

Delaware Compensation Rating Bureau, Inc.



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To: DCRB Actuarial and Classification & Rating Committees

From: Timothy L. Wisecarver

Subject: Proposed Revisions to Manual Language – Appeals Procedures

Attached is proposed language which would revise provisions of Section 1, Rule XVI of the Manual pertaining to appeals against applications of the rating system.

The purposes of the amendments under consideration are two-fold: first, to streamline language pertaining to existing procedures for employer appeals against applications of the Delaware rating system to their workers compensation policies, and secondly, to establish a procedure that would apply to instances in which the aggrieved party to an application of the rating system might be a DCRB member insurer rather than an insured employer.

Committee members are advised that very similar changes have been filed and approved for use in Pennsylvania effective October 1, 2015, and that the DCRB Governing Board recently approved presentation of this language to the Actuarial and Classification & Rating Committees as a step toward including such amendments with the December 1, 2015 rating values filing.

Delaware

CURRENT APPEALS PROCEDURE

~~A. Any policyholder (e.g. a person, a corporation or otherwise), aggrieved by an application of the rating system of the Delaware Compensation Rating DCRB, Inc. (DCRB), as approved by the Insurance Commissioner pursuant to Title 18, Chapter 26 of the Delaware Code, may appeal such application to the DCRB in accordance with this Procedure. "Rating system" is defined herein to include but is not limited to the following: the assignment by the DCRB of an individual business to a particular classification, the continuation or discontinuation of an entity's(ies') previous experience to the experience rating of new ownership, revision of losses used in a business' experience modification or merit rating, an individual business' eligibility for and/or the percentage of credit under the Delaware Construction Classification Premium Adjustment Program, the discount or surcharge applied to a business eligible for the Merit Rating Plan, the percentage credit for a business eligible for the Delaware Workplace Safety Program or any other workers compensation insurance pricing program filed by the DCRB with the Insurance Commissioner. The aggrieved party must commence any appeal of an application of the rating system within 12 months of the policy period in which the application was made by filing an appeal directly with the DCRB in accordance with this Procedure, except for an appeal for revision of losses used in a business' experience modification or merit rating which shall be governed by the specific Revision of Losses provisions of Sections 5 and 6 of this Manual.~~

~~B. An aggrieved party to which the rating system is found on appeal by the Committee to have been improperly applied as of the time of the aggrieved party's appeal to the DCRB in accordance with this Procedure may have such application amended effective only for the policy currently in effect at the time the aggrieved party first submitted its appeal to the DCRB in accordance with Paragraph F hereof and for the immediately preceding expired policy. In the case of a multiple year policy application of the rating system may be amended effective only for the policy year currently in effect at the time the aggrieved party first submitted its appeal to the DCRB in accordance with Paragraph F. hereof and for the policy year expiring no more than 12 months prior to such appeal to the DCRB.~~

~~C. An aggrieved party for which application of the rating system is revised as a result of a change in the DCRB's interpretation of the rating system approved for use by the Insurance Commissioner may have such application amended effective as of the date determined by the DCRB's Classification and Rating Committee, which date may be prospective or retroactive as determined by the Committee, provided, however, that any retroactive~~

PROPOSED APPEALS PROCEDURE

A. Any policyholder aggrieved by the application of the Rating System of the Delaware Compensation Rating Bureau, Inc., (DCRB) may appeal such application to the DCRB in accordance with this appeals procedure (Procedure).

"Rating System" is defined to include all workers compensation insurance pricing programs subject to rules set forth in this Manual.

The appeal must be filed directly with the DCRB during the policy period with respect to which the application is made, or within twelve months after the termination thereof. Appeals filed beyond this time period will not be granted.

EXCEPTION: An appeal for revision of losses used in experience or merit rating is governed by the Revision of Losses provisions of this Manual.

effect shall not exceed the time period authorized in Paragraph B hereof.

