

Chapter 491-04 WAC

FILING APPEALS

NEW SECTION

WAC 491-04-010 Purpose. This chapter sets forth the steps that are necessary to file an appeal of a local board or state board staff decision.

NEW SECTION

WAC 491-04-020 Who is allowed to file a request for an appeal of a decision? You are allowed to file a request for an appeal if you are;

- (1) The benefit recipient directly affected by the decision; or
- (2) Legal counsel for the benefit recipient directly affected by the decision.

WAC 491-04-030 What is the time limitation for filing a request for an appeal? All requests must be filed with the state board within ninety (90) calendar days of the decision mailing date.

WAC 491-04-040 Am I required to have a legal counsel? An attorney may represent you, but one is not required. The appeals process can be complicated and is conducted more like a court trial, so this should be considered when deciding to represent yourself.

WAC 491-04-050 Where are requests for an appeal filed? All requests must be made in writing with the state board at its office in Olympia, Washington.

WAC 491-04-060 What methods of filing are acceptable? Unless otherwise provided by statute or these rules, any written communication may be filed with the board personally, by mail, by facsimile, or by email before or on the date such filing is due. Any notices of appeal that fail to comply with the board's filing requirements may be rejected by the board. The board must notify the filing party of the rejection.

(1) **Filing personally.** To file written communication personally, the documents must be delivered to an employee of the board at the board's office in Olympia, Washington during regular office hours.

(2) **Filing by mail.** To file written communication by mail, the documentation must be deposited in the United States Mail, properly addressed to the board's offices in Olympia, Washington, and with all postage

prepaid. Where a statute or rule imposes a time limitation for filing the written communication, the party filing the same should include a certification demonstrating the date filing was perfected as provided under this subsection. Unless evidence is presented to the contrary, the date of the United States postal service postmark shall be presumed to be the date the written communication was mailed to the board.

(3) **Filing by telephone facsimile.**

- a. Filing written communication by facsimile is acceptable when a legible copy of the written communication is reproduced on the board's telephone facsimile equipment. All facsimile communications must be filed with the board at its offices in Olympia, Washington.
- b. The hours of operation of the board's telephone facsimile equipment are the same as the regular office hours. If a transmission of a written communication commences after these hours of operation, the written communication shall be deemed filed on the next business day.
- c. Any written communication filed with the board by telephone facsimile should be preceded by a cover page identifying the party making the transmission, listing the address, telephone and telephone facsimile number of such party, referencing the

appeal to which the written communication relates, and indicating the date of, and the total number of pages included in such transmission.

d. No written communication sent to the board via facsimile shall exceed fifteen pages in length, exclusive of the cover page required by this rule.

e. The party attempting to file written communication by telephone facsimile bears the risk that the written communication will not be legibly printed on the board's telephone facsimile equipment due to error in the operation or failure of the equipment being utilized by either the party or the board.

f. The original of any papers filed by facsimile must also be mailed to the board within twenty-four (24) hours of the time the fax was sent.

(4) **Electronic filing.** A request for an appeal may be filed electronically. An electronic request is filed when it is received by the executive secretary during the board's regular office hours. Otherwise, the request is considered filed at the beginning of the next business day. The board shall issue confirmation to the filing party that an electronic notice of appeal has been received.

WAC 491-04-070 What should my request for an appeal include? Your appeal must include:

(1) In the case of illness or injury claims, the date and

- nature of the claim, and the place it occurred;
- (2) A statement of what you want the board to do (relief requested) after considering the appeal;
 - (3) An explanation of why your request has merit;
 - (4) All facts relating to the request;
 - (5) The name and address of your attorney, if applicable;
and
 - (6) Your name, address, phone number, facsimile number (if applicable), e-mail address, and signature.

WAC 491-04-080 How much information should I provide in my request for an appeal? You bear the burden of convincing the board that you are entitled to the relief requested. You must provide sufficient information to outweigh the information that the staff or local board used in making the decision that is being reviewed.

WAC 491-04-090 Who pays for the cost of obtaining additional medical data if my case relates to an injury or illness? If your appeal regards an injury or illness and you need to provide additional medical data to support your request, you must pay any cost involved and it will not be reimbursable by the agency.

WAC 491-04-100 What will the agency do after receiving my request for an appeal?

