

**PROPOSED REGULATION OF THE HEARINGS DIVISION OF
THE DEPARTMENT OF ADMINISTRATION**

LCB File No. R102-23

February 2, 2024

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§ 1-7, NRS 616C.310.

A REGULATION relating to industrial insurance; requiring the Hearings Division of the Department of Administration to develop and maintain an electronic filing system for contested cases; establishing requirements for the mandatory use of the electronic filing system by certain parties; revising provisions governing the filing and service of process of documents related to contested cases; providing that certain procedures relating to contested cases apply to licensed representatives; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes an aggrieved party in a contested case relating to industrial insurance to: (1) request a hearing before a hearing officer; and (2) appeal from a decision of a hearing officer or from a determination made by certain parties. (NRS 616C.315, 616C.345) Existing law authorizes the Chief of the Hearings Division of the Department of Administration to establish regulations to provide for specific procedures for the determination of contested cases. (NRS 616C.310) **Section 1** of this regulation requires the Hearings Division to: (1) develop and maintain an electronic filing system for the filing and service of documents relating to a contested case or an appeal of a contested case; (2) allow certain parties access to the electronic filing system in an office of the Hearings Division under certain circumstances; and (3) provide training in the use of the electronic filing system. **Section 1** also requires a party to a contested case or an appeal of a contested case to use such electronic filing system unless the party is not represented by counsel or by a licensed representative. **Section 3** of this regulation makes conforming changes to existing regulations relating to the filing and service of documents in contested cases to account for the use of such electronic filing system.

Existing regulations set forth the procedure for parties to a contested claim to forego a hearing before a hearing officer and submit the contested claim directly to an appeals officer, including that the parties submit to the hearing officer a written stipulation signed by the employer. (NAC 616C.275) **Section 2** of this regulation provides instead that the written stipulation must be signed by the employer or the employer’s licensed representative.

Existing regulations provide that proof of service in a contested case may be made by certificate of the counsel for a party or of the counsel’s employee. (NAC 616C.294) **Section 4** of

this regulation provides that proof of service may also be made by certificate of the licensed representative for a party or of the licensed representative's employee.

Existing regulations require a party to furnish certain papers and documents to the counsel for any other party if the party is represented by counsel. (NAC 616C.303) **Section 5** of this regulation requires a party to also furnish certain papers and documents to the licensed representative of the party if the party is represented by a licensed representative.

Existing regulations provide that counsel of record is deemed to be counsel for the party until written notice of the withdrawal and substitution is filed with the appeals officers. (NAC 616C.321) **Section 6** of this regulation provides that the counsel or licensed representative of record, as applicable, is deemed to be the counsel or licensed representative of record until written notice of the withdrawal and substitution is filed with the appeals officer.

Section 1. Chapter 616C of NAC is hereby amended by adding thereto a new section to read as follows:

1. The Hearings Division will develop and maintain an electronic filing system for the filing and service of documents relating to a contested case or an appeal of a contested case under chapters 616A to 617, inclusive, of NRS. In developing and implementing such electronic filing system, the Hearings Division will, to the extent practicable, ensure consistency with the Nevada Electronic Filing and Conversion Rules adopted by the Nevada Supreme Court.

2. Except as otherwise provided in this subsection, a party to a contested case or an appeal of a contested case under chapters 616A to 617, inclusive, of NRS must use the electronic filing system. A party is not required to use the electronic filing system if he or she is not represented by counsel or by a licensed representative.

3. The Hearings Division will allow access to the electronic filing system in an office of the Hearings Division during regular business hours by a party who is not represented by counsel or by a licensed representative if the party informs the Hearings Division that he or she wishes to use such electronic filing system.

4. The Hearings Division will provide training in the use of the electronic filing system described in this section.

Sec. 2. NAC 616C.275 is hereby amended to read as follows:

616C.275 1. Parties to a contested claim who wish to forego a hearing before a hearing officer and submit the contested claim directly to an appeals officer must:

(a) If a request for a hearing before a hearing officer has been filed, submit to the hearing officer a written stipulation to forego the hearing before the hearing officer.

(b) If a request for a hearing before a hearing officer has not been filed, submit to a hearing officer a request for a hearing and a written stipulation to forego the hearing before the hearing officer.

2. The written stipulation required by subsection 1 must be signed by:

(a) The claimant's legal counsel;

(b) The insurer or a third-party administrator; and

(c) The employer ~~H~~ ***or the employer's licensed representative***, if the employer ***or the employer's licensed representative*** has notified the parties or the Hearings Division that ~~he or she~~ ***the employer*** will participate in the contested claim.

