

INSTRUCTIONS FOR SELF-REPRESENTED LITIGANTS

Appellee Packet

How to respond to an appeal to the Workers' Compensation Appeals Commission when an opposing party appeals an Alaska Workers' Compensation Board final decision that was in your favor

Workers' Compensation Appeals Commission
3301 Eagle Street, Suite 305
Anchorage, AK 99503
Phone (907) 269-6738
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E-mail the Commission Clerk at: awcac.clerk@alaska.gov

For Commission regulations and decisions,
see the Commission web page at:
www.labor.alaska.gov/wccomm/home.htm

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SCHEDULE AND FILING TIMELINE

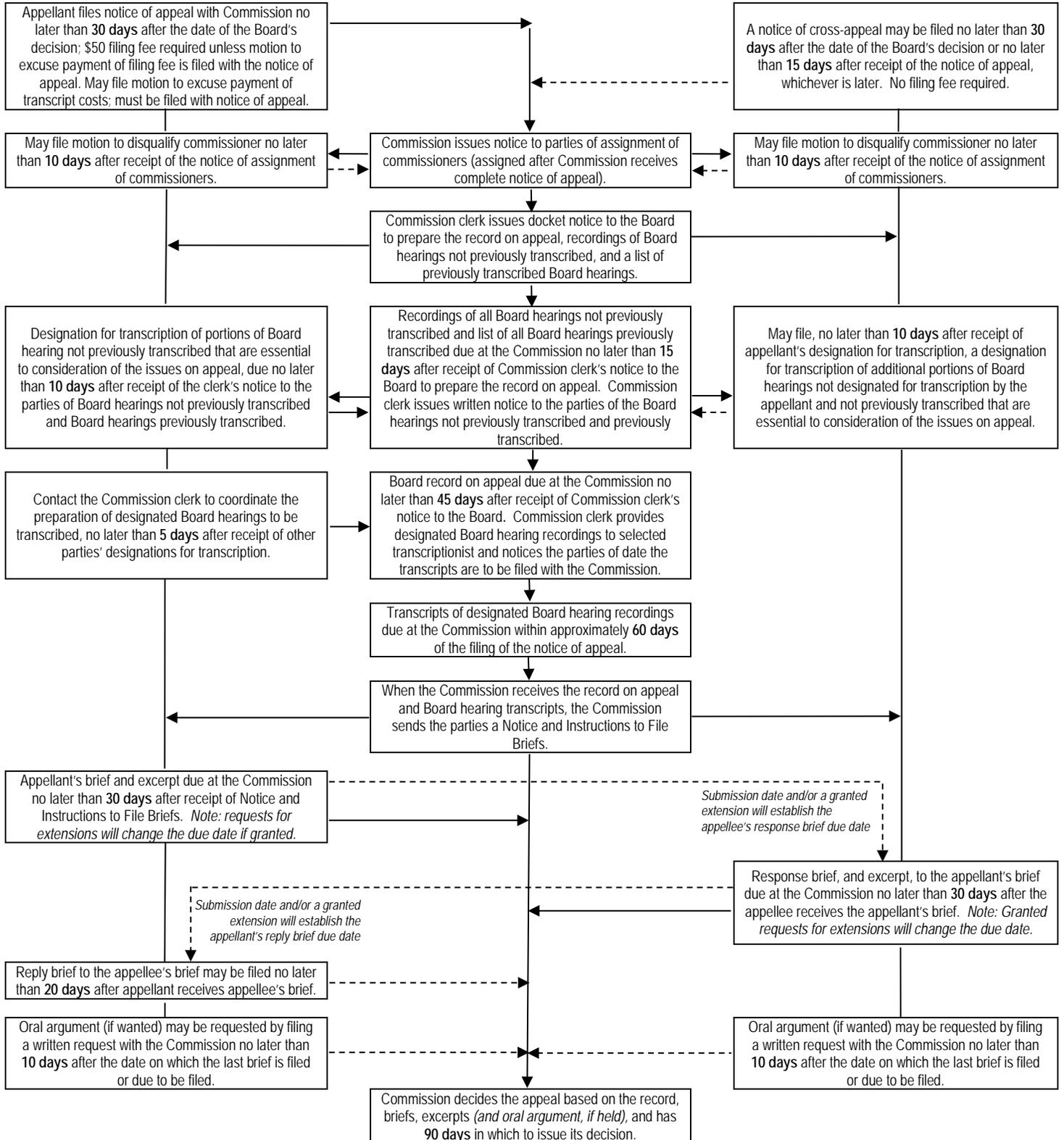
APPELLANT

(Party that files the appeal)

Alaska Workers' Compensation Appeals Commission (AWCAC)

APPELLEE

(All other parties to the Board proceeding that did not file the appeal.)



- Whenever a document is generated by the appellant/attorney, appellee/attorney, the Alaska Workers' Compensation Board, or the Alaska Workers' Compensation Appeals Commission, a copy of each document must be sent to all parties. A Certificate of Service is certification that service was completed the same day and must be included with any document sent.
- An arrow with a solid line indicates an action/response is required unless stated otherwise; an arrow with a hyphenated line indicates an action or response is optional.

INSTRUCTIONS FOR SELF-REPRESENTED APPELLEES

How to respond when an opposing party appeals a final decision or order in your favor by the Alaska Workers' Compensation Board to the Alaska Workers' Compensation Appeals Commission

INTRODUCTION

If you believe that the Alaska Workers' Compensation Board (Board) decided your claim or petition correctly, but an opposing party has filed an appeal to the Alaska Workers' Compensation Appeals Commission (Commission), you have the right to respond to the appeal and argue that the Board's decision was correct.