- (1) Within thirty (30) days from the date that your request is received by the board, staff will review the request and determine if your request is accepted or rejected. If rejected, the staff must notify you of the rejection and why it was rejected.
- (2) The executive secretary, or his or her designee, will have thirty (30) days from the date of receipt to review the request and request additional documentation and/or medical exams to help resolve the dispute prior to an administrative hearing.
 - a. If the staff requests additional medical exams, the agency shall pay for the cost of the examinations and any mileage to and from such examination appointments.
 - b. If the executive secretary, or his or her designee, is able to resolve the dispute, the request for an appeal will be closed.
 - c. If the executive secretary, or his or her designee, is unable to resolve the dispute, a notice of hearing will be issued.

WAC 491-04-110 What are the requirements for a notice of hearing?

- (1) All parties shall be served with a notice of hearing not less than thirty (30) days before the date set for

the hearing.

- (2) The notice shall include the date of the hearing, the time of the hearing, and the place the hearing will be held.

WAC 491-04-120 Can cases be consolidated? If there are multiple adjudicative proceedings involving common issues or parties, upon motion of any party or upon his or her own motion, these cases can be combined at the discretion of the Board Chair.

WAC 491-04-130 What methods of serving papers is acceptable?

- (1) All notices, pleadings, and other papers filed with the board shall be served upon all counsel and representatives of record and upon unrepresented parties or upon their agents designated by them or by law.
- (2) Service shall be made personally or, unless otherwise provided by law, by e-mail; by first-class, registered, or certified mail; by facsimile and same-day mailing of copies; or by commercial parcel delivery company.
- (3) Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed. Service by facsimile shall be regarded as completed upon production by the facsimile machine

upon confirmation of transmission. Service by commercial parcel delivery shall be regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

WAC 491-04-140 What is adequate proof of service? Where proof of service is required by statute or rule, filing the papers with the board, together with one of the following, shall constitute proof of service:

- (1) an acknowledgement of service
- (2) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by delivering a copy thereof in person to (names).
- (3) A certificate that the person signing the certificate served the papers upon all parties of the proceeding by:
 - a. Mailing a copy thereof, properly addressed with the postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or
 - b. Transmitting a copy thereof by fax, and on the same day mailing a copy, to each party to the proceeding or his or her attorney or authorized agent; or
 - c. Depositing a copy thereof, properly addressed with charges prepaid, with a commercial parcel delivery company.

WAC 491-04-150 Can I bring someone with me to the hearing?

You can bring an attorney to represent you, or a family member, friend, or anyone else to help you, provided however, that in all hearings involving the taking of testimony and the formulation of a record subject to review by the courts, where the board or the secretary thereof determines that representation in such hearing requires a high degree of legal training, experience, and skill, the board or the secretary thereof may limit those who may appear in a representative capacity to attorneys-at-law.

WAC 491-04-160 Can witnesses be subpoenaed? The board may compel the taking of testimony from witnesses under oath before the state board, or the secretary thereof, or the local board of trustees or any member thereof, for the purpose of obtaining evidence, at any time.

- (1) The board shall have the same power of subpoena as prescribed in RCW 51.52.100.
- (2) Every subpoena shall identify the party causing issuance of the subpoena and shall state the name of the board and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control.
- (3) A subpoena may be served by any suitable person over eighteen (18) years of age, by exhibiting and reading it to the witness, or by giving him or her a copy

thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

- (4) The board chair may, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may
 - a. Quash or modify the subpoena if it is unreasonable and oppressive, or
 - b. Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.
- (5) Failure of any claimant to appear and give any testimony shall suspend any rights or eligibility to receive payments for the period of such failure to appear and testify.

WAC 491-04-170 Can I submit medical reports instead of having to pay a doctor to testify? You must present the testimony of your witness. Witnesses may appear telephonically (see WAC 491-04-220). Reports or letters are considered hearsay. Hearsay statements are not usually admissible because the opposing party cannot cross-examine the person making the statement to test the statement's accuracy.

WAC 491-04-180 Can new evidence be submitted for the hearing? The board must base its decision on the information in the agency file as it existed on the date of the agency decision. New medical or vocational information offered by either party cannot be considered. If the appealing party feels it has new evidence that may change a local board or staff decision, it should withdrawal its request for a hearing and ask the local board or staff to reconsider its decision with the new evidence.

