

**Proposed filing amendments**  
**Draft for discussion purposes 1.13.21**

1 **176.106 ADMINISTRATIVE CONFERENCE.**

2 *[See statute for subdivisions 1-6]*

3 **Subdivision 7. Request for Hearing.**

4 (a) Any party aggrieved by the decision of the commissioner or compensation judge may request a  
5 formal de novo hearing by filing the request with the commissioner office and serving the request  
6 on all parties no later than 30 days after the decision. ~~Requests shall be referred to the Office of~~  
7 ~~Administrative Hearings for a de novo hearing before a compensation judge.~~ When a compensation  
8 judge ~~issued issues~~ issues the administrative decision under subdivision 5, the formal *de novo* hearing  
9 must be held before a compensation judge other than the compensation judge who presided over  
10 the administrative conference.

11 (b) Except where the only issues to be determined pursuant to this section involve liability for past  
12 treatment or services that will not affect entitlement to ongoing or future proposed treatment or  
13 services under section 176.102 or 176.135, ~~the commissioner shall refer a timely request to the~~  
14 ~~Office of Administrative Hearings within five working days after filing of the request and~~ the hearing  
15 at the ~~Office of Administrative Hearings~~ office must be held on the first date that all parties are  
16 available, but not later than 60 days after the request for hearing is filed. ~~Office of Administrative~~  
17 ~~Hearings receives the matter.~~ Following the hearing, the compensation judge must issue a decision  
18 within 30 days. ~~The decision of the compensation judge is appealable pursuant to section 176.421.~~

19 (c) A decision of the compensation judge issued under this subdivision is appealable pursuant to  
20 section 176.421.

21 *[See statute for subdivisions 8-9]*

22

23 **176.291 DISPUTES; PETITIONS; PROCEDURE.**

24 (a) Where there is a dispute as to a question of law or fact in connection with a claim for  
25 compensation, a party may serve on all other parties and file a petition with the commissioner

26 office stating the matter in dispute. The petition shall be on a form prescribed by the commissioner  
27 and shall be signed by the petitioner.

28 *[See statute for paragraph (b)-(c)]*

29

### 30 **176.295 NONRESIDENT EMPLOYERS; FOREIGN CORPORATION.**

#### 31 Subdivision 1. **Affidavit of inability to ~~obtain~~ effectuate service.**

32 Where ~~an a petitioner~~, employee, or an employee's dependent ~~has filed a petition for~~  
33 ~~compensation with the commissioner of the Department of Labor and Industry, and is unable to~~  
34 ~~make service of the petition and other notices on the employer because the latter cannot serve a~~  
35 ~~petition for compensation or other notice on an employer because the employer~~ is a nonresident or  
36 a foreign corporation, the petitioner may file an affidavit with the ~~commissioner of the Department~~  
37 ~~of Labor and Industry~~ chief administrative law judge stating that the petitioner is ~~so~~ unable to ~~make~~  
38 effectuate service.

#### 39 Subd. 2. **Action in district court.**

40 When ~~the a~~ petitioner has filed ~~the an~~ affidavit of inability to effectuate service pursuant to  
41 subdivision 1 with the ~~commissioner of the Department of Labor and Industry~~ chief administrative  
42 law judge, the petitioner may ~~bring an action also file a complaint~~ against the employer in ~~the~~  
43 district court ~~located in the county. The complaint must be filed in the county~~ in which the  
44 employee resided at the time of the injury or death. The action complaint shall be ~~brought and~~  
45 ~~conducted commenced and pursued~~ in the same manner as ~~are~~ other civil actions in district court.  
46 The complaint shall state that a petition for compensation has been filed with the ~~commissioner of~~  
47 ~~the Department of Labor and Industry office~~, and shall be accompanied by a verified copy of the  
48 affidavit of inability to effectuate service. The complaint shall also state the facts upon which the  
49 right to compensation or other relief is based.

