation Act. *Donahue v. W.C.A.B. (Phila. Gas Works)*, 856 A.2d 230, 235—236 (Pa. Cmwlth. 2004).

**§ 131.50a. Employee request for special supersedeas hearing under section 413(c) and (d) of the act.**

(a) This section governs the disposition of an employee's request for a special supersedeas hearing made in connection with a challenge to the suspension or modification of workers' compensation benefits under sections 413(c) and 413(d) of the act (77 P. S. §§ 774.2 and 774.3).

(b) A special supersedeas hearing will be held within 21 days of the employee's filing of the notice of challenge.

(c) The judge to whom the notice of challenge has been assigned will issue a written order on the challenge within 14 days of the hearing.

(d) If the judge fails to hold a hearing within 21 days or fails to issue a written order approving the suspension or modification of benefits within 14 days of the hearing, the insurer shall reinstate the employee's workers' compensation benefits at the weekly rate the employee received prior to the insurer's suspension or modification of benefits under sections 413(c) or 413(d) of the act (77 P. S. §§ 774.2 and 774.3).

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.161, 35.162, 35.190 and 35.225.

**Authority**

The provisions of this § 131.50a amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.50a adopted January 16, 1998, effective January 17, 1998, 28 Pa.B. 329; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (239524) and (289735).

**Cross References**

This section cited in 34 Pa. Code § 131.5 (relating to definitions).

**HEARING PROCEDURE**

**§ 131.51. Assembly of medical records.**

The moving party shall assemble medical records to the extent practical prior to the filing of a petition.

**Authority**

The provisions of this § 131.51 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.51 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (289735).

**§ 131.52. First hearing procedures.**

(a) The purpose of this chapter is to provide a fair and prompt hearing process, to allow all parties to introduce appropriate evidence and to receive a timely decision from the judge. Where practicable and appropriate, the entire record relating to any petition shall be completed at the initial hearing.

(b) The hearing process may differ based upon several variables including geographic location, number of parties involved, case volume and availability of experts for testimony.

(c) The hearing process chosen in any specific case, including a determination of whether testimony will be accepted at the initial hearing, is within the discretion of the judge.

(d) The moving party, at the first hearing, shall advise the judge and opposing parties of the following:

- (1) Allegations and issues of fact and law involved in the moving party's petition.
- (2) Proposed amendments to pleadings.
- (3) Stipulations of fact.
- (4) Names, addresses and method of presentation of witnesses.
- (5) Whether the items and information specified in § 131.61(a) (relating to exchange of information), which are intended to be used as evidence or exhibits, have been provided to the responding party at or before the first hearing.
- (6) Dates of depositions.
- (7) Estimate of hearing time.
- (8) Other subjects which may aid in the disposition of the proceeding.

(e) The moving party, at the first hearing, unless otherwise directed by the judge, shall offer and have marked for identification available exhibits of the moving party.

(f) The parties shall provide the judge with all documents required by law to be filed with the Bureau and which are relevant to issues in dispute with the same injury date and pertaining to the same claim. The judge will place those documents in evidence along with any other documents required to be filed by law with the Bureau or prior judges and which the judge deems relevant to the proceeding. The judge and the employee may not introduce the Employer's Report of Occupational Injury or Disease into evidence.

(g) Evidence furnished under this section does not become part of the record, unless otherwise admissible.

(h) Unless otherwise ordered by the judge, the moving party shall present testimony.

(i) Subsections (a)—(h) supersede 1 Pa. Code §§ 35.101—35.106, 35.111—35.116, 35.121—35.128, 35.137, 35.138, 35.155 and 35.161—35.169.

#### Authority

The provisions of this § 131.52 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

#### Source

The provisions of this § 131.52 adopted March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (289735) to (289736).

#### Notes of Decisions

##### *Failure to Move or Admit*

Where the record is devoid of any indication that a surveillance video was offered or admitted into evidence, it cannot be used as the basis for the workers' compensation judge's decision. *Kimberly Clark Corp. v. Workers' Compensation Appeal Board*, 790 A.2d 1072 (Pa. Cmwlth. 2002).

##### *Pleadings*

Where the employer failed to file its answer to the claim petition in a timely manner, the matter was properly considered a noncontested proceeding and there was no need for claimant to move the admission of the claim petition. *William J. Donovan Sheet Metal v. Workers' Compensation Appeal Board*, 789 A.2d 344 (Pa. Cmwlth. 2001); appeal denied 800 A.2d 936 (Pa. 2002).

#### Cross References

This section cited in 34 Pa. Code § 131.53 (relating to procedures subsequent to the first hearing).

### **§ 131.53. Procedures subsequent to the first hearing.**

(a) Within 45 days after the date of the first hearing actually held, the responding party shall comply with § 131.52(d) (relating to first hearing procedures) and shall submit, in writing, to the judge, with copies to counsel of record and unrepresented parties, the items and information specified in § 131.52(d).

(b) The responding party, in accordance with the directions of the judge, shall offer and have marked for identification the responding party's exhibits.

(c) The judge may issue an order directing the parties to proceed with the litigation in a manner that promotes expeditious resolution and avoids delay.

(d) A party wishing to present testimony in the form of rebuttal or surrebuttal shall notify the judge in writing within 21 days after conduct of the hearing or deposition at which the testimony to be rebutted or surrebutted has been given.

(e) Following a request to present rebuttal or surrebuttal testimony, the testimony shall be presented at a hearing or deposition provided the testimony shall be taken no later than 45 days after the conclusion of the case of the party presenting the testimony or evidence to be rebutted or surrebutted.

(f) Dates of the medical examinations, if not scheduled prior to the first hearing actually held, shall be scheduled within 45 days after the first hearing actually held.

(g) Subsections (a)—(f) supersede 1 Pa. Code §§ 35.101—35.106, 35.111—35.116, 35.121—35.128, 35.137, 35.138, 35.155 and 35.161—35.169.

#### Authority

The provisions of this § 131.53 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

#### Source

The provisions of this § 131.53 adopted March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; corrected September 27, 1991, effective March 30, 1991, 21 Pa.B. 4406; corrected October 11, 1991, effective March 30, 1991, 21 Pa.B. 4839; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (289736) and (227591).

#### Cross References

This section cited in 34 Pa. Code § 131.63 (relating to time for taking oral depositions).