The laws that govern the Commission and the procedures for appeals are found in the Alaska Workers' Compensation Act, Title 23, Chapter 30, of the Alaska Statutes (AS), (AS 23.30.001 – .395), and in the Alaska Administrative Code (AAC), Title 8, Chapter 57 (8 AAC 57.010 – .990). Copies of 8 AAC 57.010 – .990, the Commission's regulations, are available from the Commission's office. Read them online, or print them yourself, by going to <http://www.labor.alaska.gov/wccomm/home.htm> and selecting Appeal Procedures. More information may be found in the statutes and cases cited in the decision that has been appealed. Alaska Supreme Court cases are available free online at <http://government.westlaw.com/akcases>. Alaska Statutes are available free online at <http://www.legis.state.ak.us/basis/foils.asp>, or you may ask your local library to get them for you. **Note:** *This pamphlet is for informational purposes only. The laws in the statutes, regulations, and cases identified above control over anything said to the contrary here.*

Although the Commission tries to make the appeal process as simple as possible, appeals may involve complicated legal procedures or raise complex legal issues. You should consider consulting a lawyer if the Board's decision or order has been appealed. However, you are not required to be represented by a lawyer in the appeal.

Before you respond in an appeal, please read the information that follows about the Commission and the definitions of terms used in these instructions. If you have questions, contact the Commission clerk at:

Alaska Workers' Compensation Appeals Commission
3301 Eagle Street, Suite 305
Anchorage, AK 99503
Phone (907) 269-6738
Fax (907) 269-6737
E-mail the Commission Clerk at: awcac.clerk@alaska.gov

I. ALASKA WORKERS' COMPENSATION APPEALS COMMISSION.

A. What is the Commission? The Commission is an agency in the Alaska Department of Labor and Workforce Development. The Commission hears appeals of the Board's final decisions or orders on claims and petitions. The Commission has five members (commissioners). Three commissioners are assigned to each panel that hears and decides an appeal. All commissioners, including the chair, are appointed by the Governor and confirmed by the Alaska Legislature.

Two commissioners, because of their backgrounds and employment, are considered representatives of employees. They must have served on the Board for at least 18 months before being appointed to the Commission. One of the three commissioners assigned to a panel that hears and decides an appeal is an employee representative.

Two commissioners, because of their backgrounds and employment, are considered representatives of employers. They must have served on the Board for at least 18 months before being appointed to the Commission. One of the three commissioners assigned to a panel that hears and decides an appeal is an employer representative.

The third commissioner assigned to a panel that hears and decides an appeal is the chair of the Commission. The chair is a lawyer.

All commissioners on a panel that hear an appeal have equal votes in terms of deciding the appeal. The chair does not tell the other commissioners how to vote.

B. Commission Staff. The Commission staff may explain procedures, regulations, records, and forms. The staff may provide forms and help a party to complete them in the party's own words, but cannot advise a party what to say in an appeal. The staff must remain neutral and impartial. The staff is not allowed to give legal advice or predict what the Commission will do. For example, the Commission staff *cannot*:

- Advise a party whether a particular case or statute applies in an appeal;
- Advise a party whether a document the party prepared is going to persuade the Commission to rule in the party's favor; or
- Advise a party to choose one procedure as the best to accomplish the party's objective if more than one is available.

However, the Commission staff *may* tell a party:

- Where to find a copy of a case or a statute and how to cite it;
- How to prepare a document so the format is correct; or
- What procedures are available and what each requires.

C. Appeals to the Commission. An appeal to the Commission is a review of the Board's final decision or order on a workers' compensation claim or petition; it is not a new Board hearing or a trial-like proceeding. **Note:** *In an appeal, the Commission will not accept any new evidence regarding the claim or petition decided by the Board.* The only sources of information the Commission will consider in an appeal are the following:

1. The transcript (typed text of what was said) of the Board hearing (or a tape recording or a CD of the hearing);
2. Any items offered as evidence at the Board hearing;
3. The documents and depositions in the Board file;
4. Legal briefs filed in the appeal; and
5. Oral argument, if held.

D. Cross-Appeals to the Commission. A cross-appeal is an appeal brought by an appellee against the appellant after the appellant has already filed an appeal from the same final decision of the Board. The cross-appeal is heard at the same time as the appellant's appeal.

To file a cross-appeal, an appellee needs to file a notice of cross-appeal with the office of the commission no later than 30 days after the date of the Board's final decision or order or no later than 15 days after receipt of the appellant's notice of an appeal, whichever is later. See AS 23.30.127(c). If a cross-appeal is filed, the appellee will also become the cross-appellant and the appellant will also become the cross-appellee.

II. DEFINITIONS

A. Appellant. The *appellant* is the party that begins an appeal of a Board decision.

B. Appellee. An *appellee* is one of the other parties in the Board proceeding that did not begin an appeal of a Board decision.

C. Cross-Appellant. A party who timely files a cross-appeal. The cross-appellant is also an appellee in the original appeal. The appellant will become the cross-appellee.

D. Brief. A *brief* is a document that states a party's legal arguments.

E. Days. A day is a calendar day, and ends at 5:00 p.m., Alaska time. When counting days for any purpose in connection with an appeal, include Saturday, Sunday, and legal holidays *unless* the time period allowed is less than seven days. Start the count with the day following the triggering event. For example, an appeal must be filed not later than 30 days after the date the decision was filed (also called "issued") by the Board. If the Board issued its decision on September 2nd, count September 3rd as day one of the 30 days. If the last day falls on a Saturday, Sunday, or legal holiday, the last day of the

time period is the end of the next day that is not a Saturday, Sunday, or legal holiday. See 8 AAC 57.060.

- F. Filing.** A party *files* a document with the Commission by faxing, mailing, attaching it to an email, or delivering it to the Commission. It is filed on the day it is received by the Commission, not on the day it is sent. Documents received after 5:00 p.m., Alaska time, will be considered filed the next day that is not a Saturday, Sunday, or legal holiday. See 8 AAC 57.040(a) and (c). Also see 8 AAC 57.050(a) and (b).
- G. Motion.** A *motion* is a request or application for specific action by the chair or the Commission. For example, if a party requests that the Commission excuse the party from having to pay the filing fee for an appeal, a motion requesting that action must be filed with the Commission. See 8 AAC 57.210 and 8 AAC 57.090.
- H. Party.** A *party* is an individual, company, or organization that has an interest in and participates in a legal proceeding such as a Board hearing or an appeal to the Commission.
- I. Service.** A party serves each of the other parties to an appeal with a copy of each document the party files with the Commission, including the notice of appeal. *Service* is performed by delivering or mailing a copy of the document to each of the other parties on the same day the party files a document with the Commission, or, if a party gives consent, by faxing or emailing a copy of the document to them on the same day. See 8 AAC 57.040(b) and 8 AAC 57.050(c). If a party files a notice of non-participation, service on that non-participating party with a copy of the document being filed is not necessary. See 8 AAC 57.020(f).

