

Date: November 22, 2024

To: Michael Lewis, Compensation Attorney Principal

RE: Proposed Amendment to Rules Governing Workers' Compensation Court of Appeal Rules of Procedure, *Minnesota Rules*, Chapter 9800

OAH Docket: 21-9060-39472

After review of the Workers' Compensation Court of Appeal's (WCCA's) proposed amendments to Minn. R. 9800, et. seq. and the accompanying Statement of Need and Reasonableness (SONAR), the Department of Labor and Industry (DLI) submits comments to address concerns regarding proposed amendments that may conflict with statutory provisions regarding filing. DLI is concerned that the rule amendments may be moot unless or until there is a statutory change, and the SONAR's analysis did not sufficiently address how the proposed changes would resolve potential statutory conflict.

Minnesota Statutes section 176.285, subd. 2, provides that "[w]here a statute or rule authorizes or requires a document to be filed with or served on the commissioner *or the Workers' Compensation Court of Appeals*, the document must be filed electronically in the manner and format specified by the *commissioner* (emphasis added)." The "commissioner" under chapter 176 is the commissioner of labor and industry. See Minn. Stat. § 176.011, subd. 5a.

A number of the proposed amendments address filing, including part 9800.0330, a new section prescribing the manner and format of electronic filing at the WCCA. Under the plain language of Minn. Stat. § 176.285, subd. 2 quoted above, it is not clear whether the WCCA has the necessary statutory authority to independently alter the manner and format of filing. Minn. Stat. § 176.2611, subd. 7, grants the WCCA some authority to amend its rules of procedure regarding electronic filing, but only to amend those rules to reflect electronic filing with the office for purposes of Minn. Stat. § 176.421, subd. 5, and to allow electronic filing under Minn. Stat. § 176.285. Minn. Stat. § 176.2611, subd. 7, does not grant the WCCA authority to create or alter the rules related to the manner and format of electronic filing with the WCCA, as that authority currently lies solely with the commissioner.

The limit of the WCCA's statutory authority as it relates to the manner and format of electronic filing may mean there are issues with other proposed amendments, specifically: part 9800.0100, subp. 6, defining "filed"; part 9800.0300, addressing the form of electronic documents suitable for filing; the aforementioned part 9800.0330; and part 9800.1400, subp. 2, defining when a request for relief may be filed electronically.

Additionally, DLI has some concern that the amendments to part 9800.1600, subp. 1, may run contrary to Minn. Stat. § 176.421, subd. 4. The statute requires that a notice of appeal be filed with the office and a copy filed with the commissioner. The proposed rule amendment only requires that the notice of appeal be filed with the office, without also requiring a copy be filed with the commissioner. This generates a concern as to whether a statutory change to § 176.421, subd. 4, is necessary to remove the requirement a copy be filed with the commissioner before the rule amendment to clarify that an appeal is commenced by filing notice with the office can go through. DLI would not oppose such a change but is concerned that the proposed rule will create confusion without a statutory clarification.

In summary, DLI asks that the WCCA consider the current statutory authority for the above-mentioned proposed rule amendments and clarify why these amendments do not conflict with the statutory provisions in Minn. Stat. §§ 176.285 and 176.421. In the alternative, DLI suggests that the WCCA submit potential statutory amendments to Minn. Stat. § 176.285 to resolve any potential conflict with the proposed rule language. DLI intends to offer the Workers' Compensation Advisory Council a proposed amendment to Minn. Stat. § 176.421, subd. 4, consistent with this rulemaking for consideration for the 2025 legislative session.

Thank you for your consideration of our comments.