

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

COLORADO WORKERS'
COMPENSATION CLASSIFICATION
APPEALS BOARD

2000 SUNSET REVIEW



October 15, 2000

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Workers' Compensation Classification Appeals Board. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2001 Legislative Committees of Reference. The report is submitted pursuant to §24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

"The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination . . ."

The report discusses the question of whether there is a need for the regulation provided under Article 55 of Title 8, C.R.S. The report also discusses the effectiveness of the Board and staff in carrying out the intention of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

M. Michael Cooke
Executive Director

Table of Contents

Background	1
<i>Sunset Process/Methodology</i>	1
<i>History</i>	1
Summary of Statute	3
Programs in Other States	5
Program Description and Administration.....	6
Analysis and Recommendations	10
Appendix A - Sunset Statutory Evaluation Criteria.....	14
Appendix B - Workers' Compensation Classification Appeals Board Statute.....	15

Background

Sunset Process/Methodology

The Department of Regulatory Agencies (DORA) has concluded its sunset review of the Workers' Compensation Classification Appeals Board as required by §8-55-105, C.R.S. The review was conducted in accordance with the statutory criteria contained in §24-34-104 (9)(b), C.R.S., which are included in this report as Appendix A.

In conducting the review DORA conducted literature reviews, interviewed regulatory program staff, reviewed program records, reviewed other state regulatory programs, contacted interested parties including Pinnacle Insurance (formerly Colorado Compensation Insurance Authority) and association representatives for various organizations representing employers.

History

The idea of compensating employees for injuries received on the job has been around for centuries. The concept behind workers' compensation (WC) insurance is simple. Employers agree in advance to reimburse injured workers for lost wages and medical expenses in return for employees forfeiting legal action against the employer. Workers' compensation insurance is essentially a state mandated no fault coverage for employees.

Workers' compensation insurance rates are based on two key factors. The first factor is the job classification of the employee. Office or clerical staff represents a class of employees with a relatively low risk for injury. Rates for employees in this classification are lower than rates for employees in higher risk classifications. For example, injuries in construction classifications are more frequent, and more severe, causing higher settlement payments and, as a result, higher premiums.

The second major factor in calculating workers' compensation insurance rates is the experience history of an individual employer. Employers in a particular job classification have their premium adjusted by an experience modification rating, which is calculated from the actual history of the individual employer. The experience modification rating for new employers is calculated after 18 months of employment history. Employers purchasing an existing business generally inherit the experience modification factor of the previous owner.

In the late 1980s, workers' compensation insurance rates in Colorado were among the highest in the nation. This prompted the General Assembly to pass several measures designed to reduce rates and simplify the system. The most comprehensive of these measures was SB 91-218, an omnibus workers' compensation reform bill. While SB 91-218 was the cornerstone of reform, several other measures were passed in subsequent years to further refine perceived problems in Colorado's workers' compensation system.

Employers are granted premium credit for programs designed to reduce injuries. Certified worker safety programs can reduce premiums. Insurance carriers generally encourage policyholders to use this and other methods to reduce claim expenses, and therefore improve the experience modification rating. Other methods include: light duty back to work programs, monitoring open claims, and the use of increased deductibles.

The Workers' Compensation Classification Appeals Board (Board) was created in 1996 with the passage of HB 96-1057. This bill made changes to the process for classification appeals. Prior to the creation of the Board and revisions to the process, employers contacted their insurance carrier for relief then appealed to an informal committee made up exclusively of insurance carriers. The committee had no statutory authority to render decisions. If the employer was not satisfied with the committee's decision, an appeal could be made to the Commissioner of Insurance (Commissioner).

Employers complained that some insurers were not clear in communicating internal appeals procedures. Until the creation of the Board, there was no formal mechanism for a classification appeal to an independent party. HB 96-1057 requires written notification by insurers of internal procedures as well as the appeals process through the Board and Commissioner.

