

876—4.28(17A,86) Briefing requirements on appeal. The workers' compensation commissioner shall decide an appeal upon the record submitted to the deputy workers' compensation commissioner unless the workers' compensation commissioner is satisfied that additional newly discovered material evidence exists, which could not have been discovered and produced at the hearing with reasonable diligence. A party must file a request for taking additional evidence in WCES within 20 days after the notice of appeal was filed. If a party has been granted a waiver of the mandatory use of WCES, the party shall file the request for taking additional evidence with the division of workers' compensation and serve a copy on the other parties. Any briefs required or allowed by this rule shall be filed promptly following service.

4.28(1) Time for serving briefs. Appellant shall serve its brief within 50 days after the date on which notice of appeal was filed, or within 20 days after filing of the hearing transcript, whichever date is later. Appellee shall serve its brief within 20 days after service of the brief of appellant. If appellant serves a reply brief, it shall be done within 10 days after service of appellee's brief.

4.28(2) Cross-appeals. In the event of a cross-appeal, appellee (cross-appellant) shall serve its brief within 20 days after service of the brief of appellant. Appellant (cross-appellee) shall serve its responsive reply brief within 20 days after service of the brief of appellee. Appellee (cross-appellant) may serve a reply brief within 10 days after service of appellant's reply brief. When more than one party appeals, the party filing the first notice of appeal will be designated the appellant and the party filing a subsequent notice of appeal will be designated the cross-appellant.

4.28(3) Multiple adverse parties. In cases involving multiple appeals involving multiple claimants, employers, insurance carriers or the second injury fund, the workers' compensation commissioner shall enter an order establishing a briefing schedule.

4.28(4) Form of briefs. Respective briefs and exceptions on appeal shall include the following:

- a. Statement of the case.
- b. Statement of the issues on appeal.
- c. An argument corresponding to the separately stated issues and contentions of appellant with respect to the issues presented and reasons for them, with specific reference to the page or pages of the transcript which are material to the issues on appeal.
- d. A short conclusion stating the precise relief sought.

The appellee may submit a brief on appeal replying to the issues presented by the appellant, unless a cross-appeal is made in which case the brief of appellee shall contain the issues and argument involved in the cross-appeal as well as the response to the brief of appellant.

4.28(5) Length of briefs. See rule 876—4.45(17A,86).

4.28(6) Extensions. One extension of up to 30 days will be granted if a motion to extend the time is served on or before the date service of the brief is required by this rule. A subsequent extension requires a motion showing good cause. The commissioner may grant a party the right to serve and file a brief after the time to do so has expired if the appeal or cross-appeal has not been dismissed or decided, the party moves for relief within 60 days from the date service of the brief was due, and the motion shows that the failure to timely serve the brief was due to a good cause that could not have been avoided through the exercise of reasonable diligence.

4.28(7) Issues considered on appeal. The appeal will consider the issues presented for review by the appellant and cross-appellant in their briefs and any issues necessarily incident to or dependent upon the issues that are expressly raised, except as provided in rule 876—4.29(86,17A). An issue will not be considered on appeal if the issue could have been, but was not, presented to the deputy workers' compensation commissioner. An issue raised on appeal is decided de novo and the scope of the issue is viewed broadly. If the ruling from which the appeal was taken made a choice between alternative findings of fact, conclusions of law, theories of recovery or defenses and the alternative selected in the ruling is challenged as an issue on appeal, de novo review includes reconsideration of all alternatives that were available to the deputy.

4.28(8) Sanctions. If an appellant's brief or cross-appellant's brief is not served and filed within the time required by this rule, including any extension, the party defending against the appeal or cross-appeal may move for dismissal. If an appellant's brief or cross-appellant's brief is not served within 30 days after the time required by these rules, including any extension, the workers' compensation commissioner will

notify the party in default that upon 15 days from service of the notification the appeal or cross-appeal will be dismissed for want of prosecution unless the default is remedied within that period. If the default is not remedied, the appeal or cross-appeal will be dismissed. If an appellee's brief or cross-appellee's brief is not served and filed, the appeal will be decided without reference to that brief.

This rule is intended to implement Iowa Code section 86.24.

[**ARC 4568C**, IAB 7/31/19, effective 7/10/19; **ARC 6841C**, IAB 2/8/23, effective 3/15/23]