

**Title 8—DEPARTMENT OF
LABOR AND INDUSTRIAL RELATIONS
Division 20—Labor and Industrial
Relations Commission
Chapter 3—Rules Relating to Division of Workers' Compensation**

PROPOSED AMENDMENT

8 CSR 20-3.010 Jurisdiction. The Labor and Industrial Relations Commission (LIRC) is amending sub-sections (A) and (C) of section (3); amending section (4); amending sub-sections (B), (C), (D), (E), (F), (G) and (H) of section (5); adding a new sub-section (I) to section (5); and adding a new section (6).

PURPOSE: This amendment clarifies the procedure for seeking commission approval of a lump sum settlement or commutation, provides guidance to parties seeking modification of final awards, and establishes new procedures for disputes pertaining to future medical treatment.

(3) Original Hearings--Compromise Settlements.

(A) No original hearings in contested cases shall be heard by the commission or any member of the commission. No compromise settlement of a workers' compensation claim shall *[be submitted to]* **be accepted for consideration by** the commission or any of its members for approval if the claim is pending in the division.

(C) All compromise settlements of workers' compensation claims pending in the circuit or appellate courts shall be submitted to the commission for approval. *[The appeal shall first be dismissed or withdrawn from the circuit or appellate court and jurisdiction restored to the commission before the commission may approve the compromise settlement.]* **Before filing the settlement for consideration by the commission, the parties seeking to settle the claim shall first petition the court for an appropriate order remanding the matter or otherwise restoring jurisdiction to the commission for consideration of the settlement; the commission cannot act on any request to consider a settlement until the court so disposes of the matter.**

(4) Modifying *[Death]* Benefit Awards. The commission shall have sole authority to modify final awards allowing *[death]* benefits to **employees or dependents**. The commission may modify *[death]* benefit awards from time-to-time *[upon its own motion or]* upon motion by an interested party. All motions for modification of final awards shall be made to the commission and the movant shall **have the burden to** submit proof of the change *[or]* of condition or status of the parties receiving the benefits*[/]*, **and will also be responsible for providing to the commission, with the motion, contact information for the employee and/or each dependent affected by the motion, including current addresses. Moving parties are advised that if the commission is unable to provide due notice of the sought modification to each interested party, the commission will not take any action to modify the award.** Proof of the remarriage of the dependent surviving spouse shall be made by filing a copy of the marriage license of the remarried dependent surviving spouse or affidavit of the surviving spouse admitting remarriage. Proof of the death of **the employee or** any dependent shall be made by filing a copy of the death certificate of the **employee or** dependent. Evidence of the remarriage of the dependent surviving spouse or the death of **the employee or** dependents may be made by deposition or other evidence as the commission may specify.

(5) Lump Sum Payment of Compensation (Motion for Commutation).

(B) *[A motion for commutation shall be filed with t]* **The commission has jurisdiction over any motion for commutation** in all cases in which the award *[of the administrative law judge]* has become final.

(C) *[Three (3) copies of the motion for commutation shall be filed by the moving party. A copy of the motion shall be sent by the division or the commission to all interested parties.]* **Where the motion for**

commutation is not jointly agreed by the parties, the moving party has the burden to: (1) file a copy of the motion for commutation with the commission; and (2) serve a copy of the motion to all interested parties.

(D) When interested parties are notified of the motion, they may file a response with *[the division or] the commission [, depending upon where the motion is pending,]* within twenty (20) days of notification. If no objection is filed, the **commission will review the motion [shall be reviewed]** upon the facts and evidence submitted by the movant and **make** a decision *[made]* without **ordering** a formal hearing.

(E) If objections to the commutation are filed, the commission *[or the division, depending upon where the motion is pending, shall hold]* **may remand the matter to the division for a hearing. Upon return of the file,** the commission *[or division]* shall review the evidence and render its decision.

(F) **The commission shall send [A]** an order allowing or denying the motion *[shall be sent]* by United States mail to all interested parties.

