BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

IN THE MATTER OF ONGOING PROVISIONS FOR CORONAVIRUS/COVID-19 IMPACT ON AGENCY SERVICES	ORDER

FILED
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WORKERS' COMPENSATION

1. The Iowa Division of Workers' Compensation (DWC) is carefully monitoring the situation regarding the spread of the novel coronavirus, COVID-19, in order to balance the public health need to mitigate the spread of the pandemic with the agency's commitment to fulfilling its duties under Iowa law.

2. On March 13, 2020, the Commissioner issued an order suspending in-person hearings in all regular procedure contested case proceedings before the agency from March 18, 2020, through at least June 16, 2020. In the Matter of Coronavirus/COVID-19 Impact on Hearings, Comm'r Order (Mar. 13, 2020), online at: https://www.iowaworkcomp.gov/order-coronavirus-covid-19 (last viewed Apr. 3, 2020). The order of March 13, 2020, remains in full effect and is not amended or superseded by this order.

3. On April 2, 2020, Governor Kim Reynolds renewed the proclamation declaring COVID-19 a public health emergency in Iowa through at least April 30, 2020. Online at: https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Disaster%20Proclamation%20-%202020.04.02.pdf (last viewed Apr. 3, 2020).

4. The federal Centers for Disease Control and Prevention (CDC) has enacted guidelines through at least April 30, 2020, to help mitigate the spread of COVID-19 by, among other actions, social distancing. Corovavirus Guidelines for

America, online at: https://www.whitehouse.gov/briefings-statements/coronavirus-guidelines-america/?utm_source=link (last viewed Apr. 3, 2020).

5. On April 2, 2020, the Iowa Supreme Court issued an order governing the state judicial system during the COVID-19 public health emergency that "replaces all previous supervisory orders relating to the spread of the novel coronavirus/COVID-19 in their entirety." In the Matter of Ongoing Provisions for Coronavirus/COVID-19 Impact on Court Services, April 2, 2020 Order, online at: https://www.iowacourts.gov/static/media/cms/04022020_order_4CB0361DDD678.pdf (last viewed Apr. 3, 2020).

6. The Iowa Supreme Court's April 2, 2020 order temporarily amends and waives certain provisions of the Iowa Rules of Civil Procedure and the Iowa Rules of Electronic Procedure due to the public health emergency created by the COVID-19 outbreak in our state and nation.

7. Under Iowa Code section 86.8(1)(a), the Commissioner shall adopt and enforce rules necessary to implement Iowa Code chapters 85, 85A, 85B, 86, and 87.

8. The administrative rules adopted and enforced by the Commissioner are in chapter 876 of the Iowa Administrative Code.

9. Rule 876 IAC 4.35 states:

> The rules of civil procedure shall govern the contested case proceedings before the workers' compensation commissioner unless the provisions are in conflict with these rules and Iowa Code chapters 85, 85A, 85B, 86, 87 and 17A, or obviously inapplicable to the workers' compensation commissioner. In those circumstances, these rules or the appropriate Iowa Code section shall govern. Where appropriate, reference to the word "court" shall be deemed reference to the "workers' compensation commissioner" and reference to the word "trial" shall be deemed reference to "contested case hearing."

10. In order to provide clarity and guidance to parties and practitioners before the agency, this order discusses how the Iowa Supreme Court's April 2, 2020 order impacts contested case proceedings before the Commissioner.

SERVICE OF ORIGINAL NOTICE

11. The Iowa Supreme Court's April 2, 2020 order changes the deadline by which original notice must be served in civil actions as follows:

> For all original notices to be served in accordance with Iowa Rules of Civil Procedure 1.302, 1.305, or 1.306, and if the deadline for the original notice falls between March 23, 2020, and June 15, 2020, the serving party is granted through June 15, 2020, to complete service.

In the Matter of Ongoing Provisions for Coronavirus/COVID-19 Impact on Court Services, April 2, 2020 Order, ¶ 26.

12. Iowa Code section 17A.12(1) states, "In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice in writing delivered either by personal service as in civil actions or by certified mail return receipt requested."

13. Rule 876 IAC 4.7 states:

> Delivery of the original notice shall be made by the petitioning party as provided in Iowa Code section 17A.12(1) except that a party may deliver the original notice on a nonresident employer as provided in Iowa Code section 85.3. A proposed or final decision, order or ruling may be delivered by the division of workers' compensation to any party by regular mail, by email or by WCES. Filing of a notice, ruling and decision in WCES is the official filing and start of any appeal or motion deadline. Parties registered in WCES for a claim will be sent a courtesy email informing the parties of a filing.

14. Rule 876 IAC 4.8(1) states:

> A contested case is commenced by filing the original notice and petition with the workers' compensation commissioner. No action shall be taken by the workers' compensation commissioner on any contested case against an adverse party unless the adverse party has answered or unless it can be shown by proper proof that the adverse party has been properly served. The original notice and petition if required by 876—4.6(85,86,17A) shall be accompanied by proof that the petitioner has deposited copies of such documents with the U.S. post office for delivery by certified mail, return receipt requested, upon the respondent or has submitted such copies to a proper person for delivery of personal service as in civil actions.

15. Because Iowa Code section 17A.12(1) and agency rules allow service by registered mail, return receipt requested, as an alternative to personal service as in civil actions and it is common practice in contested case proceedings before the agency to execute service by certified mail, return receipt requested, DWC shall continue to apply Rules 876 IAC 4.7 and 4.8(a) with respect to deadlines as the agency did before the COVID-19 outbreak. However, if a party must attempt personal service as in civil actions of original notice because service by certified mail, return receipt requested, is not a viable option, the party may move to extend the deadline for service to the date identified in the Iowa Supreme Court's April 2, 2020 order, or an updated order that extends the deadline for service of original notice in civil actions due to the COVID-19 outbreak.

