

Ind 80

Filed February 28, 1975
8:35 am GHP

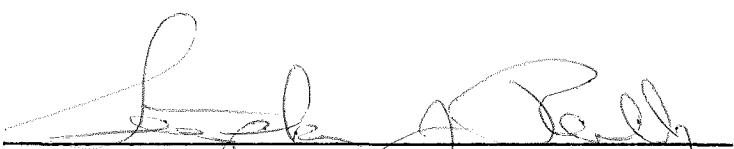
STATE OF WISCONSIN)
) SS
DEPARTMENT OF INDUSTRY,)
LABOR AND HUMAN RELATIONS)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Stephen J. Reilly, Executive Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said Department, do hereby certify that the attached rules to Wisconsin Administrative Code, Chapter Ind 80, Workmen's Compensation, were adopted by the Department of Industry, Labor and Human Relations on February 14, 1975.

I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Capitol in the City of Madison, this 27 day of February, A.D., 1975.


Stephen J. Reilly, Executive Secretary

AMENDED ORDER OF

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by sections 101.01 to 101.20 and 102.15 (1), Wis. Stats., the Department of Industry, Labor and Human Relations hereby amends, repeals and recreates and adopts rules of Wisconsin Administrative Code Chapter 80, Workmen's Compensation.

The following rules are amended:

Rules Ind 80.01, .02, .03, .04, .05, .07, .08, .09, .10, .11, .17, .18, .19, .20, .21, .22, .23, .27 and .31.

The following rules are repealed:

Ind 80.15 and 80.22 (7).

The following rules are repealed and recreated:

Ind 80.16, 80.29 and 80.32.

The following are unchanged

Ind 80.06, .14, .24, .25, .26, .30 and .33.

The rules attached hereunto shall become effective on the first day of the month following publication in the Wisconsin Administrative Code as provided in Section 227, Wis. Stats.

Filed February 18, 1975
11:15 am G.L.P.

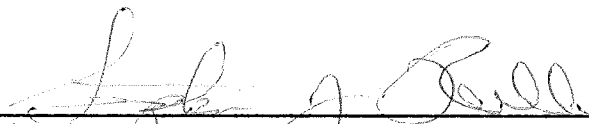
STATE OF WISCONSIN)
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DEPARTMENT OF INDUSTRY,)
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I, Stephen J. Reilly, Executive Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said Department, do hereby certify that the attached rules to Wisconsin Administrative Code, Chapter Ind 80, Workmen's Compensation, were adopted by the Department of Industry, Labor and Human Relations on February 14, 1975.

I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Capitol in the City of Madison, this 17 day of February, A.D., 1975.



Stephen J. Reilly, Executive Secretary

ORDER OF

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by sections 101.01 to 101.20 and 102.15 (1), Wis. Stats., the Department of Industry, Labor and Human Relations hereby amends, repeals and recreates and adopts rules of Wisconsin Administrative Code Chapter 80, Workmen's Compensation.

The rules attached hereunto shall become effective on the first day of the month following publication in the Wisconsin Administrative Code as provided in Section 227, Wis. Stats.

IND 80.01 General. The rules of practice at hearings before the department will conform generally to the rules of practice before courts of equity. The aim is to secure the facts in as direct and simple a manner as possible.

IND 80.02 Reports. (1) Employers under the provisions of the workmen's compensation act within one day after the fatal termination of an accident or industrial disease shall make a brief report of this occurrence to the department by telegraph, telephone or by letter. They shall also make a report on form WC-12 on the fourth day after the accident or beginning of disability from occupational disease upon every accident or disease causing death or a disability which exists beyond the third day after the employe leaves work as a result of the accident.

(2) Self-insured employers and insurance companies on all accidents which require a first report must:

(a) Make a supplementary report on form WC-13 on the eleventh day following that on which the accident occurred.

(b) Make another supplementary report immediately when payments are stopped for any reason. This report must be accompanied by an explanatory memorandum, a copy being furnished to the injured claimant if there is a dispute with the injured man.

(c) Make a final report on form WC-13 when final payment of compensation has been made, which must be accompanied by (a) a copy of the final receipt signed by the injured employe, and (b) a report from a physician, if the disability exceeds 3 weeks or if there is any permanent disability, unless there has been a hearing before the department.

(d) Supply to the employe copy of final report on form WC-13 in all cases at the time of final payment, and final physician's report in cases where disability has extended beyond 3 weeks following the date of injury, or where permanent disability has resulted.

(e) Make immediate report of any amputation which requires an artificial member or appliance.