WAC 491-04-190 What are the timing requirements for the filing of pre-hearing briefs and supporting evidence? You must file your pre-hearing brief, along with any evidence that you believe supports your position in accordance with the filing requirements set forth in WAC 491-04-060.

- (1) A pre-hearing brief should be a summary of the points that you want to make regarding your case. Specific exhibits should be referenced to make it easier for the board to follow your case.
- (2) Include all evidence you want the board to consider. This could include, but is not limited to, medical reports or accident reports for injury claims, or training records or response records for service credit claims. All evidence must meet the requirements in WAC 491-04-180.
- (3) Your pre-hearing brief and all evidence must be filed to the board and all parties to the action, no less

than fourteen (14) days prior to the scheduled hearing date.

- (4) All parties may, upon review of all evidence, file a response to a party's pre-hearing brief to the board and all parties involved no later than seven (7) days prior to the scheduled hearing date.

WAC 491-04-200 How is evidence presented? All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452

- (1) Documentary evidence not submitted in advance as required in WAC 491-04-190 shall not be allowed into evidence unless there is a clear showing that the offering part had good cause for his or her failure to produce the evidence sooner.
- (2) Any objections to evidence must be filed in writing prior to the hearing or the evidence will be deemed as admitted, unless such evidence is properly first presented at hearing under subsection (1) hereof. The board chair may permit a party to object to evidence at a later time upon a clear showing of good cause for failure to have filed such written objection.
- (3) When only portions of a document are to be relied upon, the offering party shall identify the pertinent excerpts and state the purpose for which such materials will be offered. Only the excerpts, in the form of copies, shall be received in the record.

However, the whole of the original documents, except any portions containing confidential material protected by law, shall be made available for examination and for use by all parties.

- (4) No former employee of the board shall appear, except with the permission of the board, as an expert witness on behalf of other parties in a proceeding in which he or she previously took an active part in the investigation as a representative of the board.
- (5) The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of the board chair, be grounds for striking all testimony previously given by such witness on related matter.
- (6) Any party bound by a stipulation or admission of record may, at any time prior to closure of the hearing, be permitted to withdraw the same in whole or in part by showing to the satisfaction of the presiding officer that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the right of other parties to the proceeding.

WAC 491-04-210 How does the board handle testimony under oath?

- (1) Every person called as a witness in a hearing shall

swear or affirm that the testimony he or she is about to give in the hearing shall be the truth according to the provisions of RCW 5.28.020 through 5.28.060. If the witness is testifying from outside the jurisdiction, the board chair may require the witness to agree to be bound by the laws of the state of Washington for the purposes of the oath.

- (2) Phone numbers for any person testifying by phone must be provided to the executive secretary no less than five (5) days before a scheduled hearing or deposition.

WAC 491-04-220 Can witnesses appear by phone? The board chair may conduct all or part of the hearing by telephone, television, or other electronic means, if the rights of the parties will not be prejudiced and if each participant in the hearing has an opportunity to participate in, to hear, and, if technically and economically feasible, in the judgment of the board chair, to see the entire proceeding while it is taking place. However, the board chair shall grant the motion of any party showing good cause for having the hearing conducted in person at a rescheduled time.

WAC 491-04-230 Will the hearing be recorded? All hearings shall be recorded through the use of a court reporter that will be retained and paid for by the state board in accordance with RCW 41.24.035.

WAC 491-04-240 What is the role of the state board in an appeal?

- (1) The board chair, or his or her designee, shall have the authority to:
 - a. Determine the order of presentation of evidence;
 - b. Administer oaths and affirmations;
 - c. Issue subpoenas pursuant to RCW 51.52.100;
 - d. Rule on procedural matters, objections, and motions;
 - e. Rule on motions for summary judgment;
 - f. Rule on offers of proof and receive relevant evidence;
 - g. Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing; and
 - h. Permit or require oral argument or briefs and determine the time limits for submission.
- (2) All board members shall have the authority to:
 - a. Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter; and
 - b. Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties.