~~D. An aggrieved party for which application of the rating system is revised pursuant to a change to the rating system filed by the DCRB and approved for use by the Insurance Commissioner may have such application amended effective only upon the aggrieved party's first normal policy anniversary date on or later than the effective date of the change to the rating system approved by the Insurance Commissioner.~~

~~E. Nothing in this Procedure shall permit an aggrieved party for which application of the rating system is revised on a new and renewal basis only to have such application amended effective before the aggrieved party's first normal policy anniversary date effective on or later than the effective date of the change to the rating system approved by the Insurance Commissioner.~~

~~F. An aggrieved party who wants to appeal an application of the rating system must first submit a written request for review thereof to the DCRB, together with all information in support of its appeal. The DCRB staff shall review the request and supporting information. To make certain the facts of an appeal are fully agreed upon by the DCRB and the appellant, the DCRB staff may make written inquiries to the appellant and/or (as circumstances warrant) visit the appellant's Delaware workplace(s). The DCRB shall notify the appellant in writing that staff's Paragraph F. review has been completed and that this letter is the DCRB's final decision. If the appellant is still aggrieved by the rating system application following the DCRB staff's review and final decision, the appellant shall have the right to present its appeal to the DCRB's Classification and Rating Committee in accordance with the provisions of this Procedure. A further appeal by an appellant of the Classification and Rating Committee decision may be taken to the Insurance Commissioner pursuant to Title 18, Section 2614 of the Delaware Code only after the appellant has first exhausted its rights pursuant to this Procedure.~~

~~G. Any party aggrieved by a final decision of the DCRB staff pursuant to Paragraph F shall have the right to appeal to the Classification and Rating Committee of the DCRB. Any Committee member having a direct pecuniary interest in the aggrieved party's appeal shall recuse its representative from the appeal proceeding. Such appeal must be received by the DCRB no later than 90 days from the date of the DCRB staff's final decision referred to in Paragraph F.~~

~~H. All appeals pursuant to Paragraph G hereof must be filed with the DCRB and must meet the following~~

B. An aggrieved party who wants to appeal a DCRB decision concerning an application of the Rating System must first submit a written request for review to the DCRB, together with all information in support of its appeal. DCRB staff will review the request and supporting information. To make certain the facts of an appeal are fully agreed upon, DCRB staff may make written inquiries to the appellant and/or survey the appellant's Delaware workplace(s). The appellant shall provide complete responses to such inquiries, and shall provide full access to such workplace(s). The DCRB will then notify the appellant in writing that the DCRB staff's review has been completed and provide to the appellant (or its designated representative) the DCRB staff's final decision.

C. If the appellant is aggrieved following completion of the DCRB staff's review and final decision, the appellant has the right to present its appeal to the DCRB's Classification and Rating Committee. An appeal may be taken to the Insurance Commissioner only after the appellant has first exhausted its rights pursuant to this Procedure.

D. A Classification and Rating Committee shall be convened to consider the appeal, none of whom may have a direct pecuniary interest in the aggrieved party's appeal.

E. All appeals must be filed with the DCRB no later than thirty (30) days from the date of the DCRB staff's final

requirements:

1. The appeal must be in writing.
2. The appeal must set forth in detail the nature of the complaint, all reasons for believing the DCRB decision to be in error, all documents in support of the appeal, the specific nature of the relief desired, and that the aggrieved party or its designated representative will appear before the Classification and Rating Committee at a to-be-determined hearing date. The DCRB urges the aggrieved party to appear before the Committee, as the aggrieved party is better able to respond to any questions the Committee may have regarding the aggrieved party's business operations than a designated representative.
3. In the event an appeal does not fulfill the requirements of Paragraph H. 2. hereof the DCRB shall make a written request for the needed additional information from the aggrieved party who shall have 30 days to comply. Upon a written showing by the aggrieved party that the requested additional information cannot be provided within 30 days, the DCRB may grant an extension consistent with the circumstances. If the requested additional information is not submitted within the specified time period as extended, the appeal shall be dismissed.

I. Following receipt of an appeal to the Classification and Rating Committee, the DCRB will notify the appellant of the time and place in Delaware of the Classification and Rating Committee meeting at which the matter shall be heard. The appeal shall be dismissed if an appellant, after due notice pursuant to Paragraph M. hereof, fails to be present or represented at three such scheduled hearings.

