

RULE VIII

WORKERS' COMPENSATION HEARINGS

It is the intent of these rules that all lay, expert and medical testimony shall be presented at or before the hearing. These rules shall be referred to as the "Adjudication Rules." Unless otherwise provided herein, "days" shall be calculated pursuant to the provisions of Rules 6(a) and 6(e) of the Colorado Rules of Civil Procedure.

A. REQUEST FOR FORMAL HEARING ON THE RECORD BEFORE THE DIVISION OF ADMINISTRATIVE HEARINGS

When a formal hearing on the record is requested the following procedures shall prevail:

1. A written application shall be filed with the Division of Administrative Hearings on a prescribed form and shall contain:
 - a. A statement of the issues(s) to be determined at the hearing.
 - (1) Issues brought before the ALJ must be ripe for adjudication.
 - (2) For cases with dates of injury on or after July 1, 1991, disputes about MMI, and or whole person impairment determinations by the authorized treating physician are not ripe for review until a Division Independent Medical Examination (IME) has been completed or an administrative law judge determines that such issues are ripe for hearing.
 - b. A statement setting forth the names and addresses of all witnesses to be presented at the hearing, or to be presented by deposition.
2. The application for formal hearing shall be mailed by the requesting party to all parties. A certificate of mailing shall be filed with the application. If an attorney has entered an appearance for a party, mailing to the attorney is mandatory. The adverse party shall have 20 days after the date of the setting to file a response. The response shall be filed on a prescribed form and shall contain all information required by paragraph 1.a. and 1.b. of this section.
3. An application or response will not be accepted for filing unless it contains all information required by this rule.

4. A party may not add a witness or an issue after the filing of the application or response except upon agreement of all parties, or approval of an administrative law judge for good cause shown.
5. A party may not produce a witness at a formal hearing who has not been listed in the application or response, or added by agreement or order, except to present rebuttal testimony or upon approval of the administrative law judge for good cause shown.
6. The file at the Division of Workers' Compensation will be retained at the Division and is not subject to subpoena for administrative hearings. Certified copies of any documents in the Division file can be tendered by a party to the Division of Administrative Hearings. Parties may obtain certified copies of documents in the Division file by contacting the Division of Workers' Compensation, Customer Service Section.

B. SETTING PROCEDURES

1. A party who wishes to set a case for formal hearing on the record shall notify all parties and the Division of Administrative Hearings of the date and time of the setting on a Notice to Set prescribed form. The Notice to Set shall be accompanied by a completed application form. The Notice to Set and Application for Hearing shall be mailed at least 10, but no more than 20 days before the setting date. This 10 day minimum requirement may be waived by the parties and the Division of Administrative Hearings.
2. When a formal hearing on the record is set by referral of the Director of the Division of Workers' Compensation, or by a party appearing at the Division of Administrative Hearings or by telephoning the Division of Administrative Hearings, the Notice of Hearing shall be prepared by the Division of Administrative Hearings, unless setting counsel is requested to prepare the notice. If requested, the party setting the formal hearing shall send written notice of the hearing, as official agent of the Division of Administrative Hearings, to all other parties by regular mail on a prescribed form within 20 days after the setting date and, in no event, fewer than 30 days prior to the hearing date. The original copy of the notice shall be filed with the Division of Administrative Hearings.
3. A party requesting a formal hearing on the records shall do so by filing an application for hearing in the appropriate office of the Division of Administrative Hearings so the hearing is set at the hearing location closest to the claimant's residence. The location of the hearing can be moved by order of

an administrative law judge for good cause shown. When a party requests a formal hearing on the record in Denver, Boulder, Fort Collins, or Greeley, the application for hearing shall be filed in the main office of the Division of Administrative Hearings in Denver. When a party requests a formal hearing on the record in Colorado Springs, Pueblo, or Alamosa, the application for hearing shall be filed with the Southern Regional Office of the Division of Administrative Hearings in Colorado Springs. When a party requests a formal hearing on the record in Grand Junction, Glenwood Springs, or Durango, the application for hearing shall be filed with the Western Regional Office in Grand Junction.

