

199—7.26(17A,476) Appeals to board from a proposed decision of a presiding officer.

7.26(1) Notification of proposed decision. Notice of the presiding officer's proposed decision and order in a contested case shall be sent through the electronic filing system or by first-class mail if any paper filing requirements apply to the proceeding, on the date the order is issued, to the last-known address of each party. The decision shall normally include "Proposed Decision and Order" in the title and shall normally inform the parties of their right to appeal an adverse decision and the time in which an appeal must be taken.

7.26(2) Appeal from proposed decision. A proposed decision and order of the presiding officer in a contested case shall become the final decision of the board unless, within 15 days after the decision is issued, the board moves to review the decision or a party files an appeal of the decision with the board. The presiding officer may shorten the time for appeal. In determining whether a request for a shortened appeal period should be granted, the presiding officer may consider the needs of the parties for a shortened appeal period, relevant objections of the parties, the relevance of any written objections filed in the case, and whether there are any issues that indicate a need for the 15-day appeal period.

7.26(3) Any adversely affected party may appeal a proposed decision by timely filing a notice of appeal. If the electronic filing requirement applies to the proceeding in which the appeal is taken, the notice of appeal shall be electronically filed unless the appellant has received permission from the board to submit paper filings. If the electronic filing requirement does not apply, the appellant shall file an original and ten copies of the notice of appeal with the board, provide a copy to the presiding officer, and simultaneously serve a copy of the notice pursuant to subrule 7.4(6) on all parties.

7.26(4) The board shall not consider any claim of error based on evidence which was not introduced before the presiding officer. Newly discovered material evidence must be presented to the presiding officer pursuant to a motion to reopen the record, unless the board orders otherwise.

7.26(5) Contents of notice of appeal. The notice of appeal shall include the following in separately numbered paragraphs supported, where applicable, by controlling statutes and rules.

- a.* A brief statement of the facts.
- b.* A brief statement of the history of the proceeding, including the date and a description of any ruling claimed to be erroneous.
- c.* A statement of each of the issues to be presented for review.
- d.* A precise description of the error(s) upon which the appeal is based. If a claim of error is based on allegations that the presiding officer failed to correctly interpret the law governing the proceeding, exceeded the authority of a presiding officer, or otherwise failed to act in accordance with law, the appellant shall include a citation to briefs or other documents filed in the proceeding before the presiding officer where the legal points raised in the appeal were discussed. If a claim of error is based on allegations that the presiding officer failed to give adequate consideration to evidence introduced at hearing, the appellant shall include a citation to pages of the transcript or other documents where the evidence appears.
- e.* A precise statement of the relief requested.
- f.* A statement as to whether an opportunity to file a brief or make oral argument in support of the appeal is requested and, if an opportunity is sought, a statement explaining the manner in which briefs and arguments presented to the presiding officer are inadequate for purposes of appeal.
- g.* Certification of service showing the names and addresses of all parties upon whom a copy of the notice of appeal was served.

7.26(6) Responsive filings and cross-appeals. If parties wish to respond to the notice of appeal, or file a cross-appeal, they must file the response or notice of cross-appeal within 14 days after the filing of the notice of appeal, unless otherwise ordered by the board. When a statutory or other provision of law requires the board to issue a decision in the case in less than six months, the response or cross-appeal must be filed within 7 days of filing the notice of appeal.

- a.* Responses shall specifically respond to each of the substantive paragraphs of the notice of appeal and shall state whether an opportunity to file responsive briefs or to participate in oral argument is requested.

b. Parties who file a cross-appeal must comply with the requirements for filing a notice of appeal contained in this rule, other than the requirement to file notice of the cross-appeal within 15 days after the proposed decision is issued.

7.26(7) Ruling on appeal. After the filing of the last appeal, response, or cross-appeal, the board shall issue an order that may establish a procedural schedule for the appeal or may be the board's final decision on the merits of the appeal.