

## **RULE XII**

### **REQUESTS FOR BENEFITS FROM THE SUBSEQUENT INJURY FUND**

#### **A. OFFSET OF LIABILITY TO SUBSEQUENT INJURY FUND**

1. Offset of liability to the Subsequent Injury Fund, shall be initiated by filing a request for offset with the Division upon the prescribed form and serving the director with a copy of the request for offset. The party filing the request for offset with the director shall also simultaneously file with the director a copy of all available relevant documents that support the request for offset.
2. A request pursuant to section 8-46-101, C.R.S., shall list, to the extent available by every reasonable effort by the movant, all prior or pending workers' compensation cases by name and number, a brief description of each injury and the award in each case.
3. A request pursuant to section 8-41-304(2), C.R.S., shall indicate the types of exposures alleged, the approximate dates of each exposure, and the location and the name of the employer in whose employ each exposure allegedly occurred.
4. A request for offset shall be filed no later than the date the party requesting offset files an application for hearing or response to application for hearing, unless an administrative law judge rules that good cause has been shown for filing later. However, in no event shall a request for offset be filed after a determination, by admission or order, that a claimant is permanently and totally disabled under 8-46-101 or disabled under 8-41-304(2).
5. The party requesting offset shall also file a proposed order joining the director as a party on behalf of the Subsequent Injury Fund. Sufficient copies of the order and pre-addressed envelopes for all parties shall also be filed.
6. The Subsequent Injury Fund shall file a response to a request for offset within 30 days of the date the director is served with a request for offset.
7. The administrative law judge shall consider the request and response and rule on whether to join the director as a party. The ruling shall be based on whether the procedural requirements of this Rule XII have been met and whether the request

states a sufficient basis upon which offset could be granted. Until the director is joined, notices and orders are not binding on the Subsequent Injury Fund.

8. When the director is joined as a party and when an assistant attorney general has entered an appearance on behalf of the Subsequent Injury Fund, the party who filed the request for offset shall serve the Office of the Attorney General with copies of transcripts of proceedings prior to the date of the order joining the director in the pending workers' compensation cases.
9. When the director is joined as a party and when an assistant attorney general has entered an appearance on behalf of the Subsequent Injury Fund, copies of all reports, pleadings or other documents thereafter filed by any party shall be served on the Office of the Attorney General.

**B. STATUS OF DIRECTOR, ON BEHALF OF THE SUBSEQUENT INJURY FUND, IN FATAL CASES**

1. The director shall be deemed to be an interested party in all fatal cases and shall be served with all pleadings, notices, reports, and documents as required for any party. Where an assistant attorney general has entered an appearance for the director in a case, such service shall be made upon that attorney.
2. In the event a compensable injury results in a death which has not been reported to the Division, the director may initiate a claim for the death benefits provided by statute.