RULES OF THE
VIRGINIA WORKERS' COMPENSATION COMMISSION

(Amended effective January 4, 2024)

These rules are issued to provide procedures to identify and resolve disputed issues promptly through informal dispute resolution or hearing.

General Provisions:

A. "Act" means the Virginia Workers' Compensation Act.
B. "Commission" means the Virginia Workers' Compensation Commission.
C. "Employer" includes the employer's insurance carrier unless the context otherwise requires.
D. "Signature" is a person's endorsement and may be handwritten, typed, electronic, or any other form allowed by the Code of Virginia.
E. "Jurisdiction Claim Number" is the case number assigned by the Commission and should be on all documents filed with the Commission. This is different than the claim number from an insurance carrier (and is also often referred to as "JCN").

RULE 1. PREHEARING PROCEDURES.

1.1 *Employee's Original Claim for Benefits.* An employee's original claim for benefits shall be filed within the applicable statutes of limitation.

An original claim for benefits shall be in writing, signed, and should set forth:

A. Employee's name and address;
B. Employer's name and address;
C. Date of accident or date of communication of occupational disease;
D. Nature of injury or occupational disease;
E. Benefits sought: temporary total, temporary partial, permanent total, permanent partial or medical benefits; and
F. Periods of disability, if appropriate.

1.2 *Employee's Claim on the Ground of Change in Condition or Other Relief. –*

A. A change in condition claim must be in writing and state the change in condition relied upon and should include all elements for a claim as set forth in Rule 1.1 and should include the Jurisdiction Claim Number or sufficient information to identify the claim(s).

B. Additional compensation may not be awarded more than ninety (90) days before the filing of the claim with the Commission. Requests for cost of living supplements are not subject to this limitation.

1.3 *Dismissal Upon Failure to File Supporting Evidence. –*

If supporting evidence is not filed within ninety (90) days after an employee's claim is filed, it may be dismissed upon motion of the employer after notice by the Commission to the parties.

1.4 *Employer's Application for Hearing. –*

A. An employer's application for hearing shall be in writing and shall state the grounds and the relief sought. At the time the application is filed with the Commission, a copy of the application and supporting documentation shall be sent to the employee and a copy to the employee's attorney, if represented.

B. Each change in condition application filed by an employer under § 65.2-708 of the Code of Virginia shall:

1. Be in writing;
2. Be under oath;
3. State the grounds for relief; and
4. State the date for which compensation was last paid.

C. Compensation shall be paid through the date the application was filed, unless:

1. The application alleges the employee returned to work, in which case payment shall be made to the date of the return.

2. The application alleges a refusal of selective employment or medical attention or examination, in which case payment shall be made to the date of the refusal or fourteen (14) days before filing, whichever is later.

3. The application alleges a failure to cooperate with vocational rehabilitation, in which case payment must be made through the date the application is filed.

4. An employer files successive applications, in which case compensation shall be paid through the date required by the first application. If the first application is rejected, payment shall be made through the date required by the second application.

5. The same application asserts multiple allegations, in which case payment is determined by the allegation that allows the earliest termination date.

D. An employer may file a change in condition application while an award is suspended.

E. No change in condition application under § 65.2-708 of the Code of Virginia shall be accepted unless filed within two (2) years from the date compensation was last paid pursuant to an award.

F. A change in condition application may be accepted and docketed when payment of compensation continues.

1.5 *Acceptance or Rejection of Claim or Application. –*

A. After receipt the Commission shall review the claim or application for compliance with the Workers' Compensation Act and Rules of the Commission.

B. The Commission may order the employer to advise whether the employee's claim is accepted or to provide reasons for denial.

1. Response to the order shall be considered a required report pursuant to § 65.2-902 of the Code of Virginia.

2. The employer's response to this order shall not be considered part of the hearing record.

C. The opposing party shall be permitted up to fifteen (15) days from the date the application was filed to present evidence in opposition to the application.

1. If rejected, the Commission shall inform the parties of the reason(s) for rejection and compensation shall be reinstated immediately.

2. If accepted, the Commission shall inform the parties of the reason(s) for the acceptance and the application shall be referred:

a. For Alternative Dispute Resolution,
b. For decision on the record, or
c. For an evidentiary hearing.

1.6 *Review of Decision Accepting or Rejecting Claim or Application. –*

A. A request for review of a decision accepting or rejecting a change in condition claim or application shall be filed within thirty (30) days from the date of the decision. No oral argument is permitted.

B. The letter requesting a review should specify each determination of fact and law to which exception is taken. A copy of the request shall be sent to the opposing party.

C. The opposing party shall have ten (10) days from the date the review request is filed to provide a written response to the Commission.

D. Only information contained in the file at the time of the original decision along with the review request and any response from the opposing party will be considered. Additional evidence will not be accepted.

E. If rejection of a claim or application is affirmed on review, the penalty and interest provisions of §§ 65.2-524 and 65.2-707 of the Code of Virginia shall apply from the date the application was initially rejected.

1.7 *Compromise Settlement; Lump Sum Payment. –*

A. A proposed compromise settlement shall be submitted to the Commission in the form of a petition setting forth:

1. The matters in controversy;
2. The proposed terms of settlement;
3. The total of medical and indemnity payments made to date of submission and the date through which all medical expenses will be paid;
4. The proposed method of payment;
5. Such other facts as will enable the Commission to determine if approval serves the best interests of the claimant or the dependents; and
6. A statement on the claimant's Medicare status.