Note: Proof that each of the other parties was served on the same day must be shown on the document being filed or on a separate document filed with the Commission. See 8 AAC 57.040(g). The forms that the Commission provides include a Certificate of Service section in a box that, if completed, will satisfy the requirement for proof that the document was served. An example of a Certificate of Service appears on the next page. The party serving the document fills in the identities of the parties being served, the date served, the method of service, and signs the certificate.

Note: If an attorney represents another party, the documents must be served on the attorney instead of the party. See 8 AAC 57.040(e). If one of the parties is an agency of the State of Alaska, you must send a copy of the documents to the Attorney General in Juneau at the address shown on the next page *and* also to the office where the assistant attorney general who appeared in the Board proceeding is located. If one of the parties is an agency of the State of Alaska, when an assistant attorney general has filed an entry of appearance the Attorney General in Juneau no longer needs to be served.

I certify that on _____ (date) this notice of appeal and all supporting documents were mailed, faxed, emailed, or hand delivered to the Workers' Compensation Appeals Commission; and I certify that on this same date copies of the documents filed with the Commission were mailed or hand delivered to the parties checked at the addresses listed below. (Attach additional pages if more addresses must be listed.)

| | | |
|---|--|--|
| <input type="checkbox"/> Director, Alaska Workers' Compensation Division P.O. Box 115512 Juneau, AK 99811 | <input type="checkbox"/> <i>If opposing party is a state agency:</i> Attorney General P.O. Box 110300 Juneau, AK 99811-0300 | <input type="checkbox"/> Opposing party OR party's attorney (if represented): |
| <hr style="border: 0; border-top: 1px solid black; margin: 0;"/> <div style="display: flex; justify-content: space-between;"> <i>Print name of person who mailed / delivered notice of appeal</i> <i>(signature of person who mailed / delivered notice of appeal)</i> </div> | | |

III. APPEAL PROCEDURES

A. Who May File an Appeal? If a party believes that the Board made mistakes (made factual findings that were not supported by substantial evidence or applied the law incorrectly) when it decided a workers' compensation claim or petition, that party may file an appeal of the Board's final decision or order with the Commission.

B. When an Appeal May be Filed.

1. An appeal to the Commission may be filed only after all Board proceedings, including any available review proceedings (such as a petition for reconsideration) filed with the Board, have been completed and the Board has issued a *final decision or order*.
2. The appellant must file the required notice of appeal and supporting documents with the Commission no later than 30 days after the date the final Board decision was issued. See AS 23.30.127 and 8 AAC 57.070. This means the 30-day period begins the day after the Board filed the decision in the office of the Board and mailed it to the parties. If the postmark on the envelope is later than the date on the first page of the Board's decision, then the Commission will count the days from the postmark date.
3. If a party timely files a petition for reconsideration with the Board, *the 30-day period for filing a notice of appeal does not begin until the day after the Board files and mails to the parties its decision on reconsideration or until the time expires for the Board to act on the petition* (for example, to decide to reconsider), whichever is *earlier*. If the Board is going to act on the petition for reconsideration, the Board must act no later than 30 days after the day the original final decision was issued and mailed.

If the time expires for the Board to act on the petition, the petition is considered denied due to the absence of any action, and any proceedings to appeal must be filed with the Commission no later than 30 days after the date the petition for reconsideration was considered denied due to the

absence of any action by the Board. Contact the Commission clerk if you have questions about calculating the time you have to file an appeal.

4. If an appellant wants to file a notice of appeal after the 30-day period for filing an appeal, the appellant must file a motion requesting the Commission to extend the time period to file the appeal. See 8 AAC 57.140(h). The appellant's request must state why the appeal is late. The appellant may need to file evidence to support the request. The appellant must file the request at the same time the notice of appeal is filed. The Commission may or may not grant the motion for an extension of time to file a late appeal.

C. Who May File a Cross-Appeal? Any appellee may file a cross-appeal, when an appellant has filed an appeal with the Commission. If an appellee believes the Board made mistakes when it decided a workers' compensation claim or petition, mistakes that the appellant did not list in its statement of grounds for appeal, then you as an appellee may file with the Commission a notice of cross-appeal of the Board's decision with a statement of grounds listing the reasons or mistakes that you believe the Board made in its decision.

D. When a Cross-Appeal May be Filed. A notice of cross-appeal may be filed by an appellee with the office of the Commission no later than 30 days after the date of the Board's final decision or order or no later than 15 days after receipt of the appellant's notice of appeal, whichever is later. See AS 23.30.127(c). If you need more time to file a notice of cross-appeal, you may file with the commission a request for a routine extension of time before the expiration of that time period by filing a motion for a routine extension of time. See 8 AAC 57.140(a). You may use the Motion for Routine Extension of Time form (WCAC Form 04) included in this packet. The chair of the Commission may order a routine extension of time not to exceed 10 days. See 8 AAC 57.140(c).

E. How to File a Cross-Appeal. To file a cross-appeal with the commission, do the following:

1. Notice of Cross-Appeal. An appellee may begin a cross-appeal by filing a notice of cross-appeal in the original appeal. See 8 AAC 57.070(e). You may use the notice of cross-appeal form (AWCAC Form 02.a.) included in this packet or write your own. The notice of cross-appeal must include:
 - a. Identify the Board decision(s), being appealed by the appellant, by the title(s), decision number(s), and case number(s). **Note:** If you have more than one case before the Board, the Board may have joined the cases before an appeal was filed. *If the cases were joined, it is very important that you list all the joined case numbers on your notice of cross-appeal so that the record on appeal is complete.* Please contact the commission if you need assistance.

