RULES OF THE
VIRGINIA WORKERS' COMPENSATION COMMISSION

Amended effective July 13, 2010

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

The following words and terms, when used in these rules, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Virginia Workers' Compensation Act.
"Commission" means the Virginia Workers' Compensation Commission.
"Employer" includes the employer's insurance carrier unless the context otherwise requires.

RULE 1 PREHEARING PROCEDURES

Rule 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:

1. Employee's name and address;
2. Employer's name and address;
3. Date of accident or date of communication of occupational disease;
4. Nature of injury or occupational disease;
5. Benefits sought: temporary total, temporary partial, permanent total, permanent partial or medical benefits;
6. Periods of disability, if appropriate.

Rule 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. A copy of the claim should be sent to the employer.

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

Rule 1.3 Dismissal Upon Failure to File Supporting Evidence

If supporting evidence is not filed within 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.

Rule 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 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 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.

Rule 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. If the employer's application is technically acceptable, the opposing party shall be permitted up to 15 days from the date the application was filed to present evidence in opposition to the application.

1. Pending acceptance or rejection of the application, the employer may suspend or modify compensation payments as of the date for which compensation was last paid.

2. If rejected, the Commission shall advise the employer of the reason for rejection and compensation shall be reinstated immediately.

3. If accepted, the application shall be referred:

a. For dispute resolution,
b. For decision on the record, or
c. For an evidentiary hearing.

Rule 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 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 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.

Rule 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.

B. The petition shall be signed by the claimant and, if represented, an 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 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. A notarized affidavit 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. If the proposed settlement contemplates payment in a lump sum, the petition 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.

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.

E. The parties shall submit an original proposed order, properly endorsed.

F. Payment shall be due within 10 days after entry of the order approving the compromise.

Rule 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 such information materially affects a prior response.

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. A party requesting a subpoena for witness or subpoena duces tecum shall prepare the subpoena and submit it to the Commission for insertion of return date and Clerk 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.

Subpoenaed records may be made returnable to the requesting party or, at the direction of the Commission, to the Clerk of the Commission or to a regional office. If subpoenaed records contain medical reports they must be filed with the Commission pursuant to Rule 4.2.

Requests for subpoenas may be filed with the Commission at Richmond or in the regional office assigned to hear the case.

1. Subpoenas for Witnesses. Requests should be filed at least 10 days prior to hearing.

2. Subpoenas Duces Tecum. Requests should be filed at least 15 days before hearing and the subpoena shall describe with particularity the materiality of the documents or articles to be produced.

All requests for subpoenas duces tecum 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. Each request 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.

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. The deposition of a party or physician may be taken without permission of the Commission. Leave of the Commission shall be obtained to take the deposition of any other persons. 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 (Form 6) 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.

Depositions shall be filed with the Commission and be made a part of the record.

H. Interrogatories to Parties. After a claim or application has been filed, interrogatories limited to contested issues may be served by one party on another party, more than 21 days before hearing without prior Commission approval.

Answers under oath to each interrogatory are to be filed within 21 days after service. Objections must be included with answers. If there is objection to an interrogatory and the party serving the interrogatory moves the Commission for relief, the hearing officer 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 15 interrogatories, 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.

It is not necessary to file interrogatories or answers with the Commission unless they are the subject of a motion.

I. Request for Admission. After a claim or application has been filed, 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 30 days or be subject to compliance under Rule 1.8(K) or sanctions under Rule 1.12.

J. Production of Wage Information. If the average weekly wage is contested, the employer shall timely file a wage chart 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. 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.

L. Disposition of Discovery Material. Any discovery material not admitted in evidence and filed in the Commission may be destroyed by the Clerk of the Commission after one year from entry of a final decision of the Commission or appellate court.

Rule 1.9 Informal 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 informal dispute resolution. When it appears that a claim may be resolved by informal dispute resolution, the Commission will refer the case to a Commission representative who 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.

Rule 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 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.

Rule 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.

Rule 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 and grounds of defense;
B. Exclusion of evidence from the record;
C. Dismissal of a claim or application.

RULE 2 HEARING PROCEDURES

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

Rule 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 parties shall be given 20 days to submit written statements and evidence. Ten additional days shall be given to respond. For good cause shown additional time may be allowed. Copies of all written statements and evidence shall be furnished to the Commission and 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.

Rule 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. The party having the burden of proof shall have the right to open and close. Each party shall be allowed 20 minutes in which to present evidence unless prior arrangement is made through the Commission to extend hearing time.

