

January 25, 2019

The Honorable Barbara J. Neilson  
Administrative Law Judge  
Office of Administrative Hearings  
600 North Robert Street  
P.O. Box 64620  
Saint Paul, Minnesota 55164-0620

**Re: *In the Matter of the Proposed Permanent Rules Governing Workers' Compensation Litigation Procedures: Resolution of Claims with Intervenors, Minnesota Rules 1420.1850***

OAH 72-9039-34966; Revisor R-4527

Dear Judge Neilson:

With respect to the above-referenced rulemaking proceeding, the Office of Administrative Hearings received six comments and five requests for hearing. As the number of requests for hearing does not meet the statutory threshold, no public hearing will be scheduled.

The six commenters provided substantive and useful comments related to the proposed amendments to Minn. R. 1420.1850 (2017). In this correspondence copied to each of the six commenters, the Office of Administrative Hearings has responded to the comments received, as summarized below.

### **1. Mandatory Filing of a Partial Stipulation**

Commenters expressed concern that the proposed modifications to Minn. R. 1400.1850, subp. 1B(2) (2017) mandates the filing of partial stipulations for settlement. Correctly, the commenters noted that such a mandate would conflict with current statute.

#### Agency Response

The purpose of the proposed amendments to Minn. R. 1400.1850, subp. 1B(2) (2017) is to conform the rule to the 2017 Legislature's amendment of Minn. Stat. § 176.521 (2016).<sup>1</sup> In relevant part, the statute now provides: "The parties may file a partial

---

<sup>1</sup> See 2017 Minn. Laws, ch. 94, art. 5, § 1.

stipulation for settlement which resolves the claims of the employee and reserves the claims of one or more intervenors.”<sup>2</sup>

The rule was drafted in a manner that presumed the reader was familiar with the statute’s directive and intended merely to clarify what the parties **must** do **if** they elect to file a partial stipulation for settlement under the newly adopted subdivision 2b of section 176.521. The proposed rule amendment was never intended to compel parties to file a partial stipulation for settlement.

Upon review, the agency agrees with the commenters’ stated concern that the proposed language, read in isolation of the statutory directive, appears to mandate specified filings, and further agrees that such a reading of the rule conflicts with current law. To rectify that unintended result, the agency proposes to modify the proposed rule language by replacing the word “must” with the word “may,” as highlighted below:

**1420.1850, Subpart 1B (2):**

~~If the stipulation, or a letter of agreement attached to the stipulation, is not signed by the intervenor, the stipulation must include a statement that the parties were unable to obtain a response from the intervenor despite good faith efforts, or were unable to reach agreement with the intervenor despite the belief that the parties negotiated with the intervenor in good faith and made a reasonable offer to settle the intervention claim. At the time the stipulation is filed for approval, a copy of the stipulation must be served on the intervenor. An affidavit of service of the stipulation must accompany the stipulation when it is filed for approval, the parties **must may** file a partial stipulation for settlement that complies with Minnesota Statutes, section 176.521, subdivision 2b.~~

The agency believes that this modification is necessary for clarification and does not result in the rule being substantially different from what was originally proposed.<sup>3</sup>

**2. Repeal of Minn. R. 1420.1850, Subpart 2**

The agency has proposed to repeal Minn. R. 1420.1850, subpart 2 (2017). Currently under this subpart, the Office of Administrative Hearings must schedule an expedited hearing within 60 days of filing a stipulation of settlement to determine whether the stipulation precludes the nonparticipating party from pursuing its claim. Commenters expressed concern that repealing this subpart will cause confusion and delay a non-signing intervenor’s hearing on the merits.

Agency Response

The repeal of subpart 2 is necessary in order to conform to Minn. Stat. § 176.521, subd. 2b (2018), which no longer requires an initial hearing so long as the parties comply

---

<sup>2</sup> Minn. Stat. § 176.521, subd. 2b(a) (2018).

<sup>3</sup> See Minn. Stat. § 14.05, subd. 2.

with the statute. The intervenor still maintains its right to pursue its claim at a hearing on the merits if it is timely requested.

### **3. Right of a “Party” to Request a Hearing**

Several commenters asserted that the proposed amendments to Minn. R. 1420.1850, subp. 3A (2017) appear to allow any party to request a hearing on a non-settling intervenor’s claim, rather than restrict that ability to intervenors only. These commenters insist that allowing a “filing party” to be a separate entity from the “intervening party” is contrary to Minn. Stat. § 176.521, subd. 2b (2018). The Department of Labor and Industry’s Special Compensation Fund suggested that Minn. R. 1420.1850, subp. 3A (2017) be amended to clarify that only an intervenor may file a petition for hearing on an intervenor’s claims.

#### Agency Response

The current text of Minn. R. 1400.1850, subp. 3A (2017), which the proposed rule amendment does not change, indicates that “a party must file a written petition under Minn. Stat. § 176.291, for a hearing on the merits of the intervening party’s claim.” This rule language has been in existence for many years and is not affected by the proposed changes.