- b. Statement of Grounds for Cross-Appeal. In this document you state the reason(s) or issue(s) that you are cross-appealing. In other words, the reasons why you believe the Board erred in its decision. You may use the Notice of Cross-appeal and Statement of Grounds for Cross-Appeal form (AWCAC Form 02.a.) included in this packet. You may attach more pages if needed.

Briefly list the reasons or issues in your statement of grounds for cross-appeal. Later in the appeal process, when you write your brief, you will discuss and present your arguments for each reason/issue you listed in your statement of grounds for your cross-appeal;
 - c. State your name, address, and telephone number; and
 - d. Show proof of service on all parties to the Board proceeding and the Director of the Division of Workers' Compensation on the same day, and, *if the other party is an agency of the State of Alaska*, the Attorney General of Alaska.
2. Copies to the Director and Attorney General. In addition to serving a copy of your notice of cross-appeal and all supporting documents on all other parties, you must also serve a copy of your notice of cross-appeal and all supporting documents on the following:
 - a. The Director of the Division of Workers' Compensation, P.O. Box 115512, Juneau, AK 99811-5512, *and*
 - b. *If the other party is an agency of the State of Alaska*, the Attorney General of Alaska, P.O. Box 110300, Juneau, AK 99811-0300, *and* also the office of the Attorney General where the assistant attorney general who represented the State of Alaska in the Board proceeding is located.
 3. Filing Fee. There is no filing fee requirement for a cross-appeal.

IV. COMMISSION ACTION AFTER AN APPEAL IS FILED

- A. Assignment of Commissioners.** Shortly after the notice of appeal has been filed, the Commission will send all the parties a written notice identifying the commissioners assigned to the appeal. If you believe a commissioner assigned to the appeal, including the chair, should be disqualified from hearing and deciding your appeal for any reason stated in AS 23.30.007(*l*) due to a potential conflict of interest or an inability to be fair and impartial, you should file a motion to remove and replace that commissioner *no later than 10 days after you receive the notice assigning the commissioners*. See 8 AAC 57.080(c).
- B. Docket Notice.** After a notice of appeal is received, the Commission clerk will send all the parties to the Board proceeding a written Docket Notice with the appeal number. (If a notice of appeal does not include all the required items,

the Commission clerk will send all the parties a Docket Notice listing the required items that the appellant did not file with his or her notice of appeal.)

If the appellant's notice of appeal includes all the required items, the Commission clerk will send all the parties, the Board's appeals clerk, and the Director of the Division of Workers' Compensation, a docket notice requesting the Board's appeals clerk to prepare and transfer to the Commission the entire board file no later than 45 days from the date of the docket notice. In that docket notice the Commission clerk will also request the Board's appeals clerk to transfer to the Commission no later than 15 days from the date of the docket notice, the recordings of all Board hearings not previously transcribed and provide a list of all Board hearings previously transcribed.

The docket notice will also provide instructions to the appellant regarding the process for preparing the transcript(s) of Board hearing(s) not previously transcribed that are essential to consideration of the issues on appeal. Once the Commission has received the recordings of the Board hearing(s) not previously transcribed and the list of Board hearing(s) previously transcribed, the Commission clerk will issue a written notice to all the parties of this information and will provide instructions for filing designations for transcription.

NOTE: If an appellee files a notice of cross-appeal with the Commission, the Commission clerk will send all the parties to the Board proceeding a written Docket Notice notifying all the parties of the cross-appeal. The case will contain the same appeal number and the case caption will be changed to reflect the cross-appeal.

- C. Designation of Board Hearing Recordings for Transcription.** Once the Commission clerk receives the recordings of all Board hearing(s) not previously transcribed and the list of the Board hearing(s) previously transcribed, the Commission clerk will send all the parties a written notice of this information and instructions for filing designations for transcription. The notice will identify which Board hearing(s) have been transcribed and those that have not been transcribed. See 8 AAC 57.120(a). *No later than 10 days after the appellant receives this notice*, the appellant is required to file a designation for transcription of all portions of Board hearing(s) that have *not* been previously transcribed by the Board that are essential to consideration of the issues on appeal. See 8 AAC 57.120(b).

No later than 10 days after you receive the appellant's designation for transcription, you may file a designation for transcription of portions of the Board hearing(s) that have not been previously transcribed and were not designated by the appellant that you believe are essential to the consideration of the issues on appeal. See 8 AAC 57.120(c). If you want the entire Board hearing recording(s) transcribed, you must say so in your designation. You

may use the Designation for Transcription form (AWCAC Form 03) included in this packet.

Once all parties have filed and served their designations for transcription or the due date has expired for designations for transcription to be filed with the Commission, the appellant is required to coordinate with the Commission clerk the selection of a transcriptionist for the preparation of the transcript(s) of all portions of designated Board hearing recordings that have not been previously transcribed.

- D. Preparation of the Board Record.** The record on appeal consists of all Board hearing recordings *not* previously transcribed by the Board and the entire Board file, including all original papers, exhibits, depositions, and transcripts of Board hearings previously transcribed by the Board. See 8 AAC 57.110(a). The Board's appeals clerk combines all the records of various Board cases, if those cases were joined before the Board proceedings concluded.

Transfer of the Board Record. The Commission clerk and the Board's appeals clerk coordinate the transfer of the record on appeal from the Board to the Commission. See 8 AAC 57.110(b) and (c). As part of that process, the Board's appeals clerk numbers the pages of the entire Board file, and transfers the entire Board file to the Commission. See 8 AAC 57.110(d)(1). If you want a copy of the numbered file for your own use, you can request one from the Commission; however, you must first pay the Commission for the copy. You may contact the Commission and you will be given an estimate of the cost of having the Board file copied, or you may visit the Commission office to review the Board file yourself and may request copies of certain documents in the Board's record. The first 100 copies are free or you may bring in your own copy paper and there will be no charge for copies.

- E. Briefing Schedule, Brief Format and Content, and Excerpt of Record.** When the appeal is ready for written briefs to be filed, the Commission will send all the parties a written notice that will inform the parties of the briefing schedule, setting the time limits for filing briefs. You, as the appellee, must file a brief and excerpt of record in response to the appellant's brief no later than 30 days after you have received the appellant's brief.