4. The director may set any case for formal hearing on the record by order or by referral to the Division of Administrative Hearings.

C. SCHEDULING OF FORMAL HEARINGS ON THE RECORD

1. If at least 20 days have passed since the insurance carrier or self insured employer has received written notice of the claim, and no admission has been filed, or a denial has been filed within 45 days of the request for the formal hearing, the claimant may request an expedited hearing. The request for an expedited hearing shall be made by a written request which shall certify that each of the requirements for an expedited hearing is present in the case. Expedited cases under this section shall be set pursuant to statute.
2.
 - a. A hearing shall be set within 80 to 100 days of any occurrence listed in section 8-43-211(2), C.R.S. At any time following the setting of the hearing, any party may, by written motion, seek an extension of time to commence a hearing and a re-setting of the hearing upon good cause shown, as provided in section 8-43-209, C.R.S. Once a case has commenced, it may be continued only upon motion and good cause shown.
 - b. Good cause for an extension of time to commence a hearing or to continue a hearing that has commenced includes, but is not limited to, the following:
 - (1) Death or incapacitation of a party or an attorney for a party;
 - (2) A court order staying proceedings or otherwise necessitating an extension;

- (3) Entry or substitution of an attorney for a party a reasonable time prior the hearing, if the entry or substitution reasonably requires an extension;
 - (4) A change in the parties or pleading sufficiently significant to require an extension;
 - (5) Failure of a witness to appear when the witness is under a valid subpoena;
 - (6) A showing that more time is clearly necessary to complete authorized discovery or other mandatory preparation for the hearing; or
 - (7) Agreement of the parties that a settlement has been reached, or that settlement negotiations are ongoing and likely to be approved.
- c. Absent additional grounds, the following do not constitute good cause:
- (1) Unavailability of counsel because of an engagement in another judicial or administrative proceeding;
 - (2) Unavailability of a necessary witness who is not under a valid subpoena;
 - (3) Failure of an attorney timely to prepare for the hearing; or
 - (4) That a motion for an extension of time is unopposed or stipulated by other parties.

D. MOTIONS

1. A motion for entry of a procedural order may be submitted with a separate, properly captioned, proposed order. The motion shall be filed in the location specified in Rule VIII L. The certificate of mailing shall show the office in which the motion was filed.
2. A response to a motion shall be filed in the same location that the motion was filed within 10 days from the date of the certificate of mailing of the motion, or the motion may be deemed confessed.

3. When appropriate to do so, every motion must include a certification by the party or counsel that he or she has conferred, or attempted to confer, with opposing counsel and a statement regarding whether the motion is contested, uncontested, or stipulated. If no conference has occurred, an explanation must be included in the motion.
4. The Director of the Division of Administrative Hearings designee clerk in the main or regional offices of the Division of Administrative Hearings may grant any unopposed or stipulated motion for:
 - a. Additional time to file a pleading or perform any act required by applicable statute or rules, except (i) a motion to extend the time for a hearing when good cause is not alleged or an extension of more than 20 days to commence the hearing is requested; or (ii) a motion to continue a hearing that has been commenced;
 - b. Substitution or withdrawal of counsel; or
 - c. Adding or striking an issue or witness for hearing.
5. The proponent of an order shall submit a copy of the proposed order, and an addressed stamped envelope or fax number. The proponent of the order is responsible for the timely distribution of the conformed order to all parties.
6. Filing by facsimile is permitted as follows:
 - a. Motions shall not be filed by facsimile unless the hearing date is less than 15 days from the date of the facsimile transmission. Motions filed by facsimile 15 or more days prior to the hearing will not be considered.
 - b. Responses to motions may be filed by facsimile at any time within the limits set by this Rule VIII.
 - c. Motions and responses to motions filed by facsimile must be served on opposing parties by facsimile or personal delivery on the date of filing.
 - d. When a proposed order is filed by facsimile transmission, the Division clerk shall return the signed order by facsimile to the party who submitted the proposed order. This party will be instructed to serve copies of the order on all other parties.

