

## **Title 40**

### **LABOR AND EMPLOYMENT**

#### **Part III. Workers' Compensation Second Injury Board**

##### **Chapter 1. General Provisions**

###### **§101. Approval of Settlements; Requirements; Computation of Time**

A.1. Requests for approval of the settlement of a third-party claim for settlement amounts less than \$50,000 shall be submitted by facsimile transmission or hand delivery to the offices of the Second Injury Board.

2. Requests for approval of all other settlements may be submitted by United States Postal Services, facsimile transmission or hand delivery to the offices of the Second Injury Board.

B. Requests for approval of the settlement of a third-party claim shall be submitted on SIB Form C.

C. In computing the period of time allowed for response by the Second Injury Board to a request for settlement authority, the date of submission of the request shall not be included. The last day of the period shall not be included, unless it is a legal holiday, in which event the period shall run until the end of the next day which is not a legal holiday. The board shall have three working days, excluding legal holidays, to respond to the request.

**Second Injury Board**

**Request for Settlement Authority  
Third-Party Claims Less Than \$50,000  
R.S. 23:1378(A)(8)(a)(iii)**

All requests must be in **writing**.  
All requests must be **faxed** to 225-219-5968 or **hand delivered** to the Second Injury Fund.  
All **questions** must be answered and submitted with **required attachments**.

<b>Name of Injured Worker:</b>
<b>Name of Workers' Compensation Insurance Carrier and/or Self-Insured Employer:</b>
<b>SIB Claim No:</b>
<b>Weekly Compensation Rate:</b>

What is the total paid to date by the workers' compensation insurance carrier and/or self-insured employer?

- a. Indemnity \_\_\_\_\_
- b. Medical \_\_\_\_\_

What is the third party offer to:

- a. The workers' compensation insurance carrier and or self-insured employer? \_\_\_\_\_
- b. The injured worker? \_\_\_\_\_
- c. Others (specify)? \_\_\_\_\_

Does the workers' compensation insurance carrier and/or self-insured employer anticipate waiving recovery of any portion of the amount paid to the injured worker?	<input type="checkbox"/> Yes* <input type="checkbox"/> No  *If yes, what amount or percentage will be waived? _____
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**In addition to the above responses, the following must be attached:**

- A recent medical report documenting current medical condition.
- A completed settlement evaluation form.

**Not required but recommended:**

Any additional information you care to submit to support your position.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 23:1378(A)(8)(a)(v).

**HISTORICAL NOTE:** Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 1:145 (February 1975), amended LR 3:48 (January 1977), LR 3:497 (December 1977), amended by the Department of Employment and Training, Office of Workers' Compensation, Second Injury Board, LR 17:179 (February 1991), amended by Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 32:92 (January 2006).

### **§103. Domicile of Board, Time of Meeting, Special Meetings**

A. The board shall be domiciled in Baton Rouge, Louisiana. It shall hold its regular meeting on the first Thursday of each month. Special meetings may be called upon giving three days' advance notice thereof.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 23:1372.

**HISTORICAL NOTE:** Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 1:145 (February 1975), amended LR 3:49 (January 1977), LR 3:497 (December 1977), amended by the Department of Employment and Training, Office of Workers' Compensation, Second Injury Board, LR 17:179 (February 1991).

### **§105. Definitions**

A. By reference, all of the definitions set forth and contained in R.S. 49:950 through 49:966, inclusive, are incorporated herein, and for the purpose of hearings to be held hereunder, the following definitions shall prevail.

*Applicant*—the employer or insurer making claim for reimbursement from the Workers' Compensation Second Injury Fund.

*Board*—the Office of Workers' Compensation, Second Injury Board.

*Hearing*—a hearing called by the board under the authority of R.S. 23:1378, Subsection C.

*Hearing Officer*—the chairman or vice chairman or any other person determined by the board to be qualified to conduct hearings on its behalf.

*Insurer*—the workers' compensation insurance carrier of an employer.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 23:1376.

**HISTORICAL NOTE:** Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 1:145 (February 1975), amended LR 3:49 (January 1977), LR 3:497 (December 1977), amended by the Department of Employment and Training, Office of Workers' Compensation, Second Injury Board, LR 17:179 (February 1991).

### **§107. Presentation of Claim for Reimbursement from Second Injury Fund, Timely Filing Thereof**

A. Within one year after the first payment of either compensation or medical benefits, the employer or his insurer, whichever of them makes the payments or becomes liable therefor, shall notify the board in writing of such facts and furnish such other information as may be required for

the board to determine if the employer or his insurer is entitled to reimbursement from the Workers' Compensation Second Injury Fund. No employer, insurer, servicing agent or self-insured association shall be reimbursed unless the board is notified within one year from the date of the first payment of either compensation or medical benefits.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 23:1376.

**HISTORICAL NOTE:** Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 1:146 (February 1975), amended LR 3:49 (January 1977), LR 3:497 (December 1977), amended by the Department of Employment and Training, Office of Workers' Compensation, Second Injury Board, LR 17:180 (February 1991), amended by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 22:34 (January 1996).