If you cannot file your brief by the due date, you may file a motion requesting an extension of time. See 8 AAC 57.140. You may use the Motion for Routine Extension of Time form (AWCAC Form 04) to request an extension not to exceed 10 days before the date your brief is due, or if you need more than 10 days you may use motion forms (AWCAC Form 05 or AWCAC Form 06) to request more time. These forms are included in this packet. Please call the Commission if you need further assistance.

Along with your brief, you must prepare what is called an excerpt of record. See 8 AAC 57.170. The excerpt of record contains copies of those documents in the record on appeal that you think the Commission should review in order

to decide the appeal. Instructions for preparing an excerpt of record appear below.

The appellant and appellee(s) shall file at least one brief. The appellant's brief raises all the issues the Commission should decide and makes all the arguments the appellant thinks the Commission should consider. If an issue is not raised or adequately argued, the Commission may not decide that issue, even if it is listed in the appellant's notice of appeal/statement of grounds for appeal.

An appellee's brief must respond to the arguments in the appellant's brief.

1. Brief Format. A brief must be formatted as follows:
 - a. Typed in a clear and legible font or handwritten in black ink;
 - b. Be in 12 or 13 point font size, be double-spaced on 8-1/2" x 11" white paper with 1" margins all around;
 - c. Footers and footnotes may be single-spaced and typed in a smaller font, but not smaller than 10 point; and
 - d. If longer than one page, have pages numbered consecutively.
2. Brief Contents. Your brief is limited to 50 pages (not including the cover sheet). As an appellee in your brief, you respond to (answer) the arguments in the appellant's brief and your brief must include the following:
 - a. The first page of a brief must contain the name, current mailing address, and telephone number of the party filing the document, and must contain the Commission case number, the Board claim number, and the title of the document. You may use the Brief Cover Sheet form (WCAC Form 09.a.) included in this packet; and
 - b. A section discussing why you disagree with the arguments in the appellant's brief;
 - c. A short conclusion stating what you would like the Commission to do to resolve the appeal; and
 - d. References to documents in your excerpt of record that support each fact in your brief.

As an appellee, you may address in your brief, the below sections in the appellant's brief, if you disagree with the statements the appellant made. The sections you may include in your brief, if you disagree with what the appellant stated, are as follows:

- a. A statement of the issues presented for review, UNLESS you agree with the statement in the appellant's brief;
- b. A statement of the facts; UNLESS you agree with the statement in the appellant's brief;

- c. A brief description of the proceedings before the board; UNLESS you agree with the statement in the appellant's brief; and
- d. A statement of the applicable standard of review. If you are asking for the application of a different standard of review from the one the appellant used, you must state what standard of review the Commission should apply. The standards for Commission review that the Commission applies are set forth in AS 23.30.128(b).¹ If you disagree with the standard of review the appellant used, you may refer to another legal authority or AS.20.128(b).

3. Citation Guidelines.

- a. In your brief, if you refer to specific pages in your excerpt of record that support your statements about the facts and your argument, you must identify them in your brief (these are called "citations"). To do this, put the following in parentheses after each statement that is supported in your excerpt of record: an abbreviation for excerpt (Exc.) followed by the page number.

Example:

Document in an Excerpt of Record: (Exc. 26)

If you need to refer to the record on appeal in preparing your brief and excerpt of record, you may review the record on appeal in the Commission's office and make copies of the documents in the record on appeal that you want to refer to in your brief and include in your excerpt of record. The Commission will make copies of those documents for you. The first 100 copies are free or you may bring in your own copy paper and there will be no charge for copies.

- b. Citations to legal authority. These citations can appear in the body of your brief or in footnotes. The Commission does not expect self-represented appellees to use "The Bluebook – A Uniform System of Citation" which is the standard method of citation in legal writing, but a

¹ AS 23.30.128(b) reads:

The commission may review discretionary actions, findings of fact, and conclusions of law by the board in hearing, determining, or otherwise acting on a compensation claim or petition. The board's findings regarding the credibility of testimony of a witness before the board are binding on the commission. The board's findings of fact shall be upheld by the commission if supported by substantial evidence in light of the whole record. In reviewing questions of law and procedure, the commission shall exercise its independent judgment.

copy is available at the Commission’s office if you want to use it. However, it is necessary for you to identify the legal authority you are referring to in your brief so that the Commission can locate and review that legal authority in the process of deciding the appeal.

For Alaska Supreme Court cases, use the name of the case in italics (or underlined), volume number, abbreviation for the reporter series, the page the case begins on, the page where the quote is located, and in parentheses, the state and year. A cite to a Supreme Court case could look like this:

| | | | | | | | |
|---|-----------------------|---------------------------------------|-----------------------|---------------------------|----------------------------|----------------------|---------------------|
| <u><i>Temple v. Denali Princess Lodge</i></u> | 21 | P. | 3d | 813, | 815 | (Alaska | 2001) |
| <small><i>name of case</i></small> | <small>Volume</small> | <small>Reporter (Pacific)</small> | <small>series</small> | <small>first page</small> | <small>page quoted</small> | <small>state</small> | <small>year</small> |

Board and Commission cases are cited by the name, decision number, page quoted and date:

Adepoju v. Fred Meyer Stores, Inc., Alaska Workers’ Comp. App. Comm’n Dec. No. 010, 3 (May 11, 2006).

Abdul Adepoju v. Fred Meyer Stores, Inc., Alaska Workers’ Comp. Bd. Dec. No. 05-0177, 2 (Jul. 5, 2005).

After you cite a case once in long form above, you may use a short form.

Examples:

Temple, 21 P.3d at 815.

Adepoju, App. Comm’n Dec. No. 010 at 3.

Abdul Adepoju, Bd. Dec. No. 05-0177 at 2.

If you want to look for an Alaska Supreme Court case, you can find it online for free at <http://government.westlaw.com/akcases>.

All Commission decisions are listed on the Commission website at <http://www.labor.alaska.gov/wccomm/orders.htm>.

The Board’s decisions are also available through its webpage, <http://www.labor.state.ak.us/wc/legaldir.htm>, however, you may need to call the Board for help navigating to a specific decision, as the pages are being changed.