B. The petition shall be signed by the claimant and, if represented, his or her attorney, and by the other parties or their attorneys. An endorsing attorney must be licensed to practice in Virginia.

C. The petition shall be accompanied by:

1. A medical report or record stating the claimant's current condition and whether the injuries have stabilized;
2. An informational letter from the claimant or counsel stating whether the claimant is competent to manage the proceeds of the settlement and describing the plan for managing the proceeds;
3. An affidavit sworn under penalty of perjury attesting the claimant's understanding of and voluntary compliance with the terms of the settlement; and
4. A fee statement endorsed by the claimant and the claimant's attorney.

D. 1. If the employee or the dependents are represented by counsel, the claimant's informational letter shall set forth in detail the facts relied upon to show that the best interests of the employee or the dependents will be served thereby.

2. If the employee or the dependents are not represented by counsel, the Commission shall promulgate a form titled "Informational Letter" which must be submitted in order for the Commission to make its determination as to whether the best interests of the employee or dependents will be served thereby.

3. If the proposed settlement contemplates an annuity, the petition shall state that the company issuing the annuity is authorized by the State Corporation Commission to transact the business of insurance in the Commonwealth and that, in case of default, the employer or carrier shall remain responsible for payment.

4. The parties shall submit a proposed Petition and Order, properly endorsed.

1.8 *Discovery.* –

A. Scope and Method. – The scope of discovery shall extend only to matters which are relevant to issues pending before the Commission and which are not privileged. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may be obtained by oral or written deposition, interrogatories to parties, production of documents or things, requests for admission, inspection of premises, or other means of inquiry approved by the Commission.

B. Limiting Discovery. – The Commission may limit the frequency or extent of discovery if it is unreasonably cumulative, duplicative, expensive or if the request was not timely made. The Commission will consider the nature and importance of the contested issues, limitations on the parties' resources and whether the information may be obtained more conveniently and economically from another source.

C. Stipulation to Discovery. – Except as specifically provided by these rules, the parties may by written stipulation agree to other methods of discovery or provide that depositions may be taken before any person, at any time or place, upon any notice and in any manner and when so taken may be used like other depositions.

D. Supplementation of Responses. – A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement a response to include information thereafter acquired unless the responding party learns that any such response is in some material respect incomplete or incorrect and if the additional or corrected information has not been otherwise timely made known to the other parties during the discovery process or in writing.

E. Protective Order. – Upon good cause shown, the Commission may enter an order limiting discovery to protect a party, a witness, or other person from embarrassment, oppression, or undue burden or expense.

F. Subpoenas. –

1. Subpoenas may be issued by the Commission or by an attorney licensed to practice in the Commonwealth of Virginia. Unrepresented workers or employers must request subpoenas through the Commission.

2. By the Commission. A party requesting a subpoena for witness or subpoena duces tecum shall prepare the subpoena and submit to the Commission for certification. A check or money order for service fee, payable to the appropriate sheriff's office, shall accompany the request. The Commission shall forward the subpoena and service fee to the designated sheriff's office, unless requested to do otherwise.

3. By a Virginia Attorney. A subpoena may be issued by an active licensed member of the Virginia State Bar as an officer of the Court. An attorney-issued subpoena must be signed as a pleading and contain the attorney's address, telephone number, and Virginia State Bar identification number.

4. Subpoenas for Witnesses. Subpoenas shall be filed at least ten (10) days prior to hearing or deposition, unless good cause is shown.

5. Subpoenas Duces Tecum. Requests to the Commission for subpoena duces tecum shall be filed with sufficient time for response before a hearing and the subpoena shall describe with particularity the materiality of the documents or articles to be produced. All such subpoenas are returnable fourteen (14) days following service of process.

6. Service. All requests for subpoenas shall be served on each counsel of record, or the unrepresented party, by delivering or mailing a copy to each on or before the day of filing with the clerk or issuance by the attorney. Returns from service shall be filed with the Commission which shall have appended either acceptance of service or a certificate that copies were served in accordance with the law, showing the date of delivery or mailing.

7. Objection to subpoenas. Any party or the person to whom the subpoena is directed may serve on the party issuing the subpoena a written objection setting forth any grounds upon which such production or appearance should not be had. If an objection is made, the party issuing the subpoena shall not be entitled to the request for production, except pursuant to an Order of the Commission in which the case is pending. If an objection is made, the party issuing the subpoena may, upon notice to the person to whom the subpoena is directed, move for an Order to compel the production. The Commission may quash, modify, or sustain the subpoena.

G. Depositions. – After a claim or application has been filed, any party may take the testimony of any person, including a party, by deposition upon oral examination or upon written questions.

The attendance of witnesses may be compelled by subpoena. Depositions shall be taken in accordance with the requirements and limitations of the Rules of the Supreme Court of Virginia governing actions at law unless the parties stipulate to discovery as set forth in Rule 1.8(C), supra.