### **§109. Disposition of Claim**

A. The board shall conduct such investigations, order such hearings and take such other actions as it finds necessary to make an intelligent decision on the claim. At least 30 days prior to the date of the board meeting at which a decision on the claim is to be made, all interested parties shall be notified of the following:

1. the date, time, place and purpose of the meeting;

2. that a formal hearing on the claim pursuant to the provisions of R.S. 49:955 may be requested provided such request is made in writing and is received in the office of the board at least 10 days prior to the date of said meeting; and

3. that unless a formal hearing is requested as provided in §109.A.2, the board will render its decision on the claim at said meeting.

B. Where no hearing is requested, the board shall issue a written decision as soon after said meeting as the facts and circumstances will allow. Parties shall be notified by mail of such decision.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 23:1376.

**HISTORICAL NOTE:** Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 1:146 (February 1975), amended LR 3:49 (January 1977), LR 3:497 (December 1977), amended by the Department of Employment and Training, Office of Workers' Compensation, Second Injury Board, LR 17:180 (February 1991).

### **§111. Commencement of Hearings**

A. As authorized by R.S. 23:1378.C and these rules of practice and procedure, hearings may be instituted by the board on timely request by the applicant or, at any time, on the board's own motion. No request by the applicant for a hearing shall be effective unless it is made in writing and received in the office of the board at least 10 days prior to the date of the board meeting at which a decision on the claim is to be made as set forth in §109.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 23:1376.

**HISTORICAL NOTE:** Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 1:146 (February 1975), amended LR 3:49 (January 1977), LR

3:497 (December 1977), amended by the Department of Employment and Training, Office of Workers' Compensation, Second Injury Board, LR 17:180 (February 1991).

#### **§115. Notice**

A. The board shall notify the applicant at least 15 days prior to the hearing and such notice shall conform to the requirements of R.S. 49:955.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1376.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 1:146 (February 1975), amended LR 3:49 (January 1977), LR 3:497 (December 1977), amended by the Department of Employment and Training, Office of Workers' Compensation, Second Injury Board, LR 17:180 (February 1991).

#### **§117. Answer or Appearance**

A. The applicant may file an answer or otherwise make an appearance on or before the date fixed for the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1376.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 1:146 (February 1975), amended LR 3:50 (January 1977), LR 3:497 (December 1977), amended by the Department of Employment and Training, Office of Workers' Compensation, Second Injury Board, LR 17:180 (February 1991).

#### **§119. Leave to Intervene Necessary**

A. Persons, other than the original parties to any proceedings, whose interests are to be directly and immediately affected by the proceedings, shall secure an order from the board or hearing officer appointed by it granting leave to intervene before being allowed to participate; provided that the granting of leave to intervene in any matter or proceeding shall not be construed to be a finding or determination of the board or hearing officer for purposes of court review or appeal.

B. Petitions for leave to intervene must be in writing and must clearly identify the proceeding in which it is sought to intervene. Such petition must set forth the name and address of the petitioner and contain a clear and concise statement of the direct and immediate interest of the petitioner in such proceedings, stating the manner in which such petitioner will be affected by such proceedings, outlining the matters and things relied upon by such petitioner as a basis for his request to intervene in such cause, and, if affirmative relief is sought, the petition must contain a clear and concise statement of relief sought and the basis thereof, together with a statement as to the nature and quality of evidence petitioner will present if such petition is granted.

C. Petitions to intervene and proof of service of copies thereof on all other parties of record shall be filed not less than two days prior to the commencement of the hearing. Thereafter, such petition shall state a substantial reason for such delay; otherwise, such petition will not be considered.

D. If a petition to intervene shows direct and immediate interest in the subject matter of the proceeding or any part

thereof and does not unduly broaden the issues, the board may grant leave to intervene or otherwise appear in the proceeding with respect to the matters set out in the intervening petition, subject to such reasonable conditions as may be prescribed. If it appears during the course of a proceeding that an intervenor has no direct or immediate interest in the proceeding, and the public interest does not require his participation therein, the board may dismiss him from the proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1376.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 1:146 (February 1975), amended LR 3:50 (January 1977), LR 3:497 (December 1977), amended by the Department of Employment and Training, Office of Workers' Compensation, Second Injury Board, LR 17:180 (February 1991).

#### **§121. Default in Answering or Appearing**

A. In the event of the failure of any respondent to answer or otherwise appear within the time allowed, and provided that the foregoing rules as to service have been complied with, the respondent or respondents so failing to answer or otherwise plead to or to appear, shall be deemed to be in default, and the allegations of the complaint, petition or order to show cause, as the case may be, together with the evidence to support the same, shall be entered into the record and may be taken as true and the order of the board entered accordingly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1376.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 1:146 (February 1975), amended LR 3:50 (January 1977), LR 3:497 (December 1977), amended by the Department of Employment and Training, Office of Workers' Compensation, Second Injury Board, LR 17:181 (February 1991).

#### **§123. Hearing Procedure**

A. Hearing held under these rules and regulations shall be conducted by the board, or by its designated hearing officer, in accordance with the rules and procedures set forth in R.S. 49:956.

