

## PART 800 [RESERVED]

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AUTHORITY: 5 U.S.C. 301; 30 U.S.C. 901 *et seq.*; 33 U.S.C. 901 *et seq.*; Reorganization Plan No. 6 of 1950, 15 FR 3174; Secretary of Labor's Order 38-72, 38 FR 90, January 3, 1973.

SOURCE: 52 FR 27290, July 20, 1987, unless otherwise noted.

#### INTRODUCTORY

##### § 801.1 Purpose and scope of this part.

This part 801 describes the establishment and the organizational structure of the Benefits Review Board of the Department of Labor, sets forth the general rules applicable to operation of the Board, and defines terms used in this chapter.

##### § 801.2 Definitions and use of terms.

(a) For purposes of this chapter, except where the content clearly indicates otherwise, the following definitions apply:

(1) *Acts* means the several Acts listed in §§801.102 and 802.101 of this chapter,

as amended and extended, unless otherwise specified.

(2) *Board* means the Benefits Review Board established by section 21 of the LHWCA (33 U.S.C. 921) as described in §801.101, and as provided in this part and Secretary of Labor's Order No. 38-72 (38 FR 90). Mention in these regulations of the "permanent Board" refers to the five permanent Board members only.

(3) *Chairman* or *Chairman of the Board* means Chairman of the Benefits Review Board. The Chairman of the Board is officially entitled Chief Administrative Appeals Judge.

(4) *Secretary* means the Secretary of Labor.

(5) *Department* means the Department of Labor.

(6) *Judge* means an administrative law judge appointed as provided in 5 U.S.C. 3105 and subpart B of 5 CFR part 930, who is qualified to preside at hearings under 5 U.S.C. 557 and is empowered by the Secretary to conduct formal hearings whenever necessary in respect of any claim for benefits or compensation arising under the Acts.

(7) *Chief Administrative Law Judge* means the Chief Administrative Law Judge of the Department of Labor.

(8) *Director* means the Director of the Office of Workers' Compensation Programs of the Department of Labor (hereinafter OWCP).

(9) *Deputy commissioner* means a person appointed as provided in sections 39 and 40 of the LHWCA or his designee, authorized by the Director to make decisions and orders in respect to claims arising under the Acts.

(10) *Party* or *Party in Interest* means the Secretary or his designee and any person or business entity directly affected by the decision or order from which an appeal to the Board is taken.

(11) *Day* means calendar day.

(12) *Member* means a member of the Benefits Review Board. Unless specifically stated otherwise, the word "member" shall apply to permanent, temporary and interim members. Permanent Board members are officially entitled Administrative Appeals Judges. Temporary and interim Board members are designated as Acting Administrative Appeals Judges.

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(b) The definitions contained in this part shall not be considered to derogate from the definitions of terms in the respective Acts.

(c) The definitions pertaining to the Acts contained in the several parts of chapter VI of this title 20 shall be applicable to this chapter as is appropriate.

[52 FR 27290, July 20, 1987, as amended at 52 FR 28640, July 31, 1987]

#### § 801.3 Applicability of this part to 20 CFR part 802.

Part 802 of title 20, Code of Federal Regulations, contains the rules of practice and procedure of the Board. This part 801, including the definitions and usages contained in § 801.2, is applicable to part 802 of this chapter as appropriate.

#### ESTABLISHMENT AND AUTHORITY OF THE BOARD

##### § 801.101 Establishment.

By Pub. L. 92-576, 82 Stat. 1251, in an amendment made to section 21 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 921), there was established effective November 26, 1972, a Benefits Review Board, which is composed of members appointed by the Secretary of Labor.

##### § 801.102 Review authority.

(a) The Board is authorized, as provided in 33 U.S.C. 921(b), as amended, to hear and determine appeals raising a substantial question of law or fact taken by any party in interest from decisions or orders with respect to claims for compensation or benefits arising under the following Acts, as amended and extended:

(1) The Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 *et seq.*;

(2) The Defense Base Act (DBA), 42 U.S.C. 1651 *et seq.*;

(3) The District of Columbia Workmen's Compensation Act (DCWCA), 36 D.C. Code 501 *et seq.* (1973);

(4) The Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 *et seq.*;

(5) The Nonappropriated Fund Instrumentalities Act (NFIA), 5 U.S.C. 8171 *et seq.*;

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(6) Title IV, section 415 and part C of the Federal Mine Safety and Health Act of 1977, Public Law 95-164, 91 Stat. 1290 (formerly the Federal Coal Mine Health and Safety Act, hereinafter, FCMHSA, of 1969) as amended by the Black Lung Benefits Reform Act of 1977, Public Law 92-239, 92 Stat. 95, the Black Lung Benefits Revenue Act of 1977, Public Law 95-227, 92 Stat. 11, and the Black Lung Benefits Amendments of 1981, Public Law 97-119, 95 Stat. 1643 (30 U.S.C. 901 *et seq.*).