For good cause shown the deposition of an attending panel physician may be ordered to be taken at the expense of the employer if the physician has not prepared and completed an Attending Physician's Report on the Commission's prescribed form or has not otherwise prepared written reports which are sufficient to answer questions concerning injury, diagnosis, causation, disability and other matters not stipulated and deemed by the Commission to be material to a claim or to a defense. The expenses of such depositions are subject to the approval of the Commission.

All depositions of medical providers, if transcribed, shall be filed with the Commission.

Depositions of other parties and witnesses shall not be filed with the Commission or be made a part of the record, except upon motion of a party for good cause shown or as ordered by the Commission.

H. Interrogatories and Requests for Production of Documents to Parties. – After a claim or application has been filed, or an award entered, interrogatories and requests for production of documents limited to contested issues may be served by one party on another party, more than twenty-one (21) days before hearing without prior Commission approval, or at any time upon motion to the Commission for good cause shown.

Answers under oath to each interrogatory and responses to document request are to be served within twenty-one (21) days after service, unless otherwise agreed by the parties. Objections must be included with answers. If the party serving the interrogatories and/or requests for production of documents agrees to extend the period within which to file answers under oath, the filing of objections is likewise extended until the new date the answers are due. If there is objection to an interrogatory or document request and the party serving the interrogatory or document request moves the Commission for relief, a Deputy Commissioner shall enter an order resolving the issue, after giving the parties an opportunity to state their positions in writing.

No party shall serve upon any other party, at one time or cumulatively, more than twenty (20) interrogatories, and thirty (30) requests for production of documents, including all parts and subparts, without leave of the Commission for good cause shown. Leave shall be timely requested in writing. Relevant interrogatories should be served promptly upon commencement of a contested claim.

Objections by any party to the propounding of more than twenty (20) interrogatories or thirty (30) requests for production of documents, without leave of the Commission for good cause shown, shall be filed with the answers to the interrogatories and document requests at which time the Deputy Commissioner shall enter an Order resolving the issue, after giving the parties an opportunity to state their position in writing.

Interrogatories or answers shall not be filed with the Commission unless they are the subject of a motion.

I. Request for Admission. – After a claim or application has been filed, or an Award Order entered, a party may serve upon any other party a written request for the admission of the truth of any material matter.

Each request must be numbered and set forth separately. Copies of documents shall be served with the request unless they have been furnished or made available for inspection and copying.

An admission under this rule may be used only for providing evidence in the proceeding for which the request was made and shall not have force or effect with respect to any other claim or proceeding. An admission or denial must be offered in evidence to be made part of the record. A party is required to respond within twenty-one (21) days or be subject to compliance under Rule 1.8(K) or sanctions under Rule 1.12.

J. Production of Wage Information. – If a claim seeking indemnity is filed, the employer shall timely file a fully completed wage chart on the form prescribed by the Commission showing all

wages earned by an employee in its employment for the term of employment, not to exceed one year before the date of injury.

If an employee has earned wages in more than one employment, the employee shall have responsibility for filing information concerning wages earned in an employment other than the one in which claim for injury is made.

K. Failure to Make Discovery; to Produce Documentary Evidence; to Comply with Request for Admission. – Following a reasonable attempt to resolve a discovery dispute by the parties and/or their counsel, a party, upon reasonable notice to other parties and all persons affected thereby, may request an order compelling discovery as follows:

A timely request in writing in the form of a motion to compel discovery may be made to the Commission or to such regional office of the Commission where an application is assigned to be heard.

Failure of a deponent to appear or to testify; failure of a party on whom interrogatories have been served to answer; failure of a party or other person to respond to a subpoena for production of documents or other materials; or failure to respond to a request for admission shall be the basis for an order addressing a request to compel compliance or for sanctions, or both.

1.9 *Alternative Dispute Resolution.* –

At the request of either party, or at the Commission's direction, contested claims and applications for hearing will be evaluated and may be referred for alternative dispute resolution. When it appears that a claim may be resolved by alternative dispute resolution, the Commission will refer the case to the Alternative Dispute Resolution department, which may schedule the parties for personal appearance or telephone conference. The Commission will attempt to identify disputed issues and to bring about resolution through agreement. Parties need not be represented by counsel. If agreement is reached, it shall be reduced to writing and shall be binding.

Examples of limited issues often subject to prompt resolution are:

A. Average weekly wage;
B. Closed periods of disability;
C. Change in treating physician;
D. Contested medical issues including bills;
E. Permanent disability ratings;
F. Return to work;
G. Failure to report incarceration, change in address or return to work;
H. Attorney fee disputes.

If there is no agreement between the parties and there is no material fact in dispute, issues may be referred for decision on the record. If it is determined that material issues of fact are in dispute or that oral testimony will be required, the case will be referred to the docket for evidentiary hearing.

1.10 *Willful Misconduct. –*

If the employer intends to rely upon a defense under § 65.2-306 of the Act, it shall give to the employee and file with the Commission no less than fifteen (15) days prior to the hearing, a notice of its intent to make such defense together with a statement of the particular act relied upon as showing willful misconduct.

1.11 *Prehearing Statement. –*

The Commission may require a prehearing statement by the parties as to the particulars of a claim and the grounds of defense.

