

CHAPTER 4
RULES OF PROCEDURE FOR OSHA APPEALS

DIVISION I
GENERAL PROVISIONS

[Prior to 9/7/88 Occupational Safety and Health Review Commission[610] Ch 1]

486—4.1(10A,88) Definitions as used herein.

“*Act*” means the Iowa Occupational Safety and Health Act, Iowa Code chapter 88.

“*Administrative law judge*” means an administrative hearing officer with the appeals and fair hearings division, department of inspections and appeals.

“*Affected employee*” means an employee of a cited employer who is exposed to the alleged hazard described in the citation, as a result of assigned duties.

“*Authorized employee representative*” means a labor organization which has a collective bargaining relationship with the cited employer and which represents affected employees.

“*Citation*” means a written communication issued by the commissioner of labor to an employer pursuant to Iowa Code section 88.7.

“*Commissioner of labor*” means the commissioner of labor or duly authorized representative.

“*Day*” means a calendar day.

“*Employment appeal board*” means the three-member employment appeal board.

“*Notification of proposed penalty*” means a written communication issued by the commissioner of labor to an employer pursuant to Iowa Code section 88.8.

“*Proceeding*” means any proceeding before the administrative law judge or the employment appeal board.

“*Representative*” means any person, including an authorized employee representative, authorized by a party or intervenor to represent that party or intervenor in a proceeding.

“*Working day*” means all days except Saturdays, Sundays, state and federal holidays.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.2(10A,88) Scope of rules—applicability of Iowa rules of civil procedure.

4.2(1) These rules shall govern all proceedings before the employment appeal board.

4.2(2) In the absence of a specific provision, procedures shall be in accordance with the Iowa rules of civil procedure.

486—4.3(10A,88) Use of number. Words importing the singular number may extend and be applied to the plural and vice versa.

486—4.4(10A,88) Computation of time.

4.4(1) In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, state or federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, state or federal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, state and federal holidays shall be excluded in the computation.

4.4(2) Where service of a pleading or document is by mail pursuant to 4.7(10A,88), three days shall be added to the time allowed by these rules for the filing of a responsive pleading.

486—4.5(10A,88) Extensions of time. Requests for extensions of time for the filing of any pleading or document must be received in advance of the date on which the pleading or document is due to be filed.

486—4.6(10A,88) Record address. The name, address, and telephone number shall be included in the initial pleading filed by any party or intervenor. Any change in such information must be communicated promptly in writing to the employment appeal board and to all other parties and intervenors. Parties or

intervenors who fail to furnish such information shall be deemed to have waived their rights to notice and service under these rules.

486—4.7(10A,88) Service and notice.

4.7(1) At the time of filing pleadings or other documents a copy thereof shall be served by the filing party or intervenor on every other party or intervenor.

4.7(2) Service upon a party or intervenor who has appeared through a representative shall be made only upon such representative.

4.7(3) Unless otherwise ordered, service may be accomplished by postage prepaid first-class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

4.7(4) Proof of service on other parties and intervenors shall be accomplished by a written statement which sets forth the date and manner of service. Such statements shall be filed with the pleading or document.

4.7(5) Where service is accomplished by posting, proof of posting shall be filed not later than the first working day following the posting.

4.7(6) Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the representative in the manner prescribed in 4.7(3).

4.7(7) In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of notice of docketing of the notice of contest, post, where the citation is required to be posted by the labor services division rules, a copy of the notice of contest and a notice informing affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this subrule:

(Name of Employer)

Your employer has been cited by the commissioner of labor for violation of the Iowa Occupational Safety and Health Act. The citation has been contested and will be the subject of a hearing before an administrative law judge designated by the employment appeal board. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the employment appeal board in its rules of procedure. Notice of intent to participate should be sent at the earliest opportunity to: Employment Appeal Board, Lucas State Office Building, Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319. All papers relevant to this matter may be inspected at: (Place reasonably convenient to employees, preferably at or near the workplace).

4.7(8) The authorized employee representative, if any, shall be served with the notice set forth in 4.7(7) and with a copy of the notice of contest.

4.7(9) A copy of the notice of the hearing to be held before the administrative law judge shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of such hearing at or near the place where the citation is required to be posted.

