

CHAPTER 5229
DEPARTMENT OF LABOR AND INDUSTRY
EQUITABLE APPORTIONMENT ARBITRATION

5229 0100	DEFINITIONS	5229 0410	ADMINISTRATOR
5229 0200	PURPOSE	5229 0420	SELECTION AND COMPOSITION OF ARBITRATION PANEL.
5229 0300	SCOPE	5229 0500	PROCEDURE FOR INITIATION OF ARBITRATION
5229 0350	PRESUMPTIVE RULE OF EQUITABLE APPORTIONMENT	5229 0600	ARBITRATOR
5229 0400	NOMINATION AND QUALIFICATIONS OF ARBITRATORS	5229 0700	ARBITRATION PROCEDURE

5229.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 5229.0100 to 5229 0700, the following terms have the meanings given them.

Subp. 2. **Administrator.** "Administrator" means the administrator of the apportionment arbitration process.

Subp. 3. **Arbitrator.** "Arbitrator" means that person who makes the final determination in an arbitration under this chapter.

Subp. 4. **Arbitration advisor.** "Arbitration advisor" means that person selected by a party to an arbitration under this chapter to offer advice and counsel to the arbitrator during the course of an arbitration.

Subp. 5. **Employer/insurer.** "Employer/insurer" means an employer within the meaning of Minnesota Statutes, chapter 176, and that employer's insurer for workers' compensation liability and includes the special compensation fund when it is representing an uninsured employer. The term does not include a self-insured employer.

Subp. 6. **Neutral physician.** "Neutral physician" means the physician who in the parties' or arbitrator's opinion will render an independent assessment on apportionment.

Subp. 7. **Panel.** "Panel" means the arbitrator and the arbitration advisors, if any.

Subp. 8. **Roster.** "Roster" means the list of those nominated to act as apportionment arbitrators under this chapter who meet the requirements and are nominated.

Subp. 9. **Self-insured employer.** "Self-insured employer" means an employer within the meaning of Minnesota Statutes, chapter 176, that has been permitted to self-insure for workers' compensation liability pursuant to Minnesota Statutes, section 176.181, subdivision 2.

Statutory Authority: *MS s 175.17, 175.171; 176.191, 176.83*

History: *20 SR 2286*

5229.0200 PURPOSE.

This chapter is intended to set forth the procedure for the arbitration of issues of equitable apportionment of liability for workers' compensation benefits, as defined by Minnesota Statutes, section 176.191, subdivisions 1a and 5; to provide a process for selecting arbitrators; and to provide a general rule of presumptive apportionment.

Statutory Authority: *MS s 175.17; 175.171; 176.191; 176 83*

History: *20 SR 2286*

5229.0300 SCOPE.

Minnesota Statutes, section 176.191, subdrvision 1a, provides that equitable apportionment of liability for an injury is no longer allowed except:

A. in a settlement agreement filed pursuant to Minnesota Statutes, section 176.521; and

B. when an employer or insurer requests arbitration of equitable apportionment under Minnesota Statutes, section 176.191, subdivision 5.

This chapter applies where equitable apportionment is sought but the parties have not been able to reach the agreement described in item A. This chapter applies solely to ar-

bitration of claims by self-insured employers or employer/insurers under Minnesota Statutes, section 176.191, subdivisions 1a and 5, including when the sole issue is a claim for partial or total contribution towards, or reimbursement of workers' compensation benefits against, one or more self-insured employers or employer/insurers. As set forth in Minnesota Statutes, section 176.191, subdivision 1a, the arbitration proceeding is for the limited purpose of apportioning liability for workers' compensation benefits payable, when liability for workers' compensation has been admitted by or adjudicated against the claiming self-insured employer or employer/insurer. Minnesota Statutes, section 176.191, subdivision 1a, provides that it is not to be interpreted to repeal or in any way affect the law with respect to the special compensation fund statutory liability or benefits. When disputed, fund liability under Minnesota Statutes, sections 176.131 and 176.132, is to be determined by workers' compensation judges and fund issues will be decided in proceedings over which they preside. These arbitration proceedings cannot bind the fund to more liability than that which was found by a judge. A self-insured employer or employer/insurer cannot request reimbursement from the special compensation fund that would exceed what has been ordered by the compensation judge at the Office of Administrative Hearings.