1.12 *Enforcement of the Act and Rules of the Commission; Sanctions. –*

In addition to the statutory authority of the Commission to levy fines, to assess attorney fees and punish contempt, the Commission may enforce its rules and the provisions of the Workers' Compensation Act upon motion of a party, or upon its own motion, after giving a party or other interested person the opportunity to be heard, by imposition of the following sanctions:

A. Rejection of a pleading including, but not limited to, all or part of a claim or application and/or grounds of defense;
B. Exclusion of evidence from the record;
C. Dismissal of a claim or application.

1.13 *Motions Practice. –*

No motion outside of a live evidentiary hearing shall be filed with the Commission for any purpose unless the moving party or their counsel has made a reasonable effort to confer and resolve the matter with the opposing party. Any motion filed shall be accompanied by a certification that the movant has in good faith conferred or attempted to confer with the other affected parties in an effort to resolve the dispute without Commission action. Such motion shall be in writing and the Commission shall give the opposing side three (3) business days to respond before ruling on the motion, except for those motions to compel initial discovery responses, or, unless on the face of the motion, it appears that exigent or emergency circumstances call for an earlier decision. In such exigent circumstances, the Commission may make a good faith effort to schedule a telephone conference to hear from both sides before ruling, or may proceed with the ruling.

RULE 2. HEARING PROCEDURES. –

At the request of either party, or at the Commission's direction, contested issues not resolved informally through prehearing procedures or Alternative Dispute Resolution will be referred for decision on the record or evidentiary hearing.

2.1 *Decision on the Record. –*

When it appears that there is no material fact in dispute as to any contested issue, determination will proceed on the record. After each party has been given the opportunity to file a written statement of the evidence supporting a claim or defense, the Commission shall enter a decision on the record.

A. Written Statements. – When the Commission determines that decision on the record is appropriate, the applicant party shall be given fifteen (15) days from the date of the Order to submit written statements and evidence. The responding party shall be given an additional fifteen (15) days (thirty (30) days from the date of the Order) to respond with a written statement and evidence in reply. For good cause shown additional time may be allowed. Copies of all written statements and evidence shall be filed to the Commission and served on all parties.

B. Review. – Request for review of decision on the record shall proceed under § 65.2- 705 of the Code of Virginia and Rule 3.

2.2 *Evidentiary Hearing. –*

An evidentiary hearing by the Commission shall be conducted as a judicial proceeding. All witnesses shall testify under oath and a record of the proceeding shall be made. Except for rules which the Commission promulgates, it is not bound by statutory or common law rules of pleading or evidence nor by technical rules of practice.

The Commission will take evidence at hearing and make inquiry into the questions at issue to determine the substantial rights of the parties, and to this end hearsay evidence may be received.

A. Continuances. – The parties should be prepared to present evidence at the time and place scheduled for hearing. A motion to continue will be granted at the discretion of the Commission upon a showing of good cause.

B. Evidence. –

1. Stipulations to agreed facts shall be included in the record. Each exhibit offered shall be marked and identified, and the record shall show whether it was admitted in evidence.

2. Reports and records, and depositions of health care providers, and reports of medical care directed by physicians shall be admitted in evidence. Upon timely motion, any party has the right to cross-examine the source of a medical document offered for admission in evidence.

3. The parties by the beginning of the hearing shall specifically designate, with a chronological table of contents, by author, deponent, and date, medical reports, or records to be received in evidence. Depositions will only be made part of the record pursuant to Rule 1.8(G). The requirements of this provision may be modified or waived for pro se litigants.

2.3 *Expedited Hearing. –*

An employee may request an expedited hearing before the Commission when the employer has submitted an Application for Hearing pursuant to Rule 1.4 and probable cause has been found to suspend benefits pending a hearing on the matter. An employee may also seek expedited determination of any disputed claim arising after the initial compensability of the accident has been determined by the Commission.

A. Written Request. – An employee seeking an expedited hearing must file a written request with the Clerk's office, and a copy of the request shall be sent to the employer. The request must include, by way of description, attachment, or enclosure, evidence sufficient to find that, without an expedited proceeding to determine the merits of the dispute, the employee will be caused to suffer severe economic hardship. What constitutes severe economic hardship will be determined by the Commission on a case-by-case basis. A copy of the employee's accepted request will be sent to the employer's counsel of record, the designated third-party administrator and the carrier, along with a Notice of Request For Expedited Hearing.

B. Loss of Income. – When the employee alleges that he/she is not receiving compensation benefits, and is unemployed, unable to work, or only partially employed because of an injury compensable under the Act, the employee must establish that failure to grant an expedited hearing will result in severe, immediate economic hardship. In this regard, the Commission will consider, but is not limited in considering the following evidence:

1. Whether, and to what extent, the employee is presently employed, and what other sources of income are available to support the employee;

2. Whether the employee has dependents for whom the employee's wages, salary and/or other income were the sole or primary source of financial support;

3. Whether the employee has received notices of imminent or threatened foreclosure or eviction actions, or the employee is in a state of homelessness;

4. Whether the employee has received notices of imminent repossession of personal vehicles necessary for employment or medical treatment visits;

5. Whether the employee's financial difficulties were caused by the termination of workers' compensation benefits by prior adjudication, caused by other circumstances, or both; and

6. Any other evidence demonstrating that the employee's immediate ability to provide food, clothing and shelter will be threatened by failure to grant an expedited hearing.

