

CR 87-143

RECEIVED

MAR 30 1988

8:10 am
Revisor of Statutes
Bureau

STATE OF WISCONSIN)
) SS
LABOR AND INDUSTRY REVIEW COMMISSION)

I, Hugh C. Henderson, Chairman of the Labor and Industry Review Commission and custodian of the official records, do hereby certify that the annexed rules, relating to procedural rules concerning the petition to and handling of cases by the Labor and Industry Review Commission, were duly approved and adopted by this Commission on March 22, 1988. I further certify that this copy has been compared by me with the original on file in this Commission and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the labor and industry review commission at 201 East Washington Avenue, in the city of Madison, this 25th day of March, 1988.

Hugh C. Henderson



RECEIVED

MAR 30 1988

ORDER OF
THE LABOR AND INDUSTRY REVIEW COMMISSION

Revisor of Statutes
Bureau

To amend LIRC 1.02 (title), (intro.), and (1m), 1.03, 1.04, 2.01 (title), (intro.), and (1)(a), LIRC 3 (title), 3.01 (title), (intro.) (1)(a), (b) and (c), 3.02 (1) and (2), 3.03, 3.05, 4.01 (title), (intro.), (1), 4.02 (1), and (2), and 4.03 (title); and to repeal and recreate LIRC 2.05 and 3.06, relating to procedural rules concerning the petition to and handling of cases by the labor and industry review commission.

ANALYSIS PREPARED BY THE LABOR AND INDUSTRY REVIEW COMMISSION

1985 Wisconsin Act 83, section 15, changed the designation of workers' compensation hearing examiners to administrative law judges. The change was effective November 27, 1985. Unemployment compensation hearing examiners were redefined as administrative law judges by rule of the Department of Industry, Labor and Human Relations effective December 1, 1985 (Rule ILHR 140.001(1)). The same was done as to equal rights examiners by rule Ind 88.01(2), effective July 1, 1986. These rules replace the term "examiner" or "hearing examiner" wherever it appears with "administrative law judge," in order to conform with DILHR terminology.

1985 Wisconsin Act 119 created sec. 230.35(4)(a)1m of the Statutes, effective January 1, 1986, to provide for celebration of the January 15 Martin Luther King holiday on the 3rd Monday in January. Rule LIRC 1.02(1m) is amended to reflect such change as it may affect the due date for petitions for Commission review.

Section titles are clarified to distinguish between appeals to the Commission and appeals to court. Consistent with DILHR reorganization that made separate Unemployment Compensation and Job Service divisions out of a former merged division, and because rules for DILHR unemployment compensation hearings permit taking appeals at Unemployment Compensation local offices but not Job Service offices, these rule changes eliminate Job Service offices as authorized places to file petitions for LIRC review of unemployment compensation or workers' compensation decisions. There will be little immediate practical effect, as Unemployment Compensation and Job Service local offices still occupy the same buildings, for the most part.

The sections on judicial review of unemployment compensation and workers' compensation cases are expanded and clarified. The expansion is to conform more closely with information provided on appeals enclosures which are mailed to parties along with their copies of Commission decisions and to provide more information. The clarifications incorporate changes in the appeal procedure affected by 1985 Wisconsin Act 83, section 20, effective November 27, 1985. Service and filing of the pleadings within 30 days is now required to start the judicial action, whereas formerly service alone would commence the action, and filing the pleadings in court could be up to six months later. The rule now specifies proper venue, clarifies that the action must be commenced against the Commission, and notes that service may only be made at the Commission's office in Madison.

Renumbering of the judicial review provision of the Administrative Procedure Act from 227.15 to 227.52 by 1985 Wisconsin Act 182, section 35, effective April 22, 1986, is reflected in the rule changes regarding equal rights actions for judicial review.

The apostrophe in "workers' compensation" is moved after the "s" wherever the term appears instead of before the "s" to correctly indicate that the plural possessive is intended.

Finally, the provision for reviewing equal rights appeals based on a transcript updates the reference to the equal rights rule which was changed effective July 1, 1986.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rule changes have no effect on small businesses.