J. The procedure at the hearing shall be as informal as possible and shall provide for the following steps:

1. The Chairman of the Classification and Rating Committee shall introduce the appellant to the Classification and Rating Committee.
2. The appellant may at its option make an oral presentation of its case or may rely solely upon the written material previously submitted to the DCRB in connection with the appeal.
3. DCRB staff members or consultants to the DCRB may present testimony and other information to the Committee relating to the matter under consideration.
4. The appellant or the DCRB may also present witnesses and documentary evidence relevant to the appeal, and the appellant and the DCRB shall have the opportunity to direct questions to any witness who has testified before the Committee on appeal.
5. After all testimony and other evidence have been presented, the hearing shall be declared closed by the Chairman of the Committee. Such hearing may in the discretion of the Committee be reopened at any time prior to the Committee's decision.
6. After the hearing is closed, the Committee shall arrive at its decision in executive session.
7. The decision shall be set forth in writing, shall specify

decision and meet the following requirements:

1. The appeal must be in writing.
2. The appeal must set forth in detail the nature of the complaint, including:
 - All reasons for believing the DCRB decision to be in error.
 - All documents in support of the appeal.
 - The specific nature of the relief desired.
3. The aggrieved party (or its designated representative) must agree to appear before the Classification and Rating Committee.

F. Following receipt of an appeal of a DCRB final decision, the DCRB will notify the appellant of the time and place in Delaware of the Classification & Rating Committee meeting at which the matter will be heard

G. The procedure at the Classification & Rating Committee hearing is informal:

- The appellant may make an oral presentation of its case or rely solely upon the written material previously submitted to the DCRB in connection with the appeal.
- DCRB staff may present testimony and other information to the Classification & Rating Committee relevant to the appeal.
- The appellant and/or the DCRB may also present third-party witnesses and documentary evidence relevant to the appeal.
- The appellant and the DCRB shall have the opportunity to direct questions to any witness who has testified before the Classification & Rating Committee.
- After all testimony and other evidence have been presented, the hearing shall be declared closed by the Chair of the Classification & Rating Committee.
- After the hearing is closed, the Classification & Rating Committee shall arrive at its decision in executive session. Attendance at the executive session is limited to members of the

~~all factual and other bases for the decision and shall be sent to the appellant no later than thirty (30) days after the hearing.~~

~~8. The decision shall be included in the minutes of the meetings of the Classification and Rating Committee and retained in the records of the DCRB.~~

~~9. The minutes of the Classification and Rating Committee shall be kept by the DCRB staff. As hearings before the Classification and Rating Committee are as informal as possible, there shall be no stenographic, audio or video record thereof.~~

~~10. If travel is required for the aggrieved person to be heard by the Classification and Rating Committee in person, the aggrieved person will be reimbursed for travel expenses in the same manner as members of the Classification and Rating Committee.~~

~~K. An appellant is not required to be represented by an attorney at any stage in any proceeding. However, an appellant has a right at the appellant's expense to be represented by an attorney. An appellant who is represented by an attorney shall notify the DCRB in writing and shall also furnish the DCRB with the attorney's name and mailing address. After the DCRB has received such notification from an appellant, subsequent papers in the proceeding to be served on such appellant shall be served only upon the attorney designated by the appellant.~~

~~L. All requests pursuant to Paragraph F., appeals pursuant to Paragraph G. or notice of appearance by an appellant's attorney pursuant to Paragraph K. hereof must be filed with the DCRB (to the DCRB's office – United Plaza Building, Suite 1500, 30 South 17th Street, Philadelphia, PA. 19103-4007).~~

~~M. Notices of any requirement for additional information pursuant to Paragraph H. 3. or of the time and place in Delaware of the Classification and Rating Committee hearing shall be given to the appellant or its attorney pursuant to Paragraph K. in writing personally or by certified mail (with return receipt). The notice of hearing shall be made at least ten days in advance of such hearing unless such notice is waived by the appellant or its attorney. When a meeting is adjourned to another time or place in Delaware, written notice need not be given of the adjourned hearing if the time and place in Delaware thereof are announced at the meeting during which all parties are present at which the adjournment is taken. All other notices, orders, papers and communications, including a copy of the decision, may~~

Classification & Rating Committee and DCRB legal counsel.