7. Notwithstanding the above, upon the employee's return to work with the employer at a wage less than the preinjury wage while on a current award for Temporary Total benefits, if, within twenty (20) days after said return, the employer has not either presented agreed forms for entry of an award for Temporary Partial benefits for same or paid an agreed amount voluntarily pending entry of an award, the employee may request an expedited hearing. Upon such request, there will be a presumption of entitlement to such a hearing when in fairness to both the employer

and employee the hearing can be limited to that issue and the Commission shall also promptly schedule a conference to discuss both a hearing date for same and/or whether the matter can be resolved without a hearing.

C. Medical Expenses. – When the employee seeks an expedited hearing, asserting that authorization of, or payment for recommended medical treatment has been denied by the employer or insurer, the employee must establish that failure to grant an expedited hearing will result in severe economic hardship. In this regard, the Commission will consider, but is not limited in considering the following evidence:

1. The general nature of the employee's injuries;

2. Whether, if authorization is being sought for recommended treatment not already obtained, the employee's physician has stated that the procedure must be performed on an emergent basis, and failure to do so will threaten the employee's life or result in immediate and severe deterioration of the employee's physical or mental condition;

3. Whether, if payment or reimbursement for medical expenses already incurred is being sought, reasonable and necessary ongoing medical treatment will be withheld for failure to pay for prior medical treatment, and that the withholding of such treatment will threaten the employee's life or result in immediate and severe deterioration of the employee's physical or mental condition;

4. The cost of the medical treatment in dispute, and the employee's ability to pay for it; and

5. Any other evidence demonstrating that failure to grant an expedited hearing on this issue will result in severe economic hardship.

D. Employer Response. – Upon issuance of the Commission's Notice of Request for Expedited Hearing, the employer shall have fourteen (14) days to investigate the basis for the employee's expedited hearing request. Prior to, or at the expiration of the fourteenth day, the employer shall file with the Commission, by hand-delivery, electronic filing or certified mail, a written statement indicating whether the employer will or will not agree to the employee's request for expedited hearing. If the employer will not agree to proceed on an expedited basis, it must state, with specificity, the basis for its inability to proceed pursuant to an expedited hearing schedule. Filing shall be effective upon receipt by the Commission or its agent, or by placing the statement in certified mail.

E. Informal Conference. – Once the Commission has received the employer's response statement, or fourteen (14) days pass without a filed response from the employer, the Commission shall schedule, as expeditiously as possible, an informal conference with the parties, whether in person, by teleconference or by other electronic transmission. With regard to expedited claims for payment of medical expenses pursuant to Rule 2.2(D), no informal conference will be scheduled until the employee submits medical evidence to the employer and the Commission supporting both the underlying claim and the necessity of expedited proceedings. During the informal conference, the Commission will discuss issues relevant to the granting or denial of an expedited hearing

including, but not limited to, discovery between the parties, the timing and scheduling of depositions and the parties' ability to secure other relevant evidence in an expedited manner. The Commission will discuss the issues raised by the claim, and try to limit the scope of any matter ultimately referred to the expedited hearing docket by facilitating agreements between the parties. The Commission will confer with the parties about scheduling a hearing date at the informal conference or by teleconference after the informal conference.

F. Granting or Denial of Expedited Hearing. – During the informal conference, or within seven (7) days of its completion, the Commission will determine whether the claim underlying the request for expedited hearing is appropriate for the expedited hearing docket. If the request for an expedited hearing is granted, the Commission will advise the parties of this decision during the informal conference, or in writing within seven (7) days. If the Commission determines that the matter is not appropriate for the expedited docket, the parties will be advised of the Commission's determination, and the matter will be referred for regular processing.

G. Scheduling and Continuances. – The matter will be set for a hearing no less than ten (10) days, and no more than twenty-eight (28) days after the expedited hearing was granted. Ordinarily, once the matter is set down for an expedited hearing, neither party will be granted a continuance. A continuance will be granted only for good cause shown, involving exceptional circumstances beyond the control of the party, or the party's attorney. Any claim pending on the expedited docket that is continued or non-suited at the request of the employee will be removed from the expedited docket, and shall not be reinstated for expedited proceedings.

H. Closing the Record. – The record shall close at the end of the expedited hearing unless, for good cause shown, one or both parties are unable to present necessary medical or factual evidence.

I. Decision. – The Deputy Commissioner hearing the case will issue an opinion within fourteen (14) days after the record closes in an expedited hearing proceeding.

J. Expedited Review. – Either party may seek an expedited Review of the decision to grant or deny an expedited hearing. Parties seeking expedited Review must file a written request within seven (7) days of the date of the decision to grant or deny an expedited hearing. The written request must include a statement explaining the grounds for review, and must enclose all information the party believes is necessary for consideration of the request. A copy of the Request for Expedited Review shall be furnished to the opposing party. The Commission shall provide Notice of the request for expedited review within three (3) days of its receipt. The opposing party shall have seven (7) days from the date of the Commission's Notice to file a written statement addressing the merits of the review request, and enclosing all information it believes is necessary for consideration on review. The Commission shall review the decision to grant or deny an expedited hearing, and will issue a decision by Order within seven (7) days.

K. Review After Expedited Hearing. – Review of a Deputy Commissioner's decision following an expedited hearing shall proceed according to the provisions of Rule 3.1 and § 65.2-705 of the Code of Virginia.