Alaska Statutes are cited by “AS” followed by the number of the title, the chapter, and the section, separated by periods, for example, AS 23.30.120; paragraphs and subparagraphs are separated by parentheses, for example, AS 23.30.041(n)(1).

Regulations for the State of Alaska are in the Alaska Administrative Code, cited by "AAC" preceded by the number of the title and followed by the chapter and section, separated by a period, for example, 8 AAC 57.090; paragraphs and subparagraphs are separated by parentheses, for example, 8 AAC 45.074(b)(1).

Go to the State of Alaska webpage, <http://www.legis.state.ak.us/basis/folio.asp>, to find links to statutes and regulations.

To view Commission regulations, go to the Commission's webpage, <http://www.labor.alaska.gov/wccomm/home.htm> and select Appeal Procedures.

4. Excerpt of Record. As an appellee, your excerpt of record must include documents referenced in your brief that support each of your facts and are not already included in the appellant's excerpt of record. See content requirements at 8 AAC 57.180(b).

As the appellee, you should review the appellant's excerpt of record to be sure that all the documents referenced in your brief are first not included in the appellant's excerpt of record. Then, in your excerpt of record add only those additional documents in the Board's record that you rely on to support your side of the case. DO NOT DUPLICATE what is in the appellant's excerpt.

You do not need to include copies of statutes, regulations, or cases in your excerpt of record. The Commission will locate and review the cases or statutes that you refer to in your brief.

Note: *Remember that you cannot introduce new evidence in the appeal.* Do not include anything in your excerpt of record that was not in the Board record at the time the Board proceeding was concluded.

5. Preparing an Excerpt of Record. To prepare your excerpt of record, do the following:
 - a. Prepare an excerpt of record cover sheet; you may use the excerpt of record cover sheet form (AWCAC Form 10) included in this packet.
 - b. Put Exc. page numbers at the bottom of each page. For example: Exc. 54. The appellant starts with "Exc. 1" and numbers each page in a single series from the beginning to the end of the appellant's excerpt of record. Then you, as the appellee, start numbering your excerpt of record with the number following the last number used by the appellant. So if the appellant ended with Exc. 57, you begin with Exc. 58.
 - c. Prepare an index of your excerpts. List the title of each document, the date it was signed or made, and the page number of the excerpt of record on which it begins. You may use the excerpt of record index

sheet (AWCAC Form 11) included in this packet. Put the excerpt of record index on top of the other documents. Do not number the pages of the index.

- d. Put your Excerpt of Record Cover Sheet (AWCAC Form 10) on top of your Excerpt of Record Index (AWCAC Form 11). Put all these documents together separately from your brief.
6. Service on Other Parties. You must serve a copy of both your brief and your excerpt of record on each of the other parties or, if another party has an attorney, on the other party's attorney the same day you file your brief with the Commission. You must file proof of service with the Commission. You may show proof of service by filling in the certificates of service shown on the brief and excerpt cover sheet forms (AWCAC Form 9 and Form 10).
7. Reply Brief. The appellant may file a reply brief no later than 20 days after service of the appellee's brief. See AAC 57.130(d). The appellant's reply brief is limited to 20 pages and must include references to documents in the appellant's excerpt of record that support each fact in the reply brief. No *new* arguments or issues can be raised in a reply brief, but the appellant may respond to arguments raised by an appellee that were not addressed in the appellant's first brief. An appellee files only one brief.

F. Oral Argument. *No later than ten days after the last brief in an appeal is filed or due to be filed,* any party may request oral argument before the Commission in the appeal. See 8 AAC 57.200. You may use the request form (AWCAC Form 12) in this packet to request oral argument. You do not need to request oral argument if the appellant has already done so.

At oral argument, each party may make arguments, although no *new* arguments that were not made in briefing are permitted. Oral argument is not a new board hearing or trial-like proceeding. No witnesses may be called. The time allowed for oral argument is provided in the notice setting oral argument. Usually, a total of 20 to 30 minutes for each party to argue is allowed. Any time spent answering questions from the commissioners is not included in the time allowed for argument. The purpose of oral argument is *not* so that you can read your brief to the commissioners. It is better to point out why you believe the Board ruled correctly in its decision.

If you visit the Commission before the day oral argument is scheduled and the hearing room is not in use, or you arrive early on the day oral argument is scheduled, the Commission clerk will take you to the hearing room, and show you where to sit and stand, show you the equipment, and explain what happens at oral argument.

If you wish, you may ask to participate telephonically if you cannot attend oral argument in person. See 8 AAC 57.200(e). The Commission will call you from

the hearing room. From time to time, a commissioner may need to participate telephonically as well.

If you do not timely request oral argument, you must file a motion for an extension of time to request oral argument. See 8 AAC 57.140. The motion must explain why your request for oral argument was not timely filed.

If you file a request for oral argument, you must serve a copy of your request on the other parties or their attorneys. Proof of service must be filed with the request. If the request for oral argument is timely filed, the Commission clerk will contact the parties to schedule oral argument. Sometimes the commissioners ask for oral argument even if the parties do not, because the commissioners have questions.

V. DECISION

The Commission will decide the appeal based on the record on appeal, the briefs and excerpts submitted, and oral argument (if held). By statute, the Commission has 90 days to issue its decision. See AS 23.30.128(e). All parties will be sent a copy of the Commission's decision. The Commission may:

- **AFFIRM** (approve) the Board's decision,
- **REMAND** (send the case back for additional action by the Board),
- **MODIFY** (change) the Board decision in some way,
- **REVERSE** the decision made by the Board, or
- **DISMISS** the appeal.

The Commission clerk will mail the parties a copy of the appeal decision. If you supply a fax number or e-mail address, the clerk will send it by fax or e-mail as well as mailing it to you.

The Commission may also dismiss an appeal for failure to prosecute (to act on or to complete) the appeal or for failure to follow an order of the chair or Commission. See 8 AAC 57.250. The chair may also dismiss an appeal if the parties agree to settle the case or on motion by a party. See 8 AAC 57.240.