Summary of Statute

The Workers' Compensation Classification Appeals Board (Board) is created by §8-55-101, of the Colorado Revised Statutes (C.R.S.). This Article states that the Board is created to hear appeals brought by employers against insurers and the Colorado Compensation Insurance Authority (CCIA) (now doing business as Pinnacol Insurance) related to the calculation of experience modification ratings and classification assignments. The Board consists of five voting members appointed by the Commissioner of Insurance, and one non-voting member as defined in statute:

- Two members who are salaried employees of an insurance company that issues workers' compensation insurance policies in the state, or representatives of CCIA. These two members may not be employed by the same entity. There is also an alternate member from this category;
- Three members representing private employers, who are not affiliated with an insurance company, broker, agent, law firm, actuary, or CCIA. At least one of the private employers must represent the construction industry; and
- The non-voting member is an employee of a workers' compensation rating organization, designated by the chief executive officer of that organization.

All members serve three year terms. Initial terms were staggered to provide continuity for Board service. Board vacancies are filled in the same manner as the original appointment for the remainder of the term. Board members serve without compensation except for reimbursement for travel, meal, and lodging expenses incurred while performing Board duties. Members of the Board are granted immunity from liability for claims related to Board responsibilities.

Board members elect a chairperson annually and the non-voting member serves as secretary. Board terms begin on January 1 of each year and expire on December 31. A simple majority of the Board members constitutes a quorum provided that at least two private employer representatives are present. Board members may attend via teleconference. Board members are required to recuse themselves if any conflict of interest exists, unless full disclosure of the potential conflict is made and all parties agree to waive the conflict.

Workers' compensation insurance carriers are required to have an internal appeals process for employers who have disputes regarding experience modification ratings or classifications. Carriers are required to annually provide employers with a written copy of the internal appeals process and notice of the employers' right to appeal to the Board.

Employers who have exhausted all appeal review procedures related to calculations of experience modification ratings or classification assignment with their insurance carrier may file an appeal with the Board for a review. Appeals must be filed within 30 days of exhausting the insurance carrier appeals process.

The Board meets as needed. The Board must hear all appeals within 30 days of receipt. The Board is required to send written notice of the hearing to the employer, the insurance carrier, and the workers' compensation rating organization no later than 10 days prior to the hearing. The secretary for the Board is responsible for providing administrative support for the Board including preparing the agenda and arranging facilities for meetings and hearings.

Decisions of the Board regarding classification appeals may be appealed to the Commissioner of Insurance by the employer, the insurance carrier, or CCIA within 30 days of the decision. The Commissioner has 30 days from the receipt of an appeal to provide a written decision to the parties.

An employer may hold disputed premiums in abeyance from the date an appeal is filed until a final determination is made. However, if the classification decision is upheld, the employer is subject to interest charges at the rate of one percent per month.

Programs in Other States

As of January 2000, 32 states and the District of Columbia had formal appeals processes similar to the Colorado Workers' Compensation Appeals Board. Several other states have informal processes similar to the process that existed in Colorado before the creation of the Board. States with formal programs and the name of the appealing entity are contained in Table 1 below:

Table 1

State Classification Appeals Programs

State	Program Name
Alabama	Alabama Workers' Compensation Appeals Board
Alaska	Alaska Workers' Compensation Review and Advisory Committee
Arizona	Arizona Workers' Compensation Appeals Board
Arkansas	Arkansas Workers' Compensation Appeals Board
Colorado	Colorado Workers' Compensation Classification Appeals Board
Connecticut	Connecticut Workers' Compensation Classification and Rating Appeals Board
D.C.	District of Columbia Rules and Classification Review Panel
Florida	Florida Workers' Compensation Appeals Board
Georgia	Georgia Workers' Compensation Appeals Board
Idaho	Idaho Workers' Compensation Rating and Classification Review Committee
Illinois	Illinois Workers' Compensation Appeals Board
Iowa	Iowa Workers' Compensation Appeals Board
Kansas	Kansas Workers' Compensation Appeals Board
Kentucky	Kentucky Workers' Compensation Appeals Board
Louisiana	Louisiana Workers' Compensation Appeals Board
Maine	Maine Workers' Compensation Appeals Board
Maryland	Maryland Workers' Compensation Appeals Board
Mississippi	Mississippi Workers' Compensation Appeals Board
Missouri	Missouri Workers Compensation Determination Review Board
Montana	Montana Classification and Review Committee
Nebraska	Nebraska Workers' Compensation Appeals Board
Nevada	Nevada Appeals Panel for Industrial Insurance
New Hampshire	New Hampshire Classification and Rating Appeals Board
New Mexico	New Mexico Workers' Compensation Appeals Board
Oklahoma	Oklahoma Workers' Compensation Appeals Board
Oregon	Oregon Workers' Compensation Rating System Review and Advisory Committee
Rhode Island	Rhode Island Workers' Compensation Appeals Board
South Carolina	South Carolina Workers' Compensation Appeals Board
South Dakota	South Dakota Classification and Rating Committee
Tennessee	Tennessee Workers' Compensation Appeals Board
Utah	Utah Workers' Compensation Appeals Board
Vermont	Vermont Workers' Compensation Appeals Board
Virginia	Virginia Rules and Classification Review Panel

Program Description and Administration

The operation and administration of the Board is privatized. It does not require the resources of any state agency to operate. The National Council on Compensation Insurance, Inc. (NCCI) is the rating organization designated by the Commissioner to be represented on the Board. NCCI is funded by workers' compensation insurance carriers to develop workers' compensation classifications and ratings. The non-voting Board member representing this organization serves as the Secretary to the Board. All administrative and organizational functions, such as arranging meeting rooms, notification of hearings, and required correspondences, are performed by the Secretary.

The insurance company that is a party to the appeal is immediately billed \$250 by the Board to cover its initial expense to hold the hearing. Any excess expenses of the Board are prorated among all insurance carriers authorized to issue workers' compensation insurance in the state.

When an employer contacts the Board, the Secretary first verifies that the employer has exhausted the carrier's appeals process before accepting the appeal. Once the appeal has been accepted, both parties are contacted and provided with an opportunity to provide additional information. At this time, many complaints are resolved prior to hearing.

The Board tries to group hearings together to create a more efficient use of time for Board members and staff. However, given the small number of hearings and the 30 day deadline for appeal hearings, it is not always possible to hold multiple hearings.

The Board hears experience modification appeals and classification appeals. Experience modification appeals relate to the actual experience history of the individual business. Disputes sometimes arise related to business acquisitions, the time period covered by the rating, or how the rating is prorated.

When a new owner acquires an existing business, the experience modification rating of the business usually continues. Sometimes the new owner wants to use the experience rating from a previously owned business. Even if the previous business was in the same business classification, the owner is usually required to use the existing business modification rating. Appeals on this issue are generally fairly simple to resolve since the rules are very explicit and there is little room for interpretation. Appeals when a business is acquired by another business can be more complex. However, the rules are quite clear, the Board investigates to determine if they were applied correctly. When a business with a high rating is acquired by an existing business with a lower rating, the carrier applies a blended rating. The Board can verify if the calculations used to arrive at the blended rating are correct.

Another category of experience appeal, although rare because the rules are so clear, involves the period of time used to calculate the experience modification rating. New businesses are required to use a new business rating, which is generally slightly higher than the average existing business in the same classification. Disputes sometimes arise related to when a lower experience rating is permitted under the rules.

The Board was appointed in late 1996. However, it did not actually begin hearing appeals until 1997. Since that time, the Board has held four hearings, or an average of one each year, for experience modification complaints. In most cases, the Board has found in favor of the employer and ordered the carrier to use a lower experience rating. The use of lower ratings results in lower premium payments by employers. Table 2 details the history of experience modification rating appeals since 1997.