Statutory Authority: *MS s 175.17; 175.171; 176.191; 176.83*

History: *20 SR 2286*

5229.0350 PRESUMPTIVE RULE OF EQUITABLE APPORTIONMENT.

The presumptive rule of equitable apportionment under this chapter is that the parties and the arbitrator, in making the decision, must be guided by parts 5229.0100 to 5229.0700; Minnesota Statutes, section 176.191, subdivisions 1a and 5; and workers' compensation case law on the issue.

Statutory Authority: *MS s 175.17; 175.171; 176.191; 176.83*

History: *20 SR 2286*

5229.0400 NOMINATION AND QUALIFICATIONS OF ARBITRATORS.

Subpart 1. Nomination. Workers' compensation insurers, self-insured employers who administer their own claims, and third-party administrators for self-insured employers may annually nominate individuals to the roster. Self-nomination is not allowed. Additional nominations will be closed on April 17, 1996, and will be reopened every year from March 18 to April 17.

Subp. 2. Qualifications. Members of the roster must have a minimum of five years of technical claims handling in Minnesota workers' compensation or five years of legal experience in Minnesota workers' compensation. The administrator must verify that all persons nominated meet the qualifications.

Subp. 3. Membership on roster. Each qualified nominee who is willing to participate must be included in membership on the roster.

Statutory Authority: *MS s 175.17; 175.171; 176.191; 176.83*

History: *20 SR 2286*

5229.0410 ADMINISTRATOR.

Subpart 1. Selection. The commissioner of the Department of Labor and Industry, in consultation with representatives of three workers' compensation insurers and one self-insured employer, must select an entity to act as administrator of the apportionment arbitration process. As set forth in parts 5229.0100 to 5229.0700, the administrator must facilitate the selection of arbitrators and the expeditious resolution of the equitable apportionment issues.

Subp. 2. Recordkeeping. The administrator must keep a record of all arbitration proceedings, including copies of the documents submitted by the parties, the names of the arbitration panel, and a copy of the final arbitration order.

Subp. 3. Term. The term of the contract for the administrator must not exceed three years.

Statutory Authority: *MS s 175.17; 175.171; 176.191; 176.83*

History: *20 SR 2286*

5229.0420 SELECTION AND COMPOSITION OF ARBITRATION PANEL.

Subpart 1. **Composition.** An arbitration under this chapter must be heard by a panel consisting of the arbitrator and, if the parties agree they are needed, one arbitration advisor for each party to the dispute.

Subp. 2. **Selection of arbitrator.** The arbitrator must be selected by the following process:

A. Within ten days of receiving a request for arbitration of apportionment, the administrator must, by lot and excluding anyone on the roster who is an employee of any party to the dispute, select the names of persons to hear the arbitration from the roster and submit those names to the parties to the dispute.

B. The number of names submitted to the parties must be equal to the number of parties to the arbitration, *plus one*.

C. Beginning with the party on the list for the earliest date of injury, each party must, within ten days, submit the name of a person whom that party wishes to strike from the list. The party with the next earliest date must then submit the name it wishes to strike, and so forth, until one name remains on the list.

D. The individual remaining on the list is the arbitrator until the dispute is resolved.

E. If the arbitrator is unable to complete the arbitration, the administrator must choose another arbitrator as provided in this subpart.

Subp. 3. **Selection of arbitration advisors.** If the parties have agreed that they are needed, each party to the arbitration may select an individual to act as an arbitration advisor for the period of the dispute.

Subp. 4. **Notification of parties.** When the arbitrator has been determined and, when the parties have agreed that they are needed, when each of the arbitration advisors has been named, the administrator must notify all parties to the arbitration of the names included on the panel.

Statutory Authority: *MS s 175.17; 175 171; 176.191; 176.83*

History: *20 SR 2286*

5229.0500 PROCEDURE FOR INITIATION OF ARBITRATION.

Subpart 1. **Request for arbitration.** The arbitration process must be initiated by the filing of a request for arbitration of an apportionment issue with the administrator by an aggrieved self-insured employer or employer/insurer, but shall be permitted only when the requesting party has met the requirements of Minnesota Statutes, section 176.191, subdivision 5.

