

**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 20-3.030 Review of Awards or Orders Issued by Administrative Law Judges. The Labor and Industrial Relations Commission (LIRC) is amending section (1); amending sub-sections (A) and (B) of section (3); adding new sub-sections (C) and (D) to section (3); amending sub-sections (A) and (B) of section (4); amending section (5); and amending sub-sections (B) and (C) of section (5).

PURPOSE: This amendment clarifies procedures for filing briefs with the LIRC in workers' compensation appeals, and removes the requirement to file three copies.

(1) Review--Appeal. Any interested party in a contested case may appeal from a final award, order or decision made by an administrative law judge of the Division of Workers' Compensation by making an application for review within twenty (20) days from the date of the award, order or decision with the commission as provided by section 287.480, RSMo. A form to be used in making an application for review has been promulgated by the commission and is available upon request. The applicant for review *[is]* **need** not *[required to]* use the promulgated form; provided, the application sets forth information in regard to the case and award which is sought to be reviewed and the reasons for making the application for a review of the evidence. An application for review shall be signed by the applicant or the applicant's attorney. An application filed on behalf of a corporation shall be signed by an attorney licensed in Missouri.

(3) Applications and Briefs.

(A) An applicant for review of any final award, order or decision of the administrative law judge shall state specifically in the application the reason the applicant believes the findings and conclusions of the administrative law judge on the controlling issues are not properly supported. It shall not be sufficient merely to state that the decision of the administrative law judge on any particular issue is not supported by competent and substantial evidence. **The allegations of error in an application for review are not an opportunity for early briefing, but rather serve to notify the commission and opposing parties of the nature of the issues that will be addressed on appeal. Accordingly, the application for review should not extend beyond a maximum of five (5) pages. The commission may decline to consider any portion of an application for review that extends beyond this page limitation.**

(B) If the applicant for review (known as the petitioner) desires to file a brief or memorandum of law in support of the application, it shall be indicated in the application. *[The petitioner's brief or memorandum of law shall be filed within thirty (30) days after the transmittal of the transcript of record.]* **When briefing is requested, the commission secretary will provide, via written correspondence to all parties, a briefing schedule after the transcript is prepared by the division of workers' compensation. Unless a modified briefing schedule is ordered by the commission, the petitioner's brief will be due thirty (30) days from the date of the commission secretary's correspondence establishing the briefing schedule, and** *[Parties to a claim who do not file an application for review may file reply]* **respondent** briefs or memoranda of law **will be due** within fifteen (15) days after **the date of the commission secretary's letter acknowledging the commission's receipt of the** *[applicant's]* **petitioner's** brief or memorandum of law. The commission shall have discretion, after notice to the parties, to extend or accelerate the briefing schedule.

(C) Parties requesting an extension of time to file a brief, an extension of page length, or any other extraordinary request pertaining to briefing, may make such request to the commission, in writing, prior to the last date for filing their brief, such request to include the following:

1. The number of additional days, pages, or other specific relief requested;
2. A certification that a copy of the request has been served to all opposing parties upon the same date and time, and via the same means, that such request is sent to the commission;
3. An indication whether the requesting party has conferred with opposing parties regarding the request, and if not, why;
4. An indication whether opposing parties have registered any objection to the request; and
5. The specific facts or circumstances motivating the request.

(D) The commission may decline to consider a party's request where it fails to comply with the foregoing, and may decline to consider a party's brief where it appears the party has engaged in any dilatory practice, or other conduct prejudicial to the efficient and timely adjudication of the appeal.

(4) Answers and Briefs.

(A) An opposing party (known as the respondent) may file an answer to the petitioner's application for review, concisely addressing each of the contentions set forth in the application. The answer(s) shall be filed within ten (10) days *[after the]* **from the date of the commission secretary's correspondence acknowledging the** filing of the application for review. The commission shall have discretion to extend the time for filing an answer.

(B) If the petitioner does not include a request for a briefing schedule in the application for review and the respondent desires to file a brief or memorandum of law, that request shall be included in the answer. If the petitioner has requested a briefing schedule, but fails to file a timely brief after that, the respondent may file a brief or memorandum of law *[only if the respondent included a request to file a brief or memorandum of law in the answer]* **within fifteen (15) days from the date the petitioner's brief was due.**

(5) Briefs, Typewritten. Briefs filed in any case pending before the commission shall be typewritten. The original *[and two (2) copies]* shall be filed with the commission and a copy served upon the opposing party(ies).

(B) The brief of the petitioner shall not exceed thirty (30) pages. A respondent's brief shall not exceed twenty-five (25) pages. A reply brief is not required or suggested but if the petitioner believes it is necessary to file a reply, it shall not exceed eight (8) pages. A reply brief must be filed within ten (10) days of receipt of the respondent's brief. A cover sheet or index to the brief need not be counted in the page limitation but any attachments, exhibits or appendices to the brief will be considered as pages of the brief and subject to the page limitation for the entire brief. (Parties should note that the commission file contains the award and decision of the administrative law judge along with a complete transcript of the record. It is unnecessary to attach any of these materials to the brief. Any other attachment would not be of record and not subject to consideration, which is limited to the record or transcript of the hearing.) *[Any brief submitted which is not in compliance with the above may not be considered.]*

(C) The **petitioner's** brief *[of the party requesting the application for review]* shall contain a fair and concise statement of facts without argument, **with citations to the pertinent pages of the transcript supporting each factual assertion.** The respondent's **brief** may supplement the statement of facts if necessary. No jurisdictional statement is necessary unless jurisdiction is at issue. (Parties are advised that recitations of basic legal principles of workers' compensation law are not necessary and are discouraged. *[The commission is aware of principles such as that the burden of proof is on the employee, the law is to be liberally interpreted in favor of the employee, and that the commission may make its own determination of the facts, and credibility of the witnesses including experts.]*) The briefs shall identify the issues in dispute and address those issues only *[. The briefs should]*, state concisely the factual or legal support for the party's positions *[. Lengthy recitation of facts or cases without identifying how they*

*relate to the party's position will not be considered. Briefs of all parties should clearly outline and explain the issues in dispute], and contain a conclusion in detail as to the decision, award or action requested from the Labor and Industrial Relations Commission. **Upon its own motion, or upon motion by any interested party, the commission may, in its discretion, decline to consider any brief or any portion of a brief that is not filed in accordance with these rules.***

*AUTHORITY: section 286.060, RSMo [2000] **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.*