

Reconsiderations

R08-1-01

Reconsideration Guidelines

November 1, 2008

WHEREAS, the Industrial Commission issued Resolution R05-1-02 on September 1, 2005 adopting guidelines to apply to requests for reconsideration of final Industrial Commission orders; and

WHEREAS, Section 4123.52 of the Revised Code provides that the jurisdiction of the Industrial Commission over each case is continuing and the Industrial Commission may make such modification or change with respect to former findings or orders with respect thereto, as, in its opinion is justified; and

WHEREAS, the decision of State ex rel. Gatlin v. Yellow Freight Company (1985), 18 Ohio St.3d 246, found that regardless of the existence of a legislatively prescribed court appeal, the Industrial Commission has continuing jurisdiction to reconsider its orders for a reasonable period of time absent statutory regulations restricting the exercise of reconsideration; and

WHEREAS, the decision of State ex rel. Nicholls v. Industrial Commission (1998), 81 Ohio St.3d 454, stated that continuing jurisdiction of the Industrial Commission is not unlimited and that its prerequisites are: (1) new and changed circumstances; (2) fraud; (3) clear mistake of fact; (4) clear mistake of law; or (5) error by inferior tribunal; and

WHEREAS, Section 4121.03(E)(1) of the Revised Code provides that the Industrial Commission is responsible for the establishment of the overall adjudicatory policy of the Industrial Commission; and

WHEREAS, after review and discussion the Industrial Commission finds it proper and necessary to revise the existing guidelines by deleting the provision that provides, "Should the opposing party desire to reply, the written reply must be filed with the Industrial Commission within fourteen days of that party's receipt of the request for reconsideration."

THEREFORE BE IT RESOLVED that the following guidelines shall be adopted by the Industrial Commission and shall apply to requests for reconsideration of final Industrial Commission decisions:

A. A party to a claim who desires to file a request for reconsideration of a Industrial Commission decision must file the request for reconsideration within fourteen days from the date of receipt of:

1. An order issued by the members of the Industrial Commission;
2. A final order issued by a staff hearing officer except for an order issued by a staff hearing officer under Section 4121.35(B)(2) and Section 4123.511(D) of the Revised Code; or
3. An order issued pursuant to Section 4123.511(E) of the Revised Code refusing to hear an appeal from a decision of a staff hearing officer issued under Section 4123.511(D) of the Revised Code.

B. All requests for reconsideration shall include the following:

1. A recitation of the specific grounds upon which reconsideration is sought; and
2. Identification of the relevant orders of the Administrator and the Industrial Commission from which reconsideration is sought as well as any other underlying orders addressing the issue in controversy; and

3. Identification of relevant documents and proof contained within the claim file and, where appropriate, citations to the legal authorities relied upon to support the request for reconsideration; and
4. If there exists newly discovered evidence which by due diligence could not have been discovered and filed by the appellant prior to the date of the order from which reconsideration is sought, such evidence shall be filed with the request for reconsideration.

Failure to comply with Section (B) may result in a denial of the reconsideration request.

C. A copy of the request for reconsideration shall be sent to the opposing party and opposing party's authorized representative by the party that requests reconsideration at the time the request for reconsideration is filed with the Industrial Commission.

D. If the requirements of Sections (A) and (B) are satisfied, hearing officers designated by the Industrial Commission shall review the request for reconsideration pursuant to the following criteria:

1. A request for reconsideration shall be considered only in the following cases:
 - a. New and changed circumstances occurring subsequent to the date of the order from which reconsideration is sought. For example, there exists newly discovered evidence which by due diligence could not have been discovered and filed by the appellant prior to the date of the order from which reconsideration is sought. Newly discovered evidence shall be relevant to the issue in controversy but shall not be merely corroborative of evidence that was submitted prior to the date of the order from which reconsideration is sought.
 - b. There is evidence of fraud in the claim.
 - c. There is a clear mistake of fact in the order from which reconsideration is sought.
 - d. The order from which reconsideration is sought contains a clear mistake of law of such character that remedial action would clearly follow.
 - e. There is an error by the inferior administrative agent or subordinate hearing officer in the order from which reconsideration is sought which renders the order defective.

E. Requests for reconsideration that do not comport with the aforementioned criteria will be denied by a staff hearing officer without being presented to the Industrial Commission members.

BE IT FURTHER RESOLVED that the guidelines set forth in Resolution R08-1-01 are to become effective and shall apply to all final orders of the Industrial Commission published on or after November 1, 2008.

Prior Reconsiderations Resolutions

R98-1-03
Guidelines for Processing
May 6, 1998

R05-1-02
Reconsideration Guidelines
September 1, 2005