4.7(10) A copy of the notice of the hearing to be held before the administrative law judge or the employment appeal board shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in 4.7(3), if the employer has not been informed that the authorized employee representative has entered an appearance as of the date notice is received by the employer.

4.7(11) Where a notice of contest is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receipt of the statement filed in conformance with 4.35(10A,88) of this division, serve a copy thereof on such authorized employee representative in the manner prescribed in 4.7(3) and shall file proof of such service.

4.7(12) Where a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and response filed in support thereof shall be provided to the employer for posting in the manner prescribed in 4.7(7).

4.7(13) An authorized employee representative who files a notice of contest shall be responsible for serving any other authorized employee representative whose members are affected employees.

4.7(14) Where posting is required by this rule, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

4.7(15) When settlement agreements are filed with the employment appeal board they shall be posted for ten days at or near the place where the citation is required to be posted.

4.7(16) If any party or intervenor fails to comply with the notice requirements of these rules, the employment appeal board may issue appropriate orders.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.8(10A,88) Filing.

4.8(1) All papers shall be filed with the Employment Appeal Board, Lucas State Office Building, Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319.

4.8(2) Unless otherwise ordered, all filing may be accomplished by first-class mail.

4.8(3) Filing is deemed effected at the time of mailing.

486—4.9(10A,88) Consolidation. Cases may be consolidated on the motion of any party or intervenor or on the employment appeal board's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

This rule is intended to implement Iowa Code section 10A.601 and chapter 88.

486—4.10(10A,88) Severance. Upon its own motion, or upon motion of any party or intervenor, the employment appeal board may, for good cause, order any proceeding severed with respect to some or all issues or parties.

486—4.11(10A,88) Protection of trade secrets and other confidential information.

4.11(1) Upon application by any person, in a proceeding where trade secrets or other matters may be divulged, the confidentiality of which is protected by Iowa Code section 88.12, the employment appeal board or the administrative law judge shall issue such orders as may be appropriate to protect the confidentiality of such matters.

4.11(2) Interlocutory appeal to the employment appeal board from an adverse ruling by the administrative law judge under this rule shall be granted as of right.

486—4.12 to 4.19 Reserved.

DIVISION II
PARTIES AND REPRESENTATIVES

486—4.20(10A,88) Party status.

4.20(1) Affected employees or authorized employee representatives may elect to participate as parties at any time before the commencement of the hearing, unless, for good cause shown, the employment appeal board allows such election at a later time. See also 4.21(10A,88).

4.20(2) Where a notice of contest is filed by an employee or by an authorized employee representative with respect to the reasonableness of the period for abatement of a violation, the employer charged with the responsibility of abating the violation may elect party status at any time before the commencement of the hearing. See also 4.21(10A,88).

This rule is intended to implement Iowa Code sections 88.8(3) and 10A.601.

486—4.21(10A,88) Intervention—appearance by nonparties.

4.21(1) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing.

4.21(2) The petition shall set forth the interest of the petitioner in the proceeding and show that the participation of the petitioner will assist in the determination of the issues in question, and that the intervention will not unnecessarily delay the proceeding.

4.21(3) The employment appeal board or the administrative law judge may grant a petition for intervention to such an extent and upon such terms as the employment appeal board or the administrative law judge shall determine.

486—4.22(10A,88) Representatives of parties and intervenors.

4.22(1) Any party or intervenor may appear in person or through a representative.

4.22(2) A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.

4.22(3) Affected employees who are represented by an authorized employee representative may appear only through such authorized employee representative.

4.22(4) Nothing contained herein shall be construed to require any representative to be an attorney at law.

4.22(5) Withdrawal of appearance of any representatives may be effected by filing a written notice of withdrawal and by serving a copy thereof on all parties and intervenors.

486—4.23 to 4.29 Reserved.

DIVISION III
PLEADINGS AND MOTIONS

486—4.30(10A,88) Form.

4.30(1) Except as provided herein, there are no specific requirements as to the form of any pleading. A pleading is simply required to contain a caption sufficient to identify the parties in accordance with 4.31(10A,88), which shall include the employment appeal board's docket number, if assigned, and a clear and plain statement of the relief that is sought, together with the grounds therefor.

4.30(2) It is recommended that pleadings and other documents (other than exhibits) be typewritten, double spaced, on standard size paper (approximately 8½ inches by 11 inches), have adequate margins and be securely fastened.