### § 131.53a. Consolidated hearing procedure.

(a) One day trials or other consolidated hearing procedures may be scheduled and conducted pursuant to these rules to the extent practical. The judge may waive or modify these rules as may be appropriate and adopt and direct procedures which are fair and just for a determination of the issues.

(b) Subject to § 131.3(a) (relating to waiver and modification of rules) in cases proceeding under a consolidated hearing procedure:

(1) Upon request, or on the judge's own motion, testimony from a party or witness may be taken by a trial deposition prior to the obligation of a party to conduct medical depositions, or at another appropriate time to clarify the issues.

(2) Upon request, a party shall have the opportunity to testify before the judge at the pretrial or other hearing prior to the obligation of a party to conduct medical depositions, or at another appropriate time to clarify the issues.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.101—35.106, 35.111—35.116, 35.121—35.128, 35.137, 35.138, 35.155 and 35.161—35.169.

#### Authority

The provisions of this § 131.53a issued under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

#### Source

The provisions of this § 131.53a adopted December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043.

**§ 131.54. Manner and conduct of hearings.**

(a) The judge will conduct fair and impartial hearings and maintain order. At the discretion of the judge, the hearings may be conducted by telephone or other electronic means if the parties do not object. Disregard by participants or counsel of record of the rulings of the judge shall be noted on the record, and if the judge deems it appropriate, will be made the subject of a written report to the Bureau's Director of Adjudication together with recommendations.

(b) If the participants or counsel are guilty of disrespectful, disorderly or contumacious language or conduct in connection with a hearing, the judge may suspend the hearing or take other action as the judge deems appropriate, including the submission of a written report to the Bureau's Director of Adjudication together with recommendations.

(c) A witness whose identity has not been revealed as provided in this chapter may not be permitted to testify on behalf of the defaulting party unless the testimony is allowed within the judge's discretion.

(d) In addition to subsections (a)—(c), the judge may proceed under § 131.13(m) (relating to continuances or postponements of hearings).

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 31.21—31.23, 31.27 and 31.28 and also supersede 1 Pa. Code Chapter 35, Subchapter E.

**Authority**

The provisions of this § 131.54 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.54 adopted March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (227591) to (227592).

**Notes of Decisions***Referees*

The referee, who held a temporary appointment as a professor for the employer appearing in this matter, had a substantial enough relationship with the employer so as to require the referee's recusal as the relationship created an appearance of a conflict of interest that placed the impartiality of the referee in question and tainted the proceedings. *Suprock v. Workmen's Compensation Appeal Board*, 657 A.2d 1337 (Pa. Cmwlth. 1995).

These regulations governing workers' compensation hearings require a referee to conduct a fair and impartial hearing; however, the regulations do not delineate when a referee should be recused nor do they indicate how to challenge a referee's decision that they can indeed be fair and impartial. *Suprock v. Workmen's Compensation Appeal Board*, 657 A.2d 1337 (Pa. Cmwlth. 1995).

**§ 131.55. Attorney fees and costs.**

(a) Under section 440 of the act (77 P. S. § 996), in a disputed claim under the act when the employer or insurer has contested liability in whole or in part, the employee or a dependent, in whose favor the proceeding has been finally decided, will be awarded attorney fees and costs against the employer or insurer, unless the employer or insurer had a reasonable basis for contesting the petition.

(b) Claimant's counsel may file an application for quantum meruit fees at or before the filing of proposed findings of fact, proposed conclusions of law and briefs, and if there are no proposed findings of fact, proposed conclusions of law or briefs requested, at or before the close of the record. The application shall detail the calculation of the fee requested, shall itemize the services rendered and time expended and shall address all factors enumerated in section 440 of the act (77 P. S. § 996) in support of the application.

(c) Within 15 days after service of the application for quantum meruit fees, an opposing party may file a response to the application detailing the objections to the fee requested.

(d) A decision on the fee award will be made based on the record of the case and, if filed, the application and response. If deemed appropriate by the judge, a hearing may be held and evidence presented.

(e) The application and response will be made exhibits of record and shall be served on unrepresented parties and counsel of record as provided in § 131.34(a) (relating to other filings).

(f) Subsections (a)—(e) supersede 1 Pa. Code §§ 35.1 and 35.2 (relating to applications generally; and contents of applications).

**Authority**

The provisions of this § 131.55 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.55 adopted March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (227592).

**§ 131.56. [Reserved].****Source**

The provisions of this § 131.56 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; reserved March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401. Immediately preceding text appears at serial page (100087).

**§ 131.57. Compromise and release agreements.**

(a) Under section 449 of the act (77 P. S. § 1000.5), upon or after filing a petition, the parties may engage in a compromise and release of any and all liability which is claimed to exist under the act on account of injury or death, subject to approval by the judge after consideration at a hearing.

(b) Proposed compromise and release agreements, including the stipulations of the parties, shall be recorded on a form prescribed by the Bureau. The parties may attach additional information to the form if circumstances so require.

(c) If another petition is pending before a judge at the time of the agreement of the parties to compromise and release the claim, any party may, in writing, request the judge to schedule a hearing on the proposed compromise and release agreement. The written request will be treated as an amendment of the pending matter to a petition to seek approval of a compromise and release agreement.

(d) The judge will expedite the convening of a hearing on the compromise and release agreement. The judge will circulate a written decision on the proposed compromise and release agreement within 30 days after the hearing.

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 33.42, 35.40, 35.41, 35.48—35.51, 35.101—35.106, 35.111—35.116, 35.121—35.128 and 35.155.

**Authority**

The provisions of this § 131.57 issued under the sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.57 adopted December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043.

**§ 131.58. Informal conferences.**

(a) Under section 402.1 of the act (77 P. S. § 711.1), the parties upon, or after, filing a petition may agree to participate in an informal conference.

(b) All parties shall agree to participate in the informal conference.

(c) The request for the informal conference shall be recorded on a form prescribed by the Bureau and filed with the judge to whom the pending petition has been assigned.

(d) If no petition is pending, a petition and corresponding request for the informal conference shall be filed with the Bureau on a form prescribed by the Bureau.

(e) The informal conference will be governed by the instructions and procedures specified on the form prescribed by the Bureau and by section 402.1 of the act (77 P. S. § 711.1).

(f) The request shall be served on all parties and the adjudicating judge.

(g) Subsections (a)—(f) supersede 1 Pa. Code §§ 31.21—31.23 and 35.111—35.116.

**Authority**

The provisions of this § 131.58 issued under the sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.58 adopted December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043.

