

11 NCAC 23A .0404 TERMINATION AND SUSPENSION OF COMPENSATION

(a) No application to terminate or suspend compensation shall be approved by the Commission without a formal hearing if the effect of the approval is to set aside the provisions of an award of the Commission.

(b) When an employer, carrier, or administrator seeks to terminate or suspend temporary total disability compensation being paid pursuant to G.S. 97-29 for a reason other than those specified in G.S. 97-18(d) (payment without prejudice), G.S. 97-18.1(b) (trial return to work), or G.S. 97-29(b) (expiration of 500-week limit on disability compensation (only for claims arising on or after June 24, 2011)), the employer, carrier, or administrator shall notify the employee's attorney of record or the employee, if not represented, on Form 24, *Application to Terminate or Suspend Payment of Compensation*. This form requests:

- (1) the date of injury or accident and date the disability began;
- (2) the nature and extent of injury;
- (3) the number of weeks of compensation paid and the date range(s) during which such compensation was paid;
- (4) the total amount of indemnity compensation paid to date;
- (5) whether one of the following events has occurred:
 - (A) an agreement was approved by the Commission and the date;
 - (B) an employer admitted employee's right to compensation pursuant to G.S. 97-18(b);
 - (C) an employer paid compensation to the employee without contesting the claim within the statutory period provided under G.S. 97-18(d); or
 - (D) any other event related to the termination or suspension of compensation;
- (6) whether the application is made to terminate or suspend compensation and the grounds; and
- (7) whether the employee is in managed care.

(c) The employer, carrier, or administrator shall specify the grounds and the alleged facts supporting the application and shall complete the blank space in the "Important Notice to Employee" portion of Form 24 *Application to Terminate or Suspend Payment of Compensation* by inserting a date 17 days from the date the employer, carrier, or administrator serves the completed Form 24 *Application to Terminate or Suspend Payment of Compensation* on the employee's attorney of record by e-mail or facsimile, or the employee, if not represented, by first class mail. The Form 24 *Application to Terminate or Suspend Payment of Compensation* and attached documents shall be sent to the Commission via upload to the Electronic Document Filing Portal in accordance with Rule .0108 of this Subchapter, and shall be contemporaneously served on employee's counsel by e-mail or facsimile, or on the employee, if unrepresented, by first class mail.

(d) The Form 24 *Application to Terminate or Suspend Payment of Compensation* shall specify the number of pages of documents attached which are to be considered by the Commission. If the employee or the employee's attorney of record objects by the date inserted on the employer's Form 24 *Application to Terminate or Suspend Payment of Compensation*, the Commission shall set the case for an informal hearing, unless waived by the parties in favor of a formal hearing. The objection shall be filed in accordance with Rule .0108 and shall be accompanied by all currently available supporting documentation. A copy of any objection shall be contemporaneously served on the employer, carrier, or administrator. The Form 24 *Application to Terminate or Suspend Payment of Compensation* or objection may be supplemented with any additional relevant documentation received after the initial filing. The term "carrier" or "administrator" also includes any successor in interest in the pending claim.

(e) If an employee does not object within the allowed time, the Commission shall review the Form 24 *Application to Terminate or Suspend Payment of Compensation* and any attached documentation, and an Administrative Decision and Order shall be rendered without an informal hearing as to whether there is a sufficient basis under the Workers' Compensation Act to terminate or suspend compensation, except as provided in Paragraph (g) of this Rule. Either party may seek review of the Administrative Decision and Order as provided by Rule .0702 of this Subchapter.

(f) If the employee timely objects to the Form 24 *Application to Terminate or Suspend Payment of Compensation*, the Commission shall conduct an informal hearing within 25 days of the receipt by the Commission of the Form 24 *Application to Terminate or Suspend Payment of Compensation*, unless the time is extended for good cause shown. The informal hearing may be by telephone conference between the Commission and the parties or their attorneys of record. The informal hearing may be conducted with the parties or their attorneys of record personally present with the Commission. The Commission shall make arrangements for the informal hearing with a view towards conducting the hearing in the most expeditious manner. The informal hearing shall be no more than 30 minutes, with each side given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the above, the employer, carrier, or administrator may waive the right to an informal hearing and proceed to a formal hearing by filing a request for hearing on a Form 33 *Request that Claim be Assigned for Hearing*.

- (g) Either party may appeal the Administrative Decision and Order of the Commission as provided by Rule .0702 of this Subchapter. A Deputy Commissioner shall conduct a hearing which shall be a hearing de novo. The hearing shall be peremptorily set and shall not require a Form 33 *Request that Claim be Assigned for Hearing*. The employer has the burden of producing evidence on the issue of the employer's application for termination or suspension of compensation. If the Deputy Commissioner reverses an order previously granting a Form 24 *Application to Terminate or Suspend Payment of Compensation* motion, the employer, carrier, or administrator shall promptly resume compensation or otherwise comply with the Deputy Commissioners decision, notwithstanding any appeal or application for review to the Full Commission pursuant to G.S. 97-85.
- (h) If the Commission is unable to reach a decision after an informal hearing, the Industrial Commission shall issue an Administrative Decision and Order to that effect that shall be in lieu of a Form 33 *Request that Claim be Assigned for Hearing*, and the case shall be placed on the formal hearing docket. If additional issues are to be addressed, the employer, carrier, or administrator shall within 30 days of the date of the Administrative Decision and Order file a Form 33 *Request that Claim be Assigned for Hearing* or notify the Commission that a formal hearing is not currently necessary. The effect of placing the case on the docket shall be the same as if the Form 24 *Application to Terminate or Suspend Payment of Compensation* were denied, and compensation shall continue until such time as the case is decided by a Commissioner or a Deputy Commissioner following a formal hearing.
- (i) The Commission shall send a copy of the Administrative Decision and Order to a non-prevailing party who is without legal representation by certified mail.
- (j) No order issued as a result of an informal Form 24 *Application to Terminate or Suspend Payment of Compensation* hearing shall terminate or suspend compensation retroactively to a date preceding the filing date of the Form 24 *Application to Terminate or Suspend Payment of Compensation*. Compensation may be terminated retroactively to a date preceding the filing date of the Form 24 *Application to Terminate or Suspend Payment of Compensation* without a formal hearing where there is agreement by the parties, where allowed by statute, or where the employee is incarcerated. Otherwise, retroactive termination or suspension of compensation to a date preceding the filing of a Form 24 *Application to Terminate or Suspend Payment of Compensation* may be ordered as a result of a formal hearing. Additionally, nothing shall impair an employer's right to seek a credit pursuant to G.S. 97-42.
- (k) Any Administrative Decision and Order or other Commission decision allowing the suspension of compensation on the grounds of noncompliance with medical treatment pursuant to G.S. 97-25 or G.S. 97-27, noncompliance with vocational rehabilitation pursuant to G.S. 97-25 or G.S. 97-32.2, or unjustified refusal to return to work pursuant to G.S. 97-32 must specify what action the employee must take to end the suspension and reinstate the compensation.

History Note: Authority G.S. 97-18.1(c); 97-18.1(d); 97-32.2(g); 97-80(a);
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