(G) A commutation of compensation due a minor dependent shall not be approved or ordered until a legal guardian for the dependent has been appointed by the probate court of the county in which the dependent resides and proof of the appointment of a guardian and a certificate of the probate court certifying that the guardian has qualified shall be filed with the *[motion for commutation]* **commission.**

(H) *[No party shall settle an award for compensation due upon the basis of its commutable value without submitting a motion for approval to the commission or the division.]* **In cases where there is a prior award of benefits or a duly approved settlement that has finally resolved the parties' respective rights and duties with regard to periodic benefits payable in the claim, the commission cannot consider a joint motion for payment of a lump sum as a compromise settlement under § 287.390 RSMo, unless the parties are able to identify, in their motion, a legitimate, presently justiciable dispute, over which the commission would have jurisdiction. In the absence of such dispute, and where the parties desire merely to close out or redeem the remaining obligations under the award or settlement via payment of a lump sum, the commission will treat the motion as one for commutation pursuant to § 287.530 RSMo.**

(I) Where a motion for commutation is jointly agreed by the parties, the commission will consider the motion provided it includes the following:

1. For motions to commute permanent total disability or death benefits:

A. The employee or dependent's date of birth and presumed life expectancy, including, in the event the parties are requesting that the commission presume a life expectancy that substantially differs from that indicated in the most recent edition of the National Vital Statistics Reports published by the U.S. Department of Health & Human Services, a written opinion from a medical professional explaining why the life expectancy so differs;

B. The discount rate and actuarial assumptions utilized by the parties in calculating the present-day or commutable value of the future installments that may be expected under the award or settlement;

C. The specific facts and circumstances that would support a determination by the commission that commutation will be for the best interests of the employee or dependents; or will avoid undue expense or undue hardship to either party; or that the employee or dependent has removed or is about to remove from the United States; or that the employer has sold or otherwise disposed of the greater part of its business or assets; and

D. In the event the parties are seeking commutation on the basis that such will be for the best interests of the employee or dependents, or will avoid undue expense or undue hardship to either party, the specific facts and circumstances that would support a determination by the commission that unusual circumstances exist in the case that warrant a departure from the normal method of payment.

2. For motions to commute open future medical benefits where the underlying award or settlement does not expressly preserve to the employer/insurer the discretionary right to close future medical benefits by funding an annuity or Medicare Set-Aside trust account:

A. The employee's date of birth and presumed life expectancy, including, in the event the parties are requesting that the commission presume a life expectancy that substantially differs from that indicated in the most recent edition of the National Vital Statistics Reports published by the U.S. Department of Health & Human Services, a written opinion from a medical professional explaining why the life expectancy so differs;

B. The medical expenses incurred by the employee in connection with the claim for at least the last five (5) years, if any, listed by date, provider, treatment, and amount;

C. The discount rate and actuarial assumptions utilized by the parties in calculating the commutable value of the future installments of medical expenses that may be expected under the award or settlement;

D. Whether the employee is currently, or reasonably anticipated to become within the next thirty (30) months, a Medicare beneficiary, and if so, whether Medicare has made any conditional payments for medical treatment related to the work injury;

E. If a Medicare Set-Aside trust account is proposed to commute the future installments of medical care, whether all reasonably anticipated future medical expenses are of the type that will be covered by Medicare upon exhaustion of the commutation funds, or, in the alternative, an identification of what additional sums are being paid to cover expenses not covered by Medicare, including any evidence, attestation, or other information that would support a finding by the commission as to the sufficiency of such additional sums;

F. A signed statement from the employee memorializing his or her understanding and agreement that the funds from the proposed commutation should be used exclusively for the purpose of paying for medical treatment related to the work injury, and that failure to expend the commutation funds for such purpose may jeopardize the employee's later ability to obtain any financial assistance (via Medicare, private insurance, or otherwise) for future medical expenses related to the work injury; and

G. The specific facts and circumstances that would support a determination by the commission that commutation will be for the best interests of the employee or dependents; or will avoid undue expense or undue hardship to either party; or that the employee or dependent has removed or is about to remove from the United States; or that the employer has sold or otherwise disposed of the greater part of its business or assets.

