

THE INDUSTRIAL ACCIDENT BOARD  
OF THE STATE OF DELAWARE

**ORDER**

**WHEREAS**, on March 11, 2020, in response to the serious health threat posed by the novel coronavirus (“COVID-19”), the Industrial Accident Board (“the Board”) issued an order (“First Board Order”) setting forth certain precautionary measures to protect the health of the Board Members, Hearing Officers, staff, litigants, witnesses and the public, while still allowing Board hearings to proceed in-person; and

**WHEREAS**, on March 16, 2020, in response to further developments concerning the COVID-19 outbreak, the Board issued another order (“Second Board Order”) which suspended/continued all workers’ compensation hearings through April 3, 2020, subject to review and extension and subject to further order of the Board; and

**WHEREAS**, the Delaware Supreme Court, on March 22, 2020, issued a directive closing all court facilities until at least April 15, 2020, but indicating that “[a]ll non-emergency and non-essential telephonic and video hearings shall proceed at the discretion of each court;” and

**WHEREAS**, on March 31, 2020, the Board issued another order (“Third Board Order”) which extended the suspension of workers’ compensation hearings through April 10, 2020, but which advised that, effective April 13, 2020, using WebEx Meeting technology, workers’ compensation hearings (including merit hearings, evidentiary hearings and motion hearings) could

proceed, by stipulation of the parties, in front of a Workers' Compensation Hearing Officer, provided that certain technical requirements were met; and

**WHEREAS**, on March 22, 2020, the Governor of the State of Delaware directed Delawareans to stay at home whenever possible in order to limit the amount of person-to-person contact and, accordingly, the Board is unable to hold in-person hearings so long as the Governor's order remains in place; and

**WHEREAS**, there are pending petitions that affect the receipt of benefits to injured workers at a time when receipt of such benefits may be critical and the Board wishes to provide a mean for hearings (including merit hearings, evidentiary hearings and motion hearings) to proceed on such petitions;

**NOW, THEREFORE, it is HEREBY ORDERED**, that beginning Monday, May 18, 2020, and subject to further order of the Board, scheduled matters shall proceed by video hearing before two Board Members in accordance with title 19, section 2301A(c) of the Delaware Code (or, if the parties so stipulate, before a solo Hearing Officer in accordance with title 19, section 2301B(a)(4)).

Continuances of hearings will continue to be processed in accordance with title 19, section 2348(h) of the Delaware Code and the Rules of the Industrial Accident Board. In this regard, the Board concludes that a mere reluctance or disinclination to use the video format shall NOT be considered "good cause" for a continuance, but a specific technological inability to proceed in that

format on the part of a necessary participant (attorney, client or witness) shall be deemed good cause for a continuance.<sup>1</sup> However, a continuance request based on such an inability must explain with specificity the nature of the alleged technological problem so that the Board can assess for itself whether the alleged technological problem is sufficient to warrant a continuance.

At least twenty-four hours prior to a hearing, certain anticipated exhibits, such as Hearing Stipulations and depositions, should be sent electronically to the Chief Hearing Officer or his designee, with each document separately and clearly identified and submitted in either PDF or Word format. Any submitted video shall be in a common video format such as .wmv, .mpg, .mov or the like.<sup>2</sup> This is to allow for proper distribution of the documents to the Board Members and does not affect the ability of any party to submit additional exhibits at the hearing, using the document sharing properties of the WebEx platform. However, promptly after the hearing, clean hard-copies of all exhibits are to be mailed or delivered to the Hearing Officer in charge of the hearing for inclusion in the Board's file. Unless otherwise requested by the Hearing Officer, only a single copy of each exhibit needs to be provided.

The Board, in the exercise of its sound discretion, may decline to proceed with any video hearing if the complexity or features of the case make it unfeasible to handle by video hearing. The ability of a hearing to proceed fairly with an unrepresented claimant (*pro se*) shall be

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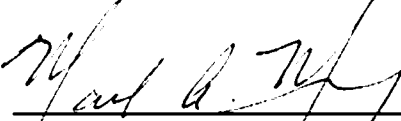
<sup>1</sup> The Board wishes to emphasize that it is not in any way suggesting that any participant is required to travel to an attorney's office or other location in order to participate. The Governor's travel restrictions are to be complied with.

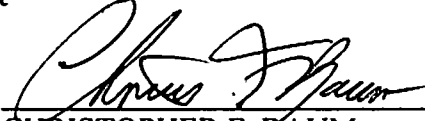
<sup>2</sup> In addition to the electronic submission, to the extent practical, hard-copies of such submissions should be delivered to the Department of Labor prior to the hearing for the convenience of the hearing officer.

determined on a case-by-case basis taking into account the contacts that the Workers' Compensation Specialists of the Office of Workers' Compensation have had with that claimant.

**IT IS SO ORDERED** this 11<sup>th</sup> day of May, 2020.

**INDUSTRIAL ACCIDENT BOARD**

  
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MARK A. MUROWANY  
Chair, Industrial Accident Board

  
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CHRISTOPHER F. BAUM  
Chief Hearing Officer