4.30(3) Pleadings shall be signed by the person filing or by the person's representative. Such signing constitutes a representation that the signer has read the document or pleading, that to the best of the signer's knowledge, information and belief the statements made therein are true, and that it is not interposed for delay.

4.30(4) The employment appeal board may refuse for filing any pleading or document which does not comply with the requirements of 4.30(1), 4.30(2) and 4.30(3).

4.30(5) After an appeal or the notice of contest has been filed, additional filings or documents may be sent by facsimile transmission (fax). A document filed by fax is presumed to be an accurate reproduction of the original. If a document filed by fax is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by fax shall be the date the document is received by the EAB. The EAB will not provide a mailed, file-stamped copy of documents filed by fax.

486—4.31(10A,88) Caption—titles of cases.

4.31(1) Cases initiated by a notice of contest shall be titled: Commissioner of Labor, Complainant v. (Name of Contestant), Respondent.

4.31(2) Cases initiated by a petition for modification of the abatement period shall be titled: (Name of Employer), Petitioner v. Commissioner of Labor, Respondent.

4.31(3) The titles listed in 4.30(1) and 4.30(2) shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits) filed.

4.31(4) The first page of any pleading or document (other than exhibits) shall show, at the upper right of the page, opposite the caption, the docket number, if known, assigned to the case.

486—4.32(10A,88) Notices of contest. The commissioner of labor shall, within seven days of receipt of a notice of contest, transmit the original to the employment appeal board, together with copies of all relevant documents.

486—4.33(10A,88) Employer contests.

4.33(1) Complaint.

a. The commissioner of labor shall file a complaint with the employment appeal board no later than 20 days after receipt of notice of contest.

b. The complaint shall set forth all alleged violations and proposed penalties which are contested, stating with particularity:

- (1) The basis for jurisdiction;
- (2) The time, location, place, and circumstances of each alleged violation; and
- (3) The considerations upon which the period for abatement and the proposed penalty on each such alleged violation are based.

c. Where the commissioner of labor seeks in the complaint to amend the citation or proposed penalty, the commissioner of labor shall set forth the reasons for amendment and shall state with particularity the change sought.

4.33(2) Answer.

a. Within 15 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the employment appeal board.

b. The answer shall contain a short and plain statement denying those allegations in the complaint which the party intends to contest.

486—4.34(10A,88) Response to motions. Any party or intervenor upon whom a motion is served shall have ten days from service of the motion to file a response.

486—4.35(10A,88) Failure to file. Failure to file any pleading pursuant to these rules when due may, in the discretion of the employment appeal board, constitute a withdrawal of the citation or the notice of contest. The employment appeal board may, after opportunity for hearing of excuses for failure to file, enter a final or proposed final order defaulting the party and disposing of the case without regard to the merits of the alleged violation.

This rule is intended to implement Iowa Code section 10A.601 and chapter 88.

486—4.36(10A,88) Petitions for modification of abatement period.

4.36(1) An employer may file a petition for modification of abatement period with the commissioner of labor when such employer has made a good faith effort to comply with the abatement requirements of a citation, but abatement has not been completed because of factors beyond the employer's reasonable control.

4.36(2) A petition for modification of abatement period shall be filed with the commissioner of labor no later than the close of the next working day following the date on which abatement was originally required. A letter-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

4.36(3) A petition for modification of abatement period shall be in writing and shall include the following information:

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement period necessary in order to achieve compliance.

c. The reason such additional time is necessary in order to achieve compliance.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. Certification by the employer that it has posted a copy of the petition for modification of abatement period, and a notice informing affected employees of their right to intervene and of the

availability of all pleadings for inspection and copying at reasonable times. Service of the above documents upon any authorized employee representative shall also be certified by the employer. A notice in the following form shall be deemed to comply with this subrule:

(Name of employer)

Your employer has been cited by the commissioner of labor for violation of the Iowa Occupational Safety and Health Act and has requested more time to correct one or more violations. Affected employees are entitled to participate as parties under terms and conditions established by the employment appeal board in its rules of procedure. Affected employees or their representatives desiring to participate must file a written objection to the employer's petition with the commissioner of labor. Failure to file such objection within ten working days of the first posting of the accompanying petition and this notice shall constitute a waiver of any further right to object to the petition or to participate in any proceeding relating thereto. Objections shall be sent to: Commissioner of Labor, Labor Services Division, 1000 East Grand Avenue, Des Moines, Iowa 50319. All papers relevant to this matter may be inspected at: (Place reasonably convenient to employees, preferably at or near workplace).