A. A request must be made on a form approved by the administrator, which must include the names of the self-insured employers or employer/insurers among which equitable apportionment is sought or from which contribution or reimbursement is sought, the name and social security number of the employee, and the dates of the relevant injury or injuries.

B. The request for arbitration must be accompanied by:

- (1) a statement of the facts;
- (2) documentation that the requirements of Minnesota Statutes, section 176.191, subdivision 5, have been met;
- (3) medical evidence in support of the requested equitable apportionment;
- (4) a brief or written argument in support of the requesting party's position, including legal support,
- (5) the name of the party's desired arbitration advisor, if any;
- (6) any request for oral argument or special handling of the case; and
- (7) a nonrefundable arbitration administration fee payable to the administrator in an amount to be determined in the agreement referred to in part 5229.0410, subpart 3, that is with the administrator.

C. The requesting party must provide the administrator with copies of the request and supporting documents for the arbitrator, for each arbitration advisor, and for the administrator's records.

D. The requesting party must, at the same time as filing the request, serve copies of the request and all attached documents on each self-insured employer or employer/insurer from which equitable apportionment is sought, as well as the employee and the employee's attorney, if any.

Subp. 2. **Determining arbitration panel.** Upon receipt of the request for arbitration and after ascertaining that the requirements of Minnesota Statutes, section 176.191, subdivision 5, have been met, the administrator must start the process under part 5229.0420 for determining the panel to hear the arbitration. When the panel is determined, the administrator must notify the arbitrator and forward copies of the request and documents to the members of the panel.

Subp. 3. **Responses to arbitration request.** Within 90 days of the administrator's receipt of a copy of the arbitration request and supporting documents, each party among which equitable apportionment is sought or from which contribution or reimbursement is sought must submit to the administrator its response to the arbitration request.

A. Responses must include:

- (1) a written brief or explanation of the party's position;
- (2) any relevant medical evidence in support of its position;
- (3) any other evidence or documentation pertinent to the case;
- (4) that party's request for oral argument or special handling, if any; and
- (5) the name of the party's desired arbitration advisor, if any.

B. The responding party must provide the administrator with copies of the response and supporting documents for the arbitrator, for each arbitration advisor, and for the administrator's records. The administrator shall forward a copy of the response and supporting documents to each party.

C. When the 90-day period following the arbitration request has passed, or when the panel is determined, whichever is later, the administrator must forward the responsive documents to the members of the panel.

Statutory Authority: *MS s 175.17; 175.171; 176.191, 176.83*

History: *20 SR 2286*

5229.0600 ARBITRATOR.

Subpart 1. **Powers of arbitrator.** The arbitrator for a particular case has sole authority to determine whether the matter will be heard upon oral argument, whether extensions of time are warranted, or whether further information is required on the files and from the parties. The arbitrator also has sole authority to determine the appropriate resolution of the matter, within the scope of parts 5229.0100 to 5229.0700, and to order payment according to the apportionment decision. The arbitrator has the power of subpoena of the commissioner of the Department of Labor and Industry and of an arbitrator under Minnesota Statutes, section 572.14, paragraph (a), to obtain information necessary to a determination of this equitable apportionment dispute.

Subp. 2. **Arbitration advisor's role.** The role of an arbitration advisor is solely to explain and clarify the positions of the parties and advise the arbitrator as to the relevant facts and, if the arbitration advisor is a licensed attorney, also as to the applicable law. An arbitration advisor has no power to make the final determination and, if the arbitration advisor is not a licensed attorney, shall not advise the arbitrator in any manner constituting the unauthorized practice of law.

Subp. 3. **Binding effect.** The determination of the arbitrator is final and binding on the parties in accordance with Minnesota Statutes, section 176.191, subdivision 5, and may be vacated only in accordance with Minnesota Statutes, chapter 572, the Uniform Arbitration Act.

Statutory Authority: *MS s 175.17; 175.171; 176.191; 176.83*

History: *20 SR 2286*

5229.0700 ARBITRATION PROCEDURE.

Subpart 1. **Nature of hearing.** Upon consideration of the requests of the parties and the facts and evidence presented, the arbitrator shall determine if the matter will be heard orally or be considered by the panel solely on the written evidence.