**EXCHANGE OF INFORMATION AND DEPOSITIONS AND  
DISCOVERY****§ 131.61. Exchange of information.**

(a) Parties shall exchange all items and information, including medical documents, reports, records, employment records, wage information, affidavits, tapes, films and photographs, lists of witnesses, CD ROMs, diskettes and other digital recordings, to be used in or obtained for the purpose of prosecuting or defending a case, unless the foregoing are otherwise privileged or unavailable, whether or not intended to be used as evidence or exhibits.

(b) The moving party shall provide the items and information referred to in subsection (a) to the responding party prior to the commencement of the first pretrial hearing or hearing actually held. The responding party shall provide the items and information referred to in subsection (a) to the moving party no later than 45 days after the first pretrial hearing or hearing actually held.

(c) A witness whose identity has not been revealed as provided in subsections (a) and (b) may not be permitted to testify on behalf of the defaulting party unless the testimony is allowed within the judge's discretion.

(d) An item or information not exchanged as provided in subsections (a) and (b), which becomes available after the times set forth in subsection (b) shall be exchanged within 15 days after receipt by the party of the item or information.

(e) Statements, documents or other records required to be provided by this chapter, if not provided within the time periods in this chapter or modified under § 131.12 (relating to modification of time), will not be admitted, relied upon or utilized in the proceedings or judge's rulings, as appropriate.

(f) Failure to comply with this section may result in the application of § 131.13(m) (relating to continuances or postponements of hearings).

(g) Subsections (a)—(f) supersede 1 Pa. Code §§ 35.161 and 35.162 (relating to form and admissibility of evidence; and reception and ruling on evidence).

**Authority**

The provisions of this § 131.61 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.61 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; reserved March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (227592) and (228547) to (228548).

**Notes of Decisions***Evidence Properly Reviewed*

Employer does not argue how the late submission of the medical bills violated its due process rights or the notion of fair play. Employer's argument addresses only that such submission was a clear violation of the Special Rules of Administrative Practice and Procedure Before Referees. A review of the introduced bills, which the referee permitted to be submitted into evidence reveals that they are, indeed, causally connected to the work injury and are reasonable and necessary. Since the referee has the discretion to waive the requirements of the special rules and employer has not shown any prejudice as a result, the referee did not err in permitting the introduction into evidence of those bills which were causally related to claimant's work injury and were reasonable and necessary. *Nevin Trucking v. Workmen's Compensation Appeal Board*, No. 19 C. D. 1995, 1995 Pa. Cmwlth. LEXIS 495 (1995).

Given the liberal evidence provisions of the Workmen's Compensation Act, the referee was free to consider the settlement letter written to employer's insurance company by claimant's counsel regarding claimant's settlement demands. It was then within the province of the referee to determine how much weight should be given to the letter in making the decision with respect to employer's petition to terminate or suspend claimant's benefits. *Anzaldo v. Workmen's Compensation Appeal Board*, 667 A.2d 488 (Pa. Cmwlth. 1995).

Although this regulation required parties to exchange all evidence, which was not available at the time of the first hearing, within 10 days of a party's receipt of the item or information and that evidence not provided within the time period would not be admitted, relied upon or utilized in the proceedings or referee's rulings, the referee did not err in relying on the surveillance evidence when plaintiff's counsel received it within 5 days of defense counsel's receipt even though the report was dated 21 days earlier. *Lathilleurie v. Workmen's Compensation Appeal Board*, 660 A.2d 694 (Pa. Cmwlth. 1995).

*Expert Testimony*

The worker's compensation judge did not err in allowing employer's medical expert to testify during deposition as to causation issues when the expert's report was allegedly limited to the worker's employability. *Stech v. Workmen's Compensation Appeal Board*, 678 A.2d 1243 (Pa. Cmwlth. 1996); appeal denied 698 A.2d 69 (Pa. 1997).

*Obligation to Provide*

Employer had an obligation to provide a copy of the surveillance videotape to claimant prior to the first hearing, pursuant to this regulation, and while employer managed to provide a copy to its medical witnesses, the employer violated this regulation by failing to reveal the existence of the tape to claimant for 11 months. *Thompson v. Workmen's Compensation Appeal Board*, 683 A.2d 1315 (Pa. Cmwlth. 1996).

Employer violated this regulation by not providing claimant with the surveillance videotape in a timely manner. Contrary to employer's assertions, claimant was not obligated to request the videotape from employer. Rather, employer had an obligation to provide claimant with the videotape prior to the first hearing before the referee. *Anzaldo v. Workmen's Compensation Appeal Board*, 667 A.2d 488 (Pa. Cmwlth. 1995); appeal denied 678 A.2d 366 (Pa. 1996).

**Cross References**

This section cited in 34 Pa. Code § 131.52 (relating to first hearing procedures); 34 Pa. Code § 131.68 (relating to discovery of records); and 34 Pa. Code § 131.70 (relating to discovery of statements of parties or witnesses).

**§ 131.62. Oral depositions.**

(a) The oral deposition of a witness other than a party may be taken and, if taken, may be used only as evidence at hearings. Depositions for discovery may be taken only as provided in § 131.68 (relating to discovery of records).

(b) The oral deposition of a party may be taken only upon approval of the judge and, if taken, may be used only as evidence.

(c) Depositions may be taken by telephone or other electronic means upon agreement of counsel of record and unrepresented parties or, upon motion, as directed by the judge.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 35.145—35.152.

**Authority**

The provisions of this § 131.62 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.62 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (228548) and (261797).

**Notes of Decisions***Depositions of Experts*

The worker's compensation judge did not err in allowing employer's medical expert to testify during deposition as to causation issues when the expert's report was allegedly limited to the worker's employability. *Stech v. Workmen's Compensation Appeal Board*, 678 A.2d 1243 (Pa. Cmwlth. 1996); appeal denied 698 A.2d 69 (Pa. 1997).

*Insufficient Evidence*

The Workmen's Compensation Appeal Board's order terminating compensation benefits was reversed where employer's hearsay evidence of medical report was not corroborated by other competent evidence such as live testimony or the deposition of the medical expert, even though the report was admitted without objection and claimant failed to appear at the hearing. *Tynan v. Workmen's Compensation Appeal Board*, 639 A.2d 856 (Pa. Cmwlth. 1994).

**Cross References**

This section cited in 34 Pa. Code § 131.66 (relating to admissibility of oral depositions).