4.36(4) The commissioner of labor shall have the authority to approve a petition for modification of abatement period filed in accordance with subrules 4.34(2) and 4.36(3), but the commissioner of labor shall not exercise approval power until the expiration of 15 working days from the date the petition and notice were first posted pursuant to 4.36(3)“e” and 4.36(5). Uncontested approved petitions shall be deemed final orders of the employment appeal board.

4.36(5) The employer shall post a copy of the petition and a notice of employee rights complying with 4.36(3)“e” before filing a petition with the commissioner of labor. Such posting shall be in a conspicuous place where all affected employees will have notice thereof or near each location where the violation occurred. The petition and notice of employee rights shall remain posted for a period of ten working days. Where affected employees are represented by an authorized representative, the representative shall be served with a copy of the petition.

4.36(6) Affected employees or their representatives may file an objection in writing to the petition with the commissioner of labor. Failure to file an objection within ten working days of the date of posting of the petition or of service upon an authorized representative shall constitute a waiver of any further right to object to the petition.

4.36(7) Where an objection is filed by an affected employee or authorized employee representative, a copy of that objection shall be provided to the employer for posting along with the documents specified in 4.36(5). An authorized employee representative who files an objection shall serve any other authorized employee representative whose members are affected employees.

4.36(8) Where any petition is objected to by affected employees or by the commissioner of labor, such petition shall be processed as follows:

a. The petition, citation, and objections shall be forwarded to the employment appeal board within 3 working days after the expiration of the 15-working-day period set out in 4.36(4).

b. The employment appeal board shall docket and process such petition as an emergency proceeding under 4.101(3).

c. An employer petitioning for modification of an abatement period shall have the burden of proving that it has made a good faith effort to comply with the abatement requirements of the citation and abatement has not been completed because of factors beyond its reasonable control.

d. Within ten days after receipt of the notice of docketing by the employment appeal board, each objecting party or intervenor may file a response to the petition or a statement of position regarding the petition with the employment appeal board.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.37(10A,88) Employee contests.

4.37(1) Where an affected employee or authorized employee representative files a notice of contest with respect to the abatement period, the commissioner of labor shall, within ten days from receipt of the notice of contest, file a clear and concise statement of the reasons the abatement period prescribed is not unreasonable.

4.37(2) Not later than ten days after receipt of the commissioner of labor's statement, the contestant shall file a response.

4.37(3) Pursuant to Iowa Code section 88.8(3), the employee's notice of contest must be filed within 15 days of the issuance of the citation.

4.37(4) All contests under this rule shall be handled as an expedited proceeding under 4.101(3). This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.38 to 4.49 Reserved.

DIVISION IV
PREHEARING PROCEDURES AND DISCOVERY

486—4.50(10A,88) Withdrawal of notice of contest, citation or complaint. At any stage of the proceedings, for good cause shown, a party may withdraw the notice of contest, the citation, or complaint, subject to the approval of the employment appeal board.

486—4.51(10A,88) Prehearing conference.

4.51(1) At any time before a hearing, the employment appeal board, on its own motion or on motion of a party, may direct the parties and intervenors or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which will tend to simplify the issues to expedite the proceedings.

4.51(2) The employment appeal board may issue a prehearing order which includes the agreements reached by the parties and intervenors. Such order shall be served on all parties and intervenors and shall be a part of the record.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.52(10A,88) Requests for admissions.

4.52(1) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within 30 days after service of the request, or within such shorter or longer time as the employment appeal board may prescribe, the party to whom the request is directed serves upon the party requesting the admission a specific written response.

4.52(2) Copies of all requests and responses shall be served on all parties and intervenors in accordance with the provisions of 4.7(1) and filed with the employment appeal board within the time allotted and shall be a part of the record.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.53(10A,88) Discovery.

4.53(1) Pursuant to Iowa Code subsection 17A.13(1), discovery procedures applicable to civil actions shall be available to all parties in contested cases before the employment appeal board.

