STATE OF
COLORADO

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Proposed rule changes for OAC procedures

1 message

Kroll - CDLE, David <david.kroll@state.co.us> Wed, Jan 21, 2015 at 8:07 AM
To: Doug Platt - DPA <doug.platt@state.co.us>

Dear Mr. Platt,

I have had the opportunity to review the proposed changes to the Procedural Rules for Workers' Compensation Hearings. I felt it would be useful to submit a comment in regard to OAC Rule 12, Issues for Hearing. Approximately a year ago, in April of 2013, the Industrial Claim Appeals Office submitted an opinion in a case titled Franco v. Denver Public Schools, W.C. No. 4-818-579. The claimant had appealed and one of her issues featured her complaint that the respondents had added an issue to the hearing at a point later than was allowed by OAC Rule 12. The Panel examined the argument, and the Rule, and had to conclude Rule 12, as written, could not be seen as applying to parties filing responses to applications for a hearing. It was stated in that opinion:

The claimant also argues that the ALJ could not consider causation based on Office of Administrative Courts Rule 12. By its terms, OAC Rule 12 does not apply to the listing of issues in a response to an application for a hearing. The first sentence in OAC Rule 12 speaks of adding issues prior to the date of the setting and the second sentence specifies that after the date of the setting issues can only be added by agreement or by order. OAC Rule 8 (F) provides, however, that the setting date must be no later than 20 days from the date of the application for hearing while OAC Rule 8 (G) states a response to the application may be filed up to 30 days from the date of the application. Since then, a response listing issues may be filed after the setting date, Rule 12 could only be referring to issues to be added by the party fling the application for a hearing, not the party filing a response. The adequacy of notice as it pertains to issues added, or not added, in a response is measured by reference to the standards of procedural due process. As noted above, the parties had a full and fair opportunity to litigate the issue of causation, and the claimant does not contend to the contrary. See Hendricks v. Industrial Claim Appeals Office, supra.

The proposed change to Rule 12 does little to address the problem described above in the Franco case. My suggestion would be to add a sentence to the conclusion of Rule 12 reading something like: "A responding party may add issues within the time allowed for a response in Rule 8(G) and after that date issues may only be added by written agreement of the parties or order of a judge or designee clerk for good cause shown."

David Kroll