50 *[See statute for subdivisions 3-4]*

51

### 52 **176.305 PETITIONS FILED WITH ~~WORKERS' COMPENSATION DIVISION~~ THE OFFICE.**

53 **Subdivision 1. Hearings on petitions.** The petitioner shall serve a copy of the petition on each  
54 adverse party personally or by first class mail. A clear copy suitable for imaging shall be filed with  
55 the ~~commissioner office~~, together with an appropriate affidavit of service. ~~The commissioner shall,~~  
56 ~~within ten days, refer all petitions involving issues over which the commissioner lacks jurisdiction to~~  
57 ~~the office.~~

58 *[See statute for subdivision 1a]*

#### 59 ~~Subd. 2. Copy of petition.~~

60 ~~The commissioner shall deliver the petition and answer, after certification for a hearing, to the~~  
61 ~~Office of Administrative Hearings for assignment to a compensation judge.~~

62 Subd. ~~3~~ 2. Testimony.

63 Where the chief administrative law judge has substituted a compensation judge originally assigned  
64 to hear a matter, the testimony taken before the substitute compensation judge shall be  
65 considered as though taken before the judge before whom it was originally assigned.

66 Subd. ~~4~~ 3. Striking from calendar.

67 A compensation judge ~~or the commissioner~~, after receiving a properly served motion, may strike a  
68 case from the active trial calendar after the employee has been given 30 days to correct the  
69 deficiency if it is shown that the information on the petition or included with the petition is  
70 incomplete. Once a case is stricken, it may not be reinstated until the missing information is  
71 provided to the adverse parties and filed with the ~~commissioner or~~ compensation judge. If a case  
72 has been stricken from the calendar for one year or more and no corrective action has been taken,  
73 the ~~commissioner or a~~ compensation judge may, upon the ~~commissioner's or~~ judge's own motion or  
74 a motion of a party which is properly served on all parties, dismiss the case. The petitioner must be  
75 given at least 30 days' advance notice of the proposed dismissal before the dismissal is effective.

76

77 **176.321 ANSWER TO PETITION.**

78

*[See statute for subdivision 1]*

79 **Subd. 2. Contents.**

80 The answer shall admit, deny, or affirmatively defend against the substantial averments of the  
81 petition, and shall state the contention of the adverse party with reference to the matter in dispute.

82 Each fact alleged by the petition or answer and not specifically denied by the answer or reply is  
83 deemed admitted, but the failure to deny such a fact does not preclude the compensation judge  
84 from requiring proof of the fact.

85 The answer shall include the names and addresses of all known witnesses; whether or not the  
86 employer intends to schedule an adverse examination and, if known, the date, time, and place of all  
87 adverse examinations; the desired location for a hearing; any request for a prehearing or  
88 settlement conference; the estimated time needed to present evidence at a hearing; and, if an  
89 affidavit of significant financial hardship and request for an expedited hearing are included with the  
90 petition, any objection the employer may have to that request. If the date, time, and place of all  
91 adverse examinations is unknown at the time the answer is filed, the employer must notify the  
92 ~~commissioner office~~ in writing of the date, time, and place of all adverse examinations within 50  
93 days of the filing of the claim petition.

94 **Subd. 3. Extension of time in which to file answer.** Upon showing of cause, the ~~commissioner office~~  
95 may extend the time in which to file an answer or reply for not more than 30 additional days. The  
96 time to file an answer or reply may also be extended upon agreement of the petitioner, and  
97 provided that the ~~commissioner office~~ must be notified in writing by the employer no later than five  
98 days beyond the time required for the filing of the answer of the fact that an agreement has been  
99 reached, including the length of the extension. Any case received by the office that does not include

100 an answer, written extension order, or written notification of the extension agreement shall be  
101 immediately set for a hearing at the first available date under section 176.331.

102

103 **176.331 PROCEEDINGS WHEN ANSWER NOT FILED.**

104 Except in cases involving multiple employers or multiple insurers, if an adverse party fails to file and  
105 serve an answer or obtain an extension from the ~~commissioner office~~ or the petitioner as required  
106 by section 176.321, subdivision 3, the ~~commissioner office~~ shall ~~refer set~~ the matter ~~to the chief~~  
107 ~~administrative law judge~~ for an immediate hearing and prompt award or other order. The adverse  
108 party that failed to file an answer may appear at the hearing, present evidence and question  
109 witnesses, but shall not be granted a continuance except upon a showing of good cause.

110 If an adverse party who fails to serve and file an answer is neither insured for workers'  
111 compensation liability nor a licensed self-insured as required by section 176.181 and the special  
112 compensation fund is a party to the proceeding, the ~~commissioner or~~ compensation judge may  
113 enter an order awarding benefits to the petitioning party without a hearing if so requested by the  
114 special compensation fund.