IND 80.03 Compromise. In any case where an accident and injury to an employe occurs of which the department has jurisdiction under the compensation act, and a compromise of liability thereunder is made directly by such employer and employe, the same shall be made in writing in the presence of one or more disinterested witnesses who shall sign such compromise, and copies of all such compromises shall be mailed immediately to the department by the employer. All compromises may be reviewed, set aside, modified or confirmed by the department upon application of either party within one year from the date of the compromise. (Section 102.16, Wis. Stats.)

IND 80.04 Place of hearing. The department at its discretion may from time to time hold public sessions other than in the state capitol.

IND 80.05 Procedure on claim. (1) In case of disputes in matters coming under the jurisdiction of the department, either party to the dispute may apply to the department for relief and the department shall make such order or award as shall be lawful and just in the premises.

(2) In all such cases the party complaining shall file his application with the department, with copies to be served on the adverse party. The department shall thereupon serve such adverse party with a copy of such application and such adverse party shall file his answer thereto with the department within 10 days after such service and likewise serve a copy of such answer on the party making the application. The department will thereupon notify the parties of the time and place of hearing, at least 10 days prior to such hearing. (Section 102.17, Wis. Stats.)

IND 80.07 Service. All service of papers, unless otherwise directed by the department or by law, may be made by mail and proof of such mailing shall be prima facie proof of such service. Time within which service shall be made shall be the same as in courts of record unless otherwise specified by rule or order of the department.

IND 80.08 Amendments. Amendment may be made to any pleading upon application to the department and cause shown. The department may on its own motion, modify or change its order, finding or award at any time within 20 days from the date thereof if it shall discover any mistake therein.

IND 80.09 Extension of time and postponement. The department may grant extensions of time in which to comply with any rule when it shall deem such extensions of time reasonable and it may likewise grant adjournments of hearings.

IND 80.10 Stipulations. Parties to a controversy may stipulate the facts in writing, and the department may thereupon make its order or award. Stipulations must set forth in detail the manner of computing the compensation due and must be accompanied by a report from a physician stating the extent of the disability.

IND 80.11 Depositions. At the discretion of the department depositions may be taken and used upon any hearing where the convenience of the witness or parties may so require. Such depositions shall be taken in the same manner as in courts of record. Depositions for the purpose of discovery before hearing are specifically prohibited by law, with certain exceptions as provided by section 102.17 (1) (bm), Wis. Stats.

IND 80.15 Repeal

IND 80.16 Exemptions from Insurance; Automatic. The state and all of its political subdivisions and all state and national banks are exempt from insurance of their liability under the compensation act, without further order of this commission, if such liability is not insured in some company authorized to insure such liability. Partial insurance or divided insurance of the risk of the state and any of its political subdivisions may also be carried without further order of this commission, including agreements entered into for the joint operation of a fire or police department or other unit engaged in rescue or in the enforcement of peace or in the pursuit and capture of those charged with crime, whether composed wholly or partly of volunteers, provided the arrangement for such partial or divided insurance coverage will not result in confusion as between the separately insured and exempted portions of the employer's liability. In the event that dispute arises as to the responsibility for payment, the employer assumes full responsibility to immediately make all payments of compensation and medical expenses as may be required in any given injury case pending a final determination as to the liability.

IND 80.17 Excess insurance. An employer who has been granted exemption from insuring his risk under the workmen's compensation act may carry excess insurance in accordance with regulations of the insurance commissioner without further order of this department, and such excess insurance shall not be deemed full coverage.

IND 80.18 Procedure in state cases. (1) The following reports and statements are required in claims for compensation or medical aid by an employe of the state.

(a) In all cases where disability extends beyond the three-day waiting period or permanent disability results, the first report of injury on form WC-12 is to be submitted to the department by the employing department.

(b) In all cases in which any disability results or medical expense is involved, a statement by the employe on form to be supplied by the department that he was injured in the course of his employment, reciting time and place of injury, the reasons for its occurrence, the nature of injury and stating all expenditures incurred for medical, surgical, hospital treatment, and medicines, to the time of the claim; whether claim is made for disability; if so, what period of temporary disability and what permanent disability is claimed, and what salary has been paid by the state during the period of disability. If bills have been paid by the injured, receipts are to be attached.

(c) A report from the attending physician showing the nature of injury and the extent of disability. This may be made on form supplied by the department.

(d) Bill from physician and/or hospital itemizing services rendered and charges made. This need not be verified.