- e. When a motion, response or proposed order is filed by facsimile, copies of the motion, response or proposed order and envelopes should not be filed with the Division clerk, and will not be returned if filed.
7. The requirements of this section shall not apply when a motion for entry of a procedural order is made during a formal hearing or during a prehearing conference.

E. DISCOVERY

Discovery in workers' compensation cases is limited to:

- 1. Interrogatories
 - a. One set of written interrogatories and requests for production of documents may be served upon each adverse party. The number of interrogatories, including the requests for production of documents, to any one party shall not exceed 20, each of which shall consist of a single question or request.
 - b. The responses to the interrogatories and production of documents shall be provided to all opposing parties within 20 days of mailing of the interrogatories and requests.
 - c. The interrogatories and the requests for production of documents may not be submitted later than 40 days prior to hearing, except for expedited hearings.
- 2. Depositions
 - a. A deposition of a party may be taken upon written motion and order. Permission to take a deposition of a party will be granted only when there is a specific showing:
 - (1) That a party who has been served with written interrogatories has failed to respond to the interrogatories; or
 - (2) That the responses to the written set of interrogatories are insufficient; or
 - (3) All parties agree to the taking of a deposition.

- b. Depositions of other witnesses may be taken upon written motion, order, and written notice to all parties.
3. Each party is under a continuing duty to timely supplement or amend responses to discovery up to the date of the hearing.
4. Discovery, other than evidentiary depositions, shall be completed no later than 20 days prior to the hearing date, except for expedited hearings.
5. If any party fails to comply with the provisions of this rule and any action governed by it, an administrative law judge may impose sanctions upon such party pursuant to statute and rule. However, attorney fees may be imposed only for violation of a discovery order.
6. All asserted privileges shall be accompanied by a privilege log with sufficient description to allow the other parties to assess the applicability of the privilege claims.
7. Once an order to compel has been issued and properly served upon the parties, failure to comply with the order to compel shall be presumed willful.
8. Upon agreement of the parties or for good cause shown, an administrative law judge may allow additional discovery, may limit discovery or may modify the time limits set forth in this rule. Setting of a formal hearing on an expedited schedule shall constitute good cause. Good cause shall include but not be limited to an agreement of the parties.

F. DATE OF FILING

The date of filing for purposes of this rule shall mean the date stamped on the document by the Division of Administrative Hearings or Division when the document is delivered, or the date on the certificate of mailing when the document is mailed. The date of filing for a facsimile received after 5:00 p.m. will be the following business day.

G. MEDIATION, SETTLEMENT CONFERENCES, PREHEARING CONFERENCES AND ARBITRATION

1. Mediation. Parties to a dispute may consent to submit any dispute to mediation pursuant to the provisions of this Rule VIII and section 8-43-205, 3B C.R.S.
 - a. The Division shall schedule a mediation conference after all parties agree to participate pursuant to any party's request for mediation

services, in writing or orally. The mediation conference shall be scheduled at the earliest practical time, but not later than 30 days from the date of receipt of the request for such mediation conference by the Division.