Table 2

Experience Modification Rating Appeals

Hearing Date	Number Of Appeals	Result
June 1997	1	Carrier upheld
August 1998	1	Employer upheld
June 1999	1	Employer upheld
March 2000	1	Employer upheld

The second type of appeals heard by the Board involve employee/employer classifications. Classification appeals can be much more complex. Rules allow for multiple classifications of employees within the same business in some instances. The classification of employees is based on both the type of business and the type of work performed by the employee. While the rules attempt to make clear distinctions, it is not always possible. In some cases, insurance underwriters place employees in a classification that appears to be the closest fit. If an employer believes that a different classification with a lower rate is more appropriate, the employer can appeal.

The appeals process exists precisely because the classification process can be subjective. For example, a recent appeal heard by the Board involved a company that constructed decorative rock retaining walls. The underwriter for the carrier placed the company in a classification for masonry contractors. The employer believed the employees should be classified in the landscape gardening classification.

During the hearing, the Board heard evidence that walls built by companies in the masonry classification were routinely over four feet in height and were usually required by building codes to include a guardrail along the top. The company in question used a construction method that was not practical over four feet in height. When an area required a higher wall, the contractor terraced the area and built two separate walls.

The Board found that the injury risks associated with the masonry classification were not consistent with the risks that employees of this particular contractor were exposed to. Therefore, the Board ordered the carrier to reclassify the employees resulting in premium savings for the employer.

The Board has heard 10 classification appeals since the beginning of 1997. Board decisions have been evenly divided, according to Board statistics, 50 percent of the appeals have found in favor of the carrier and the balance in favor of the employer. Table 3 details the classification appeals since 1997.

Table 3

Classification Appeals

Hearing Date	Number Of Appeals	Result
June 1997	1	Employer upheld
September 1997	1	Employer upheld
August 1998	2	2 Carriers upheld
June 1999	3	3 Employers upheld
March 2000	3	3 Carriers upheld

When a carrier's classification is upheld, the rating continues as originally underwritten and therefore result is very clear. However, when an employer appeals, it may appeal more than one classification issue, and may request specific changes. The Board may decide to move the employees into a classification that is different from the classification requested by the employer. While this is tracked as upholding the employers appeal, the employer may not receive as much of a reduction as requested.

Appeals of Board Decisions

Carriers and employers may appeal Board decisions to the Commissioner within 30 days of the decision. The Commissioner then has 30 days to request additional information and issue a formal decision. There has been only one appeal of a Board decision to the Commissioner since the program was begun.

In that case, an automotive repair shop owner had appealed the classification of his customer service manager (CSM) as general worker in the classification 8380 (Automobile Service or Repair Center & Drivers) from July 1, 1995 through June 30, 1996. In July of 1996, the insurance carrier reclassified the CSM as classification 8810, which is used for clerical employees.

The owner argued that if 8810 was applicable from July 1996 on, then it should have been applied to the policy period proceeding that time. The Board ruled that the carrier was correct in assigning 8380 for the time period in question because the rules in place at the time prohibited classification as 8810.

The owner appealed to the Commissioner as provided for in §8-55-104 (1), C.R.S. The Commissioner responded within 30 days ruling that the carrier had followed the appropriate classification process during the time period in question.

Analysis and Recommendations

The Act creates a process for employers to resolve differences with insurance carriers in a cost-effective manner. The current process, with a diverse Board appointed by the Commissioner, replaces an informal system with a panel made up of insurance carriers only. Thirty-one states and the District of Columbia have similar programs.

In the early 1990s, workers' compensation insurance rates in Colorado were among the highest in the nation. Since the reforms implemented in 1991, there have been few rate increases and Colorado rates now compare favorably with other states.

Since the program began in 1997, the Board has received 27 appeal requests, and held 10 hearings. When compared to other states, the number of appeals and hearings appears reasonable. Table 4 demonstrates the number of appeals and hearing in states with similar programs.

