

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 the board has granted a party approval to receive service in paper, on the date the order is issued. 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. The notice of appeal shall be electronically filed unless the appellant has received permission from the board to submit paper filings.

7.26(4) On appeal of a proposed decision of a presiding officer that is based upon new evidence not introduced in the record before the presiding officer, the board shall determine whether the new evidence requires a new hearing. If the board determines that the new evidence is material to the proposed decision and a new hearing should be held, the board may remand the proposed decision to the presiding officer for the taking of the new evidence or may conduct a hearing and issue an order based upon the record before the presiding officer and the new evidence.

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.* If a party wishes to request a stay or other temporary remedy pending review of the proposed decision by the board, the request shall state the reasons justifying a stay or other temporary remedy and shall address the factors listed in Iowa Code section 17A.19(5) "c."
- h.* 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. If a request for a stay or other temporary remedy was included in the notice of appeal, any party wishing to respond to the request shall include the response to the request in the party's response to the notice of appeal or notice of cross-appeal. 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 seven 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. If a request for a stay or other temporary remedy was included in the notice of appeal, the request shall be evaluated by the board using the factors stated in rule 199—7.28(17A,476). A stay or other temporary remedy may be vacated by the board upon application of any party or upon the board's own motion.

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