

TO BE RESCINDED

4121-3-15

Claims procedures subsequent to allowance.

- (A) An "Application for the Determination of the Percentage of Permanent Partial Disability" and for an "Application for Increase in Percentage of Permanent Partial Disability" pursuant to division (A) of section 4123.57 of the Revised Code.
- (1) An "Application for the Determination of Percentage of Permanent Partial Disability" ("Form C-92") or, when indicated, an "Application for Increase in Percentage of Permanent Partial Disability" (C-92-A) shall be completed and signed by the applicant or applicant's attorney and shall be filed in duplicate. Where the applicant desires to submit documentary proof, medical or otherwise, in support of his original C-92 application, such proof shall be submitted in duplicate with the application. However, a C-92-A application must be accompanied by substantial evidence of new and changed circumstances which have developed, as indicated in paragraph (C)(5) of this rule. Such documentary proof must be filed in duplicate. Unsigned applications shall be dismissed. The same applies to C-92-A applications filed without medical proof. Whenever the applicant leaves a question or questions in the application form unanswered, the application shall be held in abeyance until all questions are answered.
- (2) Upon the filing of either of these applications, the commission shall mail a copy of the application and any accompanying proof to the employer. Such employer shall submit any proof bearing upon the issue to the commission, in duplicate, within thirty days of the receipt of the claimant's application.
- (3) Each applicant for a determination of the percentage of permanent partial disability shall be examined by the medical section of the commission or by a physician designated by the medical section or by the commission, and the examining physician shall file a report of such examination, together with his evaluation of the degree of disability as a part of the claim file. Where the application is for an increase in the percentage of permanent partial disability, the applicant shall either be examined, or his claim referred for review, by the medical section of the commission or by a physician designated by the medical section or by the commission and the physician shall file a report of such examination and/or review of the record, together with his evaluation of the degree of disability, as part of the claim file.
- (a) If a medical examination by a physician of the employer's choice is requested pursuant to paragraph (B)(4) of rule 4121-3-09 of the Administrative Code, the C-92 or C-92-A application shall not be set for hearing until the employee has submitted to such examination as may be ordered by the industrial commission.

- (b) If either party has not received copy of the physician's report (referred to in paragraph (C)(3) of this rule) in advance of the notice of hearing, and such party feels that the deposition of any physician who has examined the claimant in connection with the C-92 or C-92-A application, or who has submitted a report on the C-92-A application pursuant to a review of the claim file is necessary for the proper determination of permanent disability, and there exists a substantial disparity between the report of the physician who is to be deposed and another medical report on file, or it appears that the estimate of disability made by the physician to be deposed was based in part on disability for which the claim has not been allowed or an allowed disability was inadvertently omitted from consideration, such party may request in writing, immediately upon the receipt of the notice of hearing, that the hearing be continued and the deposition of the physician taken prior thereto. For procedures on taking depositions see paragraph (B)(5) of rule 4121-3-09 of the Administrative Code.
- (c) "Substantial disparity" means fifteen per cent or more difference.
- (d) Either the claimant or the employer may submit additional medical evidence following the examination by the medical section of the industrial commission as long as copies of the evidence are submitted to all parties.
- (4) All such applications shall be set for special hearing before a district hearing officer at such times and at such places as the commission shall determine. Notices of the special hearing shall be mailed to the claimant, the employer, and their representatives and the administrator at least two weeks in advance of the hearing date, except as provided in paragraph (C)(6) of rule 4121-3-09 of the Administrative Code.
- (5) No application for subsequent percentage determinations on the same claim for injury or occupational disease shall be accepted for review by the commission unless supported by substantial evidence of new and changed circumstances which have developed. Applications accompanied by medical evidence of new and changed circumstances will be processed in accordance with paragraph (C)(3) of this rule.
- (6) An application for reconsideration, review, or modification may be filed within ten days after the date of receipt of the decision of the district hearing officer on a C-92 or C-92-A application and shall be heard by a staff hearing officer, whose decision shall be final.