**§ 131.63. Time for taking oral depositions.**

(a) An oral deposition may be taken at any time subsequent to 30 days after the date of service of the petition by the Bureau.

(b) Oral depositions shall be completed so as not to delay unreasonably the conclusion of the proceedings, and within a time schedule agreed upon by the parties and approved by the judge provided that medical depositions shall be completed as specified in subsections (c) and (e).

(c) The deposition of a medical expert testifying for the moving party shall be taken within 90 days of the date of the first hearing scheduled unless the time is extended or shortened by the judge for good cause shown. The deposition of a medical expert testifying for the responding party shall be taken within 90 days of the date of the deposition of the last medical expert testifying on behalf of the moving party.

(d) A party wishing to present depositions for rebuttal or surrebuttal shall notify the judge in writing within 21 days after the conduct of the hearing or deposition at which the testimony to be rebutted or surrebutted has been given.

(e) Depositions for rebuttal or surrebuttal shall be taken in accordance with § 131.53(e) (relating to procedures subsequent to the first hearing).

(f) If a party fails to abide by the time limits established by this section for submitting evidence, the evidence will not be admitted, relied upon or utilized in the proceedings or the judge's rulings.

(g) Subsections (a)—(f) supersede 1 Pa. Code §§ 35.145—35.152, 35.161 and 35.162.

#### Authority

The provisions of this § 131.63 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

#### Source

The provisions of this § 131.63 adopted March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; corrected September 27, 1991, effective March 30, 1991, 21 Pa.B. 4406; corrected October 11, 1991, effective March 30, 1991, 21 Pa.B. 4839; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (261797) to (261798).

#### Notes of Decisions

##### *Evidence Insufficient*

The Workmen's Compensation Appeal Board's order terminating compensation benefits was reversed where employer's hearsay evidence of medical report was not corroborated by other competent evidence such as live testimony or the deposition of the medical expert, even though the report was admitted without objection and claimant failed to appear at the hearing. *Tynan v. Workmen's Compensation Appeal Board*, 639 A.2d 856 (Pa. Cmwlth. 1994); appeal denied 653 A.2d 1236 (Pa. 1994).

##### *No Unreasonable Delay*

The Worker's Compensation Judge erred in imposing a 10% penalty for unreasonable delays. The Judge imposed a penalty upon Employer because Employer unreasonably delayed the conclusion of the proceedings by demanding that claimant take the orthopedic surgeon's deposition and by insisting that claimant afterwards submit to an independent medical evaluation by another physician. However,

it was not unreasonable for employer to seek the deposition of claimant's medical expert or to request that the physician, who had already reviewed claimant's medical records and rendered a contrary opinion about the work-relatedness of claimant's back problem, actually examine claimant before offering any further opinion. *Ball Incon Glass Packaging v. Workmen's Compensation Appeal Board*, 682 A.2d 85 (Pa. Cmwlth. 1996).

#### *Waiver*

The Workers' Compensation Judge did not abuse his discretion in waiving compliance by the employer with the 90-day rule, where the claimant, who argued that her ability to win the case is hurt by the introduction of the deposition, has failed to demonstrate the kind of prejudice necessary to warrant the exclusion of the medical expert's deposition; the prejudice a claimant must demonstrate is not that if the deposition is admitted, she may lose her case, but that the delay in obtaining the deposition compromises her ability to present her case. *Atkins v. Workers' Compensation Appeal Board*, 735 A.2d 196 (Pa. Cmwlth. 1999).

#### *Unreasonable Delay*

The Workers' Compensation Judge erred in admitting the deposition of a physician, where the deposition was taken over four months before the health care provider filed his petition for review of the utilization review determination. *Cruz v. Workers' Compensation Appeal Board (Philadelphia Club)*, 728 A.2d 413 (Pa. Cmwlth. 1999).

#### **Cross References**

This section cited in 34 Pa. Code § 131.66 (relating to admissibility of oral depositions).

### **§ 131.64. Notice of oral depositions.**

(a) The notice of an oral deposition shall be served at least 20 days prior to the date scheduled for the taking of the deposition.

(b) The notice of an oral deposition shall contain the following:

- (1) The name or identity, address and occupation of the witness.
- (2) The date, time and place of the taking of the oral deposition.
- (3) A statement of a relevant reason for the taking of the oral deposition.
- (4) The following legend:

#### Notice to Parties and/or Witness:

You may object to this oral deposition by mailing or delivering a letter listing your objections to (name and address of party scheduling deposition) at least 10 days before (date of deposition).

(c) The notice of an oral deposition shall be served by the party scheduling the deposition upon each witness to be deposed, counsel of record, unrepresented parties and the judge.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 33.33 and 35.145—35.152.

#### **Authority**

The provisions of this § 131.64 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.64 adopted March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (261798) to (261799).

**Notes of Decisions***Hearsay*

The Workmen's Compensation Appeal Board's order terminating compensation benefits is reversed where employer's hearsay evidence of medical report was not corroborated by other competent evidence such as live testimony or the deposition of the medical expert, even though the report was admitted without objection and claimant failed to appear at the hearing. *Tynan v. Workmen's Compensation Appeal Board*, 639 A.2d 856 (Pa. Cmwlth. 1994); appeal denied 653 A.2d 1236 (Pa. 1994).

**Cross References**

This section cited in 34 Pa. Code § 131.66 (relating to admissibility of oral depositions); and 34 Pa. Code § 131.68 (relating to discovery of records).

**§ 131.65. Objections to taking of oral depositions.**

(a) A party or witness may object to the oral deposition by serving, at least 10 days prior to the scheduled date of the oral deposition, a written notice upon the party who has scheduled the oral deposition, counsel of record, unrepresented parties and the judge. The objections shall state the specific reason supporting the objections. The objections shall stay the deposition until it is ordered to be held by the judge.

(b) A party or witness may request a ruling on objections by filing a written request with the judge, which shall be accompanied by a copy of the notice of an oral deposition, any subpoena and the objections lodged as required by subsection (a). The requesting party shall serve a copy of the request for ruling on counsel of record, unrepresented parties and the objecting witnesses.

(c) Upon receipt of a request for ruling, as specified in subsection (b), the judge will, after giving parties and objecting witnesses notice and opportunity to be heard by written submission, in person, or by telephone conference, as the judge may direct, rule on the objections within 5 business days after the parties and objecting witnesses are heard.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 35.145—35.152.