4.53(2) Where there is a failure to comply with any proper method of discovery permitted under these rules, the party seeking discovery may apply to the employment appeal board for an order compelling discovery.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.54(10A,88) Failure to comply with orders for discovery. If any person fails to comply with an order of the employment appeal board to permit discovery in accordance with the provisions of these rules, the employment appeal board may issue appropriate orders.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.55(10A,88) Issuance of subpoenas—petitions to revoke or modify subpoenas—right to inspect or copy data.

4.55(1) The employment appeal board shall, on the application of any party directed to the employment appeal board, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence, or documents, in their possession or under their control. Applications for subpoenas may be made ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued. The requesting party shall be responsible for service of the subpoenas.

4.55(2) Any person served with a subpoena shall, at any time prior to the hearing, move in writing to revoke or modify the subpoena if that person does not intend to comply. All motions to revoke or modify shall be served on the party at whose request the subpoena was issued. The employment appeal board shall revoke or modify the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law, the subpoena is otherwise invalid. The employment appeal board shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed thereto, and any ruling thereon shall become a part of the record.

4.55(3) Persons compelled to submit data or evidence at a public proceeding are entitled to retain, or on payment of lawfully prescribed costs, to procure copies of, transcripts of the data or evidence submitted by them.

4.55(4) Upon the failure of any person to comply with a subpoena issued upon the request of a party, the employment appeal board shall initiate proceedings in the appropriate district court for the enforcement thereof, if in its judgment the enforcement of such subpoena would be consistent with law and with policies of the Act. The employment appeal board shall not be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court.

486—4.56 to 4.59 Reserved.

DIVISION V
HEARINGS

486—4.60(10A,88) Notice of hearing. Notice of the time, place, and nature of a hearing shall be given to the parties and intervenors at least ten days in advance of such hearing, except as otherwise provided in 4.101(10A,88).

486—4.61(10A,88) Postponement of hearing.

4.61(1) Postponement of a hearing ordinarily will not be allowed, unless a case of extreme emergency exists or a request is made in writing at least three days in advance of the date set for the hearing.

4.61(2) No postponement in excess of 30 days shall be allowed without employment appeal board approval.

486—4.62(10A,88) Failure to appear.

4.62(1) Subject to the provisions of 4.62(2), the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the employment appeal board or to appeal the decision.

4.62(2) The employment appeal board, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.63(10A,88) Payment of witness fees and mileage—fees of persons taking depositions. Witnesses summoned before the employment appeal board shall be paid the same fees

and mileage that are paid witnesses in the district courts of the state of Iowa, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the district courts of the state of Iowa. Witness fees and mileage shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

486—4.64(10A,88) Reporter's fees. Reporter's fees shall be borne by the party or intervenor requesting a court reporter, unless the employment appeal board provides for a court reporter. Transcript costs shall be borne by the person requesting a transcript.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.65(10A,88) Transcript of testimony.

4.65(1) Hearings shall be electronically recorded. A record of testimony taken at the hearing shall be filed in the employment appeal board office.

4.65(2) The employment appeal board's recording or transcript of the hearing shall be available to any interested person for examination at reasonable times without cost. Upon receipt of a copy of a petition filed in a district court of Iowa praying that an order of the employment appeal board be modified or set aside pursuant to Iowa Code section 88.9, the employment appeal board shall either:

- a. Have the electronic recording transcribed, certify the transcript, and file it with the court, if no court reporter recorded the hearing, or
- b. Contract with the court reporter to transcribe the reporter's notes; in which case the reporter shall certify the transcript and deliver the transcript to the employment appeal board for filing with the court.

486—4.66(10A,88) Duties and powers of the employment appeal board or administrative law judge. It shall be the duty of the employment appeal board or the administrative law judge to conduct a fair and impartial hearing, to ensure that the facts are fully elicited, to adjudicate all issues and avoid delay. The employment appeal board or the administrative law judge shall have authority to:

1. Administer oaths and affirmations;
2. Issue authorized subpoenas;
3. Rule upon petitions to revoke subpoenas;
4. Rule upon offers of proof and receive relevant evidence;
5. Take or cause depositions to be taken whenever the needs of justice would be served;
6. Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;
7. Hold conferences for the settlement or simplification of the issues;
8. Dispose of procedural requests or similar matters, including motions and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of its decisions;
9. Reserved.
10. Call and examine witnesses and to introduce into the record documentary or other evidence;
11. Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;
12. Adjourn the hearing as the needs of justice and good administration require;
13. Take any other action necessary under the foregoing and authorized by the Act and published rules of the employment appeal board.