You may request reconsideration of the Commission's final decision on appeal no later than 30 days after the date of the Commission's decision (the date mailed to you). See AS 23.30.128(f) and 8 AAC 57.230.

When you receive the Commission's decision in the appeal, read the appeal procedures carefully. There is important information about the effect of the decision and how to appeal to the Alaska Supreme Court, if you wish. Contact the Clerk of the Appellate Courts for information on filing such an appeal. The Clerk of the Appellate Courts is located at 303 K St., Anchorage, Alaska, 99501. The telephone number is (907) 264-0608.

VI. AWARD OF COSTS

If you win the appeal, you may apply for an award of costs in the appeal by filing a motion. See AS 23.30.008(d) and 8 AAC 57.260. In order to be awarded costs, *no later than 10 days after the date shown on the certificate of distribution of the Commission's decision*, you must file an itemized bill of costs with the motion. See 8 AAC 57.260. Costs do not include living expenses you had to pay until you won your appeal. The costs you may ask for are:

1. The cost of preparing a transcript or transcripts of Board hearing(s); and
2. The cost of duplicating and mailing motions, briefs, and excerpts.

You must serve a copy of your motion for costs on the other parties or their attorneys, who have 10 days to file oppositions. The Commission will then decide what costs to award and send all parties a copy of the order on the motion.

VII. FORMS

The next pages are examples of forms you may use. You do not have to use these forms, but they may help you file complete documents.

- AWCAC Form 02.a., Notice of Cross-Appeal/Statement of Grounds for Cross-Appeal
- AWCAC Form 03, Designation for Transcription of Hearing Record
- AWCAC Form 04, Motion for Routine Extension of Time
- AWCAC Form 05, Motion for Extension of Time
- AWCAC Form 06, Motion/Request
- AWCAC Form 07, Opposition to Motion/Request
- AWCAC Form 08, Certificate of Service
- AWCAC Form 09.a., Brief Cover Sheet For Brief of Appellee
- AWCAC Form 10, Excerpt of Record Cover Sheet
- AWCAC Form 11, Excerpt of Record Index
- AWCAC Form 12, Request for Oral Argument

ALASKA WORKERS' COMPENSATION APPEALS COMMISSION

| |
|---|
| Appellant, <i>(party filing appeal)</i> |
| vs. |
| Appellee(s). <i>(all other parties to appeal)</i> |

AWCAC Appeal No. _____
 AWCB Decision No. _____
 AWCB Case No. _____

MOTION / REQUEST BY SELF-REPRESENTED APPEAL PARTICIPANT

(attach additional pages if needed)

I, _____, am the: Appellant Appellee
(name)

I request that the Commission do the following: _____

The Commission should do this for these reasons:

_____. (Attach more pages if needed.)

 Signature Date

 Mailing Address

 City, State, Zip

 Telephone Number Fax Number and/or Email

Person filing this document MUST sign above.

| CERTIFICATE OF SERVICE | |
|--|--|
| I certify that on _____ <i>(date)</i> this motion and all other supporting documents were <input type="checkbox"/> mailed, <input type="checkbox"/> faxed, <input type="checkbox"/> emailed, or <input type="checkbox"/> hand delivered to the Workers' Compensation Appeals Commission; and I certify that on this same date copies of this motion and all other supporting documents filed with the Commission were <input type="checkbox"/> mailed or <input type="checkbox"/> hand delivered to the parties checked at the addresses listed below. <i>(attach additional pages if more addresses must be listed)</i> | |
| _____ | <input type="checkbox"/> Opposing party OR party's attorney (if represented): |
| | _____ |
| _____ | _____ |
| <i>Print name of person who mailed / delivered motion</i> | <i>(signature of person who mailed / delivered motion)</i> |

ALASKA WORKERS' COMPENSATION APPEALS COMMISSION

| |
|---|
| Appellant, <i>(party filing appeal)</i> |
| VS. |
| Appellee(s). <i>(all other parties to appeal)</i> |

AWCAC Appeal No. _____
 AWCB Decision No. _____
 AWCB Case No. _____

OPPOSITION TO MOTION / REQUEST BY SELF-REPRESENTED APPEAL PARTICIPANT

I am the: Appellant Appellee. I **oppose** the motion / request filed by the
 Appellant Appellee asking that the Commission do the following: _____

I do not agree that the Commission should do what the motion requests because: _____

_____. (Attach more pages if needed).

| | |
|------------------|-------------------------|
| Signature | Date |
| Mailing Address | |
| City, State, Zip | |
| Telephone Number | Fax Number and/or Email |

Person filing this document **MUST sign above.**

| CERTIFICATE OF SERVICE | |
|---|--|
| I certify that on _____ (date) this opposition and all other supporting documents were <input type="checkbox"/> mailed, <input type="checkbox"/> faxed, <input type="checkbox"/> emailed, or <input type="checkbox"/> hand delivered to the Workers' Compensation Appeals Commission; and I certify that on this same date copies of this opposition and all other supporting documents filed with the Commission were <input type="checkbox"/> mailed or <input type="checkbox"/> hand delivered to the parties checked at the addresses listed below. <i>(attach additional pages if more addresses must be listed)</i> | |
| | <input type="checkbox"/> Opposing party OR party's attorney (if represented): |
| | |
| | |
| <i>Print name of person who mailed / delivered opposition</i> | <i>(signature of person who mailed / delivered opposition)</i> |

ALASKA WORKERS' COMPENSATION APPEALS COMMISSION

| |
|---|
| Appellant, <i>(party filing appeal)</i> |
| VS. |
| Appellee(s). <i>(all other parties to appeal)</i> |

AWCAC Appeal No. _____

AWCB Decision No. _____

AWCB Case No. _____

CERTIFICATE OF SERVICE BY SELF-REPRESENTED APPEAL PARTICIPANT

I, _____, am the: Appellant Appellee
(name)

I certify that on _____, a copy of my: Notice of Appeal/Statement of Grounds *

Financial Statement Affidavit Designation of Transcription of Hearing Record Motion/Request

Opposition to Motion/Request Brief Excerpt of Record

Other: _____ was/were:

mailed hand delivered or other method _____ to:

| | | |
|---|--|--|
| <input type="checkbox"/> Director, Alaska Workers' Compensation Division P.O. Box 115512 Juneau, AK 99811 | * <input type="checkbox"/> <i>If opposing party is a state agency:</i> Attorney General P.O. Box 110300 Juneau, AK 99811 | <input type="checkbox"/> Opposing party OR party's attorney (if represented): _____ _____ |
|---|--|--|

Additional names and addresses:

| | |
|--|--|
| | |
| | |
| | |

| | |
|------------------|-------------------------|
| Signature | Date |
| Mailing Address | |
| City, State, Zip | |
| Telephone Number | Fax Number and/or Email |

Person filing this document MUST sign above.