WAC 491-04-250 Do I have to file any paperwork after the hearing? After the hearing, all parties may file a post-hearing brief. A post-hearing brief restates your position, what you believe the board's decision should be, and what evidence presented supports that decision.

- (1) Post-hearing briefs shall be served to the board and all involved parties no later than thirty (30) days after the hearing.
- (2) If any party wants to prepare a response to the post-hearing briefs, he/she may serve such a response to the board and all involved parties within thirty days (30) of the post-hearing brief due date. Responses are not required.

WAC 491-04-260 After the hearing, how long will it be before a decision is made and issued? It takes a court reporter approximately four weeks to transcribe a deposition or hearing. It is the board's goal to issue decisions as soon as possible after all transcripts are received. This generally takes between sixty (60) and ninety (90) days. At times, due to the complexity of the appeal, it may take longer.

WAC 491-04-270 How am I informed of the final decision? Every decision and order, whether initial or final, shall be written, signed by all members present, be provided to all parties, and shall:

- (1) Be correctly captioned as to the name of the agency

- and name of the proceeding;
- (2) Designate all parties and representatives participating in the proceeding;
 - (3) Contain appropriate numbered findings of fact
 - (4) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;
 - (5) Contain an initial or final order disposing of all contested issues; and
 - (6) Contain a statement describing the available post-hearing remedies.

WAC 491-04-280 What happens once the decision is issued?

- (1) Petition for review and replies:
 - a. Any party to a hearing may file a petition for the board's reconsideration of its order.
 - b. The petition for reconsideration shall be filed with the agency's executive secretary within thirty (30) days of the date of service of the order unless a different place and time limit for filing the petition are specified in the order in its statement describing available procedures for administrative relief. Copies of the petition shall be served upon all other parties or their representatives at the time the petition is filed.
 - c. The petition for review shall specify the portions of the order to which exception is taken and shall refer to the evidence of record which is relied upon

to support the petition.

d. Any party may file a reply to a petition for reconsideration. The reply shall be filed with the office where the petition for review was filed within thirty (30) days of the date of service of the petition and copies of the reply shall be served upon all other parties or their representatives at the time the reply is filed.

(2) A petition for reconsideration of an order shall be filed with the board.

(3) Official transcript:

a. Copies of official transcripts will not be made available by the board. A party may request a copy of the official transcript but shall bear the cost of such transcript.

b. Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. If the parties agree and the board chair approves, transcript corrections may be incorporated into the record at any time during the hearing or after the close of evidence. All corrections must be made within ten (10) calendar days after receipt of the transcript unless the board chair allows a different period.

WAC 491-04-290 Are the parties allowed to reach an settlement? Settlements may be worked out with the agreement of

both parties. The following procedures are available for dispute resolution that may make more elaborate proceedings unnecessary:

(1) a. The state encourages all agencies and persons to explore early, resolution to disputes whenever possible. Any person whose interest in a matter before the board may be resolved by settlement shall communicate his or her request or complaint to the agency, setting forth all pertinent facts and particulars and the desired remedy. If the board or staff requires additional information to resolve the matter, it shall promptly provide to the person who is seeking relief an opportunity to supply such information. Settlement negotiations shall be without prejudice to rights of a participant in the negotiations. Provided, however, that any time limit applicable to filing a application for a hearing shall not be extended because settlement attempts are pending.

b. In the event an early resolution is reached, the agency is responsible for providing a written description of the resolution to the person(s) involved.

(2) a. If settlement of an adjudicative proceeding may be accomplished by negotiation with the agency or other parties involved, negotiations shall be commenced at the earliest possible stage of the proceeding.

Settlement shall be concluded by:

- (i) Stipulation of parties;
- (ii) Withdrawal by the applicant of his or her application for a hearing; or
- (iii) Withdrawal of any local board, state board, or staff action which is the subject matter of the hearing.

b. A stipulation shall be in writing and signed by each party to the stipulation or his or her representative or shall be recited on the record at the hearing. When an adjudicative proceeding has been settled by stipulation, the agency head, the agency head's designee, or the board chair shall enter an order in conformity with the terms of the stipulation.

c. When a hearing has been wholly or partially settled by withdrawal, the board chair, or his or her designee, shall enter an order dismissing the hearing or an order dismissing the affected party's interest in the proceeding if other parties have not withdrawn.