

In accordance with Management Directive 1996-01, the Department of Labor and Industry is soliciting stakeholder comments on a proposed change to the Workers' Compensation Appeal Board's (WCAB) rules of procedure with respect to the scheduling of oral argument and submission of briefs.

**PROPOSAL:** Amend the WCAB regulations to:

- Require both parties' briefs to be submitted before making a decision to schedule oral argument and use the briefs, not oral argument, to start the internal appellate review process.
- Make oral arguments discretionary with the WCAB where necessary to address novel or complex legal issues, as is the practice in other Commonwealth appellate courts.

**RATIONALE:** By regulation, the WCAB schedules oral arguments in every appeal—regardless of the merits of the appeal—unless all parties waive argument. Because no action is taken on an appeal until after oral argument is scheduled, the automatic scheduling of oral arguments adds an average of 81 days of delay to the WCAB's issuance of a decision. Appeals may sit for far longer awaiting oral argument in less populous locations where arguments are scheduled less frequently.

Oral argument is held before a "cold bench," that is, before the parties' briefs are received or reviewed by the WCAB. These oral arguments are very short, not transcribed, and are held before the WCAB has the opportunity to become conversant with the facts and issues in the case. As such, their contribution to the decision-making process is minimal but the automatic scheduling of oral argument in every case adds time, administrative expense, and litigation costs by requiring counsel to appear. Travel by the WCAB members also limits the time available to the WCAB to review and circulate decisions.

The proposed changes would expedite the determination of appeals filed with the WCAB by initiating review once briefing is completed (or waived), thus eliminating the delay resulting from automatic scheduling of oral argument and subsequent briefing. The changes will authorize the WCAB to schedule oral arguments when, in the discretion of the WCAB, the novelty or complexity of the appellate issue(s) warrant colloquy with the parties' counsel.

#### **HOW TO SUBMIT COMMENTS:**

Please e-mail your comments to the following account: [RA-LIWCREGCOMMENTS@pa.gov](mailto:RA-LIWCREGCOMMENTS@pa.gov).

If you prefer to submit comments by mail, please send them to:

Steven Loux, Esq.  
Secretary, Workers' Compensation Appeal Board  
Department of Labor and Industry  
Capital Associates Building – 3rd Floor South  
901 North 7th Street  
Harrisburg, PA 17102-1412

**PLEASE SUBMIT YOUR COMMENTS BY OCTOBER 20, 2017.** You will also have the opportunity to provide input during the public comment period when the Department publishes the proposed regulations in compliance with the Regulatory Review Act and the Commonwealth Documents Law.