

CIRCULAR LETTER NO. 297

To: All Interested Persons

From: James J. Campell, Commissioner

Re: Guidelines Relative to The Filing, Processing, and Hearing of Appeals Pursuant to M.G.L. c. 152, Section 65B

Date: November 9, 1998

Attached are Guidelines Relative to the Filing, Processing, and Hearing of Appeals pursuant to M.G.L. c. 152, Section 65B.

GUIDELINES RELATIVE TO THE FILING, PROCESSING, AND HEARING OF APPEALS PURSUANT TO M.G.L. C. 152, SECTION 65B

EMPLOYER OBJECTIONS:

An employer, within ten (10) days after the receipt of a notice of cancellation from the insurance company can file with the Department of Industrial Accidents, "Department" office of Insurance objections to said notice. Employers should refer to "Attachment A" for the list of documents and information required to be submitted with their objection to the cancellation notice.

INSURER RESPONSE:

The insurer may cancel or terminate employer's policy pursuant to M.G.L. c. 152, Section 65B; provided, that the insurer shall give notice in writing to the rating organization and the insured of its desire to cancel said policy. The insurer shall file a response to employer's objection with the Department within twenty one days of the receipt of employer's objection to the Notice of Cancellation, stating why the objections should not be sustained, providing documentation requested in Attachment A, and attaching affidavits and documents in support of the response.

JURISDICTION

The Department of Industrial Accidents does not have jurisdiction to hear all issues regarding workers' compensation insurance policies. In accordance with M.G.L. c. 152, Sections 52D, 65K and the Massachusetts Notice to Policyholder Endorsement, certain issues relating to an insurer's determination of classifications or premiums are within the jurisdiction of the Workers' Compensation Rating and Inspection Bureau and/or the Division of Insurance. Therefore, if the Department determines that the issues underlying the cancellation are not within its jurisdiction, the Department will remand the appeal to the appropriate Authority.

MANDATORY PRELIMINARY HEARING:

Within a reasonable time after the receipt of the objection notice by the Department the parties shall: 1) hold a mandatory preliminary hearing pursuant to Section 65B before a Hearing Officer to attempt to resolve the dispute, clarify issues, and discuss exhibits, witnesses and their objections. 2) File with the designated Hearing Officer a joint statement of the results of the meeting, and any attempts to resolve the dispute through other agencies if applicable.

EVIDENTIARY HEARING:

If the dispute has not been resolved, the Department shall schedule an evidentiary hearing pursuant to M.G.L. c. 152, Section 65B. The Hearing Officer may, in his/her discretion, schedule a prehearing conference. The parties are required to submit a prehearing memorandum within five days prior to the hearing date. Said memorandum should contain the following:

- Introduction;
- Stipulated facts;
- Disputed facts;
- Issues in dispute;
- Exhibits to be marked for identification;

- A list of witnesses with their anticipated testimony;
- Objections; and
- Estimated length of hearing anticipated.

Upon Hearing Officer's request parties may submit closing arguments.

WAIVER OF HEARING

Although the parties are entitled to a hearing before the Department, the parties may waive such hearing in their joint statement or at any time until the date set for hearing. In that event, the case shall be decided on the objections, response, prehearing memorandum, and any other information or documentation submitted at the request or approval of the Hearing Officer.

RESCHEDULING AND MISCELLANEOUS MATTERS

Rescheduling or other requests will be granted only upon good cause and notice to the opposing party.

NONCOMPLIANCE WITH GUIDELINES

In the event that the insurer or employer fail to comply with the directives of this Notice, the opposing party may file a statement with the designated Hearing Officer explaining the circumstances of noncompliance. The Hearing Officer may take any action appropriate, such as scheduling the hearing, finding for the complying party, or dismissing the action.

ATTACHMENT A

FROM THE EMPLOYER

1. A statement of specific reasons why the objections should be sustained, as well as relevant supporting statutory or other authority, affidavits, and other documents.
2. A copy of the Notice of Cancellation or termination as well as documentation and statements evidencing the date of employer's receipt of said notice.
3. Any correspondence with the insurer, invoices, audits or other documents received from the insurer, such as copies of manuals, rules, classification, rates or rating plans of other information or documentation relied upon.

FROM THE INSURER

1. A copy of the response, with a statement of specific reasons why the objections should not be sustained, as well as relevant supporting statutory or other authority, including policy provisions, affidavits, and other documents.
2. Evidence that written notice of cancellation or termination was given to the rating bureau and the insured, and evidence of the date such notice was given.
3. In the case of a mid-term cancellation, information relating to whether there has been (i) nonpayment of premium; (ii) fraud or material misrepresentation affecting the policy or insured; and (iii) a substantial increase in the hazard insured against.