The rule does not conflict with the statute. The statute directs the filing party to serve upon “all parties” the partial stipulation, a notification of intent to seek court approval, and notice of “the nonsigning intervenor’s right to request a hearing on the merits of the intervenor’s claim.”<sup>4</sup> The fact that the statute addresses one specific party’s right to seek a hearing, in a statutory section dedicated specifically to that party type, does not lead to the conclusion that no other party has an interest, or right to pursue, a hearing on an intervenor’s claim. Under current law and decades of practice, a party other than the intervenor (oftentimes, an employee claimant) has a right to have the intervenor’s claim heard; this practice is most often used when the employee needs a final adjudication on whether the medical bill or claim will be found payable by the workers’ compensation insurer. A change to this rule, as suggested by the Special Compensation Fund, would eliminate that right from the employee or other party. As the Special Compensation Fund’s suggested modification would impact the substantive rights of parties, it is outside the scope of the authority delegated to the Office of Administrative Hearings with respect to this rulemaking proceeding.<sup>5</sup>

### **4. Lack of Specified Penalty for Failure to File Within 30 Days**

A few commenters noted that the rule does not identify any penalty for a non-signing intervenor who fails to request a hearing within 30 days. They further opined that the 30-day request period unreasonably intersects with the 30-day appeal period set in Minn. Stat. § 176.421, subd. 1 (2018), and the corresponding 30-day period in which a

---

<sup>4</sup> Minn. Stat. § 176.521, subd. 2b(b).

<sup>5</sup> See Minn. Stat. § 14.05, subd. 2.

compensation judge retains jurisdiction to issue amended findings under Minn. R. 1420.3150, subp. 1 (2017).

### Agency Response

The commenters incorrectly assume there are no consequences for failure to request a hearing within 30 days. An intervenor's failure to comply with the statute's imposed 30-day filing period is jurisdictional; failure to request a hearing within the time limits will bar an intervenor's right to a hearing on the merits of the claim. In addition, the absence of a rule-embedded penalty provision and the interaction of the various 30-day periods has been the rule of law for decades. As the proposed amendments were solely meant to clarify the rule in light of the new statutory language, incorporating an additional specific penalty provision and unthreading the 30-day periods would have been outside the scope of the delegated authority.

## **5. Incompleteness and Vagueness**

Commenters complained that Minn. R. 1420.1850, subp. 3 (2017) is incomplete and vague in that it does not address all ills of the process, including the required process to hear a non-signing intervenor's claim when an underlying claim remains pending. These commenters contend that the proposed striking of the last sentence of subpart 3A eliminates direction on that issue.

### Agency Response

While the proposed amendments cannot address process irregularities unrelated to the rulemaking authority granted in 2017 Minn. Laws ch. 94, art. 5, § 4, the agency agrees that the amendments to Subpart 3A should more clearly address how a non-settling intervenor's claim can be heard when the settlement does not dispose of all pending matters. To rectify this unintended omission, the agency proposes modifying Subpart 3A by withdrawing the deletion of the last sentence, adding limiting language, and deleting an unnecessary time parameter. The proposed modifications are highlighted below:

#### **1420.1850, Subpart 3. A:**

If the parties have not fully resolved the intervenor claim following the ~~procedures~~ procedure in subparts subpart 1 and ~~2~~ and there is no action pending at the office, a party must file a written petition under Minnesota Statutes, section 176.291, for a hearing on the merits of the intervening party's claim. The petition must be filed within 30 days after an award on stipulation is served and filed. If a petition for a hearing on the merits of an intervenor's claim is pending at the time an award on stipulation is served and filed under subpart 2, the office shall schedule the intervenor claims for a hearing on the merits for at least one-half day.

The agency believes that these modifications are necessary for clarification and do not render the rule substantially different from what was originally proposed.

## 6. Delay and Extra Cost

Last, certain commenters asserted that the proposed rule amendment will increase costs and lead to delays in processing workers' compensation claims. The majority, if not all, of the alleged delay and cost is attributed to the commenter's understanding that the rule requires filing of a partial stipulation in every case.

### Agency Response

As indicated in Issue 1 above, the agency never intended the rule to be read as requiring the filing of a partial stipulation in every workers' compensation case. Acknowledging its imprecise drafting, the agency has already addressed this issue in its proposed modification to part 1420.1850, subp. 1B(2) (2017), identified above.

Without amendment, the current rule provides that a hearing must be scheduled, held, and a decision issued as to whether the stipulation, as filed, precludes the non-participating intervenor from pursuing its claim. Only after that process is complete can a compensation judge issue the award.

Under the amendment enacted in 2017, the statute and proposed rule now allows the parties to file a partial stipulation which complies with specified procedural requirements. Once that is done, the compensation judge must sign the award without any further proceedings. While the new process has added steps by requiring the parties to serve the non-signing intervenor with the stipulation, wait the ten-day objection period, and then file the stipulation with the court, the elimination of the current rule's initial hearing saves far more time and expense than the new process steps entail. Therefore, the commenters' allegations of increased cost and delay are not well-founded.

### Conclusion

Minnesota Statutes, section 14.14, subdivision 2 (2018), requires the Office of Administrative Hearings to "make an affirmative presentation of facts establishing the need for and reasonableness of the proposed rules . . . ." The agency has set forth its affirmative presentation in its Statement of Need and Reasonableness, which presentation meets the rational basis standard and compels the conclusion that the proposed rules of the Office of Administrative Hearings are needed and reasonable.

The agency has addressed all of the concerns raised during the public comment period. With the proposed modifications detailed above, the agency respectfully requests that the Administrative Law Judge recommend adoption of the proposed rule amendments.

Yours very truly,



Tammy L. Pust  
Chief Administrative Law Judge