Table 4

Workers' Compensation Appeals Comparison

State	Total Appeals	Closed Prior To Hearing	Hearings Held	Hearing Percent
AK	22	7	15	68.2
AL	7	5	2	28.6
AR	8	4	4	50.0
AZ	11	4	7	63.6
CO	27	16	11	40.7
CT	20	13	7	35
DC	1	1	0	0
FL	66	45	21	31.8
GA	38	29	9	23.7
IA	5	5	0	0
ID	9	3	6	66.7
IL	47	23	24	51.1
KS	4	4	0	0
KY	3	3	0	0
MD	3	2	1	33.3
ME	4	2	2	50
MO	11	6	5	45.5
MS	4	3	1	25.0
MT	11	4	7	63.6
NE	1	0	1	100
NH	10	5	5	50
NM	13	4	9	69.2

State	Total Appeals	Closed Prior To Hearing	Hearings Held	Hearing Percent
NV	5	4	1	20
OK	4	3	1	25
OR	42	23	19	45.2
RI	2	2	0	0
SC	21	21	0	0
SD	5	3	2	40
TN	124	81	43	34.7
UT	2	1	1	50
VA	15	12	3	20
VT	5	4	1	20
Total	550	342	208	37.8

Those states with more appeals and hearings have a longer program history, as well as an increased marketing effort within the small business community. Some states require that employer representatives on their boards belong to a local chamber of commerce, small business trade group, or federation. The goal of these requirements is to raise the level of awareness of the program, and as a result, the utilization of the process.

The appeals process is popular with both carriers and the employers who use it, particularly those who receive a premium reduction. Still, the low number of appeals could be cause for concern. Colorado requires a notice in the annual premium statement, and a notice whenever there is a classification or premium change. Otherwise, the appeals process is not marketed to the business community.

Recommendation 1 - Continue the Workers' Compensation Classification Appeals Board until 2010.

Worker's compensation insurance can be a significant expense for any business, especially a small business. While large businesses may employ a full-time benefits person or a risk manager, a small business generally cannot afford this expense. Small businesses desire a low-cost, fair, and effective process to resolve highly technical issues with insurance carriers.

The appeals process through the Board is accessible to all businesses. Legal representation is not required; however, either party in the appeal may use an attorney if they desire. The Board decisions appear to be well thought out and supported by the statutory and regulatory guidelines established by the General Assembly and the Commissioner. Employers have prevailed in 50 percent of the appeals that have gone to hearing. Two conclusions can be drawn from this information. One, that insurance carriers occasionally make errors in classifying employees. And two, that the Board has the means and willingness to correct those errors.

Only one Board decision has been appealed to the Commissioner. In that case, the employer disagreed with the Board and exercised his right to further review. The Commissioner upheld the Board's decision, finding the decision to be appropriate given the facts presented. This demonstrates that the second layer of review can be accessed in an efficient manner.

The low number of appeals is a concern. Insurance industry representatives speculate that the strong Colorado economy has created a competitive market for workers' compensation insurance resulting in a willingness for carriers to resolve disputes using internal appeals rather than risk losing clients.

This may be a reasonable explanation. Another explanation may be that employers are not aware of the appeals process. The statute requires notification of employers by the insurance carrier annually, with the premium, as well as whenever there is a classification change. The Division of Insurance should vigorously monitor compliance with these provisions to ensure that employers are aware of their rights.

Administrative Recommendation

The following recommendation does not require statutory changes and is included to address administrative issues related to sunset criteria III, and IX.

Administrative Recommendation 1 - The Board and Division of Insurance Should Increase Awareness of the Program Among Employers.

There is relatively little utilization of the appeals process by employers. This may be because most employers are satisfied with their insurance carrier and the classification they have been placed in. It may also be because employers are not aware of the appeals process.

The National Council on Compensation Insurance (NCCI) has information about the appeals process on its web site and has an 800-telephone number to call with questions. However, this site is used mainly by insurance carriers.

