

MINUTES

KENTUCKY WORKERS' COMPENSATION REGULATORY ADVISORY COMMITTEE

AUGUST 15, 2022

A meeting of the Regulatory Advisory Committee (RAC) was held on August 15, 2022, beginning at 1:00 p.m. in the Hearing Room at the Department of Workers' Claims, 500 Mero Street, Frankfort, KY regarding preliminary comments on potential revisions to 803 KAR 25:010.

Members present in-person: From the Kentucky Department of Workers' Claims (DWC) were Douglas Gott, Chief Administrative Law Judge; Stephanie Kinney, Administrative Law Judge; John Coleman, Administrative Law Judge; Dale Hamblin, Esq., Staff Attorney Manager/Assistant General Counsel; Michael Alvey, Chairman, Kentucky Workers' Compensation Board. Other members present were Kenneth J. Dietz, Kelly Gray, and Bobby Ferreri, and Robert Swisher.

Present via Zoom were Mark Knight, Gerald Vanover, Jeff Roberts, and Ched Jennings.

Also in attendance was Scott Wilhoit, Commissioner of the Kentucky Department of Workers' Claims, who welcomed everyone to the meeting. The Commissioner noted that the meeting is held in accordance with KRS 61.823(4)(a), the Open Meetings statute, and that notice of the meeting was published as required. He thanked all the members for participating.

The members of the committee introduced themselves. Judge Gott also thanked everyone for giving their time. He noted that the make-up of the committee included attorneys for claimants and employers, representatives of insurance and labor, and ALJs, and so variety of perspectives on the potential revisions to 803 KAR 25:010 would be available for the Commissioner's consideration. He noted a plan to walk through all the sections of the regulation. To help prompt discussion, a list of items of possible interest were identified. From that, the discussion commenced, as follows:

Section 1 – Definitions

(13) – The “Notice of Filing of Application” doesn't state the “week during which a hearing is to be held,” and arguably doesn't need to. It was also raised whether the label for the conference preceding the hearing would be better labeled “prehearing conference” rather than the current “benefit review conference.” It was noted that renaming would likely require legislative change.

(14) – “Signature” means an actual personal handwritten signature and includes electronic signatures for purpose of CR11. (14) and 3(3) both permit electronic signatures.

Many jurisdictions require solely electronic signatures. A discussion was had over whether to eliminate “wet” signatures. The majority of the committee favored continuance of “wet signatures” for a variety of reasons. It was further noted that unrepresented parties did not have the ability to submit electronic signatures on LMS.

Section 2 – Parties

(3)(a) – “An Administrative Law Judge shall order, upon proper showing, that a party be joined or dismissed.” Should it also define when it is necessary to file a new 101?

The Commissioner and Judge Gott noted that there was a group at DWC presently studying this issue of how to more easily and efficiently amend or add claims to an existing claim.

A related discussion commenced over who is responsible for reaching out to all members who may have a claim? The interest of new party claimant “X” may conflict with original plaintiff’s client. A form for fatalities was mentioned as a possible solution that would list all interested parties and addresses. All heirs should be notified by perhaps adding an “all known heirs” certification.

Section 3 – LMS Filings

Should the regulation say that Agreed Orders are prohibited since an ALJ can’t sign the tendered order on LMS? Should Joint Motions be required instead?

Discussion was that Joint motion would be preferred. It was also noted by members that (6) and (7) refer to an obligation to maintain an original. Members noted that such an obligation was obsolete and could be deleted.

Section 5 – Pleadings

There was discussion of subsection (2) and the lack of proper service by some attorneys.

Chairman Alvey reminded that LMS is not a substitute for civil rules. Not everyone is in LMS, party moves to join but are not served, and that proper certificate of service is required. It was mentioned that it requires notifying electronically. Should regular mail service be added? Is LMS not considered as electronically notifying?

(3)(d) – Consolidated cases require listing of most recent cases first on pleadings, but LMS automatically does this backwards. Can that be fixed? If not, this section doesn’t fit.

Members liked idea of being able to see all in LMS so that they know “X” is happening on “X” day.

Section 6 – Motions

(7) – Any change to (relaxing of) requirements for filing attorney fee motions, is that restricted by requirements in KRS 342.320?

Commissioner Wilhoit reminded attorneys to adhere to the requirement to file fee motions and that fees may not exceed the cap of the statute.

Members discussed the need to attach contingency contracts as required in (7) and (8), and for a revisit of the Form 109.

Section 7 – Application for Resolution of Claim and Response

It was suggested that revision of 1(a) and 1(b) with regards to the Forms 104, 105 and 106 was appropriate. Because of LMS concerns, the regulation allowed filing of the forms within 15 days of the Form 101, but that concern is no longer present. Another perspective was that claimants do not have all required information available at the time of filing. It was pointed out that motions for extension of time to provide the required forms would be allowed by ALJs. Another point on this discussion was that the process for filing a claim should be easier and require less information.

It was noted that deletion of the “voluntary intoxication” language in 2(d) and 3(e) was appropriate in light of new KRS 342.610 (3).

Meeting was adjourned with plans to come back to pick back up in Section 7 in mid-September.