2. Settlement Conferences. Parties to a dispute may request a settlement conference subject to the limitations set forth in section 8-43-206, 3B C.R.S.
3. Prehearing Conferences. The director, administrative law judges in the Division of Administrative Hearings, or any party to a claim may request a prehearing conference before a prehearing administrative law judge. Prehearing administrative law judges may order any party to a claim to participate in a prehearing conference.
 - a. The issues raised for consideration may be raised by motion, either written or oral. At least five days prior to the prehearing conference, the parties shall notify each other of the issues they intend to present to the prehearing administrative law judge. Additional time to respond to an issue raised at the prehearing conference may be requested by any party. It shall be within the discretion of the prehearing administrative law judge to determine if such additional time is necessary to protect the rights of the parties.
 - b. Once a prehearing conference has been requested by a party to a claim, it shall be set. If any party objects to the prehearing conference as set, the following procedures shall apply:
 - (1) Where a party objects to the setting of a prehearing conference or refuses to participate therein, it shall fax or hand-deliver its objections to the prehearing conference unit at the Division of Administrative Hearings within 2 days after the date the prehearing conference is set. If the prehearing administrative law judge orders that the prehearing conference proceed as set, the requesting party shall send written notice of the time and place of the prehearing conference to all other parties.
 - c. At the time of the prehearing conference, each party may submit a prehearing statement setting forth a brief summary of the issues in dispute, the names of all witnesses each party intends to call, the estimated time each party will require to present testimony and evidence, and the status of settlement discussions. Each party may also submit any discovery or pre-trial motion.

- d. Any party to a claim may request, either in advance or on the date of the prehearing conference, that the prehearing conference be recorded electronically or by court reporter. If a request for electronic recording is made, a party shall have until the date of the formal hearing on the record, if such hearing date is pending at the time of the prehearing conference, or 100 days following the prehearing conference, whichever is shorter, within which to request that the prehearing conference unit prepare a transcript. The cost of preparing such transcripts shall be paid by the requesting party directly to the vendor providing the service who shall be designated by the administrative law judge.
 - e. The prehearing administrative law judge may require a party to provide available vocational, medical, hospital and employment records, or reports to the other parties.
4. Arbitration. Parties to a dispute may consent to submit any dispute to binding arbitration by written agreement. Binding arbitration pursuant to the provisions of this Rule VIII and section 8-43-206.5, 3B C.R.S., shall be conducted by an administrative law judge of the parties' mutual choice from the Division of Administrative Hearings, or pursuant to arbitration procedures as provided by the Colorado Rules of Civil Procedure. Unless otherwise provided by the administrative law judge or upon mutual consent of the parties and/or upon the order of the arbitrator(s), proceedings in any such arbitration shall be conducted in a manner consistent with the Colorado Rules of Civil Procedure.

H. SUBPOENAS

A subpoena to compel the attendance of witnesses or parties and the production of books, papers or records at a scheduled deposition or formal hearing may be issued on behalf of the Division of Administrative Hearings by an attorney who has entered an appearance in the case.

I. SUBMISSION OF REPORTS, OTHER DOCUMENTARY EVIDENCE, DEPOSITIONS, POSITION STATEMENTS FOR FORMAL HEARING BEFORE THE DIVISION OF ADMINISTRATIVE HEARINGS

- 1. All reports without limitation including medical and hospital reports, physicians' reports, vocational reports, and records of the employer shall be provided to the opposing party or counsel if represented at least 20 days prior to the formal hearing. If not so disclosed, the reports shall not be introduced into evidence at

hearing, absent a showing of good cause. Reports and records previously provided to opposing parties do not have to be provided again. When provided, such reports and records do not have to be identified as potential formal hearing exhibits.

2. An evidentiary deposition may be filed before or at the formal hearing.
3. After a hearing is set and at least 3 days prior to the formal hearing, the claimant shall file a copy of the Worker's Claim for Compensation that has been filed with the Division of Workers' Compensation, and the respondent shall file a copy of the employer's First Report of Accident and the most recent Admission or Notice of Contest that has been filed with the Division of Workers' Compensation; the party applying for the hearing shall file a copy of any order previously entered in the claim granting or denying a benefit which is the same or similar to an issue designated for hearing.
4. Copies of interlocutory orders previously issued in the case that a party intends to raise on appeal shall be filed and identified at the formal hearing.
5. Oral argument at the conclusion of the formal hearing may be allowed in the discretion of the administrative law judge. A party may file a position statement and/or proposed order upon approval of the administrative law judge.
6. Only reports and records filed and identified at the formal hearing which are relevant to an issue set for hearing will be considered as evidence.
7. Testimony presented by reports, records, deposition, or telephone is presumed to be equivalent of in person hearing testimony.