The Board and the Division of Insurance should work with other state agencies involved in business development, such as the Department of Revenue, the Office of Economic Development, and the Division of Workers' Compensation, to develop marketing information about the program. Such information should be made available to business trade organizations such as chambers of commerce, small business development centers and through the state Business Assistance Center

Appendix A - Sunset Statutory Evaluation Criteria

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and rules establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action; and
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

**Appendix B -
Workers'
Compensation
Classification
Appeals Board
Statute**

8-55-101 - Workers' compensation classification appeals board - creation.

(1) There is hereby created, in the division of insurance in the department of regulatory agencies, the workers' compensation classification appeals board. The board shall hear grievances brought by employers against insurers and the Colorado compensation insurance authority concerning the calculation of experience modification factors and classification assignment decisions. The board shall consist of five voting members, each of whom shall be knowledgeable about workers' compensation classification and experience modification factors, and one nonvoting member, as follows:

(a) Two members shall be either salaried employees of an insurance company that issues workers' compensation insurance policies in this state or representatives of the Colorado compensation insurance authority. Such two members shall not both represent the Colorado compensation insurance authority or the same insurance company. In addition, one person shall be selected to serve as an alternate member to represent the interests of the insurance industry or the Colorado compensation insurance authority. The alternate shall represent such interests in the event the primary member recuses himself or herself.

(b) One member, who shall be a nonvoting member, shall be an employee of a workers' compensation rating organization functioning under the provisions of section 10-4-408, C.R.S. The workers' compensation rating organization shall serve as a technical resource for the board.

(c) Three members shall represent private employers. Each private employer member shall be knowledgeable with respect to workers' compensation insurance, rules, and classifications, and shall be familiar with the business environment and community in this state. No private employer member shall be an employee of an insurance company, insurance broker, insurance agent, law firm, actuary, the Colorado compensation insurance authority, or any association of such entities or persons. All private employer board memberships shall be held in the name of an individual. At least one private employer member shall represent the construction industry.

(2) The private employer members and the members representing insurers and the Colorado compensation insurance authority shall be appointed by the commissioner of insurance. The workers' compensation rating organization representative shall be appointed by the chief executive officer of such organization or by another officer designated to make such appointment. The commissioner may solicit a list of nominees from any interested party before making such appointments. The commissioner shall immediately notify the workers' compensation rating organization concerning the identity of any appointees.

(3) Each member shall serve a three-year term; except that the terms of the initial members shall be determined as follows:

(a) The members who represent the workers' compensation rating organization, the insurance industry, and the Colorado compensation insurance authority shall serve three-year terms each, and of the three private employer members, one shall serve for a three-year term, one shall serve for a two-year term, and one shall serve for a one-year term.

(b) A private employer member or member representing the insurance industry or the Colorado compensation insurance authority may serve a second consecutive three-year term. The member representing the workers' compensation rating organization may be reappointed without limitation.

(4) Any vacancy on the board shall be filled for the unexpired term in the same manner as the original appointment. The member appointed to fill such vacancy shall be from the same category described in subsection (1) of this section as the member vacating the position.

(5) Members of the board shall serve without compensation, but their reasonable expenses incurred when performing their duties as board members shall be reimbursed from the workers' compensation cash fund created in section 8-44-112 (7). Such expenses shall be limited to travel, food, and lodging expenses.

(6) Members of the board, in their capacity as members, shall be immune from liability in all claims for injury that lie in tort or could lie in tort, regardless of whether that may be the type of action or the form of relief chosen by the claimant.

8-55-102 - Right to appeal - notice of appeal procedures.

An employer may appeal to the workers' compensation classification appeals board any issue concerning the calculation of experience modification factors and classification assignment decisions under the workers' compensation laws of this state, by filing written notice with said board within thirty days after the employer has exhausted all appeal review procedures provided by the insurance company. Every insurance carrier authorized to transact business in this state, including the Colorado compensation insurance authority, shall provide employers with a written copy or summary of their appeal procedures, together with a written notice of the availability of an appeal under this article, at the beginning of each policy year and when notice is provided to the employer of a change in experience modification factors or job classification.