(e) A statement from the employing department stating whether injury occurred in the course of employment, and whether treatment is believed necessary as claimed. This will be made in conjunction with employe's statement and on the same form. If the department is unable to make statement, the reason is to be stated.

(f) A state employe who sustains an accidental injury may select his own physician; and if the case is compensable, the department will order reimbursement for reasonable medical, surgical, and hospital care, including charges for necessary medical examinations and reports. The employing department has no authority to incur any liability for medical or surgical treatment or hospital care. The employing department is not a party to a claim for compensation; the state of Wisconsin is considered the employer, and the attorney general represents the state in such cases.

(2) If the statements supplied and inquiry or investigation by the department and/or attorney general leave doubt as to legitimacy of the claim, hearing will be scheduled.

(3) The attorney general will appear for the state if hearing is set.

(5) Where payment of medical expense is authorized by the employing department under the provisions of section 102.42(8) Wis. Stats. up to a gross of \$500 plus compensation for not to exceed 3 weeks for temporary disability for each injury, form AD-PE-S2 is to be sent to the department enumerating thereon the amounts of the expenses being authorized for payment and a voucher is to be sent to the Bureau of Finance with itemized statements of expenses incurred thereto.

IND 80.19 Procedure on review by commission. (1) The following shall govern proceedings on petition for review by the commissioners from an order of an examiner.

(a) The party appealing shall file his petition with the department, setting forth separately the particular finding or findings as to which it is claimed error has been made.

(b) If the commission affirms or modifies the original decision, or directs the taking of further testimony, notice to that effect will be served upon all parties in interest.

(c) If the commission sets aside the original decision, it shall forthwith notify the opposing party, who shall have 10 days from date of notice in which to make answer. Time for answering may be extended upon order of the department. The answer shall meet separately each contention of the petitioner by a concise statement of the opposing party in support of his contention.

(d) Brief may be filed by either party with its petition or answer, but not thereafter unless permitted by the commission. Oral argument shall not be permitted except upon request of the commission. Transcript of testimony shall not be furnished except upon order of the commission.

IND 80.20 License to appear. (1) The following rules shall govern the issuance, suspension, or revocation of licenses to appear before the department in compensation matters under the provisions of section 102.17 (1) (am), Wis. Stats.

(a) Permission to appear at a single hearing may be issued by the department through any examiner upon application evidencing qualifications provided by statute and the department's rules. Such permission may be given to appear in 3 cases before the issuing of license. When appearance has been made in 3 cases, license shall be required, which shall be issued only upon execution and filing with the department of application upon form prescribed by the department.

(b) Before license shall be issued applicant shall have appeared in representation of a party before the department on at least 3 formal hearings.

(c) The following conditions shall operate as grounds for refusal, suspension, or revocation of license.

1. Charging of excessive or unconscionable fees, misrepresentation of clients, dishonesty, fraud, sharp practice, neglect of duty, or other improper conduct in the representation of a party before the department, unless satisfactorily explained or excused by the department on the grounds of subsequent good conduct.

2. Disbarment from the practice of law, or resignation by request of properly constituted authorities, unless there has been subsequent reinstatement and continuance in good standing.

3. Contumacious conduct in hearing, gross discourtesy toward department representatives, or failure to conform to rulings or instructions of the department or its representatives.

4. Intentional or repeated failure to observe provisions of the compensation act or rules of procedure adopted by the department.

5. Any other gross evidence of lack of good moral character, fitness or act of fraud, or serious misconduct.

IND 80.21 Physician's reports. Upon the request of the department, any party in interest to a claim under the workmen's compensation act shall furnish the department with copies of all physicians' reports in their possession or procurable by them. When deemed advisable by the department, copies of such reports may be furnished to the other parties in interest.

IND 80.22 Use of physicians' reports as evidence. See section 102.17

(1) (as), Wis. Stats.

(1) Matters stated in such report which would not be competent or material evidence if given as oral testimony shall not be competent or material as prima facie evidence if objection is made, except as corroborated by competent and material oral testimony.

(2) Use of reports shall be permitted in any case in which claim for compensation is made, provided the reporting doctor is available for cross examination.

(3) An applicant shall be informed of the provisions of section 102.17 (1) (as), Wis. Stats., and the department's rules and also that form for reporting will be supplied to him upon request.

(4) Report shall be submitted to the department upon a form prescribed by the department and shall be verified or certified. The department may require additional or supplementary reports. Upon failure of the applicant to submit such reports within the time specified prior to hearing, all reports

previously filed may, in the discretion of the department, be excluded as evidence.