J. TRANSCRIPTS OF HEARING

1. All testimony and argument of each hearing held pursuant to section 8-43-207, C.R.S. may be taken by a hearing reporter provided by the Division of Administrative Hearings, or electronically recorded by the Division of Administrative Hearings, or a private court reporter provided by any party. If the hearing is recorded by more than one method, the administrative law judge shall designate, at the time of the hearing, which will be the source for the transcript on appeal. That source will be the source for the transcript on appeal unless the administrative law judge determines that a transcript from a different source is more accurate.

2. The Division of Administrative Hearings shall provide parties and their counsel with as current information as possible regarding the availability of hearing reporters for particular hearings. However, if any party deems live reporting services to be essential, such party should make arrangements for a private court reporter in order to ensure coverage.

K. CANCELLATIONS

A formal hearing on the record may be cancelled by the agreement of all parties. The parties may stipulate that the cancellation will not result in a waiver of any issues. One party or counsel shall contact the clerk of the Division of Administrative Hearings Office where the hearing is set to be held and advise that all parties have agreed to a cancellation of the hearing. A new hearing can then only be set by filing a new application for hearing. A formal hearing may also be cancelled by written motion made pursuant to section D. of this rule, or oral motion made at the time of the prehearing conference or the formal hearing.

L. CONSOLIDATION

1. A motion to consolidate two or more claims for formal hearing shall be filed no later than the time the response to the application for hearing is due, unless the moving party verified that any new party has waived this requirement.
2. The motion shall contain a statement of any additional issues the moving party wishes to have determined at the formal hearing, and the names and addresses of any witnesses the moving party wishes to present at the hearing.
3. The moving party is responsible for appropriate notices to all interested parties.

M. PLACE OF FILING

1. All matters for the director's determination shall be filed with the Division of Workers' Compensation at 1515 Arapahoe Street, Tower 2, 5th Floor, Customer Service Unit, Denver, Colorado. Matters for the Director's determination include:
 - (a) Show cause orders as set forth in subsection O of this rule;
 - (b) Requests for penalties for a violation of rules as set forth in subsection N of this rule;

- (c) Requests for attorney fees made to the Director under subsection M of this rule;
 - (d) Matters regarding claims handling or administration, for example, benefit distribution, petitions to modify, terminate or suspend temporary benefits, lump sum requests;
 - (e) Requests for payment of costs of a transcript pursuant to section 8-43-213 (3), C.R.S.;
 - (f) Closure orders pursuant to Rule X. A.;
 - (g) Petition to Reopen pursuant to rule X B.;
 - (h) Matters involving uninsured employers pursuant to section 8-43-409, C.R.S.;
 - (i) Utilization reviews, unless the Director has referred the matter on appeal;
 - (j) Application for admission to the major medical or medical disaster funds;
 - (k) Settlement documents in which all parties are represented by counsel, unless settlement was finalized before an administrative law judge, in which case an administrative law judge may approve the settlement documents; and,
 - (l) Intent to practice forms and entries of appearance under subsection Q of this rule.
2. To avoid duplication, and unnecessary expense to all parties and the Division of Workers' Compensation and the Division of Administrative Hearings, copies of matters for the determination of the Director shall not be filed with the Division of Administrative Hearings. However, copies of these documents may be filed if required as attachments, evidence submissions, and other instances to complete the record at the Division of Administrative Hearings.
 3. All other motions and responses shall be filed, unless otherwise specifically ordered, with the Division of Administrative Hearings office closest to the claimant's residence.

4. To avoid duplication, and unnecessary expense to all parties and the Division of Workers' Compensation and the Division of Administrative Hearings, copies of these motions and responses shall not be filed with the Division of Workers' Compensation. However, copies of these documents may be filed if required as attachments, evidence submissions, and other instances to complete the record for determination of a matter before the Director.

