

## CHAPTER 143. DISPUTE RESOLUTION--REVIEW BY THE APPEALS PANEL

### §143.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Appellant--A party to a benefit contested case hearing who is dissatisfied with the decision of the hearing officer, and files a request for review of that decision by the appeals panel.
- (2) Request--The appellant's written appeal for review of the decision of a hearing officer.
- (3) Respondent--The other party to a benefit contested case hearing who must file a response to the appellant's request.
- (4) Response--The respondent's written answer to the appellant's request.

*The provisions of this §143.1 adopted to be effective March 7, 1991, 16 TexReg 1195; amended to be effective May 9, 2004, 29 TexReg 4223.*

### §143.2. Description of the Appeal Proceeding.

- (a) To review the decision of the hearing officer, the appeals panel considers the appellant's request, the respondent's response, and the record of the benefit contested case hearing. The parties do not appear in person before(a) the panel.
- (b) The appeals panel may:
  - (1) affirm the decision of the hearing officer;
  - (2) reverse the decision of the hearing officer and render a new decision; or
  - (3) reverse the decision of the hearing officer and remand to the hearing officer for a second benefit contested case hearing, which shall be set as provided by §142.18 of this title (relating to Special Provisions for Cases on Remand from the Appeals Panel).

*The provisions of this §143.2 adopted to be effective March 7, 1991, 16 TexReg 1195.*

### §143.3. Requesting the Appeals Panel to Review the Decision of the Hearing Officer.

- (a) A party to a benefit contested case hearing who is dissatisfied with the decision of the hearing officer may request the appeals panel to review that decision. The request shall:
  - (1) be in writing;
  - (2) clearly and concisely rebut each issue in the hearing officer's decision that the appellant wants reviewed, and state the relief the appellant wants granted;
  - (3) be filed with the Chief Clerk of Proceedings in the commission's central office in Austin not later than the 15th day after receipt of the hearing officer's decision. Requests that are timely submitted to a commission location other than the Chief Clerk of Proceedings, such as a local field office of the commission, will be considered timely filed and forwarded to the commission's appeals panel for consideration, but this may result in delay in the processing of the request. Untimely requests, regardless of whether they are filed with the Chief Clerk of Proceedings in the commission's central

office or in a different commission office, do not invoke the jurisdiction of the appeals panel and will not be reviewed by the appeals panel;

(4) be served on the other party on the same day filed with the commission; and

(5) contain a statement certifying that a copy has been served on the other party or parties in person, mailed by certified mail, return receipt requested, or transmitted by verifiable means. A certificate in substantially the following form shall be used: "I hereby certify that I have on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, served a copy of the attached request for appeal on \_\_\_\_\_ (state the name of the other party or parties on whom a copy was served) by \_\_\_\_\_ (state the manner of service)." \_\_\_\_\_ Signature

(b) If it is not clear from the request for review that the party has properly served a copy of the request on the other party or parties, the hearings division shall attempt to contact the other party or parties and, if the contact indicates that the other party or parties have not received a copy of the request, provide a copy of the request expeditiously.

(c) A party may make a conditional request for review by the appeals panel even if the overall contested case hearing decision is favorable. A timely request that indicates that the filing party seeks consideration only if the opposing party files a request for review will not be treated as a request for review unless an opposing party timely files a request. If an opposing party does file a timely request, the conditional request will be treated as a cross-appeal.

(d) The commission shall deem that the parties received the hearing officer's decision:

(1) five days after the date the commission's letter was mailed to the parties, unless the great weight of evidence indicates otherwise;

(2) the first working day after the date the written communication was placed in a carrier's Austin representative box located at the commission's main office in Austin unless the great weight of evidence indicates otherwise;

(3) the working day that it was faxed by the commission, if faxed during normal business hours as defined in §102.3(c); otherwise, the next working day after the date faxed; or

(4) the working day that it was electronically transmitted by the commission, if transmitted during normal business hours as defined in §102.3(c); otherwise, the next working day after the date electronically transmitted.

(e) A request made under this section shall be presumed to be timely filed or timely served if it is:

(1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision, as provided in subsection (a) of this section; and

(2) received by the commission or other party not later than the 20th day after the date of receipt of the hearing officer's decision.