1. The chairman of the board or the vice chairman in the absence of the chairman or the hearing officer assigned to the matter shall announce the title and docket number of the proceedings before the board and direct a reading into the record of the notice of hearing together with the written appearances of the applicant and shall note the subpoenas issued and returns thereon. Attorneys and/or other representatives of the applicant shall be recognized along with the representatives of the board and other proper parties.

2. The applicant shall then present his evidence subject to cross examination by the board and other proper parties in those cases where the applicant requested the hearing be held.

3. The board shall then present its evidence subject to cross examination by the applicant and other proper parties.

4. Where the board has called the hearing on its own motion, the order of presentation of evidence shall be reversed.

5. The board may make an informal disposition of the case by stipulation, agreed settlement, consent order or default.

6. The board shall render its final decision and order in accordance with R.S. 49:958.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1376.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 1:146 (February 1975), amended LR 3:50 (January 1977), LR 3:497 (December 1977), amended by the Department of Employment and Training, Office of Workers' Compensation, Second Injury Board, LR 17:181 (February 1991).

### **§125. Finality of Board's Decision**

A. The decision of the board shall be final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1376.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 1:146 (February 1975), amended LR 3:50 (January 1977), LR 3:498 (December 1977), amended by the Department of Employment and Training, Office of Workers' Compensation, Second Injury Board, LR 17:181 (February 1991).

### **§127. Appeal**

A. An appeal from an adverse final decision of the board, as to liability under the Act or the amount of such liability or both, may be taken by the aggrieved party provided such appeal is filed, pursuant to the provisions of R.S. 23:1378.E, within 30 days after the date shown on the written notice of said final decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1376.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 1:146 (February 1975), amended LR 3:50 (January 1977), LR 3:498 (December 1977), amended by the Department of Employment and Training, Office of Workers' Compensation, Second Injury Board, LR 17:181 (February 1991).

### **§129. Stenographic Record of Hearing**

A. At the expense of and at the written request made not less than five days prior to the date set for the hearing by any person affected by the hearing, the board or the person designated by it to hold the hearing shall cause a full stenographic record of the proceedings to be made by a competent stenographic reporter and, if transcribed, such records shall be made a part of the record of the board of the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1376.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 1:147 (February 1975), amended LR 3:51 (January 1977), LR 3:498 (December 1977), amended by the Department of

Employment and Training, Office of Workers' Compensation, Second Injury Board, LR 17:181 (February 1991).

### **§131. Docket**

A. When a hearing is instituted, it shall be assigned a number and entered with the date of its filing on a separate page of docket provided for such purpose. The board shall establish a separate file for each such docketed case, in which shall be systematically placed all papers, pleadings, documents, transcripts, evidence and exhibits pertaining thereto, and all such items shall have noted thereon the docket number assigned and the date of filing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1376.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 1:146 (February 1975), amended LR 3:49 (January 1977), LR 3:497 (December 1977), amended by the Department of Employment and Training, Office of Workers' Compensation, Second Injury Board, LR 17:181 (February 1991).

## **Chapter 3. Assessments**

### **§301. Assessment; Calculation of Rate**

A. The board shall determine the amount of the total assessment to be collected which shall not exceed 125 percent of the disbursements made from the fund in the preceding fiscal year.

B. The assessment rate shall be calculated by dividing the total assessment by the total workers' compensation benefits as reported to the Office of Workers' Compensation on Form LDOL-WC-1000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1376 and R.S. 23:1377.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 22:35 (January 1996).

### **§303. Assessment; Due Date; Notice**

A. Each reporting entity shall be assessed an amount determined by multiplying the assessment rate times the total reported workers' compensation benefits paid by that entity.

B. The board shall set the date that the assessment shall be due and shall provide notice to all entities assessed at least 30 days prior to such due date.

C. An assessment notice shall be prepared and mailed to each entity filing an annual report and for which an assessment is due. The notice shall be sent certified mail, return receipt requested.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1376 and R.S. 23:1377.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 22:35 (January 1996).

**§305. Assessments—Failure to Pay; Penalties; Collection**

A. Any entity assessed, shall remit the amount of the assessment within 30 days of the date of notice or by the due date set forth in the notice if greater than 30 days. The official United States Postal Department postmark shall be the basis for determining compliance with this requirement.

B. Any entity failing to pay by the due date may be assessed a penalty of 20 percent of the unpaid assessment for each 30 days, or portion thereof, that the assessment remains unpaid.

C. Payments received by the office shall be applied first to penalties assessed and then to the outstanding second injury fund assessment.

D. The assessment and/or penalties imposed pursuant to this Section shall be pursued for collection by the procedures used for collection of an open account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1376 and R.S. 23:1377.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 22:35 (January 1996).

**§307. Ineligibility for Reimbursement**

A. Any entity required by law to make an annual payment or payments into the fund, but which has not made such annual payment or payments, shall be ineligible for reimbursement from the fund for injuries occurring during such period of nonpayment of assessment.

B. Except as provided in R.S. 23:1378(A)(7), any entity that is not required by law to make an annual payment or payments into the fund shall be ineligible for reimbursement from the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1376 and R.S. 23:1377.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, Second Injury Board, LR 22:35 (January 1996).