

### **Part 3**

## **Adjudicative Proceedings**

#### **34A-1-301 Commission jurisdiction and power.**

The commission has the duty and the full power, jurisdiction, and authority to determine the facts and apply the law in this chapter or any other title or chapter it administers.

Renumbered and Amended by Chapter 375, 1997 General Session

#### **34A-1-302 Presiding officers for adjudicative proceedings -- Subpoenas -- Independent judgment -- Consolidation -- Record -- Notice of order.**

- (1)
  - (a) The commissioner shall authorize the Division of Adjudication to call, assign a presiding officer, and conduct hearings and adjudicative proceedings when an application for a proceeding is filed with the Division of Adjudication under this title.
  - (b) The director of the Division of Adjudication or the director's designee may issue subpoenas. Failure to respond to a properly issued subpoena may result in a contempt citation and offenders may be punished as provided in Section 78B-6-313.
  - (c) Witnesses subpoenaed under this section are allowed fees as provided by law for witnesses in the district court of the state. The witness fees shall be paid by the state unless the witness is subpoenaed at the instance of a party other than the commission.
  - (d) A presiding officer assigned under this section may not participate in any case in which the presiding officer is an interested party. Each decision of a presiding officer shall represent the presiding officer's independent judgment.
- (2) If, in the judgment of the presiding officer having jurisdiction of the proceeding the consolidation would not be prejudicial to any party, when the same or substantially similar evidence is relevant and material to the matters in issue in more than one proceeding, the presiding officer may:
  - (a) fix the same time and place for considering each matter;
  - (b) jointly conduct hearings;
  - (c) make a single record of the proceedings; and
  - (d) consider evidence introduced with respect to one proceeding as introduced in the others.
- (3)
  - (a) The commission shall keep a full and complete record of all adjudicative proceedings in connection with a disputed matter.
  - (b) All testimony at any hearing shall be recorded but need not be transcribed. If a party requests transcription, the transcription shall be provided at the party's expense.
  - (c) All records on appeals shall be maintained by the Division of Adjudication. The records shall include an appeal docket showing the receipt and disposition of the appeals.
- (4) A party in interest shall be given notice of the entry of a presiding officer's order or any order or award of the commission. The mailing of the copy of the order or award to the last-known address in the files of the commission of a party in interest and to the attorneys or agents of record in the case, if any, is considered to be notice of the order.
- (5) In any formal adjudicative proceeding, the presiding officer may take any action permitted under Section 63G-4-206.

Amended by Chapter 3, 2008 General Session

Amended by Chapter 382, 2008 General Session

**34A-1-303 Review of administrative decision.**

- (1) A decision entered by an administrative law judge under this title is the final order of the commission unless a further appeal is initiated:
  - (a) under this title; and
  - (b) in accordance with the rules of the commission governing the review.
- (2)
  - (a) Unless otherwise provided, a person who is entitled to appeal a decision of an administrative law judge under this title may appeal the decision by filing a motion for review with the Division of Adjudication.
  - (b)
    - (i) Unless a party in interest to the appeal requests in accordance with Subsection (3) that the appeal be heard by the Appeals Board, the commissioner shall hear the review in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
    - (ii) Subject to Subsection (2)(b)(iii), the decision of the commissioner is a final order of the commission unless within 30 days after the date the decision is issued further appeal is initiated pursuant to this section or Title 63G, Chapter 4, Administrative Procedures Act.
    - (iii) In the case of an award of permanent total disability benefits under Section 34A-2-413, the decision of the commissioner is a final order of the commission unless set aside by the court of appeals.
  - (c)
    - (i) If in accordance with Subsection (3) a party in interest to the appeal requests that the appeal be heard by the Appeals Board, the Appeals Board shall hear the review in accordance with:
      - (A) Section 34A-1-205; and
      - (B) Title 63G, Chapter 4, Administrative Procedures Act.
    - (ii) Subject to Subsection (2)(c)(iii), the decision of the Appeals Board is a final order of the commission unless within 30 days after the date the decision is issued further appeal is initiated pursuant to this section or Title 63G, Chapter 4, Administrative Procedures Act.
    - (iii) In the case of an award of permanent total disability benefits under Section 34A-2-413, the decision of the Appeals Board is a final order of the commission unless set aside by the court of appeals.
  - (d) The commissioner may transfer a motion for review to the Appeals Board for decision if the commissioner determines that the commissioner's ability to impartially decide the motion for review might reasonably be questioned.
- (3) A party in interest may request that an appeal be heard by the Appeals Board by filing the request with the Division of Adjudication:
  - (a) as part of the motion for review; or
  - (b) if requested by a party in interest who did not file a motion for review, within 20 days of the date the motion for review is filed with the Division of Adjudication.
- (4)
  - (a) On appeal, the commissioner or the Appeals Board may:
    - (i) affirm the decision of an administrative law judge;
    - (ii) modify the decision of an administrative law judge;
    - (iii) return the case to an administrative law judge for further action as directed; or
    - (iv) reverse the findings, conclusions, and decision of an administrative law judge.
  - (b) The commissioner or Appeals Board may not conduct a trial de novo of the case.