2.4 *Video Hearings.* –

A. Pre-filing of Exhibits and Medical Records Designations Mandatory. –

1. Filing deadline: A copy of each party's medical designation, as well as all proposed exhibits, must be filed no later than seven (7) calendar days before the scheduled hearing. The Medical Records Designation must be filed in accordance with the Commission's July 1, 2013 Order Clarifying Commission Rules 2.2 (B)(3) and 4.2. A copy of this Order may be found at: http://www.workcomp.virginia.gov/documents/order-regarding-medical-records-and-designations. Any other proposed exhibits must be filed with a numerical table of contents which must include title, author, and date. All proposed exhibits must be preceded by a separator page, and numbered to identify the following document in accordance with the table of contents.

2. Objections: Objections to any item in the medical designation or to a proposed exhibit must be filed with the Commission by any opposing party no later than four (4) calendar days prior to the scheduled hearing.

3. Late filings: Any medical record or exhibit submitted less than seven (7) calendar days before the hearing, other than a response to a record timely submitted under this Order for which leave is granted to file a response, will be excluded from evidence or may serve as a basis for the continuance of the hearing, in the sole discretion of the Deputy Commissioner.

4. Copies required for witnesses: If a party anticipates questioning an adverse party or witness about a particular exhibit or medical record, identical electronic and paper copies of the exhibit must be sent by the questioning party to the adverse party or the witness so the party or witness may view the documents while testifying. No other written explanatory or instructive materials may accompany the documents. Failure to provide the witness with such copies will be grounds for excluding the anticipated testimony from the record. It is not considered an improper *ex parte* contact for a party to provide to the adverse party or witness a particular exhibit or medical record with an accompanying cover letter as long as no additional instructive or explanatory materials are provided. A copy of the cover letter must be filed with the Commission. Alternatively, parties may agree which party will produce exhibits and medical records to an adverse party or witness. Under this provision, it is expected that parties will send exhibits and medical records to their own witnesses.

B. Oaths required. – Witnesses will be sworn remotely and all witnesses must aver prior to their testimony that they shall not receive any undisclosed or other assistance from any source while testifying.

C. Witnesses. – Parties must provide the Commission with the name, telephone number, and, if possible, email address of all witnesses they expect to call to testify no less than seven (7) calendar days prior to the scheduled hearing. Further, parties who receive a WebEx Meeting invitation to the hearing from the Commission must forward that invitation to any witnesses they expect to call to testify to allow for ease of connecting to the video hearing. Failure to do so may result in exclusion of witness testimony, at the discretion of the Deputy Commissioner. Continuances will not be granted solely because a witness fails to appear because the calling party failed to provide this information, subject to the discretion of the Deputy Commissioner. Nothing

in this Order shall preclude the parties from obtaining evidence by de bene esse deposition or as otherwise permitted by the Commission.

D. Minimum Technical Requirements. – Parties and witnesses attending the video hearing must participate remotely using a PC, laptop, tablet or smartphone equipped with a video camera and microphone. All parties and witnesses should use up-to-date browsers and operating systems with a reliable high-speed internet connection and participation in the hearing will be subject to such other technical requirements as are published from time to time. Parties and witnesses are strongly encouraged to test their systems as instructed in advance of the hearing date. Parties must notify the Commission as soon as possible, and not less than fourteen (14) days prior to the hearing without good cause being shown, if they or any of their witnesses cannot meet the minimum requirements for participation in the video hearing, so that alternate arrangements for the participation of such attendees may be arranged. Deputy Commissioners have broad discretion to continue or cancel the hearing if attendees cannot meet the minimum technical requirements for participants.

E. Recording Prohibited. – Parties and witnesses attending the video hearing may not record the hearing by any means except upon advance leave granted by the Deputy Commissioner. The Commission's recording of the hearing will be the sole official record of the proceedings.

F. Proper Decorum Required. – Parties and witnesses attending a video hearing are attending a formal judicial proceeding and must dress appropriately just as if personally appearing in court. All attendees must participate from a quiet location free of distractions. Deputy Commissioners have broad discretion to continue or cancel hearings or exclude witnesses if noise or extraneous activity disrupts the proceedings and to impose contempt sanctions for inappropriate conduct where necessary.

RULE 3. POSTHEARING PROCEDURES. –

3.1 *Request for Review. –*

A request for review of a decision, order, or award of the Commission shall be filed by a party in writing with the Clerk of the Commission within thirty (30) days of the date of such decision, order, or award.

A request for review should assign as error specific findings of fact and conclusions of law. Failure of a party to assign any specific error in its request for review may be deemed by the Commission to be a waiver of the party's right to consideration of that error. The Commission may, however, on its own motion, address any error and correct any decision on review if such action is considered to be necessary for just determination of the issues.

A copy of the request for review shall be furnished to the opposing party.

3.2 *Written Statements. –*

The Commission will advise the parties of the schedule for filing written statements supporting their respective positions. The statements shall address all errors assigned, with particular reference to those portions of the record which support a party's position. No schedules for written statements shall be issued in connection with interlocutory appeals, appeals of award orders issued pursuant to agreements or appeals of decisions accepting or rejecting a change in condition claim or application. However, where a decision accepting or rejecting a change in condition claim or application has been appealed, the non-appealing party shall have ten (10) days from the date the Request for Review was filed to provide a written response.