115

116 **176.341 HEARING ON PETITION.**

117 Subdivision 1. **Time.** Upon ~~receipt of a matter from the commissioner~~ the filing of a petition, the  
118 chief administrative law judge shall fix a time and place for hearing the petition. The hearing shall  
119 be held as soon as practicable and at a time and place determined by the chief administrative law  
120 judge to be the most convenient for the parties, keeping in mind the intent of chapter 176 and the  
121 requirements of section 176.306. Except where a shorter time period is required under this chapter,  
122 all hearings must be held within 26 months after a petition has been filed, unless the chief  
123 administrative law judge issues an order for a later date for the hearing explaining why the hearing  
124 could not be held within 26 months.

125 *[See statute for subdivisions 2-6]*

126

127 **176.391 INVESTIGATIONS.**

128 Subdivision 1. **Power to make.**

129 Before, during, or after any hearing, ~~the commissioner or~~ a compensation judge may make an  
130 independent investigation of the facts alleged in the petition or answer.

131 Subd. 2. **Appointment of physicians, surgeons, and other experts.**

132 The compensation judge assigned to a matter, ~~or the commissioner,~~ may appoint one or more  
133 neutral physicians or surgeons to examine the injury of the employee and report thereon except as  
134 provided otherwise pursuant to section 176.1361. Where necessary to determine the facts, the  
135 services of other experts may also be employed.

136 Subd. 3. **Reports.**

137 The report of a physician, surgeon, or other expert requested under this section shall be filed with  
138 ~~the commissioner and~~ the compensation judge assigned to the matter if any. The report shall be  
139 made a part of the record of the case and be open to inspection as such.

140 Subd. 4. **Compensation.**

141 The ~~commissioner or~~ compensation judge shall fix the compensation of a physician, surgeon, or  
142 other expert whose services are employed under this chapter section. This compensation shall be  
143 paid initially out of the funds appropriated for the maintenance of the Workers' Compensation  
144 Division, but shall be taxed as costs to either party, or both, or otherwise, as the ~~commissioner or~~  
145 compensation judge directs.

146 Where a sum which has been taxed to a party has not been paid, it may be collected in the same  
147 manner as are costs generally.

148

149 **176.421 APPEALS TO WORKERS' COMPENSATION COURT OF APPEALS.**

150 *[See statute for subdivisions 1-3]*

151 Subd. 4. **Service and filing of notice; cost of transcript.**

152 Within the 30-day period for taking an appeal, the appellant shall:

153 (1) serve a copy of the notice of appeal on each adverse party; and

154 (2) pursuant to section 176.285, file the original notice of appeal, with proof of service by admission  
155 or affidavit, with the chief administrative law judge and file a copy with the commissioner.

156 ~~Alternatively, the original may be retained by the filing party and a copy of the original filed by~~  
157 ~~facsimile with the chief administrative law judge and the commissioner. Facsimile filings must be 15~~  
158 ~~pages or less in length. A facsimile appeal received after 4:30 p.m. on a state business day is~~  
159 ~~considered filed on the next state business day.~~

160 In order to defray the cost of the preparation of the record of the proceedings appealed from, each  
161 appellant and cross-appellant shall pay to the commissioner of management and budget, Office of  
162 Administrative Hearings account the sum of \$25. The filing fee must be received by the Office of  
163 Administrative Hearings within ten business days after the end of the appeal period. If the filing fee  
164 is not received within ten days after the appeal period, the appeal is not timely filed.

165 The first party to file an appeal is liable for the original cost of preparation of the transcript. Cross-  
166 appellants or any other persons requesting a copy of the transcript are liable for the cost of the  
167 copy. The chief administrative law judge may require payment for transcription costs to be made in  
168 advance of the transcript preparation. The cost of a transcript prepared by a nongovernmental  
169 source shall be paid directly to that source and shall not exceed the cost that the source would be  
170 able to charge the state for the same service.

171 Upon a showing of cause, the chief administrative law judge may direct that a transcript be  
172 prepared without expense to the party requesting its preparation, in which case the cost of the  
173 transcript shall be paid by the Office of Administrative Hearings.

174 All fees received by the Office of Administrative Hearings for the preparation of the record for  
175 submission to the Workers' Compensation Court of Appeals or for the cost of transcripts prepared  
176 by the office shall be deposited in the Office of Administrative Hearings account in the state  
177 treasury and shall be used solely for the purpose of keeping the record of hearings conducted under  
178 this chapter and the preparation of transcripts of those hearings.

179 *[See statute for subdivisions 5-7]*

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