Pursuant to authority vested in the labor and industry review commission by s. 101.04 (2), Stats., the commission amends and repeals and recreates rules interpreting ss. 40.65 (2), 56.07 (7), 56.21 (1), 101.22 (4p), 101.223 (4), 102.18 (3) and (4)(c), 102.23 (1), 108.09 (6) and (7), 108.10 (2) and (3), and 111.39 (5)(a) and (b), Stats., as follows:

SECTION 1. LIRC 1.02 (title), (intro.), and (1m) are amended to read:

LIRC 1.02 (title) PETITIONS FOR COMMISSION REVIEW. All petitions for commission review shall be received within 21 days from the date of mailing of the ~~examiner's finding~~ administrative law judge's findings and decision, or order except as provided under this section. "Received" means physical receipt. A mailed petition postmarked on or prior to the last day of an appeal period but received on a subsequent day is not a timely appeal. All petitions or appeals shall be in writing. The receipt may be on the next succeeding business day if the last day for filing falls on any of the following:

(1m) ~~January-15;~~ The third Monday in January;

SECTION 2. LIRC 1.03 and 1.04 are amended to read:

LIRC 1.03 WITHDRAWALS. Requests to withdraw petitions shall be in writing. The commission may deny a request by a any party to withdraw ~~his-or-her~~ a petition if the commission has already reviewed and decided the case, but not yet issued its decision, or if the commission considers that withdrawal is not in the best interests of proper administration of the program involved. Denials of withdrawals shall be in writing, but may be included in the findings and decision of the commission.

LIRC 1.04 REVIEW. Review by the commission is on the record of the case including the synopsis or summary of the testimony or other evidence presented at the hearing as prepared by the department of industry, labor and human relations' ~~hearing-examiner~~ administrative law judge who presided at the hearing. Consideration of the hearing tapes or a transcript of the hearing testimony is discretionary with the commission, except as provided under s. LIRC 4.02(2).

SECTION 3. LIRC 2.01 (title), (intro.), and (1)(a) are amended to read:

LIRC 2.01 (title) PETITIONS FOR COMMISSION REVIEW. (1) A petition for commission review of an appeal tribunal decision under s. 108.09 or 108.10, Stats., shall be received within 21 days after the date of mailing of the decision to the parties and during regular office hours by an employe of the ~~job-service-division-or~~ unemployment compensation division, department of industry, labor and human relations, or an employe of the commission, at:

(a) Any ~~job-service-or~~ unemployment compensation office, or

SECTION 4. LIRC 2.05 is repealed and recreated to read:

LIRC 2.05 ACTIONS FOR JUDICIAL REVIEW. Judicial review of any commission decision under s. 108.09 or 108.10, Stats., shall be commenced in the manner and upon the grounds specified in ss. 108.09(7) and 102.23, Stats., and not under ch. 227 or s. 801.02, Stats. Either party may commence a legal action for review of the commission decision in circuit court within 30 days from the date the decision was mailed to the party's last known address. Such action is commenced only by filing a summons and complaint with the circuit court and serving an authenticated copy of the summons and the complaint upon the commission, all within 30 days. Service must be made upon a commissioner of the labor and industry review commission or an agent authorized by the commission to accept service only at the commission's office in Madison. Such service shall be deemed complete service on all parties but there shall be left with the person so served as many copies of the summons and complaint as there are defendants. Service by mail is effective only if the pleadings are actually received by the commission within the appeal period. The complaint shall state the grounds upon which review is sought. The action shall be commenced against the commission, and the party in whose favor the decision was made shall also be made a defendant. The proceedings shall be in the circuit court of the county where the plaintiff resides except that, if the plaintiff is a state agency, the proceedings shall be in the circuit court of the county where the defendant resides. If the plaintiff is a nonresident of Wisconsin, the proceedings shall be in the circuit court for Dane county. The proceedings may be brought in any circuit court if all parties stipulate and that court agrees. The appealing party shall arrange for preparation of the necessary legal documents.

SECTION 5. LIRC 3 (title), 3.01 (title), (intro.), (1)(a), (b) and (c), 3.02 (1) and (2), and 3.03 are amended to read:

Chapter LIRC 3 (title) WORKERS' COMPENSATION

LIRC 3.01 (title) PETITIONS FOR COMMISSION REVIEW. (1) A petition for commission review of the findings and order of a department of industry, labor and human relations' ~~hearing-examiner~~ administrative law judge shall be received within 21 days from the date of mailing of the findings and order to the parties and during regular office hours by an employe of either the ~~worker's~~ workers' compensation division, ~~job-service-division~~ or unemployment compensation division of the department at:

(a) The central administrative office of the ~~worker's~~ workers' compensation division, 201 East Washington Avenue, P. O. Box 7901, Madison, Wisconsin 53707, or

(b) The ~~worker's~~ workers' compensation division, 819 North Sixth Street, Milwaukee, Wisconsin 53203, or

(c) Any ~~job-service-office-or~~ unemployment compensation office.

LIRC 3.02 ANSWER AND SET ASIDE. (1) A party opposing the petition may file an answer to a petition for commission review with the ~~worker's~~ workers' compensation division of the department of industry, labor and human relations within 21 days from ~~the opposing-party's~~ receipt of a copy of the petition.

(2) If an answer has not been filed under sub. (1), the commission may prior to its final order or award, set aside the findings and order of the ~~hearing-examiner~~ administrative law judge, in which case it shall notify the party opposing the petition who shall have 10 days from the date of notice in which to make an answer.