- (c) The commissioner or Appeals Board may base its decision on:
    - (i) the evidence previously submitted in the case; or
    - (ii) on written argument or written supplemental evidence requested by the commissioner or Appeals Board.
  - (d) The commissioner or Appeals Board may permit the parties to:
    - (i) file briefs or other papers; or
    - (ii) conduct oral argument.
  - (e) The commissioner or Appeals Board shall promptly notify the parties to any proceedings before the commissioner or Appeals Board of its decision, including its findings and conclusions.
- (5)
- (a) Each decision of a member of the Appeals Board shall represent the member's independent judgment.
  - (b) A member of the Appeals Board may not participate in any case in which the member is an interested party.
  - (c) If a member of the Appeals Board may not participate in a case because the member is an interested party, the two members of the Appeals Board that may hear the case shall assign an individual to participate as a member of the board in that case if the individual:
    - (i) is not an interested party in the case;
    - (ii) was not previously assigned to:
      - (A) preside over any proceeding related to the case; or
      - (B) take any administrative action related to the case; and
    - (iii) is representative of the following group that was represented by the member that may not hear the case under Subsection (5)(b):
      - (A) employers;
      - (B) employees; or
      - (C) the public.
  - (d) The two members of the Appeals Board may appoint an individual to participate as a member of the Appeals Board in a case if:
    - (i) there is a vacancy on the board at the time the Appeals Board hears the review of the case;
    - (ii) the individual appointed meets the conditions described in Subsections (5)(c)(i) and (ii); and
    - (iii) the individual appointed is representative of the following group that was represented by the member for which there is a vacancy:
      - (A) employers;
      - (B) employees; or
      - (C) the public.
- (6) If an order is appealed to the court of appeals after the party appealing the order has exhausted all administrative appeals, the court of appeals has jurisdiction to:
- (a) review, reverse, remand, or annul any order of the commissioner or Appeals Board; or
  - (b) suspend or delay the operation or execution of the order of the commissioner or Appeals Board being appealed.

Amended by Chapter 192, 2014 General Session

**34A-1-304 Definitions -- Rulemaking -- Electronic or similar methods of proceedings.**

- (1) For purposes of this section:
  - (a) "Deliver" means to serve, file, or otherwise provide a document.

- (b) "Document" includes a notice, order, decision, or other document that is required or permitted by a relevant statute.
- (c) "Relevant statute" means a provision of:
  - (i) this title;
  - (ii) Title 34, Labor in General, for which the commissioner has regulatory authority;
  - (iii) Title 40, Chapter 2, Coal Mine Safety Act; or
  - (iv) Title 57, Chapter 21, Utah Fair Housing Act.
- (2)
  - (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing adjudicative procedures under a relevant statute, including providing the form of a notice and the manner of serving a notice.
  - (b) Except as provided in this title and Title 63G, Chapter 4, Administrative Procedures Act, a rule made under this section is not required to conform to common law or statutory rules of evidence or other technical rules of procedure.
- (3) The rules made under this section shall protect the rights of the parties and include procedures to:
  - (a) dispose of a case informally or expedite claims adjudication;
  - (b) narrow issues; and
  - (c) simplify the methods of proof at a hearing.
- (4) The commission may by rule permit a hearing or other adjudicative proceeding to be conducted, recorded, or published by an electronic means or similar method.
- (5) Notwithstanding whether a relevant statute requires that a document be delivered by mail or otherwise, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, permit a document to be delivered by electronic means pursuant to the rule.