N. REQUESTS FOR ATTORNEY FEES

When the claim is based upon an injury or illness which occurred on or after July 1, 1991, attorney fees may be requested by a Motion for Attorney Fees filed within 20 days after an order has become final or 20 days after a formal hearing has been cancelled, or, if the motion is made pursuant to section 8-43-408(4), at such time as may be designated by the director or the administrative law judge. The motion shall be accompanied by a detailed itemization of the time spent on the matter for which attorney fees are sought, and an affidavit from the attorney that such time was reasonably necessary to prepare for or attend the formal hearing or other matter, and stating the reasonable hourly rate. If no objection is filed by another party within 10 days of the motion, it will be presumed that there is no objection to the number of hours or the hourly rate, and the director or the administrative law judge shall enter an order awarding the amount requested or denying the entire request. If an objection is filed, the director or the administrative law judge may enter an order based upon the motion and objection, or may refer the matter for a mediation conference, a prehearing conference, or a formal hearing on the record to resolve the disputed issues.

O. PENALTY PROCEDURES UNDER SECTION 8-43-304, 3B C.R.S.

1. A person requesting the assessment of penalties pursuant to section 8-43-304, 3B C.R.S. shall proceed as follows:
 - a. When there are other issues pending hearing, by moving to add the issue of penalties to the application or response. Thereafter the provisions of section 8-43-304(4), 3B C.R.S. shall control.
 - b. When there are no other issues pending hearing, a party may request the imposition of penalties by:
 - (1) Filing an application for hearing requesting assessment of penalties; or

- (2) Filing a written motion with the director requesting the assessment of penalties wherein the grounds therefore are stated with specificity.
2. When a motion is filed with the director pursuant to paragraph 1.b.(2) of this section N and the alleged violator has not timely filed a written response to the motion pursuant to the provisions of section D.2. of this Rule VIII, or when the director otherwise becomes aware of any alleged violation contemplated by section 8-43-304(1), 3B C.R.S., the director may issue an order to show cause pursuant to the provisions of section O. of this Rule VIII.
3. When a Motion is filed with the director pursuant to paragraph 1.b.(2) of this section N and the alleged violator timely files a written response pursuant to the provisions of section D.2. of this Rule VIII, the director shall issue a notice advising the alleged violator that unless the matter is set for a formal hearing on the record within 20 days from the date of the notice, the director may:
 - a. Make a determination regarding the assessment of penalties as provided for in the Act; or
 - b. Refer the matter to an administrative law judge in the Division of Administrative Hearings to conduct a hearing on the alleged violation, whereupon the administrative law judge shall issue an order on the matter.

P. ORDERS TO SHOW CAUSE

Where the director determines that action shall be taken unless a person shows good cause, the following procedures shall apply:

1. Unless otherwise specifically set forth in the order, a show cause order shall direct the respondent to either set the matter for a formal hearing on the record within 20 days from the date of the show cause order, or show cause in writing within twenty 20 days from the date of the show cause order why the director should not take the action identified in the order.

Q. TRUST DEPOSITS AND SURETY BONDS UNDER 8-43-408(2)

1. The trustee for all funds held in trust under the provisions of section 8-43-408(2), 3B C.R.S. may be the Colorado State Treasurer. If the Colorado State Treasurer is designated as trustee, an employer depositing funds into the trust

shall transmit such funds by check payable to the Colorado State Treasurer as trustee for the employer.