486—4.67(10A,88) Disqualification of member of employment appeal board or administrative law judge.

4.67(1) Members of employment appeal board or the administrative law judge may withdraw from a proceeding whenever they deem themselves disqualified.

4.67(2) Any party may request any member of the employment appeal board or the administrative law judge before the filing of the decision to withdraw on grounds of personal bias or disqualification, by filing with the employment appeal board or the administrative law judge promptly upon the discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

4.67(3) If, in the opinion of the employment appeal board or the administrative law judge, the affidavit referred to in 4.67(2) is filed with due diligence and is sufficient on its face, the employment appeal board member or the administrative law judge shall forthwith withdraw from the proceeding.

4.67(4) If the employment appeal board member or the administrative law judge does not withdraw from the proceeding, the employment appeal board or the administrative law judge shall so rule upon the record, stating the grounds for so ruling and shall proceed with the hearing, or if the hearing is closed, shall proceed with the issuance of a decision, and the provisions of 4.90(10A,88) shall thereupon apply.

486—4.68(10A,88) Examination of witnesses. Witnesses shall be examined orally under oath. Opposing parties shall have the right to cross-examine any witness whose testimony is introduced by an adverse party.

486—4.69(10A,88) Affidavits. An affidavit may be admitted as evidence in lieu of oral testimony if the matters therein contained are otherwise admissible and the parties agree to its admission.

486—4.70(10A,88) Deposition in lieu of oral testimony—application—procedures—forms—rulings.

4.70(1) An application to take the deposition of a witness in lieu of oral testimony shall be in writing and shall set forth the reasons such deposition should be taken, the name and address of the witness, the matters concerning which it is expected the witness will testify and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken (for purposes of this section, hereinafter referred to as “the officer”). Such application shall be filed with the employment appeal board and shall be served on all other parties and intervenors. Where good cause has been shown, the employment appeal board shall make and serve on the parties and intervenors an order which specifies the name of the witness whose deposition is to be taken and the time, place, and designation of the officer before whom the witness is to testify. Such officer may or may not be the officer specified in the application.

4.70(2) Such deposition shall be taken pursuant to the Iowa rules of civil procedure.

4.70(3) The officer shall immediately deliver the transcript, together with a certificate in person, or by registered mail to the Employment Appeal Board, Lucas State Office Building, Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319.

4.70(4) The employment appeal board or administrative law judge shall rule upon the admissibility of the deposition or any part thereof.

4.70(5) All errors or irregularities in compliance with the provision of this rule shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, discovered.

4.70(6) If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used as other depositions.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.71(10A,88) Exhibits.

4.71(1) All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

4.71(2) In the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as a part of the record, unless excluded by the employment appeal board or administrative law judge pursuant to 4.72(10A,88).

4.71(3) Unless the employment appeal board or administrative law judge finds it impractical, a copy of each such exhibit shall be given to the other parties and intervenors.

4.71(4) All exhibits offered but denied admission into evidence shall be identified as in 4.71(1) and shall be placed in a separate file designated for rejected exhibits.

486—4.72(10A,88) Rules of evidence. Hearings before the employment appeal board or administrative law judge shall be in accordance with these rules and insofar as practicable shall be governed by the rules of evidence applicable in the Iowa district courts. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for their serious affairs, and it may be based upon such evidence even if it would not be admissible in a jury trial.

486—4.73(10A,88) Burden of proof.

4.73(1) In all proceedings commenced by the filing of a notice of contest, the burden of proof shall rest with the commissioner of labor.

4.73(2) In proceedings commenced by a petition for modification of the abatement period, the burden of establishing the necessity for such modification shall rest with the petitioner.

486—4.74(10A,88) Objections.

4.74(1) Any objections with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling by the administrative law judge may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

4.74(2) Whenever evidence is excluded from the record, the person offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

486—4.75 Reserved.