(5) Reports shall be filed with the application for adjustment of claim or as soon thereafter as possible. Reports not filed with the department 15 days prior to the date of hearing shall not be acceptable as evidence except upon good cause for failure so to file, established to the satisfaction of the department.

(6) Upon receipt of report the department shall promptly serve copy upon the employer or carrier.

(7) Repeal.

IND 80.23 Common insurance of employer and third party. In all cases where compensation becomes payable and the insurance carrier of an employer and of a third party shall be the same, or if there is common control of the insurer of each, the insurance carrier of the employer shall promptly notify the parties in interest and the department of that fact.

IND 80.27 Forms. (1) The following are listed in accordance with section 227.013, Wis. Stats. Each form is issued by the Workmen's Compensation Division and may be obtained in limited quantity from the Department of Industry, Labor and Human Relations, P.O. Box 2215, Madison.

- (a) WC-7 Application for Adjustment of Claim.
- (b) WC-7b Application for Review of Compromise.
- (c) WC-12 Employer's First Report of Injury or Disease.
- (d) WC-13 Supplementary Report on Accident or Industrial Disease.
- (e) WC-13a Supplementary Wage Information.
- (f) WC-16 Physician's Report of Accident of Industrial Disease.
- (g) WC-16a Physician's Report on Eye Injuries.
- (h) WC-16b Physician's Certified Report on Accident or Industrial Disease pursuant to section 102.17 (1) (as).
- (i) WC-28 Petition for Review of Findings and Order of Examiner.

IND 80.29 Value of room or meals. For the purpose of determining the value of lodging and meals for wage purposes under Chapter 102 the allowance provided under Chapter IND 72 shall apply.

IND 80.31 Procedure and claims under chapter 66, Wis. Stats. The department shall observe the same rules and procedures and may use the same forms in processing and determining claims made under chapter 66, Wis. Stats. as are used under chapter 102.

IND 80.32 Permanent disabilities. Percentages of loss of use for losses of motion as compared with amputations at the involved joints.

(1) The evaluation of permanent disability is at best difficult. The final evaluation is a composite of elements which can be objectively measured and others that cannot. Believing that a guideline for minimum disabilities associated with certain loss of motion or common medical conditions would assist, the Commission sought the advice of an Orthopedic Advisory Committee. On its recommendation the department adopts the schedule of minimum disabilities set out below. In adopting this schedule the department emphasizes that findings of additional disabling elements would result in an estimate higher than the minimum. An example would be where in addition to a described loss of motion, pain and circulatory disturbance further limited the use of an arm or a leg. The removal of a semi lunar cartilage in a knee with less than a good result would call for an estimate higher than 5% loss of use of the leg at the knee. The same principle would apply to laminectomies or spinal fusions.

The minimum also assumes that the member, the back, etc., was previously without disability. Appropriate reduction should be made for any pre-existing disability.

(2) Amputations, upper or lower extremities

At functional level	Equivalent to amputation at midpoint
Stump unsuitable to accommodate prosthesis	Equivalent to amputation at next most proximal joint
Stump not functional	Grade upward

All ranges of joint motion or degrees of ankylosis not listed below are to be interpolated from existing percent of disability listed.

(3) Hip

Ankylosis, optimum position, generally 15° to 30° flexion	50%
Mal position	Grade upward

To compute disabilities for loss of motion relate % of motion lost to average range

Shortening of leg (no posterior or lateral angulation)

No disability for shortening less than 3/4 inch

3/4 inch	5%
1 inch	7%
1-1/2 inches	14%
2 inches	22%

Greater than 2 inches of shortening results in greater proportionate rating than above

Prosthesis	Minimum of 50%
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(4) Knee

Ankylosis, optimum position, 170°	40%
Remaining range, 180° - 135°	25%
Remaining range, 180° - 90°	10%

Knee (Continued)

Prosthesis	40%
Removal of patella	To be based on functional impairment
Semi lunar cartilage removal Excellent to good result	5%

(5) Ankle

Total ankylosis, optimum position	40%
Ankylosis ankle joint	30%
Subtalar ankylosis	15%

(6) Toes

Ankylosis great toe at proximal joint	50%
All other toes at proximal	40%
Ankylosis great toe at distal joint	15%
All other toes at any interphalangeal joint	If no deformity, no disability
Mal position	On merits
Loss of motion	No disability

