

Hearing Administrator Issues

Resolution R03-1-04

Continuance Guidelines

October 2, 2003

WHEREAS, Section 4121.36(H)(2)(c) of the Revised Code provides that hearing administrators shall, upon a finding of good cause and without a formal hearing, issue compliance letters either granting or denying requests for continuances; and

WHEREAS, Rule 4121-3-09(C)(9) of the Administrative Code sets forth the procedure for addressing requests for continuances of hearings; and

WHEREAS, Rule 4121-3-09(C)(9)(b)(ii) of the Administrative Code provides that requests for continuances filed more than five calendar days prior to the date of hearing shall be processed by the hearing administrator, resulting in the issuance of a compliance letter either granting or denying the requested continuance based on the standard of good cause; and

WHEREAS, Rule 4121-3-09(C)(9)(b)(ii) of the Administrative Code provides that where a request for continuance is received within five calendar days of the scheduled hearing, the hearing administrator shall address the requested continuance based on the presence of extraordinary circumstances that could not have been foreseen by the requesting party; and

WHEREAS, Rule 4121-3-09(C)(9)(b)(iii) of the Administrative Code originally filed under the provisions of Chapter 119.03 for proposed amendment on July 28, 2003, and filed as a revised proposed amended rule on July 29, 2003, provides that guidelines may be provided by the Commission for hearing administrators and hearing officers in determining whether the standard of good cause, or the standard of extraordinary circumstances that could not have been foreseen, is established; and

WHEREAS, in anticipation that the proposed amendment to rule 4121-3-09 as identified in the preceding paragraph will be filed in final form pursuant to Chapter 119.03 to be effective in the near future and in order to ensure that there are guidelines in existence for hearing administrators and hearing officers in determining whether the standard of good cause, or the standard of extraordinary circumstances that could not have been foreseen, is established, at the time that the proposed amendment to rule 4121-3-09 becomes effective; and

WHEREAS, pursuant to Section 4121.03(E)(1) of the Revised Code, the Commission is responsible for establishing the overall adjudicatory policy and management of the Commission under Chapters 4121., 4123., 4127., and 4131. of the Revised Code.

THEREFORE BE IT RESOLVED that the commission adopts the following guidelines for hearing administrators and hearing officers in determining whether the standard of good cause, or the standard of extraordinary circumstances that could not have been foreseen, is established:

- A. Good cause, as required in paragraph (C)(9)(b)(ii) of rule 4121-3-09 of the Administrative Code, shall include, but is not limited to, the following examples:
 - i. When the requesting party or representative has a documented conflict (e.g. a simultaneous court date or commission hearing.)
 - ii. If the commission receives notice of a pre-scheduled vacation, seminar, or plant shutdown at least thirty days prior to the scheduled conflict, the commission shall not schedule a hearing during pre-scheduled vacation, seminar, or plant shutdown for a period not to exceed two weeks.
 - iii. Recent retention of an authorized representative is good cause if it impedes the representative's ability to obtain evidence that is germane to the issue docketed for hearing.

- iv. When a pending settlement dispositive of the docketed issue is in the negotiation stage, the commission will continue the hearing and issue an interlocutory order referring the claim file to the bureau of workers' compensation, pending settlement negotiations. The assertion of a pending settlement agreement must be made by both parties and must include a waiver of the time frames set forth in Section 4123.511 of the Revised Code. This provision shall not apply to the settlement of claims where a permanent and total disability application is being processed.
 - v. When the employer has shown due diligence in requesting a signed medical release or in scheduling an examination under Section 4123.651 of the Revised Code the employer shall be afforded a reasonable period of time in which to obtain medical records or receive the examination report.
 - vi. That the parties have mutually agreed to a request for a continuance is a factor that shall be considered in the determination of whether good cause is shown.
- B. The standard for extraordinary circumstances that could not have been foreseen, as required in paragraph (C)(9)(b)(ii) of rule 4121-3-09 of the Administrative Code, shall include, but is not limited to, the following examples:
- i. Hospitalizations and medical emergencies, deaths in immediate family, automobile accidents, and weather emergencies, etc.
 - ii. The failure to properly set forth the names and addresses of the parties and their representatives clearly discernable on the face of the notice of hearing or the processing of a discovery request that was not foreseeable and could not have been filed earlier.
 - iii. If a party or its representative receives notice of a court date that was not foreseeable, such as a common pleas domestic related emergency custody hearing.
 - iv. Recent retention of an authorized representative is an extraordinary circumstance that could not have been foreseen if it impedes the representative's ability to obtain evidence that is germane to the issue docketed for hearing.

BE IT FURTHER RESOLVED that the aforementioned guidelines are to be effective upon the effective date of the proposed amendment of Rule 4121-3-09 of the Administrative Code.

Other Hearing Administrator Issues Resolutions

R94-1-19
Request for 4123.522 and 4123.52 Relief
November 23, 1994

R05-1-01
Revision of Continuance Guidelines
January 27, 2005