Amended by Chapter 261, 2011 General Session

**34A-1-305 Orders of commission -- Presumed lawful.**

All orders of the commission within its jurisdiction shall be presumed reasonable and lawful until they are found otherwise in an action brought for that purpose, or until altered or revoked by the commission.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-1-306 Orders not to be set aside on technicalities.**

A substantial compliance with the requirements of this chapter shall be sufficient to give effect to the orders of the commission, and they may not be declared inoperative, illegal, or void for any omission of a technical nature.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-1-307 Action permitted in adjudicative proceedings.**

For the purposes mentioned in this title, the commission may take any action permitted:

- (1) if a formal adjudicative proceeding, under Section 63G-4-205 or 63G-4-206; or
- (2) if an informal adjudicative proceeding, under Section 63G-4-203.

Amended by Chapter 382, 2008 General Session

**34A-1-308 Depositions.**

The commission or any party may in any investigation cause depositions of witnesses residing within or without the state to be taken as in civil actions.

Renumbered and Amended by Chapter 375, 1997 General Session

**34A-1-309 Add-on fees.**

(1) As used in this section:

(a) "Carrier" means:

- (i) a workers' compensation insurance carrier;
- (ii) the Uninsured Employers' Fund, an employer that does not carry workers' compensation insurance; or
- (iii) a self-insured employer as defined in Section 34A-2-201.5.

(b) "Indemnity compensation" means a workers' compensation claim for indemnity benefits that arises from or may arise from a denial of a medical claim.

(c) "Medical claim" means a workers' compensation claim for medical expenses or recommended medical care.

(d) "Unconditional denial" means a carrier's denial of a medical claim:

- (i) after the carrier completes an investigation; or
- (ii) 90 days after the day on which the claim was submitted to the carrier.

(2)

(a) The commission may award an add-on fee to a claimant to be paid by the carrier if:

- (i) a medical claim is at issue;
- (ii) the carrier issues an unconditional denial of the medical claim;
- (iii) the claimant hires an attorney to represent the claimant during the formal adjudicative process before the commission;
- (iv) after the carrier issues the unconditional denial, the commission orders the carrier or the carrier agrees to pay the medical claim; and
- (v) any award of indemnity compensation in the case is less than \$5,000.

(b) An award of an add-on fee under this section is in addition to:

- (i) the amount awarded for the medical claim or indemnity compensation; and
- (ii) any amount for attorney fees agreed upon between the claimant and the claimant's attorney.

(c) An award under this section is governed by the law in effect at the time the claimant files an application for hearing with the Division of Adjudication.

(d)

(i) Medical expenses awarded as part of a medical claim under this section shall be calculated in accordance with the amount the carrier is required to pay under the rules established by the commission under Subsection 34A-2-407(9).

(ii) If the medical expenses awarded under this section are not set forth in the rules described in Subsection 34A-2-407(9), the medical expenses shall be calculated based on the amount the carrier paid or is contractually required to pay to the medical provider, whichever is greater.

(3) If the commission awards an add-on fee under this section, the commission shall award the add-on fee in the following amount:

(a) the lesser of 25% of the medical expenses the commission awards to the claimant or \$25,000, for a case that is resolved at the commission level;

- (b) the lesser of 30% of the medical expenses the Utah Court of Appeals awards to the claimant or \$30,000, for a case that is resolved on appeal before the Utah Court of Appeals; or
  - (c) the lesser of 35% of the medical expenses that the Utah Supreme Court awards to the claimant or \$35,000, for a case that is resolved on appeal before the Utah Supreme Court.
- (4) If a court invalidates any portion of this section, the entire section is invalid.

Amended by Chapter 364, 2023 General Session

**34A-1-310 Record of proceedings before commission.**

A record shall be kept of all proceedings before the commission on any investigation in accordance with Section 34A-1-302.

Renumbered and Amended by Chapter 375, 1997 General Session