##### § 801.103 Organizational placement.

As prescribed by the statute, the functions of the Benefits Review Board are quasi-judicial in nature and involve review of decisions made in the course of the administration of the above statutes by the Employment Standards Administration in the Department of Labor. It is accordingly found appropriate for organizational purposes to place the Board in the Office of the Deputy Secretary and it is hereby established in that Office, which shall be responsible for providing necessary funds, personnel, supplies, equipment, and records services for the Board.

##### § 801.104 Operational rules.

The Deputy Secretary of Labor may promulgate such rules and regulations as may be necessary or appropriate for effective operation of the Benefits Review Board as an independent quasi-judicial body in accordance with the provisions of the statute.

#### MEMBERS OF THE BOARD

##### § 801.201 Composition of the Board.

(a) The Board shall be composed of five permanent members appointed by the Secretary from among individuals who are especially qualified to serve thereon. Each permanent member shall serve an indefinite term subject to the discretion of the Secretary.

(b) The member designated by the Secretary as Chairman of the Board shall serve as chief administrative officer of the Board and shall have the authority, as delegated by the Secretary, to exercise all administrative functions necessary to operate the Board.

(c) The four remaining members shall be the associate members of the Board.

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(d) Upon application of the Chairman of the Board, the Secretary may designate up to four Department of Labor administrative law judges to serve as temporary Board members in addition to the five permanent Board members. Up to four such temporary members may serve at any one time. The term of any temporary Board member shall not exceed 1 year from date of appointment.

### § 801.202 Interim appointments.

(a) *Acting Chairman.* In the event that the Chairman of the Board is temporarily disabled or unavailable to perform his or her duties as prescribed in this chapter VII, he or she shall designate a permanent member to serve as Acting Chairman until such time as the Secretary designates an Acting Chairman. In the event that the Chairman is physically unable to make such designation, the next senior permanent member shall serve as Acting Chairman until such time as the Secretary of Labor designates an Acting Chairman.

(b) *Interim members.* In the event that a permanent member of the Board is temporarily unable to carry out his or her responsibilities because of disqualification, illness, or for any other reason, the Secretary of Labor may, in his or her discretion, appoint a qualified individual to serve in the place of such permanent member for the duration of that permanent member's inability to serve.

### § 801.203 Disqualification of Board Members.

(a) During the period in which the Chairman or the other members serve on the Board, they shall be subject to the Department's regulations governing ethics and conduct set forth at 20 CFR part 0.

(b) Notice of any objection which a party may have to any Board member who will participate in the proceeding shall be made by such party at the earliest opportunity. The Board member shall consider such objection and shall, in his or her discretion, either proceed with the case or withdraw.

## ACTION BY THE BOARD

### § 801.301 Quorum and votes of the permanent Board; panels within the Board.

(a) For the purpose of carrying out its functions under the Acts, whenever action is taken by the entire permanent Board sitting en banc, three permanent members of the Board shall constitute a quorum, and official action of the permanent Board can be taken only on the concurring vote of at least three permanent members.

(b) The Board may delegate any or all of its powers except en banc review to panels of three members. Each panel shall consist of at least two permanent members. Two members of the panel shall constitute a quorum and official panel action can be taken only on the concurring vote of two members of the panel.

(c) A panel decision shall stand unless vacated or modified by the concurring vote of at least three permanent members sitting en banc.

(d) En banc action is not available in cases arising under the District of Columbia Workmen's Compensation Act.

### § 801.302 Procedural rules.

Procedural rules for performance by the Board of its review functions and for insuring an adequate record for any judicial review of its orders, and such amendments to the rules as may be necessary from time to time, shall be promulgated by the Deputy Secretary. Such rules shall incorporate and implement the procedural requirements of section 21(b) of the Longshore and Harbor Workers' Compensation Act.

### § 801.303 Location of Board's proceedings.

The Board shall hold its proceedings at 200 Constitution Avenue, NW., Room N-5101, Washington, DC 20210, unless for good cause the Board orders that proceedings in a particular matter be held in another location.

[62 FR 10666, Mar. 7, 1997]

### § 801.304 Business hours.

The office of the Clerk of the Board at Washington, DC shall be open from 8:30 a.m.-5:00 p.m. on all days, except

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Saturdays, Sundays, and legal holidays, for the purpose of receiving notices of appeal, petitions for review, other pleadings, motions, and other papers.

### REPRESENTATION

#### § 801.401 Representation before the Board.

On any issues requiring representation of the Secretary, the Director, Office of Workers' Compensation Programs, a deputy commissioner, or an administrative law judge before the Board, such representation shall be provided by attorneys designated by the Solicitor of Labor. Representation of all other persons before the Board shall be as provided by the rules of practice and procedure promulgated under § 801.302 (see part 802 of this chapter).

#### § 801.402 Representation of Board in court proceedings.

Except in proceedings in the Supreme Court of the United States, any representation of the Benefits Review Board in court proceedings shall be by attorneys designated by the Solicitor of Labor.

## PART 802—RULES OF PRACTICE AND PROCEDURE

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AUTHORITY: 5 U.S.C. 301; 30 U.S.C. 901 *et seq.*; 33 U.S.C. 901 *et seq.*; Reorganization Plan