486—4.76(10A,88) Filing of briefs and proposed findings with the employment appeal board or the administrative law judge—oral argument at the hearing. Any party or intervenor shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the electronically or stenographically recorded report of the hearing. Any party or intervenor shall be entitled, upon request made before the close of the hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the employment appeal board or administrative law judge. The employment appeal board or administrative law judge may fix a reasonable period of time for such filing.

486—4.77(10A,88) Conduct of persons attending meetings or hearing.

4.77(1) The employment appeal board or the administrative law judge may exclude a person from an open meeting or hearing for behavior that obstructs an orderly meeting or hearing.

4.77(2) Cameras and recording devices shall be placed and used within the hearing room in a manner that will not obstruct the meeting or hearing. Use of artificial lighting for filming for photographic purposes shall not be allowed during the course of the hearing. If the user of the camera or recording device violates this rule, the employment appeal board or administrative law judge may order the person excluded from the meeting or hearing.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.78 to 4.89 Reserved.

DIVISION VI
POSTHEARING PROCEDURES

486—4.90(10A,88) Decisions of employment appeal board or administrative law judge.

4.90(1) When the employment appeal board presides at the reception of the evidence in a contested case, the decision of the employment appeal board is a final decision.

4.90(2) When the employment appeal board did not preside at the reception of the evidence in a contested case, the administrative law judge shall make a proposed decision. When the administrative law judge makes a proposed decision, that decision then becomes the final decision of the employment appeal board without further proceedings unless there is an appeal to, or review on motion of, the employment appeal board within 20 days. Findings of fact shall be prepared by the administrative law judge after the reception of the evidence in a contested case unless the administrative law judge becomes unavailable to the employment appeal board. If the administrative law judge is unavailable, the findings of fact may be prepared by another person qualified to be an administrative law judge who has read the record, unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and the administrative law judge is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

4.90(3) On appeal from or review of the proposed decision or declaratory ruling, the employment appeal board has all the power which it would have in initially making the final decision except as it may limit the issues on notice to the parties. In cases where there is an appeal from a proposed decision or where a proposed decision is reviewed on motion of the employment appeal board, an opportunity shall be afforded to each party to file exceptions, present briefs and, with the consent of the employment appeal board, present oral arguments to the employment appeal board members who are to render the final decision.

4.90(4) A proposed or final order in a contested case shall be in writing or stated in the record. A proposed or final decision shall include findings of fact, conclusions of law, and an order, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. If, in accordance with these rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by cited authority or by a reasoned opinion.

4.90(5) Parties and intervenors shall be promptly notified of each proposed or final decision or order by the delivery to them of a copy of such decision or order.

4.90(6) Employers shall post a copy of the decision and proposed or final order for a period of 30 days for the information of affected employees.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.91 Reserved.

486—4.92(10A,88) Stay or rehearing of final order.

4.92(1) Any party or intervenor aggrieved by a final order of the employment appeal board may, while the matter is within the jurisdiction of the employment appeal board, file a motion for a stay or a rehearing.

4.92(2) Such motion shall set forth the reasons a stay or rehearing is sought and the specific relief requested.

4.92(3) The employment appeal board may order such relief or may vary the relief as it deems appropriate.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.93 to 4.99 Reserved.

DIVISION VII
MISCELLANEOUS PROVISIONS

486—4.100(10A,88) Settlement.

4.100(1) Settlement is encouraged at any stage of the proceedings where such settlement is consistent with the provisions and objectives of the Act.

4.100(2) Where parties to settlement agree upon a proposal, it shall be served upon represented and unrepresented affected employees in the manner set forth in 4.7(10A,88). Proof of such service shall accompany the proposed settlement agreement when submitted to the employment appeal board.

4.100(3) Parties and intervenors shall have ten days from the date of service to object to a settlement agreement.

4.100(4) Settlement agreements shall be filed with the employment appeal board to permit final disposition of the contested case.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.101(10A,88) Emergency proceeding.

4.101(1) Upon the application of any party or intervenor, or upon its own motion, and for good cause shown, the employment appeal board may order an emergency proceeding. The party or intervenor shall include in its motion the hazards to which the employees are exposed, the probable injuries which could occur from such exposure, and the number of employees exposed to each hazard.

4.101(2) When such proceeding is ordered, the employment appeal board shall notify all parties and intervenors.