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 only when it appears that material or irreparable harm may result if not granted.

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 of physicians and reports of medical care directed by physicians may be admitted in evidence as testimony by physicians or medical care providers. Upon timely motion, any party shall have the right to cross-examine the source of a medical document offered for admission in evidence.

3. The parties shall specifically designate, by author, deponent and date, medical reports, records or depositions to be received in evidence. Those portions of a deposition to be included in the record must be specifically identified by page and line.

4. Medical reports, records or deposition portions designated by the parties or included by the Commission will be admitted into evidence.

Rule 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.

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 grant 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. Grant 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.

RULE 3 POSTHEARING PROCEDURES

Rule 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. Upon request to the Clerk, a party may obtain a copy of the hearing transcript subject to an appropriate charge.

Rule 3.2 Written Statements

The Commission will advise the parties of the schedule for filing brief 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 days from the date the Request for Review was filed to provide a written response.

Rule 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 to reopen the record for additional evidence will be favorably acted upon by the full Commission only when it appears to the Commission that such course is absolutely necessary and advisable and also 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.

Rule 3.4 Oral Argument

A party may request oral argument at the time of application for review. Otherwise, the review shall proceed on the record.

If oral argument is requested and the Commission considers it necessary or of probable benefit to the parties or to the Commission in adjudicating the issues, the parties will be scheduled to present oral argument.

Any party may request the Commission to schedule argument by telephone conference by giving notice to the Clerk of the Commission and to opposing counsel at least five days before the scheduled date for argument.

Each side will be limited to no more than 15 minutes for presentation of oral argument.

If oral argument is requested and the requesting party fails to appear in person or by scheduled telephone conference, the Commission may impose sanctions in the absence of good cause shown.

RULE 4 FILING DOCUMENTS

Rule 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.

Rule 4.2 Medical Reports

Each party shall promptly provide the other parties with copies of any medical records they receive as they receive them. 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. These records shall be filed upon receipt by the party filing them, and are required reports subject to the provisions of 65.2-902. A party is not required to file copies of medical records that another party has already filed.

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

A medical 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 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

Rule 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.

Rule 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;
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

Rule 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. A notice from the insurer (Form No. 45F) certifying this fact will be received as acceptable proof.

Rule 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 provisions of the Act. Such notice shall follow substantially the form prescribed 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

Rule 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.

Rule 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

Rule 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.

Rule 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

Rule 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 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.

Rule 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.

Rule 10.3 Appointment of Pulmonary Committee

The Commission shall appoint a Pulmonary Committee to be composed of at least three qualified physicians certified as B readers under standards promulgated by the International Labour Organization (ILO).[1]

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

[1] The General Assembly amended section § 65.2-504 of the Virginia Code, effective July 1, 2000, to add subsection (E), which provides that "All members of any panel or committee required to interpret or classify a chest roentgenogram for the purposes of diagnosing a coal worker's pneumoconiosis shall be B-readers approved by the National Institute for Occupational Safety and Health."

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

Average Decibel Loss	Percent of Compensable Hearing Loss	Average Decibel Loss	Percent of Compensable Hearing Loss
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

Average Decibel Loss	Percent of Compensable Hearing Loss	Average Decibel Loss	Percent of Compensable Hearing Loss

No allowance for presbycusis is to be made.

RULE 13. TABLE OF PERCENTAGE OF LOSS OF VISUAL ACUITY

SNELLEN'S CHART

Snellen's 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	332
20/70	40
20/80	50
20/90	622
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

Snellen's Chart Readings	Percentage of Loss of Visual Acuity
20/20	0
20/190	99
20/200	100

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

RULE 14. DEFINITION OF COMMUNITY

For the purpose of § 65.2-605 of the Code of Virginia, the word "community" shall mean one or more planning districts as set forth below:

Community	**Planning District(s)**
1	Districts 1 & 2
2	District 3
3	District 4
4	District 5
5	District 11 & 13
6	District 12
7	District 6
8	District 7
9	District 16
10	District 9 & 10
11	District 8
12	District 17 & 18
13	District 22 & 23
14	District 14 & 15
15	District 19

Whenever an employee receives treatment outside of the Commonwealth, the commission will determine the appropriate community in the state or territory where the treatment is rendered upon application of either the employee, employer (or its representative), or medical provider.

When the commission deems appropriate, it may consider additional data to determine the prevailing community rate.