ELECTRONIC SIGNATURES

16. The Iowa Supreme Court's April 2, 2020 order amends Iowa Rule of Electronic Procedure 16.305(3) as follows:

> The court temporarily amends rule 16.305(3) of the Iowa Rules of Electronic Procedure to allow a person to sign a civil court document electronically with "/s/" followed by the person's typed full

> name or with "/person's name/." If the document is a civil court form that includes the signature block of identifying information, including the person's address, telephone number, and email address, that information must be provided with the electronic signature. See Comment to Iowa Ct. R. 16.305(4).

In the Matter of Ongoing Provisions for Coronavirus/COVID-19 Impact on Court Services, April 2, 2020 Order, ¶ 27.

17. Rule 876 IAC 4.11 states:

> All documents and papers required by these rules, the Iowa Rules of Civil Procedure as applicable, or a statutory provision shall be signed by the party if unrepresented or the party's attorney if represented. The party's signature in addition to the attorney's signature shall be necessary only when otherwise required by these rules, the Iowa Rules of Civil Procedure as applicable, and any statutory provision. Iowa R. Elec. P. 16.305 concerning signatures is applicable to WCES.

18. Rule 876 IAC 4.52 states:

> Chapter 16 of the Iowa Court Rules of Electronic Procedure shall govern the use and filings in WCES for contested case proceedings before the workers' compensation commissioner unless the provisions are in conflict with these rules and Iowa Code chapters 85, 85A, 85B, 86, 87 and 17A or obviously inapplicable to the workers' compensation commissioner. In those circumstances, these rules or the appropriate Iowa Code section shall govern. Where appropriate, reference to the word "court" shall be deemed reference to the "workers' compensation commissioner or deputy workers' compensation commissioner," reference to the word "trial" shall be deemed reference to "contested case hearing," and reference to "clerk of court" shall be deemed reference to staff at the division of workers' compensation.

19. DWC shall apply Rules 876 IAC 4.11 and 4.52 in accordance with Paragraph 27 of the Iowa Supreme Court's April 2, 2020 order, and any updated orders that perpetuate the court's temporary amendment to Iowa Rule of Electronic Procedure 16.305(3).

NOTARY PUBLIC SIGNATURES

20. With respect to signatures by notaries public, the Iowa Supreme Court's April 2, 2020 order states, "A notary public signature cannot be electronic '/s/' or '/person's name/.' Notaries public are encouraged to follow the Iowa Secretary of State's March 25, 2020 media release and any updated releases since that date." In the Matter of Ongoing Provisions for Coronavirus/COVID-19 Impact on Court Services, April 2, 2020 Order, ¶ 27.

21. Moreover, the court's order states, "To minimize the in-person interactions when possible, the court has eliminated the notarization requirements when permitted in the Iowa Court Rules and court forms published to the judicial branch website." Id. at ¶ 28.

22. DWC encourages notaries public to follow the Iowa Secretary of State's March 25, 2020 media release and any updated releases since that date.

23. To minimize in-person interactions when possible, the Commissioner hereby eliminates the notarization requirements when permitted in the agency rules and forms published to the DWC website.

TEMPORARY AUTHORIZATION TO FILE BY EMAIL

24. The Iowa Supreme Court's April 2, 2020 order also temporarily authorizes filing by email for certain self-represented who have not registered for EDMS and persons exempt from using EDMS. In the Matter of Ongoing Provisions for Coronavirus/COVID-19 Impact on Court Services, April 2, 2020 Order, ¶ 42.

25. Through June 16, 2020, the Commissioner hereby temporarily authorizes filing by email for all:

a. Self-represented persons who have not already registered for the Workers' Compensation Electronic System (WCES);

b. Persons excused from electronic filing (eFiling) on WCES under Rule 876 IAC 2.5;

c. Persons affected by a technical failure in WCES under Rule 876 IAC 4.19(3)(g); and

d. Persons affected by problems attributable to the filer (such as telephone line problems, problems with the filer's Internet service provider, hardware problems, software problems, etc.) under Rule 4.19(3)(i).

26. Persons who are already registered WCES filers must continue to file all documents through WCES as usual.

27. To file by email, the self-represented or exempt person must first contact the Assistant Workers' Compensation Commissioner to get the appropriate email address for the agency to receive the filing. The self-represented or exempt person must then email the filing to the appropriate DWC email address in PDF format, and staff will then file the document. The document should not be considered filed until the self-represented or exempt person receives a confirmatory email from DWC that the filing has been made. DWC's acceptance of such emailed documents does not waive the filer's obligation to comply with agency rules regarding appropriate redaction and service of the emailed documents.

28. Persons identified in Paragraph 25 above may also file by facsimile under Rule 876 IAC 4.39.

29. "Jurisdictional deadlines, including but not limited to any applicable statute of limitations, cannot be extended. It is the filer's responsibility to ensure that a document is filed timely to comply with jurisdictional deadlines. A technical failure, including a failure of WCES will not excuse a failure to comply with a jurisdictional deadline." 876 IAC 4.19(3)(h).

GENERAL

30. DWC will continue to monitor developments relating to the COVID-19 outbreak and update this order as necessary.

Signed and filed this 3rd day of April, 2020.

Joseph S. Cortese II

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WORKERS' COMPENSATION COMMISSIONER