- (7) Where an award under division (A) of section 4123.57 of the Revised Code has been made prior to the death of an employee, all unpaid installments accrued or to accrue are payable to the surviving spouse or if there is no surviving spouse to the dependent children of such employee, and if there are no such children surviving, then to such other dependents as the commission may determine. This relief may be granted whether the death of the employee was related to the injury or occupational disease upon which this claim was based or was due to unrelated causes. Application for the payment of such installments accrued or to accrue shall be made by motion and shall be accompanied by sufficient proof to establish the death of the employee and the dependency of the spouse or children or other dependents. Where there is a question of dependency or the motion is filed under section 4123.60 of the Revised Code, such motion shall be set for hearing with notices.
- (8) No award under division (A) of section 4123.57 of the Revised Code shall be made which is based on a percentage of permanent partial disability which, taken with all other percentages of permanent partial disability, exceeds one hundred per cent.

(B) Settlement applications.

Settlement applications shall state the reason why a final and complete settlement is desired. They shall not be considered unless the file shows a recent medical evaluation of the claimant. An application for a full and final lump-sum settlement in injury and occupational disease claims shall:

- (1) Be signed by the claimant;
- (2) Clearly set forth the circumstances by reason of which the proposed settlement is deemed desirable and the nature of the controversy;
- (3) State the amount of the requested settlement;
- (4) Be accompanied by a recent medical report furnished by the claimant, showing the claimant's present physical condition, unless the commission has already determined that claimant is permanently and totally disabled. Such report shall contain detailed medical findings, show the part or parts of the body considered by the examining physician, including a specific diagnosis of the disability found, a statement that such diagnosed condition is related to the disability allowed in the claim, and an evaluation of the percentage of permanent disability found.

- (5) List the claim numbers and parts of body affected in all claims filed by the claimant with the bureau of workers' compensation or the industrial commission.
 - (a) If the application or the medical report, or both, do not furnish all of the above information, the claimant and representative shall be notified as to this and the question of final settlement shall not be decided until such required information is furnished.
 - (b) The application for settlement and the accompanying medical report shall be filed in duplicate and copies shall be mailed to the employer.
- (C) In an application for final settlement in death claims, the requirements are the same except for furnishing a medical report.
- (D) Self-insurer claims may be settled by agreement of parties and be referred to the legal section of the industrial commission for review, preparation of memorandum and presentation to the members of the industrial commission for approval or disapproval.
- (E) Structured Settlements.
 - (1) All claims will be candidates for structured settlements. There will be no limitations on whether the employer is self-insured or state fund, or upon the issues raised in the claims presented for consideration (i.e., permanent and total disability, occupational disease, death, etc.).
 - (2) Issues addressed through a structured settlement shall have the same finality as other workers' compensation settlements. All structured settlement agreements shall contain clear and concise language notifying the parties of the finality of the settlement upon approval by the industrial commission.
 - (3) In all structured settlements where annuities are to be obtained from third party resources, the annuity provider shall be licensed in Ohio and have achieved rating equivalent to no less than an insurance industry standard of AA. Preference shall be given to settlement proposals wherein the annuity provider has a rating equivalent to AAA.
 - (4) All structured settlement agreements shall contain language specifying the chain of accountability for satisfaction of the terms of the structured settlement. This language shall specify that, if the annuity company is unable to fulfill its

financial obligation, the self-insured employer, its bonding company, (where applicable), then the bureau of workers' compensation shall assume such obligation.

- (5) In all structured settlements specifying a fixed period of payment (a.k.a., sum certain, guaranteed payment, or fixed term annuities), the agreement shall designate a beneficiary as the recipient of the balance of payments remaining at the time of the claimant's death. The unpaid installments shall be payable whether the death of the employee was related to the injury or occupational disease upon which the claim was based, or was due to unrelated causes. When the claimant dies after the expiration of the fixed period of payment, the dependents or estate of the employee shall have no rights other than those ordinarily available under Chapter 4123. of the Revised Code in settled claims.
- (6) All legal fees related to the workers' compensation claim and settlement thereof shall be fully satisfied upon adoption of the settlement agreement.
- (7) All structured settlements shall be treated as workers' compensation benefit settlements and language pertaining to tax liability shall not be included in the settlement agreement.
- (8) All structured settlement agreements submitted to the industrial commission shall incorporate all terms and agreements, and shall include documentation as to annuity provider rating and all other commission requirements. Requests for structured settlement approval that do not comport with the aforementioned criteria will be denied without further action.

Effective:

R.C. 119.032 review dates: 07/28/2003

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4121.31, 4123.57, 4121.36
Rule Amplifies: 4123.57
Prior Effective Dates: 10/17/68, 12/11/78