AWCAC Form 08, Certificate of Service (for use by self-represented appeal participant)

DO NOT FILE WITH COMMISSION UNTIL YOU FILE YOUR BRIEF

ALASKA WORKERS' COMPENSATION APPEALS COMMISSION

| | |
|--|---|
| <p>Appellant, <i>(party filing appeal)</i></p> <p>VS.</p> <p>Appellee(s). <i>(all other parties to appeal)</i></p> | <p>AWCAC Appeal No. _____</p> <p>AWCB Decision No. _____</p> <p>AWCB Case No. _____</p> |
|--|---|

BRIEF COVER SHEET
FOR BRIEF FILED BY SELF-REPRESENTED APPELLEE

I, _____, am the Appellee.
(name)

This is my brief on appeal. It contains my arguments on the issues presented and a short conclusion stating what I would like the commission to do to resolve the appeal.

Optional: it also contains a different summary of the facts, brief description of the proceedings before the board, and statement of the applicable standard of review, because I am dissatisfied with the appellant's statement in those sections.

| | |
|------------------|-------------------------|
| Signature | Date |
| Mailing Address | |
| City, State, Zip | |
| Telephone Number | Fax Number and/or Email |

Person filing this document MUST sign above.

| CERTIFICATE OF SERVICE | |
|--|--|
| I certify that on _____ <i>(date)</i> this appeal brief was <input type="checkbox"/> mailed, <input type="checkbox"/> faxed, <input type="checkbox"/> emailed, or <input type="checkbox"/> hand delivered to the Workers' Compensation Appeals Commission; and I certify that on this same date a complete copy of the appeal brief that was filed with the Commission was <input type="checkbox"/> mailed or <input type="checkbox"/> hand delivered to the parties checked at the addresses listed below. <i>(attach additional pages if more addresses must be listed)</i> | |
| | <input type="checkbox"/> Opposing party OR party's attorney (if represented): |
| | |
| | |
| _____ | _____ |
| <i>Print name of person who mailed / delivered brief</i> | <i>(signature of person who mailed / delivered brief)</i> |

DO NOT FILE WITH COMMISSION UNTIL YOU FILE YOUR BRIEF

ALASKA WORKERS' COMPENSATION APPEALS COMMISSION

| |
|---|
| Appellant, <i>(party filing appeal)</i> |
| VS. |
| Appellee(s). <i>(all other parties to appeal)</i> |

AWCAC Appeal No. _____
AWCB Decision No. _____
AWCB Case No. _____

EXCERPT OF RECORD COVER SHEET

I, _____, am the: Appellant Appellee
(name)

This is my excerpt of record on appeal. It contains the documents that are most important to my appeal and that I refer to in my appeal brief. Each page is numbered from ____ to _____. The attached index lists the documents and the pages where each document is found.

Signature Date

Mailing Address

City, State, Zip

Telephone Number Fax Number and/or Email

CERTIFICATE OF SERVICE

I certify that on _____ *(date)* this excerpt of record was mailed, emailed, or hand delivered to the Workers' Compensation Appeals Commission; and I certify that on this same date a complete copy of the excerpt of record that was filed with the Commission was mailed or hand delivered to the parties checked at the addresses listed below.
(attach additional pages if more addresses must be listed)

| | | |
|---|--|--|
| | | <input type="checkbox"/> Opposing party OR party's attorney (if represented): |
| | | |
| | | |
| _____ <i>Print name of person who mailed / delivered excerpt of record</i> | | _____ <i>(signature of person who mailed / delivered excerpt of record)</i> |

ALASKA WORKERS' COMPENSATION APPEALS COMMISSION

| | |
|---|-------------------------|
| Appellant, <i>(party filing appeal)</i> | |
| VS. | |
| Appellee(s). <i>(all other parties to appeal)</i> | AWCAC Appeal No. _____ |
| | AWCB Decision No. _____ |
| | AWCB Case No. _____ |

REQUEST FOR ORAL ARGUMENT BY SELF-REPRESENTED LITIGANT

I, _____, am the: Appellant Appellee

I request that the Commission schedule oral argument in this appeal. I will attend
 in person.

by telephone. Please call me at this telephone number when oral argument begins:

(_____) _____

| | |
|------------------|-------------------------|
| Signature | Date |
| Mailing Address | |
| City, State, Zip | |
| Telephone Number | Fax Number and/or Email |

Person filing motion/request MUST sign above.

| CERTIFICATE OF SERVICE | |
|---|--|
| I certify that on _____ <i>(date)</i> the original of this request for oral argument was <input type="checkbox"/> mailed, <input type="checkbox"/> faxed, <input type="checkbox"/> emailed, or <input type="checkbox"/> hand delivered to the Workers' Compensation Appeals Commission; and I certify that on this same date a copy of this request for oral argument that was filed with the Commission was <input type="checkbox"/> mailed or <input type="checkbox"/> hand delivered to the parties checked at the addresses listed below. <i>(attach additional pages if more addresses must be listed)</i> | |
| | <input type="checkbox"/> Opposing party OR party's attorney (if represented): |
| | |
| | |
| <i>Print name of person who mailed / delivered request</i> | <i>(signature of person who mailed / delivered request)</i> |

NOTE: IF YOU REQUIRE ACCOMMODATION TO PARTICIPATE IN ORAL ARGUMENT, PLEASE CONTACT THE COMMISSION CLERK DIRECTLY, BY TELEPHONE AT (907) 269-6738 or E-mail at awcac.clerk@alaska.gov