

11 NCAC 23A .0409 CLAIMS FOR DEATH BENEFITS

(a) An employer shall notify the Commission of the occurrence of a death resulting from an injury or occupational disease allegedly arising out of and in the course of employment by filing a Form 19 *Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission* within five days of knowledge thereof. In addition, an employer, carrier, or administrator shall file with the Commission a Form 29 *Supplemental Report for Fatal Accidents*, within 45 days of knowledge of a death or allegation of death resulting from an injury or occupational disease arising out of and in the course of employment.

(b) An employer, carrier, or administrator shall make a good faith effort to discover the names and addresses of decedent's beneficiaries under G.S. 97-38 and identify them on the Form 29 *Supplemental Report for Fatal Accident*.

(c) In all cases involving minors or incompetents who are potential beneficiaries, a guardian *ad litem* shall be appointed pursuant to Rule .0604 of this Subchapter.

(d) If an issue exists as to whether a person is a beneficiary under G.S. 97-38, the employer, carrier, administrator, or any person asserting a claim for benefits may file a Form 33 *Request that Claim be Assigned for Hearing* for a determination by a Deputy Commissioner.

(e) If the employer, carrier, or administrator accepts liability for a claim involving an employee's death and there are no issues necessitating a hearing for determination of beneficiaries or their respective rights, the parties shall submit an agreement executed by all interested parties or their representatives to the Commission. All agreements shall be submitted to the Commission on a Form 30 *Agreement for Compensation for Death* as set forth in Rule .0501 of this Subchapter.

(f) The agreement shall be submitted along with all relevant supporting documents, including death certificate of the employee, any relevant marriage certificate and birth certificates for any dependents.

(g) If the employer, carrier, or administrator denies liability for a claim involving an employee's death, the employer, carrier, or administrator shall send a letter of denial to all potential beneficiaries, their attorneys of record, if any, all known health care providers that have submitted bills to the employer, carrier, or administrator, and the Commission. The denial letter shall state the reasons for the denial and shall further advise of a right to hearing.

(h) Any potential beneficiary, the employer, the carrier, or the administrator may request a hearing as provided in Rule .0602 of this Subchapter.

(i) Upon approval by the Commission of a Form 30 *Agreement for Compensation for Death*, or the issuance of a final order of the Commission directing payment of death benefits pursuant to G.S. 97-38, payment shall be made by the employer, carrier, or administrator directly to the beneficiaries, with the following exceptions:

- (1) any applicable award of attorney fees shall be paid directly to the attorney; and
- (2) benefits due to a minor or incompetent.

(j) Any benefits due to a minor pursuant to G.S. 97-38 shall be paid directly to the parent as natural guardian of the minor for the use and benefit of the minor if the minor remains in the physical custody of the parent as natural guardian. If the minor is not in the physical custody of the parent as natural guardian, payment shall be made through some other person appointed by a court of competent jurisdiction or to such other person under such terms as the Commission finds is in the best interests of the parties. When a beneficiary reaches the age of 18, any remaining benefits shall be paid directly to the beneficiary.

(k) In order to protect the interests of a beneficiary who is incompetent, the Commission shall order that benefits be paid to the beneficiary's appointed general guardian for the beneficiary's exclusive use and benefit, or to the Clerk of Court in the county in which the beneficiary resides for the beneficiary's exclusive use and benefit as determined by the Clerk of Court.

(l) Upon a change in circumstances, any interested party may request that the Commission amend the terms of any award with respect to a minor or incompetent to direct payment to another party on behalf of the minor or incompetent.

(m) In the case of benefits commuted to present value, only those sums that have not accrued at the time of the entry of the Order are subject to commutation.

(n) Where the parties seek a written opinion and award from the Commission regarding the payment of death benefits in uncontested cases in lieu of presenting testimony at a hearing before a Deputy Commissioner, the parties may make application to the Commission for a written opinion by filing a written request with the Docket Director.

(o) The parties shall file, electronically, by joint stipulation, affidavit or certified document, a proposed opinion and award or order along with the following information:

- (1) a stipulation regarding all jurisdictional matters;
- (2) the decedent's name, social security number, employer, insurance carrier or servicing agent, and the date of the injury giving rise to this claim;

- (3) a Form 22 *Statement of Days Worked or Earnings of Injured Employee* or stipulation as to average weekly wage;
 - (4) any affidavits regarding dependents;
 - (5) the death certificate;
 - (6) a Form 29 *Supplemental Report for Fatal Accidents*;
 - (7) Guardian *ad litem* forms, if any beneficiary is a minor or incompetent;
 - (8) proof of beneficiary status, such as marriage license, birth certificate, or divorce decree;
 - (9) medical records, if any;
 - (10) a statement of payment of medical expenses incurred, if any; and
 - (11) a funeral bill or stipulation as to payment of the funeral benefit.
- (p) Any attorney seeking fees for representation in an uncontested claim shall file an affidavit or itemized statement in support of an award of attorney's fees.

History Note: Authority G.S. 97-38; 97-39; 97-80(a);
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