**Authority**

The provisions of this § 131.65 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.65 adopted March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (261799) to (261800).

**Notes of Decisions***Insufficient Evidence*

The Workmen's Compensation Appeal Board's order terminating compensation benefits is reversed where employer's hearsay evidence of medical report was not corroborated by other competent evidence such as live testimony or the deposition of the medical expert, even though the report was admitted without objection and claimant failed to appear at the hearing. *Tynan v. Workmen's Compensation Appeal Board*, 639 A.2d 856 (Pa. Cmwlth. 1994); appeal denied 653 A.2d 1236 (Pa. 1994).

*Waiver of Rules*

Because parties act in reliance of various time limitations in the rules, it was error to retroactively modify the time requests of § 131.65 of the Special Rules without agreement of all parties. *Plaugher v. Workers' Compensation Appeal Board*, 814 A.2d 1278 (Pa. Cmwlth. 2003).

**Cross References**

This section cited in 34 Pa. Code § 131.66 (relating to admissibility of oral depositions); and 34 Pa. Code § 131.68 (relating to discovery of records).

**§ 131.66. Admissibility of oral depositions.**

(a) Oral depositions taken in accordance with §§ 131.62—131.65 or upon waiver of the formal requirements of those sections by agreement of all parties, will be admissible at the time of hearing or by mail if allowed by the judge in the same manner as if the deponent appeared before the judge and testified.

(b) Objections shall be made and the basis for the objections stated at the time of the taking of the depositions. Only objections which are identified in a separate writing, introduced prior to the close of the evidentiary record, as close of the record is specified in §§ 131.101(c)—(e) (relating to briefs, findings of fact and close of record), and stating the specific nature of the objections and the pages where they appear in the deposition will be preserved for ruling. Objections not so preserved are waived.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.126, 35.151, 35.161 and 35.162.

**Authority**

The provisions of this § 131.66 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.66 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (261800) to (261801).

**Notes of Decisions***Long Distance Travel*

Under workers' compensation law, a Workers' Compensation Judge may order the payment of travel expenses to attorneys who attend depositions more than 100 miles from where a workers' compensation hearing may be scheduled; by analogy, the Commonwealth Court concludes that, as a matter of law, travel exceeding 100 miles one way for medical treatment is "long distance" travel, not

“local” travel; to hold otherwise would penalize claimants who reside in remote areas and who must routinely travel great distances for medical treatment. *Holly v. Workers' Compensation Appeal Board (Lutheran Home)*, 735 A.2d 153 (Pa. Cmwlth. 1999); appeal denied 751 A.2d 194 (Pa. 2000).

#### *Objections*

Employer's objection to psychiatrist's testimony that Claimant's depression was caused by her work injury was not preserved because it was not specific, it was waived on appeal. *Marriott Corp. v. Workers' Compensation Appeal Board (Knechtel)*, 837 A.2d 623, 630-631 (Pa. Cmwlth. 2003).

The Workmen's Compensation Appeal Board's order terminating compensation benefits is reversed where employer's hearsay evidence of medical report was not corroborated by other competent evidence such as live testimony or the deposition of the medical expert, even though the report was admitted without objection and claimant failed to appear at the hearing. *Tynan v. Workmen's Compensation Appeal Board*, 639 A.2d 856 (Pa. Cmwlth. 1994); appeal denied 653 A.2d 1236 (Pa. 1994).

The referee did not commit reversible error by failing to rule on objections which were not identified in a separate writing. *Yezovich v. Workmen's Compensation Appeal Board*, 601 A.2d 1341 (Pa. Cmwlth. 1992).

Objections not properly preserved are waived. *Stech v. Workmen's Compensation Appeal Board*, 678 A.2d 1243 (Pa. Cmwlth. 1996); appeal denied 698 A.2d 69 (Pa. 1997).

When counsel for both the claimant and employer agreed that objections would be raised during the deposition of the claimant's expert or waived, the referee properly sustained objections raised during cross-examination of the witness at the time of the hearing which were not previously expressed. *Pioneer Machine and Tool Co. v. Workmen's Compensation Appeal Board*, 602 A.2d 442 (Pa. Cmwlth. 1991).

### **§ 131.67. Expenses of taking depositions.**

(a) If a deposition is to be taken more than 100 miles from where the hearing is or would be scheduled, the judge may order the payment of reasonable expenses of attorneys, not including counsel fees, to attend the deposition.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.148 and 35.152 (relating to officer before whom deposition is taken; and fees of officers and deponents).

#### **Authority**

The provisions of this § 131.67 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

#### **Source**

The provisions of this § 131.67 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (261801).

### **§ 131.68. Discovery of records.**

(a) A party may schedule and take the deposition of a custodian of records or a person in a similar capacity. A party has the right to inspect and analyze the records listed in this subsection. Title 42 Pa.C.S. §§ 6151—6160 (relating to medical records) shall be followed, if applicable. The deposition may be used to locate, authenticate and obtain copies of records which are material and relevant to the proceeding, including:

- (1) Employment, earnings or work environment.

- (2) Treatment, including vocational and physical rehabilitation.
- (3) Mental or physical examination.
- (4) Hospitalization.
- (5) Testing.
- (6) X-rays.
- (7) Autopsy.
- (8) Tissue slides and samples.
- (9) Surveillance.

(b) A party may take the discovery deposition at any time after the assignment of the petition to a judge.

(c) The notice of discovery shall conform to § 131.64(b) (relating to notice of oral depositions) and shall also contain a description of the items to be produced at the deposition.

(d) The service of the notice of discovery shall conform to § 131.64(c).

(e) Objections shall conform to § 131.65 (relating to objections to taking of oral depositions).

(f) A deposition under this section shall be in the form of a written affidavit of the custodian of records as deponent without interrogation. The affidavit shall be in the form, and contain the information specified in § 131.69 (relating to form of deposition affidavit). Title 42 Pa.C.S. §§ 6151—6160 shall be followed, if applicable.

(g) The deposition affidavit and the records or items authenticated thereby will be admissible into evidence in the proceeding before the judge in the same manner as if the deponent appeared before the judge and testified to the authenticity of the records or items.

(h) Failure to comply with this section may result in the application of §§ 131.13(m) and 131.61(d) and (e) (relating to continuances or postponements of hearings; and exchange of information).

(i) Subsections (a)—(h) supersede 1 Pa. Code §§ 35.145—35.152.