LIRC 3.03 TRANSCRIPTS. Transcripts of testimony at hearings conducted by ~~hearing-examiners~~ administrative law judges of the ~~worker's~~ workers' compensation division, department of industry, labor and human relations, may be requested and obtained from the ~~worker's~~ workers' compensation division of the department, according to s. Ind 80.14. The commission may direct the preparation of a transcript for the purposes of commission review if a satisfactory showing is made by any party that the synopsis of testimony prepared by the ~~hearing-examiner~~ administrative law judge of the department of industry, labor and human relations is not sufficiently complete and accurate to reflect the relevant and material testimony and other evidence taken.

SECTION 6. LIRC 3.05 is amended to read:

LIRC 3.05 COMPROMISE SETTLEMENTS. Compromise settlements of ~~worker's~~ workers' compensation claims are solely within the jurisdiction of the ~~worker's~~ workers' compensation division, department of industry, labor and human relations, according to s. 102.16, Stats., and s. Ind 80.03.

SECTION 7. LIRC 3.06 is repealed and recreated to read:

LIRC 3.06 ACTIONS FOR JUDICIAL REVIEW. Judicial review of any commission decision shall be commenced in the manner and upon the grounds specified in s. 102.23, Stats., and not under ch. 227 or s. 801.02, Stats. Either party may commence a legal action for review of the commission decision in circuit court. The action must be commenced within 30 days from the date of the decision. Such action is commenced only by filing a summons and complaint with the circuit court and serving an authenticated copy of the summons and the complaint upon the commission, all within 30 days. Service must be made upon a commissioner of the labor and industry review commission or an agent authorized by the commission to accept service only at the commission's office in Madison. Such service shall be deemed complete service on all parties but there shall be left with the person so served as many copies of the summons and complaint as there are defendants. Service made by mail is effective only if the pleadings are actually received by the commission within the appeal period. The complaint shall state the grounds upon which review is sought. The action shall be commenced against the commission, and the party in whose favor the order or award was made shall also be made a defendant. The proceedings shall be in the circuit court of the county where the plaintiff resides, except that, if the plaintiff is a state agency, the proceedings shall be in the circuit court of the county where the defendant resides. If the plaintiff is a nonresident of Wisconsin, the proceedings shall be in the circuit court for Dane county. The proceedings may be brought in any circuit court if all parties stipulate and that court agrees. The appealing party shall arrange for preparation of the necessary legal documents.

SECTION 8. LIRC 4.01 (title), (intro.), (1), 4.02(1) and (2), and 4.03 (title) are amended to read:

LIRC 4.01 (title) PETITIONS FOR COMMISSION REVIEW. (1) A petition for commission review of the findings and order of a department of industry, labor and human relations ~~hearing-examiner~~ administrative law judge shall be received within 21 days from the date of mailing of the findings and order to the parties during regular office hours by an employe of the equal rights division of the department at:

LIRC 4.02 TRANSCRIPTS. (1) Transcripts of the testimony at hearings before department hearing-examiners administrative law judges may be obtained according to s. Ind 88.17, or, in fair housing, ~~s. Ind 89.13~~ s. Ind 89.21.

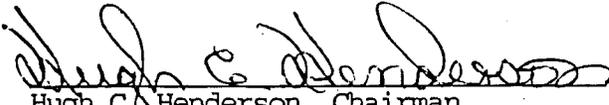
(2) Review by the commission shall be based on the record of the case, including a transcript of the testimony, where the record has been transcribed before the examiner administrative law judge prepared his--or--her a decision, ~~and where the transcript has been substituted for the summary of proceedings~~ under ~~s. Ind 88.18(1)~~ s. Ind 88.18(5).

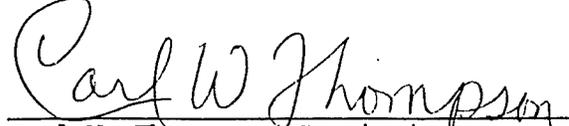
LIRC 4.03 (title) ACTIONS FOR JUDICIAL REVIEW. Judicial review of any commission order or decision shall be commenced in the manner and upon the grounds specified in ~~ss. 227.15~~ ss. 227.52 to ~~227.20~~ 227.57, Stats.

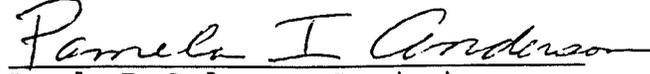
This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2) (intro.), Stats.

Dated: March 22, 1988

LABOR AND INDUSTRY REVIEW COMMISSION


Hugh C. Henderson, Chairman


Carl W. Thompson, Commissioner


Pamela I. Anderson, Commissioner