A. The determination as to whether the matter will be heard orally or solely upon the written submissions must be made within 30 days of the date of submission of the last timely response.

B. The arbitrator shall determine the time and place for oral argument or the meeting of the arbitration panel, upon consultation with the parties and panel members.

C. Unless extraordinary circumstances require otherwise, the first oral argument or first meeting of the panel must take place within 60 days of the date for final submission of the response.

Subp. 2. Submission of additional materials. If, upon review of the materials submitted by the parties, the arbitrator determines that further evidentiary materials are required, the arbitrator may order the parties to submit these materials and may set a date by which these materials must be submitted. In no case may the deadline for submission of additional evidence be greater than 90 days from the arbitrator's order to submit materials.

Subp. 3. Determination on written evidence. If the arbitrator concludes that the matter should be determined solely on the written evidence submitted, the arbitrator must notify the arbitration advisors, if any, of the date, time, and place of the first meeting, and the panel shall meet as needed.

Subp. 4. Oral hearings. If the arbitrator determines that an oral hearing is required, the arbitrator shall notify the parties, the panel, and the employee and the employee's attorney, if any, of the date, time, and place of the hearing.

A. Unless otherwise agreed to by the parties, the panel must consider all relevant evidence and is not bound by the formal rules of evidence.

B. The arbitrator must determine if more than one day of hearing is required.

C. If more than one day of hearing is required, the panel may meet one or more times following the completion of the hearing to discuss the evidence presented.

D. At the cost of the party requesting the recording, oral proceedings may be recorded by a court reporter. Nothing said by an employee may be used in any other proceeding under Minnesota Statutes, chapter 176.

Subp. 5. Neutral physician. Following the conclusion of oral argument, if any, or the final meeting of the panel, the arbitrator may promptly render a decision in accordance with subpart 6, or may first render a determination on the facts of the case and submit those facts to a neutral physician for an apportionment opinion. The arbitrator will notify the neutral physician of the number of days within which the opinion must be received in order to be used and, therefore, payable. The last oral argument or meeting of the panel, or review of the neutral physician's opinion by the panel if that opinion was sought, must occur within 60 days of the first oral argument or meeting of the panel unless extraordinary circumstances require otherwise.

A. The costs of obtaining the apportionment opinion of the neutral physician must be borne on a pro rata basis by the parties in accordance with the apportionment decision and subpart 6.

B. The neutral physician must be determined:

(1) if the parties agree, by agreement of the parties, or

(2) if the parties do not agree, by the arbitrator after the arbitrator has considered the objections for cause made by any of the parties.

C. Following the rendering of the opinion of the neutral physician, the arbitration panel must review the opinion. If additional oral testimony is required, the arbitrator may order further oral argument.

Subp. 6. Decision. The arbitrator must issue a written decision on the equitable apportionment arbitration within 30 days of the final oral argument or final meeting of the panel, or if the opinion of a neutral physician was sought, within 30 days of review of that opinion by the panel. In any event, a final decision must be issued within 240 days of the request for arbitration. The arbitrator is not bound by the opinion of the neutral physician. In the event of a default by any party, the arbitrator shall make a decision based on the evidence submitted. Disputed issues of fact are determined by a preponderance of the evidence. The written decision must include:

- A. a statement of the facts as determined by the arbitrator;
- B. the apportionment decision;
- C. the application of the apportionment decision;
- D. a brief explanation of the basis for the decision;

E. an order requiring the parties to make pro rata payment of arbitration costs and fees in accordance with the apportionment decision, including reimbursement by the parties of their apportioned share of the arbitration administration fee or any other costs or fees, to any party that initially paid the costs or fees. As provided in Minnesota Statutes, section 176.191, subdivision 5, expenses of witnesses, including the employee, are a cost of the arbitration. Each party shall pay its own attorney fees for the arbitration, except any employee attorney fee under Minnesota Statutes, section 176.191, subdivision 8, which is a cost or fee of the arbitration; and

- F. any other information as the case merits.

Subp. 7. **Enforcement.** Enforcement of the arbitrator's decision under this chapter must be as set forth for an arbitrator's decision under the Uniform Arbitration Act in Minnesota Statutes, chapter 572.

Statutory Authority: *MS s 175.17; 175.171, 176.191, 176.83*

History: *20 SR 2286*