#### Authority

The provisions of this § 131.68 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

#### Source

The provisions of this § 131.68 adopted March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (261801) and (222327) to (222328).

**Notes of Decisions***Evidence Properly Admitted*

The worker's compensation judge did not err in allowing employer's medical expert to testify during deposition as to causation issues when the expert's report was allegedly limited to the worker's employability. *Stech v. Workmen's Compensation Appeal Board*, 678 A.2d 1243 (Pa. Cmwlth. 1996); appeal denied 698 A.2d 69 (Pa. 1997).

*General Comment*

Although this regulation gives parties the right to inspect records concerning earnings from employment; neither this regulation nor 77 P. S. § 833 authorize unlimited discovery. Discovery requests must be reasonable and relevant to the proceedings before the referee. *Honesdale Borough v. Workmen's Compensation Appeal Board*, 659 A.2d 70 (Pa. Cmwlth. 1995); appeal denied 670 A.2d 144 (Pa. 1995).

*Subpoenas*

The issuance of a subpoena, and not a request for production of documents or the provisions of the "Personnel Files Act," was the proper and reasonable method for the production of records in proceedings before a referee. *Tady v. Workmen's Compensation Appeal Board*, 485 A.2d 897 (Pa. Cmwlth. 1985). (**Editor's Note:** The court cited to former § 131.47 which dealt with discovery of records.)

**Cross References**

This section cited in 34 Pa. Code § 131.62 (relating to oral depositions); and 34 Pa. Code § 131.69 (relating to form of deposition affidavit).

**§ 131.69. Form of deposition affidavit.**

(a) The deposition affidavit required by § 131.68(f) (relating to discovery of records) shall be in the following form:

**DEPOSITION AFFIDAVIT OF RECORD CUSTODIAN**

I, the undersigned, being duly sworn according to law, depose and say, that I am the duly authorized custodian of records for (name of hospital, doctor, employer, etc.) with the authority to certify said records, and I hereby certify to the following:

(1) The records attached hereto are true and correct copies of the records in my custody, pertaining to (claimant or decedent); and

(2) All records called for in the attached subpoena duces tecum, including this certification, which are in my custody, have been photocopied at my office, in my presence, at my discretion and under my supervision, by (name of copy service, if any); and

(3) All records produced in my presence, unless qualified below, were prepared in the ordinary course of business by authorized persons or personnel at or near the time of the act, condition or event; and

(4) A careful search has been made by me or at my direction for records pertaining to the above identified individual and the records produced pursuant to the attached subpoena duces tecum constitute all of the records of the individual so identified.

(b) Subsection (a) supersedes 1 Pa. Code § 35.149 (relating to oath and reduction to writing).

**Authority**

The provisions of this § 131.69 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.69 adopted March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (222328) to (222329).

**Cross References**

This section cited in 34 Pa. Code § 131.68 (relating to discovery of records).

**§ 131.70. Discovery of statements of parties or witnesses.**

(a) Upon written request, a party is entitled to receive a photostatic copy or other reproduction of a statement previously made concerning the petition or its subject matter by that party, another party or a witness.

(b) Upon written request, a person not a party, is entitled to receive a photostatic copy or other reproduction of a statement concerning the petition or its subject matter previously made by that person.

(c) This section may not apply to statements made by a party to the party's counsel which are protected by the attorney-client privilege or which are protected as the work product of counsel.

(d) Failure to adhere to this section may result in the application of §§ 131.13(m) and 131.61(d) and (e) (relating to continuances or postponements of hearings; and exchange of information), as appropriate.

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.145—35.152.

**Authority**

The provisions of this § 131.70 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.70 adopted March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (222329).

**SUBPOENAS****§ 131.81. Subpoenas.**

(a) Upon written request of a party or counsel of record in a pending proceeding, the judge will issue a subpoena to compel the attendance of a witness or require the production of books, documents, records, CD ROMs, diskettes, other digital recordings or other things relevant to the proceeding at a scheduled hear-

ing or deposition within the scope of, and scheduled under, this chapter. The party requesting a subpoena shall serve the judge with the original written request and shall serve a copy of the written request on unrepresented parties and counsel of record as provided in § 131.34(a) (relating to other filings).

(b) The party, counsel of record or their respective agents requesting a subpoena shall serve the subpoena upon the witness or person subpoenaed and upon opposing counsel.

(1) Service shall be made by one of the following:

(i) Personal service under the Pennsylvania Rules of Civil Procedure.

(ii) Any form of mail requiring a return receipt postage prepaid, restricted delivery or as provided in § 131.11(b) (relating to filing, service and proof of service).

(2) The fee for 1 day's attendance and roundtrip mileage shall be tendered upon demand at the time the person is served with the subpoena. If a subpoena is served by mail, a check in the amount of 1 day's attendance and round-trip mileage shall be enclosed with the subpoena. The fee for 1 day's attendance and roundtrip mileage is as prescribed in 42 Pa.C.S. §§ 5901—5988 (relating to depositions and witnesses).

(c) Upon the filing of written objections by a person served with a subpoena or a party, the judge may, after notice to counsel of record and unrepresented parties, promptly quash or limit the scope of a subpoena issued or served.

(d) If the person fails to appear, or has given notice of the intention not to appear, as required by a subpoena duly served, the judge will upon request of a party, communicate to the witness the requirements of the act that the person so appear and advise the person of the enforcement provisions under section 436 of the act (77 P. S. § 992).

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.139 and 35.142 (relating to fees of witnesses; and subpoenas).

#### Authority

The provisions of this § 131.81 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

#### Source

The provisions of this § 131.81 adopted March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (222329) to (222330).

#### Notes of Decisions

Issuance of a subpoena is the proper and reasonable method for the production on records. *Tady v. Workmen's Compensation Appeal Board*, 485 A.2d 897 (Pa. Cmwlth. 1985). (**Editor's Note:** The court cited to former § 131.51 which dealt with subpoenas.)

**Cross References**

This section cited in 34 Pa. Code § 131.11 (relating to filing, service and proof of service).

**STIPULATIONS****§ 131.91. Stipulations of fact.**

(a) Stipulations of fact may be filed with the judge to whom the case has been assigned.

(b) The judge may issue a decision based on stipulations of fact, if the judge is satisfied that:

(1) The stipulations of fact are fair and equitable to the parties involved.

(2) The claimant understands the stipulations of fact and the effect of the stipulations of fact on future payments of compensation and medical expenses.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.155 (relating to presentation and effect of stipulations).