Sec. 3. NAC 616C.291 is hereby amended to read as follows:

616C.291 For the purposes of NAC 616C.282 to 616C.336, inclusive:

1. Filing occurs when the ***original document is electronically submitted using the electronic filing system described in section 1 of this regulation or the*** original document is received by and is in the actual physical custody of the Hearings Division ~~H~~ ***, as applicable.***

2. ~~A~~ ***If a party is not required to use the electronic filing system pursuant to subsection 2 of section 1 of this regulation, a*** document over five pages in length may not be filed by

facsimile unless so ordered or approved in advance by a hearing or appeals officer. If a document which is five pages or less in length is received by facsimile, the document will be accepted and the date of receipt stamped on the document. If a document is received by facsimile and the original of the document is received within 3 business days after it is received by facsimile, the original will be stamped with the date it is received, but shall be deemed filed on the date the facsimile was received.

3. ~~{A}~~ *If a party is not required to use the electronic filing system pursuant to subsection 2 of section 1 of this regulation, a* document may be filed by electronic mail upon prior written approval of the Hearings Division. A document filed by electronic mail must be:

- (a) Accompanied by an acknowledgment of receipt.
- (b) Sent to the secretary for the hearing or appeals officer and to each party to the proceeding.

4. Except as otherwise provided in subsection 6 of NRS 616C.345, if service is to be made upon a party represented by counsel or by a licensed representative, the service must be made upon counsel or the licensed representative unless service upon the party is ordered by the appeals officer.

5. Except as otherwise provided in ~~{subsection 8,}~~ *this subsection*, service upon counsel *or a licensed representative*, or upon a party must be made *by use of the electronic filing system described in section 1 of this regulation. If the electronic filing system is not required to be used pursuant to subsection 2 of section 1 of this regulation, service must be made* by delivering or mailing a copy of the document to ~~{the counsel}~~ :

(a) The counsel or licensed representative, or the party at his or her last known address or, if the address is not known, by leaving the copy at the office of the hearing or appeals officer ~~{}~~ ;
or

(b) The office of the Hearings Division.

6. Delivery of a copy of the document *that is not required to be served using the electronic filing system described in section 1 of this regulation* is made by:

(a) Handing it to the party or his or her counsel ~~{}~~ *or licensed representative;*

(b) Leaving it at the office of the party or his or her counsel *or licensed representative* with a clerk or other person in charge thereof or, if there is no one in charge, leaving it in a conspicuous place therein; ~~{or}~~

(c) Leaving it at the dwelling house or usual place of abode of the person to be served with some person of suitable age and discretion residing therein ~~{}~~ *; or*

(d) Leaving it at the office of the Hearings Division.

7. Service by ~~{mail}~~ :

(a) Use of the electronic filing system described in section 1 of this regulation is complete upon receipt by the filing party of confirmation that the document was received, filed and served.

(b) Mail is complete upon mailing. Any document served by mail shall be deemed received 3 days after it is mailed.

~~{8. If requested by a party or his or her counsel, the Hearings Division will serve a document upon the party or his or her counsel by placing the document in a folder maintained for that purpose at the Hearings Division's office. If such a folder is maintained by the Hearings Division, it will be available for inspection by the party or his or her counsel during the regular business hours of the Hearings Division. A document served pursuant to this subsection shall be deemed received 3 days after the document is placed in the party's folder.}~~

Sec. 4. NAC 616C.294 is hereby amended to read as follows:

616C.294 Proof of service may be made by certificate of the counsel *or licensed representative* for a party or of the counsel's *or licensed representative's* employee, or by written admission, affidavit, or other proof satisfactory to the appeals officer. Failure to make proof of service does not affect the validity of service.

Sec. 5. NAC 616C.303 is hereby amended to read as follows:

616C.303 1. Papers and documents filed pursuant to NAC 616C.282 to 616C.336, inclusive, need not conform to any particular format.

2. All papers and documents and copies thereof must be legible.

3. A party shall furnish to the counsel *or licensed representative* for any other party, or to the party if he or she is not represented by counsel ~~H~~ *or a licensed representative*, copies of all papers and documents served upon any party or filed with the appeals officer.

4. Papers and documents offered as evidence, except for good cause shown, must not be marked with highlighting, underlining, any annotation, or other device that serves to draw attention to one part of the document over another part or one document over another document or to comment on the contents of the document.

5. Papers and documents submitted to an appeals officer must:

(a) Have any personal identifying information redacted; and

(b) If personal identifying information has been redacted, include an affirmation that the submitted papers and documents do not contain the personal identifying information of any person,

↳ unless the identity of the person is at issue.

6. Papers and documents submitted without the affirmation required pursuant to paragraph (b) of subsection 5 must not be accepted into evidence in any proceeding before an appeals officer.

7. As used in this section, “personal identifying information” has the meaning ascribed to it in NRS 616C.310.

Sec. 6. NAC 616C.321 is hereby amended to read as follows:

616C.321 ~~{Counsel}~~ *The counsel or licensed representative* of record , *as applicable*, shall be deemed to be *the counsel or licensed representative* for the party in all proceedings before the appeals officer until written notice of the withdrawal and the substitution of counsel *or licensed representative* is filed with the appeals officer.

Sec. 7. This regulation becomes effective on the later of:

1. The date on which it is filed by the Legislative Counsel with the Secretary of State pursuant to NRS 233B.070; or
2. July 1, 2024.