- The effective date of the decision will be specifically determined by the Classification & Rating Committee, in accordance with Manual rules.

~~H. A record of meeting of the Classification & Rating Committee will be kept by DCRB staff. As hearings before the Classification & Rating Committee are informal, there is no stenographic, audio or video record. The Classification & Rating Committee decision will be included in the record of meeting and retained in the records of the DCRB.~~

~~I. Travel expenses for the appellant will be reimbursed in the same manner as for members of the Classification & Rating Committee. Reimbursement is payable on a per appeal basis, i.e., multiple reimbursements will not be paid when more than one appellant representative attends the Classification & Rating Committee meeting.~~

~~J. The decision of the Classification & Rating Committee shall be set forth in writing, include the basis for the decision, and be sent to the appellant no later than thirty (30) days after the hearing.~~

~~K. An appellant is not required to be represented by an attorney. However, an appellant has the right, at the appellant's expense, to be represented by an attorney. An appellant who is represented by an attorney shall notify the DCRB of such representation in writing in advance of the hearing, and shall furnish the DCRB with the attorney's name, mailing address and e-mail address. After the DCRB has received such notification from an appellant, all subsequent correspondence related to the appeal will be directed to the attorney designated by the appellant.~~

~~L. Notice regarding the time and place of the Classification & Rating Committee hearing as well the Classification & Rating Committee decision in the matter will be provided to the appellant (or its attorney) in writing, via e-mail (if agreed upon) or first class mail.~~

~~be served on an appellant by hand delivery or by regular first class mail to the appellant or its attorney at the last known mailing address provided to the DCRB.~~

~~N. During the course of all proceedings governed by this Procedure, the Classification and Rating Committee shall have the power to interpret and apply the foregoing Paragraphs, and such interpretation shall be binding upon the parties.~~

~~O. Appeals from a final decision of the Classification and Rating Committee pursuant to this Procedure must be filed with the Insurance Commissioner within 30 days of the mailing date of the Committee's decision, as provided in Section 2614, Title 18 of the Delaware Code.~~

~~P. Unless otherwise specifically provided by this Procedure, all periods of time shall be calculated from the postmark on materials sent by first class or certified mail through the United States Postal Service or the date of any hand delivery, whichever date is earlier.~~

~~Q. Nothing contained in this Procedure shall prevent efforts to resolve any controversies governed by this Procedure on an informal basis at any stage of the proceedings before the DCRB or the Classification and Rating Committee.~~

M. Appeals from a final decision of the Classification & Rating Committee must be filed with the Insurance Commissioner in writing within thirty (30) days of the mailing date of the Classification & Rating Committee's decision. Such appeals must set forth the basis for the appeal and the grounds being relied upon by the appellant.

N. Nothing contained in this Procedure shall prevent efforts to resolve any dispute on an informal basis at any stage of these proceedings

New Separate Manual Rule:

RULE XVII - MEMBER CARRIER DISPUTES (DISPUTE RESOLUTION CONFERENCE)

- A.** A member carrier aggrieved by a final decision of DCRB staff concerning an application of the rating system (Staff Decision) may submit a written request for a conference with the DCRB President and/or Senior Vice President (Dispute Resolution Conference) to discuss the Staff Decision. This request must be submitted within 30 days of the Staff Decision, and must state the basis of the grievance and the remedy being sought.
- B.** Within 30 days following the Dispute Resolution Conference, the DCRB President or Senior Vice President shall issue a written communication (Conference Decision) to the aggrieved member carrier communicating any change(s) to the Staff Decision and any remedy on account of such change(s). If the member carrier remains aggrieved by the Conference Decision, the member carrier may appeal the Staff Decision, as sustained or modified by the Conference Decision, to the Insurance Commissioner within 30 days of the mailing date of the Conference Decision. Such appeals should be directed to the Insurance Commissioner.
- C.** A copy of the Conference Decision will be sent to the impacted policyholder if the Conference Decision changes the Staff Decision. To the extent the policyholder is aggrieved by the Conference Decision, the policyholder may pursue an appeal of the Conference Decision via the appeals procedure outlined in Rule XVI. In the context of Rule XVI procedures the Conference Decision is considered the DCRB final decision.