

Supreme Court

In re: Provisional Rule 2.35 of the Workers' :
Compensation Court Rules of Practice :
(Appeals from Determinations of the :
Retirement Board Pursuant to :
R.I.G.L. § 45-21.2-9) :

ORDER

As of January 1, 2013, the jurisdiction of the Workers' Compensation Court was expanded to include the authority to hear appeals from determinations of the Retirement Board pursuant to 2011 R.I. Pub. Laws ch. 151 art. 12, sec. 8. The Workers' Compensation Court has submitted proposed amendments to the Workers' Compensation Court Rules of Practice which includes a rule (proposed rule 2.35) that addresses procedures for Retirement Board appeals before the Workers' Compensation Court. The proposed amendments are scheduled for public hearing on *March 27, 2013 at 9:00 A. M.* in the Supreme Court courtroom located on the seventh floor of the Licht Judicial Complex pursuant to an Order of this Court dated January 24, 2013.

The Court hereby approves as a provisional rule, the attached Rule 2.35 of the proposed amendments to the Workers' Compensation Court Rules of Practice until such provisional rule shall be formally approved after hearing.

Entered as an Order of this Court this *28th* day of *January 2013*.

/s/
Suttell, C.J.

/s/
Goldberg, J.

/s/
Flaherty, J.

 /s/
Robinson, J.

 /s/
Indeglia, J.

2.35. APPEALS FROM DETERMINATIONS OF THE RETIREMENT BOARD PURSUANT TO R.I.G.L. § 45-21.2-9. -- (A) Any appeal from a determination of the Retirement Board made pursuant to R.I.G.L. § 45-19-1 shall be heard by the Court, *de novo*, in accordance with the Rules of Practice of the Workers' Compensation Court and R.I.G.L. § 45-21.2-9.

(B) The party claiming an appeal shall file a notice of appeal with the Court on a form provided by the Court, shall deliver a copy to the Retirement Board, and shall serve copies of said notice of appeal upon the opposing parties. The notice of appeal shall be accompanied by a statement of claim on a form provided by the Court together with copies of the medical reports which the member intends to rely upon in support of the claim for benefits and the Orders and Findings adopted by the Retirement Board. The Office of Administrator shall not accept any notice of appeal for filing unless accompanied by all necessary documents.

(C) When a notice of appeal is timely filed with the Court, the order of the Retirement Board shall be stayed pending further action by the Court.

(D) Upon receipt of the notice of appeal and statement of claim, a Judge shall conduct a mandatory pretrial conference within twenty-one (21) days, pursuant to R.I.G.L. § 28-35-20. Notice of said conference shall be sent by the Administrator to the parties and/or attorneys of record stating the name of the Judge assigned to hear the matter as well as the date, time, and location of the pretrial conference.

(E) No later than seventy-two (72) hours prior to the pretrial conference all parties shall submit and exchange the medical records and reports in support of their respective positions regarding the claim.

(F) Upon receipt of a notice of appeal and prior to the pretrial conference, the municipality/agency affected by the decision of the Retirement Board may intervene as a party to the case without leave of the Court. Following the pretrial conference, and only with leave of the Court, the municipality/agency may intervene as a party and shall then be entitled to notice and an opportunity to be heard

(G) Any party aggrieved by a decision or decree of the Workers' Compensation Court shall file an appeal in accordance with G.L. § 28-35-28 and Article IV of the Rules of Practice of the Workers' Compensation Court.

(H) The Court shall retain jurisdiction in these matters to review its orders and decrees. Such petitions shall be filed directly with the Court and shall be subject the Rules of Practice of the Workers' Compensation Court and procedures for case management and dispute resolution as set forth in R.I.G.L. § 28-29-1 through § 28-38-25.

Reporter's Notes. In 2011, the jurisdiction of the Workers' Compensation Court was expanded by the enactment of R.I.G.L. § 45-21.2-9(f) – (k). This rule was added to set forth the rules and procedure for appeals from the Retirement Board by parties seeking accidental disability benefits

pursuant to R.I.G.L. § 45-19-1. It must be noted that the Rule was designed to reconcile the unique nature of the litigation under G.L. § 45-21.2-9 with other litigation before the Workers' Compensation Court. Initially, it must be noted that the amendment to the statute did not set forth a time within which a party may pursue an appeal to the Workers' Compensation Court. In such circumstances, our Supreme Court has consistently held that where no time limit is identified in a statute, the time shall be a reasonable one. *See* First Bank and Trust Co. v. City of Providence, 827 A.2d 606, 611 (2003). In determining what is a reasonable time within which to file a notice of appeal, the Court will look to other time limitations contained in the Act. In that regard, reference is made to the period within which to seek review of a final decree of the Workers' Compensation Court set forth in G.L. § 28-35-29 (twenty days (20)). The parties should also be aware that the terms "pretrial conference" and "pretrial order" as used in the Workers' Compensation Act are vastly different than the common usage. G.L. § 28-35-20 sets forth the procedure for the pretrial conference under the terms of the Act and the requirement that the Court enter a pretrial order following the pretrial conference. It mandates that the pretrial order address the relief sought in the petition and shall be binding upon the parties upon entry. Any payments ordered shall be made within fourteen (14) days of the date on which the order was entered. Moreover, the pretrial order remains in full force and effect until a final decree is entered by the Court. Thus, the pretrial conference is a significant milestone in any workers' compensation case and the parties should be ready to proceed on the date set for hearing. This portion of the statute was reviewed by the Rhode Island Supreme Court in *City of Pawtucket v. Pimental*, 960 A.2d 981 (R.I. 2008).