2. If the Colorado State Treasurer is designated as trustee, the employer shall deliver the check for funds to be deposited in trust or a surety bond to the Division within 10 days after the date of the order.
3. Interest on funds deposited in trust shall accrue for the benefit of the person(s) determined to be entitled to such funds in the final order. If the trust funds are ordered to be distributed to more than one person, each person shall receive the interest that has accrued on the principal amount he or she is entitled to receive.
4. A person seeking distribution of a trust deposit, or enforcement of release of a surety bond, shall file a written motion in accordance with the requirements of Rule VIII D., setting forth the reasons justifying distribution, the person(s) to whom the distribution shall be made, and the amount(s) to be distributed. The motion may be filed with the Division or with an administrative law judge.
5. Nothing set forth herein shall otherwise limit the authority and duties of the State Controller as provided by section 24-30-202.4, 10A C.R.S.

R. PRACTICE BEFORE THE DIVISION

1. An attorney who wishes to practice before the Division or the Division of Administrative Hearings shall file a notice of intent to practice on the prescribed form. Such form shall be filed with the Division of Workers' Compensation.
2. To enter an appearance in a specific case, an attorney shall file an entry of appearance on the prescribed form, or complete the entry of appearance section on the application for hearing or response form, or file a notice of substitution of counsel containing the following:
 - a. The name of each party the attorney is representing, and
 - b. The attorney's address, telephone number, registration number and office code, if applicable.
 - c. Such form shall be filed with the Division of Workers' Compensation.
3. All pleadings shall contain the information required in section 2.b. above.
4. When the case has been closed by order or final admission, An attorney may withdraw from a specific case by filing a notice of substitution of counsel signed by both attorneys, by providing notice to all parties and filing a copy of the notice with the Division of Workers' Compensation or, when the case is not closed, by filing a motion and obtaining an order authorizing withdrawal.
5. An attorney who wishes to request an order allowing withdrawal from a case that is not closed, shall file a motion together with a copy of the notice of request to withdraw mailed to the client. The notice to the client shall contain the following:
 - a. A statement that the attorney wishes to withdraw;
 - b. A statement that the client is responsible for keeping the Division informed of the client's current address and telephone number and that a claim may be dismissed if the claim is not pursued;
 - c. The date scheduled for any future hearing, the dates by which any legal pleadings or briefs are to be filed and a statement that these dates will not be affected by the withdrawal of counsel; and

- d. A statement that the client may object to the request to withdraw by filing a written objection within 10 days of the date on the certificate of mailing of the notice, and mailing a copy of the objection to the attorney.
- 6. A motion to withdraw should be filed with the Division of Administrative Hearings.
- 7. Any attorney in good standing from any other jurisdiction in the United States may in the discretion of the Director of the Division of Administrative Hearings, or an administrative law judge, be admitted to practice before the Division of Administrative Hearings in a specific case when the attorney has been employed by one of the parties in the case.

S. DISFIGUREMENT AWARD

A party may have an administrative law judge determine the amount of additional compensation due to a claimant for disfigurement as follows:

1. By photograph: a party may submit a request for a disfigurement award to the Division of Administrative Hearings. The request shall be accompanied by a photograph or photographs clearly showing the disfigurement and the face of the claimant. The back of the photographs shall be signed by the claimant and state the date the photograph was taken. The date the photograph was taken must be at least six months after the date of the injury or surgery, or after the date of maximum medical improvement. The signature of the claimant is the claimant's certification that the photograph accurately depicts the disfigurement on the date the photograph was taken. A copy of the request, and a copy of the photographs, shall be provided to all opposing parties. Any party may request reconsideration of a disfigurement award by photograph by filing, within twenty days of the date of the certificate of mailing of the disfigurement award, an application for hearing listing disfigurement as an issue. If such an application is filed the disfigurement award will be withdrawn and vacated.
2. At a hearing: a party may file an application for hearing with the Division of Administrative Hearings listing disfigurement as an issue. If disfigurement is the only issue listed, the hearing shall be set 30 to 60 days after the date of the setting.
3. The employer or insurer may credit any disfigurement award by any amount previously paid for disfigurement, unless provided otherwise in the disfigurement award. If the amount of the credit exceeds the disfigurement award, the employer or insurer may credit any permanent disability benefits not yet paid to the claimant.