(7) Shoulder

Ankylosis, optimum position, scapula free	55%
In mal position	Grade upward
Limitation of active elevation in flexion and abduction to 45° but otherwise normal	30%
Limitation of active elevation in flexion and abduction to 90° but otherwise normal	20%
Limitation of active elevation in flexion and abduction to 135° but otherwise normal	5%

(8) Elbow

Ankylosis, optimum position, 45° angle	
With radio-ulnar motion destroyed	60%
With radio-ulnar motion intact	45%
Rotational ankylosis in neutral position	20%
Any mal position	Grade upward
Limitation of motion elbow joint, radio-ulnar motion unaffected	
Remaining range - 180° - 135°	35%
Remaining range - 135° - 90°	20%
Remaining range - 180° - 90°	10%
Rotation at elbow joint	
Neutral to full pronation	10%
Neutral to full supination	15%

(9) Wrist

Ankylosis, optimum position 30° dorsiflexion	30%
Mal position	Grade upward

(10) Complete Sensory Loss

Any digit	50% lesser involvement to be graded appropriately - 35% for palmar, 15% for dorsal surface
Total median sensory loss to hand	65-75%
Total ulnar sensory loss to hand	25%
Ulnar nerve paralysis	
Above elbow, sensory involvement	50% at wrist
Below elbow, motor and sensory involvement	45-50% at wrist

Complete Sensory Loss (Continued)

Below elbow, motor involvement only	35-45% at wrist
Below elbow, sensory involvement only	5-10% at wrist
Median nerve paralysis	
Above elbow, motor and sensory involvement	55-65% at wrist
Thenar paralysis with sensory loss	40-50% at wrist
Radial nerve paralysis	
Complete loss of extension, elbow wrist and fingers	45-55% at shoulder
Complete loss of extension, wrist and fingers	45-55% at wrist
Pareneal nerve paralysis	
At level below knee	25-30% at knee

(11) Back

Laminectomy, no undue symptomatic complaints or any objective findings	5%
Spinal fusion L5-S1, good results	10%
Spinal fusion L4-S1, good results	10%
Cervical fusion, successful	5%
Compression fractures of vertebrae of such degree to cause permanent disability may be rated 5% and graded upward	5%

(12) Fingers

(a) Complete ankylosis

Thumb	Mid-position	Complete Extension
Distal joint only-----	25%	35%
Proximal joint only-----	15%	20%
Distal and proximal joints-----	35%	65%
Distal, proximal and carpometa- carpal joints-----	85%	100%

Fingers

Distal joint only-----	25%	35%
Middle joint only-----	75%	85%
Proximal joint only-----	40%	50%
Distal and middle joints-----	85%	100%
Distal, middle and proximal joints-----	100%	100%

(b) Loss of Motion

Fingers	Loss of Flexion	Loss of Use	Loss of Extension	Loss of Use
Distal joint only-----	10%	- 1%	10%	- 2%
	20%	- 2%	20%	- 4%
	30%	- 3%	30%	- 6%
	40%	- 5%	40%	- 8%
	50%	- 10%	50%	- 15%
	60%	- 15%	60%	- 20%
	70%	- 20%	70%	- 30%
	80%	- 25%	80%	- 40%
		100%	- 60%	
Middle joint only-----	10%	- 5%	10%	- 2-1/2%
	20%	- 10%	20%	- 5%
	30%	- 15%	30%	- 10%
	40%	- 25%	40%	- 15%
	50%	- 40%	50%	- 30%
	60%	- 50%	60%	- 50%
	70%	- 60%	70%	- 70%
	80%	- 70%	80%	- 90%
		100%	- 100%	
Proximal joint only-----	10%	- 5%	10%	- 2-1/2%
	20%	- 10%	20%	- 5%
	30%	- 15%	30%	- 15%
	40%	- 20%	40%	- 20%
	50%	- 25%	50%	- 25%
	60%	- 30%	60%	- 40%
	70%	- 35%	70%	- 75%
	80%	- 40%	80%	- 85%
		90%	- 100%	

October 10, 1975

John J. Heilly
Asst. Secretary
DLHR

Gary Poulson
Assistant Revisor of Statutes

Rule changes for Ind 80

I am returning the filing of the department's order adopting rules for Chapter Ind 80. From the form of the order adopting I thought the department intended to repeal and recreate Chapter Ind 80. Speaking with Mr. Taugher, I was informed that the intent was to amend certain sections and repeal and recreate other sections. From the Order Adopting I cannot discern which sections are to be amended and which sections are repealed and recreated, etc. The acceptable form is set out in the rulemaking manual on pages 10 and 11.

If there are any questions please contact me.

GLP:dm