3.3 *Additional Testimony. –*

No new evidence may be introduced by a party at the time of review except upon agreement of the parties. A petition to reopen or receive after-discovered evidence may be considered only upon request for review.

A petition on review will be favorably acted upon only when the party requesting the same is able to conform to the rules prevailing in the courts of this State for the introduction of after-discovered evidence.

3.4 *Oral Argument. –*

A party may request oral argument at the time of the request for review and the Commission may grant it subject to whatever terms and conditions the Commissioners apply to the case. Otherwise, the review shall proceed on the record.

RULE 4. FILING DOCUMENTS. –

4.1 *Agreements. –*

All agreements as to payment of compensation shall be reduced to writing by the employer and promptly filed with the Commission. If the claim is denied, the employer shall notify the employee and the Commission promptly in writing.

If an agreement is offered to a claimant by the carrier and it is signed and returned unchanged to the carrier within fourteen (14) days, then the carrier must either reject the agreement in writing or sign and file the agreement with the Commission within fourteen (14) days of its receipt or be subject to the penalties from Code § 65.2-701(B).

4.2 *Medical Reports. –*

Each party shall promptly provide the other parties with copies of any medical records they receive as they receive them. Copies may be provided electronically, by regular mail or by facsimile transmission. Unless otherwise directed by the Commission or these Rules, the parties shall not file medical records with the Commission until a hearing request is filed. The requesting

party shall promptly file medical records supporting the request, if applicable. After a hearing request has been filed, the parties shall file with the Commission only medical records that are related to the hearing request.

Without leave of the Commission, the parties shall not file with the Commission any of the following medical records:

A. Laboratory reports;
B. Routine nursing notes;
C. X-rays or other diagnostic imagery films (except in pulmonary cases);
D. Physical therapy records;
E. Routine hospital patient observation notes; and
F. Health provider bills and/or statements of account (unless the claim is brought by a health care provider or the application seeks payment of specific medical expenses).

Medical records filed in accordance with this rule shall be filed upon receipt by the party filing them, and they are required reports subject to the provisions of Code § 65.2-902.

A party is not required to file copies of medical records that another party has already filed.

A health care provider attending an injured employee shall, upon request, furnish a copy of such medical reports, at no cost except for a nominal copying charge.

A health care provider is entitled to a reasonable fee for preparation of a narrative report written in response to a request from a party if the report requires significant professional research or preparation.

RULE 5. A COST OF MEDICAL SERVICES. –

A claimant under an award shall not be liable for the cost of medical services payable under the Act.

RULE 6. AWARD OF ATTORNEY'S FEES UNDER § 65.2-714 OF THE CODE OF VIRGINIA. –

6.1 *Agreement Between Parties as to a Fee.* –

An attorney's fee shall be awarded from sums recovered for the benefit of a third-party insurance carrier or a health care provider pursuant to § 65.2-714 of the Code of Virginia, if agreement is reached and an order, endorsed by counsel and the carrier or provider, identifying the amount of medical charges recovered and the agreed fee, is submitted to the Commission.

6.2 *Parties Fail to Agree on a Fee.* –

A. An attorney's fee shall be awarded from sums recovered for the benefit of a third-party insurance carrier or a health care provider pursuant to § 65.2-714 of the Code of Virginia, if the

parties cannot agree, upon filing of a statement including the name and address of each carrier or provider from whom the fee is requested, the amount of the medical charge recovered for each carrier or provider and the amount of the fee requested, and certification that:

1. The claim was contested or that the defense was abandoned;
2. Prior to the filing of a request with the Commission, the attorney and carrier or provider made a reasonable good faith effort to resolve the matter;
3. The insurance carrier or health care provider was given reasonable notice that a motion for an award of such fee would be made; and
4. A copy of the motion has been sent to each carrier and health care provider identified.

B. If the request is referred to the evidentiary hearing docket, counsel must provide notice of the hearing to each carrier or provider. The notice must state the amount of the medical charge recovered for the carrier or provider, the amount of the attorney's fee requested and the time and place of the hearing.

RULE 7. EMPLOYER RESPONSIBILITIES. –

7.1 *Proof of Insurance Coverage.* –

Every employer subject to the Act shall file with the Commission proof of compliance with the insurance provisions (§§ 65.2-800 and 65.2-801) of the Act upon such forms as may be required by the Commission.

7.2 *Posting Notices.* –

Every employer subject to the Act shall post and keep posted, conspicuously, in the plant, shop, or place of business at a location frequented by employees, notice of compliance with the insurance provisions of the Act upon such forms as may be required by the Commission. The Commission will supply employers with printed notices upon request. Failure by an employer to give such notice to an employee may constitute waiver of the notice defense pursuant to § 65.2-600 of the Code of Virginia.

RULE 8. SELF-INSURANCE. –

8.1 *The Commonwealth of Virginia, Its Municipalities and Political Subdivisions.* –

Permission for self-insurance will be granted by the Commission to the Commonwealth and its political subdivisions and to Virginia municipalities upon application for certification, without submission of proof of financial ability and without deposit of bond or other security. However, the premium tax provided for in § 65.2-1006 of the Act shall be paid.