(f) Saturdays and Sundays and holidays listed in Section 662.003, Government Code, are not included in the computation of the time in which a request for an appeal must be filed.

*The provisions of this §143.3 adopted to be effective March 7, 1991, 16 TexReg 1195; amended to be effective December 31, 1991, 16 TexReg 7358; amended to be effective March 14, 2001, 26 TexReg 2032; amended to be effective May 9, 2004, 29 TexReg 4223.*

#### **§143.4. Responding to a Request for Review by the Appeals Panel.**

- (a) The other party shall respond to the appellant's request. The response shall:
- (1) be in writing;
  - (2) clearly and concisely support each issue in the hearing officer's decision that the appellant has rebutted in the request, and state why the appellant's relief should not be granted;
  - (3) be filed with the Chief Clerk of Proceedings in the commission's central office in Austin not later than the 15<sup>th</sup> day after the request was received by the respondent. Responses that are timely submitted to a commission location other than the Chief Clerk of Proceedings, such as a local field office of the commission, will be considered filed timely and forwarded to the commission's appeals panel for consideration, but this may result in delay in the processing of the response. Untimely responses, regardless of whether they are filed with the Chief Clerk of Proceedings or in a different commission office, will not be reviewed by the appeals panel;
  - (4) be served on the appellant on the same day filed with the commission; and
  - (5) contain a statement certifying that a copy has been served on the other party or parties in person, mailed by certified mail, return receipt requested, or transmitted by verifiable means. A certificate in substantially the following form shall be used: "I hereby certify that I have on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, served a copy of the attached response to a request for appeal on \_\_\_\_\_ (state the name of the other party or parties on whom a copy was served) by \_\_\_\_\_ (state the manner of service)."  
\_\_\_\_\_  
Signature
- (b) If it is not clear from the response that the party has properly served a copy of the response on the other party or parties, the hearings division shall attempt to contact the other party or parties and, if the contact indicates that the other party or parties have not received a copy of the response, provide a copy of the response expeditiously.
- (c) A response made under this section shall be presumed to be timely filed or timely served if it is:
- (1) mailed on or before the 15th day after the date of receipt of the appellant's request, as provided in subsection (a) of this section; and
  - (2) received by the commission or other party not later than the 20th day after the date of receipt of the appellant's request.
- (d) Saturdays and Sundays and holidays listed in Section 662.003, Government Code, are not included in the computation of the time in which a response must be filed.

*The provisions of this §143.4 adopted to be effective March 7, 1991, 16 TexReg 1195; amended to be effective March 31, 1992, 17 TexReg 2009; amended to be effective March 14, 2001, 26 TexReg 2032; amended to be effective May 9, 2004, 29 TexReg 4223.*

#### **§143.5. Decision of the Appeals Panel.**

- (a) Not later than the 30th day after the date the response was filed with the commission, the appeals panel will issue its written decision, concluding with a separate paragraph stating words to the effect: "The true corporate name of the insurance carrier is (NAME IN BOLD PRINT) and the name and address of its registered agent for service of process is (NAME AND ADDRESS IN BOLD PRINT)", and file a copy with the director of the hearings division.

- (b) If the appeals panel does not issue a written decision by the 30th day after the date the response was filed with the commission, the hearing officer's decision becomes final, constitutes the decision of the appeals panel, and, for the purpose of establishing the time for seeking judicial review, is deemed filed with the director of the hearings division on that day.
- (c) Not later than the seventh day after the appeals panel files its decision with the director of the hearings division, or a decision is deemed filed, as provided in subsection (b) of this section, the division shall send to each party a copy of the decision, or a notice that the hearing officer's decision has become final and constitutes the decision of the appeals panel.
- (d) A decision of the appeals panel that is not appealed for judicial review, as provided by the Texas Labor Code §410.251, et seq., becomes final on the 41st day after the date the decision was filed, or deemed filed, with the director of the hearings division. Failure to comply with a final decision or order within 20 days of its becoming final is a Class A administrative violation, with a penalty not to exceed \$10,000.
- (e) A decision of the appeals panel that is appealed for judicial review is binding on the parties for the duration of the judicial review.

*The provisions of this §143.5 adopted to be effective March 7, 1991, 16 TexReg 1195; amended to be effective May 9, 2004, 29 TexReg 4223.*