4.101(3) The employment appeal board in an emergency proceeding shall make necessary orders with respect to time for filing of pleadings and other documents and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.102(10A,88) Standards of conduct. All persons appearing in any proceeding shall conform to the standards of ethical conduct required in the courts of the state of Iowa. The employment appeal board or administrative law judge may take appropriate action to enforce the standards of conduct including, but not limited to, excluding persons from the hearing.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.103(10A,88) Ex parte communication.

4.103(1) There shall be no ex parte communication, with respect to the merits of any case not concluded, between the employment appeal board, including any members, officer, employee, or agent of the employment appeal board who is employed in the decisional process, and any of the parties or intervenors.

4.103(2) In the event such ex parte communication occurs, the employment appeal board may make such orders or take such action as fairness requires. Upon notice and hearing, the employment appeal board may take disciplinary action as is appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

486—4.104(10A,88) Restrictions as to participation by investigative or prosecuting officers. In any proceeding noticed pursuant to the rules in Chapter 4, the commissioner of labor shall not participate or advise with respect to the employment appeal board's decision except as permitted by these rules.

486—4.105(10A,88) Inspection and reproduction of documents.

4.105(1) Subject to the provisions of law restricting public disclosure of information, any person may, at the office of the employment appeal board, inspect and copy any document filed in any proceeding.

4.105(2) Costs shall be borne by such person.

486—4.106(10A,88) Restrictions with respect to former employees.

4.106(1) No former employee of the employment appeal board or the commissioner of labor (including a member of the employment appeal board or the commissioner of labor) shall appear before the employment appeal board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which that former employee participated personally and substantially during the period of employment.

4.106(2) No former employee of the employment appeal board or the commissioner of labor (including a member of the employment appeal board or the commissioner of labor) shall appear before the employment appeal board as an attorney or other representative for any party in any proceeding or

other matter, formal or informal, for which that former employee was personally responsible during the period of employment, unless one year has elapsed since the termination of such employment.

486—4.107(17A) Petition for rule making.

4.107(1) Any interested person may petition the employment appeal board for the adoption, amendment, or repeal of a rule.

4.107(2) A petition for rule making shall comply with the form prescribed in 4.30(10A,88) and shall set forth in separately numbered paragraphs:

a. The text of any proposed rule or amendment, identifying the section or sections of the law or rule involved, or the rule sought to be repealed.

b. The reasons for requesting the action, including any relevant facts, opinions, or arguments.

c. A concise statement of the petitioner's interest in the subject matter.

4.107(3) Upon the filing of the petition the executive secretary shall inspect the petition to ensure substantial compliance with this rule. Petitions which fail to substantially comply with this rule shall be rejected and returned to the petitioner along with the reasons for the rejection. Petitioner may then correct the petition and refile it.

4.107(4) Within 60 days of the filing of a petition the employment appeal board shall meet to consider the petition. The employment appeal board shall either grant the petition and commence rule making, or deny the petition and notify the petitioner in writing of the grounds for the denial.

This rule is intended to implement Iowa Code sections 17A.7 and 10A.601 and chapter 88.

486—4.108(10A,88) Special circumstances—waiver of rules. In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the employment appeal board may, upon application by any party or intervenor, or on its own motion, after three days' notice to all parties and intervenors, waive any rule or make such orders as justice or the administration of the Act requires.

486—4.109(10A,88) Penalties.

4.109(1) All penalties assessed by the employment appeal board are civil.

4.109(2) The employment appeal board has no jurisdiction under Iowa Code sections 88.14(5), 88.14(6), 88.14(7) and 88.14(8) and will conduct no proceeding thereunder.

486—4.110(10A,88) Telephone hearing.

4.110(1) The employment appeal board or administrative law judge, on its own motion, or on the motion of any party or intervenor, and in the absence of an objection from any party or intervenor, may conduct a hearing by means of a telephone conference call. Hearings shall be recorded as provided in 4.65(1).

4.110(2) Any party or intervenor upon whom a motion for a telephone hearing is served shall have five days from service of the motion to file an objection.

4.110(3) Evidence and exhibits to be introduced during the course of a telephone hearing must be submitted to the employment appeal board with copies to all parties and intervenors before the date of the telephone hearing.

4.110(4) Persons who wish to be present at the telephone hearing but who do not wish to participate may attend and listen to the telephone hearing at the office of the administrative law judge or at the office of any consenting party or intervenor.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

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