**Authority**

The provisions of this § 131.91 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.91 adopted November 6, 1981, effective November 7, 1981, 11 Pa.B. 4015; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (222330).

**Notes of Decisions**

If a stipulation is part of an illegal settlement or is no more than an agreement approved by the referee, his decision thereon cannot be accorded res judicata. *Spears v. Workmen's Compensation Appeal Board*, 481 A.2d 1244 (Pa. Cmwlth. 1984). (**Editor's Note:** The court cited to former § 131.56 which dealt with stipulations of fact.)

**BRIEFS, FINDINGS OF FACT, CLOSE OF RECORD  
AND ORAL ARGUMENT****§ 131.101. Briefs, findings of fact and close of record.**

(a) The judge may require the parties to submit proposed findings of fact, conclusions of law and legal briefs or memoranda to the judge for review and consideration.

(b) Submissions referred to in subsection (a) shall be made within the time specified by the judge, but not later than 30 days following the close of the record.

(c) The evidentiary record is closed when the parties have submitted all of their evidence and rested or when the judge has closed the evidentiary record on

a party's motion or the judge's own motion. If the judge determines that additional hearings are necessary, or that additional evidence needs to be submitted, or if the judge schedules additional written or oral argument, the evidentiary record may be held open by the judge. When the judge determines that the evidentiary record is closed, the judge will notify the parties that the evidentiary record is closed on the record or in writing.

(d) A party may move to close the evidentiary record and all other parties shall advise the judge within 20 days as to whether the evidentiary record is closed or whether there is additional evidence to be submitted. At the conclusion of the 20-day period, the judge will determine whether the evidentiary record will be closed or will remain open.

(e) A judge may close the evidentiary record on the judge's own motion even if all parties have not rested when the judge determines that the parties have had reasonable opportunity to present their case, provided that reasonable notice of the closing of the evidentiary record has been given to all parties.

(f) All parties shall provide a certification of the contents of the evidentiary record before the judge, including hearing dates, a list of witnesses testifying and a list of offered exhibits. The certification of the evidentiary record shall be provided to the judge after the close of the evidentiary record and at or before the filing of proposed findings of fact, conclusions of law or brief. The judge will specify the contents of the evidentiary record in the decision.

(g) Proposed findings of fact, proposed conclusions of law, briefs and certification of the evidentiary record not timely filed with the judge may not be considered unless, in advance of the date specified in this section, a request for an extension of time has been made to, and granted by, the judge for good cause shown.

(h) Briefs submitted under this section shall consist of at least the following items separately and distinctly set forth:

- (1) A short statement of the questions involved.
- (2) A statement of the facts by the moving party or counter-statement of the facts by the responding party.
- (3) An argument.
- (4) Short conclusions setting forth the precise relief sought.
- (5) A proof of service.

(i) Subsections (a)—(h) supersede 1 Pa. Code §§ 35.54, 35.55, 35.131—35.133, 35.163, 35.173, 35.191—35.193, 35.212, 35.221 and 35.231—35.233 and also supersede 1 Pa. Code Chapter 35, Subchapter D.

#### **Authority**

The provisions of this § 131.101 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.101 adopted March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (289737).

**Notes of Decisions***Right to Full Hearing*

Where a party requests a period of time to prepare proposed findings of fact, conclusions and a memorandum of law, and the referee does not respond to the request, then files his decision prior to the expiration of the period of time requested, the referee's decision violates the right to a full hearing under this section and the 45-day limit does not apply where circumstances suggest that neither the parties nor the referee gave much attention to subsection (b). *Newtown Township v. Workmen's Compensation Appeal Board*, 459 A.2d 1372 (Pa. Cmwlth. 1983). (**Editor's Note:** The court cited to former § 131.61 which dealt with briefs).

The sanctions for failure to timely file a brief as set forth in § 131.101(c) are not the exclusive sanctions available to the workers' compensation judge (WCJ) it was therefore not error for the WCJ to deny the claimant statutory interest on his benefits during the unexcused period during which his brief was overdue. *Johnakin v. Workers' Compensation Appeal Board*, 806 A.2d 950 (Pa. Cmwlth. 2002).

**Cross References**

This section cited in 34 Pa. Code § 131.66 (relating to admissibility of oral admissions).

**§ 131.102. Oral argument.**

(a) The judge, with notice to the parties, may require oral argument at any time before or after the close of the evidentiary record. A party may request oral argument at any time prior to the submission of the parties proposed findings of fact, proposed conclusions of law or brief. If no proposed findings of fact, proposed conclusions of law or brief are filed, a party may request oral argument prior to the close of the evidentiary record.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.204, 35.214 and 35.221 (relating to oral argument before presiding officer; oral argument on exceptions; and briefs and oral argument in absence of proposed report).

**Authority**

The provisions of this § 131.102 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.102 adopted March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (289738).

**Cross References**

This section cited in 34 Pa. Code § 131.111 (relating to decision of judges).

**DECISIONS****§ 131.111. Decision of judges.**

(a) Following the close of the evidentiary record and the hearing of oral argument, if any, as provided in § 131.102(a) (relating to oral argument), the judge will issue a written decision, which will contain findings of fact, conclusions of law and an appropriate order based upon the entire evidentiary record.

(b) The decision of the judge will be a final order, subject to correction or amendment under § 131.112 (relating to correction or amendment of decision), or appeal.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 31.13, 31.14, 35.190, 35.201—35.207, 35.225, 35.226 and 35.241.

**Authority**

The provisions of this § 131.111 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.111 adopted March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (289738).

**Notes of Decisions***Bench Order Not a Decision*

A bench order issued by the Workers' Compensation Judge for the convenience of the parties is not a written decision and, therefore, was not considered a "decision" or "final order." *Strawbridge & Clothier v. Workers' Compensation Appeal Board*, 777 A.2d 1194 (Pa. Cmwlth. 2001).

*Effect of Written Decision*

Workers' Compensation Judge (WCJ) did not err in voiding compromise and release agreement between claimant and employer because agreement contained a provision stating that it was null and void upon claimant's death if not approved by a judge and there was no dispute that the order approving it was not issued until claimant passed away. *Crawford v. Workers' Compensation Appeal Board (Centerville Clinics)*, 958 A.2d 1075 (Pa. Cmwlth. 2008).