(6) The commission retains jurisdiction over disputes pertaining to the parties' respective rights and obligations with regard to future medical treatment whenever a final award or settlement in the case leaves the issue of future medical treatment "open" or otherwise indeterminate. See *State ex rel. ISP Minerals, Inc. v. Labor & Indus. Rels. Comm'n*, 465 S.W.3d 471 (Mo. 2015). The commission will only consider issues falling within its statutory authority, such as whether a disputed treatment is reasonably required to cure and relieve the effects of the work injury for purposes of § 287.140 RSMo, and will not entertain requests to "compel" or "enforce" any award or settlement, because such powers are reserved to the judiciary.

(A) Upon receipt of a motion identifying a dispute pertaining to future medical treatment, the commission will allow opposing parties to respond within twenty (20) days from the date of the commission's correspondence acknowledging the motion; provided, however, that the commission, in its discretion, may extend or accelerate the period for filing such a response. If the commission determines that there is a presently justiciable dispute between the parties over which the commission would have jurisdiction, and that the movant has alleged a prima facie claim for relief of a type that the commission would be authorized to provide, the commission will remand the matter to the division of workers' compensation for a hearing to take evidence on the parties' allegations set forth in the motion and responsive pleadings, if any. Otherwise, the commission may dismiss the motion.

(B) Parties will be entitled to reasonable discovery in advance of the hearing. Any disputes pertaining to discovery should be brought to the commission's attention for a ruling. The

administrative law judge will hold in abeyance any action in connection with the commission's order of remand until the discovery dispute is resolved. The administrative law judge will hear and rule upon all evidentiary objections made at the hearing, and will allow the proponent to make an offer of proof where evidence is ruled inadmissible. At the close of the hearing, the division will return the file to the commission for a determination of the disputed issues.

(C) Mediation may be pursued at the discretion of the administrative law judge assigned to the matter. If such mediation is successful, the administrative law judge may sign, if the parties so request, an informal memorandum of understanding outlining and memorializing the parties' agreement, which should be executed by all parties and/or their attorneys; provided, however, if the parties desire approval of a formal settlement agreement resolving the disputed issue of future medical treatment, such should be forwarded to the commission for approval pursuant to § 287.390 RSMo. Any formal settlement agreement should be submitted to the commission in accordance with the guidelines for compromise settlements set forth in these rules.

(D) If, at any time, the dispute becomes moot, the parties are directed to advise the commission, and also the division in the event proceedings are pending in connection with an order of remand from the commission, that no further action is necessary in connection with the motion, whereupon the commission will dismiss the motion.

(E) Where the parties' dispute pertains to future medical treatment which is alleged to be imminently necessary to prevent harm to the health or well-being of the employee, the commission will entertain a request to hear the dispute on an expedited or hardship basis. Such request should include a written opinion from a medical professional explaining why the requested medical treatment is imminently necessary to prevent harm. Where the commission grants such expedited review, the commission may issue an order resolving the dispute based on its own review of the documentary evidence submitted by the parties, without the formality of ordering an evidentiary proceeding before the division. To be considered, such documentary evidence should be certified or otherwise sworn to be authentic via affidavit.

(F) All parties to awards or settlements are hereby advised that the commission generally disfavors the practice of ordering further proceedings in open future medical cases except where strictly necessary; and that the process set forth in this rule does not constitute an invitation or opportunity to relitigate issues in the case that were previously adjudicated or stipulated. Accordingly, if the record before the commission reveals that any party has failed, without reasonable ground, to fully and faithfully comply with its obligations under the law pursuant to an award or settlement previously entered in the case, the commission may assess an award of costs and attorney's fees against said party, pursuant to § 287.560 RSMo. All parties are thus strongly encouraged to resolve their disputes without recourse to the commission except in those extraordinary cases where intervention by an impartial, fact-finding tribunal is necessary.

AUTHORITY: section 286.060, RSMo [1986] Supp. 2018. Original rule filed Dec. 18, 1975, effective Dec. 28, 1975. For intervening history, please consult the Code of State Regulations. Amended: Filed April 11, 2019.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Labor and Industrial Relations Commission, Attn: Robert Cornejo, Chairman, PO Box 599, Jefferson City, MO 65102-0599. To be considered, comments must be received

*within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*