8-55-103 - Hearings - conflicts of interest.

(1) The board shall commence each term on January 1 of each year and shall terminate each term on December 31.

(2) At the beginning of each term the board shall either in person or by teleconference:

(a) Elect a chair who shall be responsible for conducting each hearing;

(b) Appoint the member representing the workers' compensation rating organization as secretary; and

(c) Establish such organizational and procedural rules as are deemed necessary.

(3) The board shall meet as needed and in accordance with the following:

(a) The board shall schedule a hearing within thirty days after receipt of an appeal.

(b) The board shall provide written notice of a hearing to the appellant, the insurer, and the workers' compensation rating organization within thirty days after receipt of an appeal, but not less than ten days before the hearing.

(c) A hearing shall be conducted only if a quorum of the board is present, either in person or by teleconference. A quorum shall consist of a simple majority of the voting members, including at least two private sector members.

(d) Any decision of the board shall be by majority vote of the voting members who are present at the hearing.

(e) A member's vote shall be cast only by such member.

(f) If a board member has a conflict of interest with respect to any matter scheduled for hearing before the board, such member shall recuse himself or herself from any discussion and decisions on said matter unless, after full disclosure of the facts giving rise to such conflict, all parties to the appeal agree to waive such conflict. For purposes of this paragraph (f), a member shall be deemed to have a conflict of interest if such member:

(I) Has a conflict that would call into question such member's ability to render an unbiased decision; and

(II) Is associated with either party to the appeal. A member is "associated" with a party to an appeal if:

(A) The member and the party to the appeal are involved in a common business enterprise or are members of a controlled group, as defined in section 1563(a) of the federal "Internal Revenue Code of 1986", as amended; or

(B) The member has a familial relationship with the party to the appeal.

(g) Notwithstanding the provisions of paragraph (f) of this subsection (3), the member representing the workers' compensation rating organization shall not be deemed to have a conflict of interest with respect to any appeal based solely on his or her affiliation with his or her organization.

(4) The secretary of the board shall carry out the administrative functions of the board and shall be responsible for providing notice of, preparing the agenda for, and arranging the facilities for each hearing and meeting. The secretary shall also prepare a memorandum after each hearing that includes the vote of the board. Such memoranda shall be signed by the chair of the board and, each month, the secretary shall deliver copies of that month's memoranda to the workers' compensation rating organization.

8-55-104 - Review of board decisions.

(1) A decision of the board shall be final and not subject to appeal unless the employer, insurance company, or the Colorado compensation insurance authority provides written notice to the office of the commissioner of insurance, who shall determine whether a job misclassification occurred, as required pursuant to section 8-44-108. An employer may hold disputed premium amounts in abeyance from the date an appeal is filed pursuant to section 8-55-102 until the later of:

(a) The date a final decision is made by the board concerning such appeal; or

(b) The date of any written decision of the commissioner of insurance issued pursuant to subsection (3) of this section.

(2) Each employer, insurance company, or the Colorado compensation insurance authority, as the case may be, shall be advised of his or her right to appeal to the office of the commissioner of insurance.

(3) An employer, insurance company, or the Colorado compensation insurance authority shall provide written notice of an appeal to the commissioner of insurance within thirty days after the date of the board's decision. The commissioner shall review any decision of the board properly appealed pursuant to this section and shall provide a written decision within thirty days after the request for such review.

(4) Any employer that holds disputed premium amounts in abeyance pursuant to subsection (1) of this section and loses its appeal shall pay the disputed premium amount plus interest at the rate of one percent of such disputed amount per month. Such interest shall accrue from the date of the premium rate increase to the date of payment.

8-55-105 - Repeal of article.

(1) This article is repealed, effective July 1, 2001.

(2) Prior to said repeal, the workers' compensation classification appeals board shall be reviewed as provided in section 24-34-104 (30) (c), C.R.S.