Where the workers' compensation judge (WCJ) held a hearing to consider an agreed-upon compromise and release, orally approved the same and signed a written order of approval the next morning, the decisions of the WCJ and the Board to affirm the order were proper, even though the claimant died only hours after the hearing from a nonwork related illness. There was no indication of fraud or concealment, and the employer's attorney had ample opportunity to cross-examine the claimant about his medical condition. *Department of Corrections v. Workers' Compensation Appeal Board (McClellan)*, 794 A.2d 977 (Pa. Cmwlth. 2002).

**§ 131.112. Correction or amendment of decision.**

(a) A decision or an order of a judge may be amended or corrected by the judge subsequent to the service of notice of the decision and order. A typographical or clerical error or obvious omission or error on the part of the judge may be

corrected on the judge's motion or on the motion of one or both parties. Other amendments or corrections will be made only upon written agreement of the parties. A request for correction or amendment shall be made within 20 days of the date of service of notice of the decision and order.

(b) The corrected decision and order will specifically set forth the items in the prior decision and order which are being corrected and amended, and will contain the following provision: "In all other respects the prior decision and order in the case are hereby reaffirmed."

(c) Neither the request for correction nor the corrected decision and order will extend the appeal period of the original decision and order as to any part of that decision and order which is not the subject of the request for correction or amendment.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 31.13, 31.14, 35.54, 35.55, 35.190 and 35.211—35.214 and also supersede 1 Pa. Code Chapter 35, Subchapter D.

#### Authority

The provisions of this § 131.112 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

#### Source

The provisions of this § 131.112 adopted March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial pages (286285) to (286286).

#### Notes of Decisions

##### *Bench Order Not a Decision*

Because a bench order is not a "decision" as required by § 131.112, that section is not applicable. *Strawbridge & Clothier v. Workers' Compensation Appeal Board*, 777 A.2d 1194 (Pa. Cmwlth. 2001).

##### *Sample Note—Scope*

It would be utterly impracticable to deny a Workers' Compensation Judge the authority to vacate his decision without the written agreement of the parties if he realizes that a decision has been issued erroneously. *Edward Floria v. Workers' Compensation Appeal Board (General Electric)*, 11 PAWCLR (LRP) 2102.

Referee's changing of word "asbestosis" to "asbestos dust exposure," in view of fact that all factual findings related to asbestos dust exposure and that asbestosis was never an issue in the case, was merely a correction of an obvious typographical, clerical or mechanical error which did not require the written agreement of the interested parties. *Bethlehem Mines Corp. v. Workmen's Compensation Appeal Board*, 510 A.2d 916 (Pa. Cmwlth. 1986). (**Editor's Note:** The court cited to former § 131.67 which dealt with correction or amendment of decisions.)

Referee's amended decision awarding claimant partial disability compensation is void since written agreement of both parties was not obtained prior to the amendment. *Butcher v. Workmen's Compensation Appeal Board*, 517 A.2d 1023 (Pa. Cmwlth. 1986). (**Editor's Note:** The court cited to former § 131.67 which dealt with correction or amendment of decisions.)

**Cross References**

This section cited in 34 Pa. Code § 131.111 (relating to decision of referees).

**PENALTY PROCEEDINGS****§ 131.121. Penalty proceedings initiated by a party.**

(a) Penalty proceedings may be initiated by a party filing a petition for penalties as provided in § 131.32 (relating to petitions except petitions for joinder and challenge proceedings). Answers shall be filed as provided in § 131.33 (relating to answers except answers to petitions for joinder and challenge proceedings).

(b) Penalty proceedings initiated by a party in a pending proceeding may be initiated by a petition under subsection (a) or by motion on the record in the pending proceeding. If penalties are requested by motion on the record, an answer may be made either orally on the record or as provided in subsection (a).

(c) If, in a pending proceeding where no separate penalty petition has been filed in accordance with subsection (a), it appears to the judge in proceedings before the judge that there has been noncompliance with the act or this chapter, the judge will schedule a hearing for the purpose of determining if noncompliance has occurred unless the hearing is waived by the parties. The hearing will be scheduled either upon motion of a party or on the judge's own motion unless waived.

(d) The judge will give notice of the scheduling of any penalty hearing to all parties and this notice will specify the nature of the penalty proceeding and that the hearing will involve the question of the imposition of penalties under the act or this chapter.

(e) The penalty hearing may be conducted in conjunction with a hearing on the merits in a pending proceeding or at a separate hearing.

(f) At the penalty hearing, the judge will take testimony, receive evidence and hear arguments necessary to create a record sufficient to support, defend or appeal the decision of the judge regarding noncompliance with the act or this chapter and the imposition of penalties.

(g) A party complaining of a violation of the act or this chapter shall have the burden of proving the violation.

(h) The judge, in a separate order prior to a final order or in conjunction with the final decision in the proceeding, will rule on the request for penalties and will determine whether noncompliance with the act or this chapter exists, and, if appropriate, impose penalties.

(i) Subsections (a)—(h) supersede 1 Pa. Code §§ 35.1, 35.2, 35.5—35.7, 35.9—35.11, 35.14, 35.17—35.20, 35.23, 35.24, 35.35—35.41, 35.54, 35.55 and 35.251 and also supersede 1 Pa. Code Chapter 35, Subchapter D.

**Authority**

The provisions of this § 131.121 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.121 adopted March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (286286).

**Cross References**

This section cited in 34 Pa. Code § 127.27a (relating to bureau intervention and penalties); and 34 Pa. Code § 131.122 (relating to other penalty proceedings).

**§ 131.122. Other penalty proceedings.**

(a) Penalty proceedings not conducted under § 131.121 (relating to penalty proceedings initiated by a party) will be conducted in accordance with Chapter 121 (relating to general provisions).

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.14, 35.37 and 35.251 (relating to orders to show cause; answers to orders to show cause; and reports of compliance).

**Authority**

The provisions of this § 131.122 amended under sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (77 P. S. §§ 710 and 991(a) and (c)); section 2205 of The Administrative Code of 1929 (71 P. S. § 565); and section 414 of the Occupational Disease Act (77 P. S. § 1514).

**Source**

The provisions of this § 131.122 adopted March 29, 1991, effective March 30, 1991, 21 Pa.B. 1401; amended December 6, 2002, effective December 7, 2002, 32 Pa.B. 6043. Immediately preceding text appears at serial page (286287).

**Cross References**

This section cited in 34 Pa. Code § 127.27a (relating to bureau intervention and penalties).

[Next page is 141-1.]

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