

## **24 NCAC 03 .0602 REVIEW: BRIEFS FOR REVIEW**

(a) Petitioning for review. Any member of the Board may direct that a decision of a hearing examiner be reviewed by the entire Board as a whole. Any party adversely affected or aggrieved by the decision of the hearing examiner (pursuant to Rule .0309 or .0601 of this Chapter) or by the decision of the Chairman of the Review Board (pursuant to Rule .0309 of this Chapter) may file a petition for review. The petitioner or cross-petitioner must comply with applicable Rules .0505 and .0506 of this Chapter. If no direction for review or petition for review is effected within 30 days from the date on which the hearing examiner's or Chairman's decision is filed with the Board, such decision shall become the final order of the Review Board. A petition for review or cross-petition for review may be conditional: either may state that review is sought only upon the existence of an opposing party's petition for review. A cross-petition for review may be filed within seven days of notice from the opposing party of its petition for review.

(b) Content of the petition. A petition for review or cross-petition for review shall concisely and precisely state the portion(s) of the decision for which review is sought; refer to the citations and citation items (for example, Citation 1, Item 3) for which review is sought; identify by number any fact or conclusion set forth by the hearing examiner which is not supported by a preponderance of the evidence or which is contended to constitute an error of law; and identify any error contended to be prejudicial or any instance which is contended to be an abuse of discretion.

(c) Procedure; briefs. A petition for review or cross-petition for review, timely filed, shall be deemed granted upon receipt by the Review Board. All interested parties to the original hearing shall be notified of the date and the time and place of such hearing and shall be allowed to appear in person or by representative as previously defined. Parties on appeal to the Review Board shall file a brief of reasons and supporting authorities relied on. Failure to file a brief may result in judgment against the parties for failure to comply with these Rules. The original and three copies of the brief shall be filed with the Board. A party shall, prior to the statement of facts, designate in his brief those pages of the transcript relevant to each portion of the decision and order of the hearing examiner to which exception is taken. The purpose of this Rule is to require parties to notify the Review Board of any pages or parts of the transcript which are irrelevant to the decision before the Review Board, as well as to notify the Review Board of those pages and parts of the transcript which are relevant. A cross-petitioner shall file a single brief divided into two distinct sections: the first section shall respond to the petitioner's brief; the second section shall set forth issues on cross-appeal in accordance with this Rule. A petitioner's reply brief shall be limited to the issues raised in the second section of the cross-petitioner's brief.

- (1) When review is directed by the Board, the Commissioner of Labor shall file the first brief within 30 days after being notified by the Board that the transcript of the hearing has been filed with the Board. Any opposing party shall then file its brief within 30 days of service of the Commissioner's brief.
- (2) If a petition for review is filed, the petitioning party shall file the first brief within 30 days of being notified by the Board that the transcript of the hearing has been filed with the Board. Any opposing party, including a cross-petitioner, shall file its brief within 30 days of service of the petitioning party's brief.
- (3) If a cross-petition for review is filed, the petitioner for review shall file any reply brief within 15 days of service of the cross-petitioner's brief.
- (4) If a petition for interlocutory review is filed and the hearing examiner or Board permits or orders the filing of briefs, the first brief must be filed by the petitioner within 15 days of notice that review is granted. Any opposing party shall file its brief within 15 days of service of the petitioning party's brief.
- (5) The brief of an amicus curiae may be filed only by leave of the Review Board Chairman. The motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Any amicus curiae shall file its brief within the time allowed the party whose position the amicus will support.

Normally, review will be strictly limited to issues raised in the petition for review and cross-petition for review, or, if review is directed by the Board, review will normally be limited to issues upon which the hearing examiner passed judgment.

(d) Upon review of any decision of a hearing examiner, the Board may adopt, modify, or vacate the decision of the hearing examiner and notify the interested parties. The report, decision, or determination of the Board upon review shall be final unless further appeal is made to the court as provided in Rule .0605 of this Section.

*History Note: Authority G.S. 95-135;  
Temporary Rule Eff. October 2, 1991 For a Period of 180 Days to Expire on March 30, 1992;  
Eff. February 3, 1992;  
Amended Eff. April 1, 1993;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.*