8.2 *Confidentiality of Self-Insurer Information.* –

No record of any information concerning the solvency and financial ability of any employer acquired by a Commissioner or his agent by virtue of his powers under the Act shall be subject to

inspection; nor shall any information in any way acquired for such purposes by virtue of such powers be divulged by a Commissioner or his agent, unless by order of the court, so long as said employer shall continue solvent and the compensation legally due from him, in accordance with provisions of the Act, shall continue to be paid.

RULE 9. PAYMENT OF COMPENSATION. –

9.1 *Waiting Period.* –

If the employee is not paid wages for the entire day on which the injury occurred, the seven-day waiting period prescribed by the Act shall include the day of injury regardless of the hour of the injury.

All days or parts of days when the injured employee is unable to earn a full day's wages, or is not paid a full day's wages, due to injury, shall be counted in computing the waiting period even though the days may not be consecutive.

9.2 *Direct Payment.* –

All compensation due an injured employee or compensation awarded on account of death under the Act must be paid directly to the beneficiary in accordance with the award. This ruling applies whether or not the employee is represented.

Compensation awarded shall be paid promptly and in strict accordance with the award issued by the Commission. When an award provides for an attorney fee, the employer shall pay the fee directly to the attorney unless there is alternative provision in the award.

RULE 10. X-RAY EVIDENCE FOR COAL WORKERS' PNEUMOCONIOSIS CLAIMS. –

10.1 *Limitation on X-ray Submissions.* –

In any claim for first, second, or third stage pneumoconiosis under § 65.2-504 of the Code of Virginia, the employer and the employee each shall be limited to submission of not more than three (3) medical interpretations (readings) of x-ray evidence without regard to the number of x-rays. For good cause shown, additional interpretations may be received as evidence if deemed necessary by the Commission.

10.2 *Reading by Pulmonary Committee.* –

Any party to a contested claim, or the parties upon agreement, may submit the x-ray evidence to the Commission for interpretation by the Pulmonary Committee. If a party agrees to accept the x-ray reading of the Pulmonary Committee as the binding classification, the costs of evaluation shall be borne by the Commission.

10.3 *Appointment of Pulmonary Committee.* –

The Commission shall appoint a Pulmonary Committee to be composed of at least three (3) qualified physicians certified as B readers under standards promulgated by the International Labour Organization (ILO).

RULE 11. PNEUMOCONIOSIS TABLE. –

A table for conversion of medically-classified categories of pneumoconiosis (under ILO standards) into stages of pneumoconiosis shall be promulgated by the Commission and information from the table shall be the basis for determining the amount of compensation due, if any, under § 65.2-504 of the Code of Virginia for coal workers' pneumoconiosis and under § 65.2-503 of the Code of Virginia for other pneumoconioses.

TABLE

Medical interpretations of radiographic evidence, for the purpose of conversion to stages under this table, shall be based upon the ILO 1980 International Classification of Radiographs of the Pneumoconioses.

First Stage:	Category	1 and 2 p,s
	"	1 q,t
Second Stage:	Category	3 p,s
	"	2 and 3 q,t
	"	1, 2 and 3 r,u
Third Stage:	Category	A, B and C

RULE 12. HEARING LOSS TABLE. –

A table for determining compensable percentage of hearing loss shall be promulgated by the Commission.

All determinations are to be made (i) without the use of a hearing aid and (ii) with a pure-tone audiometer by air conduction alone.

Hearing loss in decibels is to be recorded at 500, 1,000, 2,000 and 3,000 cycles per second. The audiometer must be calibrated to the ANSI 1969 standard.

The average decibel loss is to be translated into percentage of compensable hearing loss of each ear according to the following table:

Average Decibel Loss	Percent of Compensable Hearing Loss	Average Decibel Loss	Percent of Compensable Hearing Loss
27	0.8	60	55.0

28	2.2	61	56.7
29	3.6	62	58.3
30	5.0	63	60.0
31	6.7	64	61.7
32	8.3	65	63.3
33	10.0	66	65.0
34	11.7	67	66.7
35	13.3	68	68.3
36	15.0	69	70.0
37	16.7	70	71.7
38	18.3	71	73.3
39	20.0	72	75.0
40	21.7	73	76.4
41	23.3	74	77.8
42	25.0	75	79.2
43	26.7	76	80.6
44	28.3	77	82.0
45	30.0	78	83.4
46	31.7	79	84.8
47	33.3	80	86.2
48	35.0	81	87.6
49	36.7	82	89.0
50	38.3	83	90.4

51	40.0	84	91.8
52	41.7	85	93.2
53	43.3	86	94.6
54	45.0	87	96.0
55	46.7	88	97.4
56	48.3	89	98.8
57	50.0	90	
58	51.7	and	
59	53.3	over	100

No allowance for presbycusis is to be made.

RULE 13. TABLE OF PERCENTAGE OF LOSS OF VISUAL ACUITY. –

SNELLEN CHART

Snellen Chart Readings	Percentage of Loss of Visual Acuity
20/20	0
20/25	5
20/30	10
20/40	20
20/50	25
20/60	33 1/2
20/70	40
20/80	50
20/90	62 1/2

20/100	75
20/110	80
20/120	85
20/130	87
20/140	89
20/150	91
20/160	93
20/170	95
20/180	97
20/190	99
20/200	100

Any other deviation from normal vision caused by the injury shall be considered.