

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 of the death.

(b) An employer, carrier, or administrator shall conduct an investigation to determine the names and addresses of decedent's potential beneficiaries under G.S. 97-38 and identify them on the Form 29 Supplemental Report for Fatal Accidents. The Form 29 Supplemental Report for Fatal Accidents shall be filed with the Commission within 45 days of notification of a death or allegation of death resulting from an injury or occupational disease arising out of and in the course of employment.

(c) If the employer, carrier, or administrator disputes that an employee's death is compensable or denies it has liability for the claim, the employer, carrier, or administrator shall notify the Commission on a Form 61 Denial of Workers' Compensation Claim. When the employer, carrier, or administrator denies liability for a claim involving an employee's death, the employer, carrier, or administrator shall send the form to all known potential beneficiaries, their attorneys of record, if any, all health care providers that have submitted bills to the employer, carrier, or administrator, and the Commission.

(d) 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 either a Form 30 Agreement for Compensation for Death as set forth in Rule .0501 of this Subchapter or a proposed Opinion and Award.

(e) If the parties submit a Form 30 Agreement for Compensation for Death, the agreement shall be filed in accordance with Rule .0108 of this Subchapter with the following:

- (1) a stipulation as to average weekly wage;
- (2) any affidavits regarding dependents;
- (3) the employee's death certificate;
- (4) a Form 29 Supplemental Report for Fatal Accidents;
- (5) a Form 42 Application for Appointment of Guardian ad Litem, if any beneficiary is a minor or incompetent;
- (6) proof of beneficiary status, such as marriage license, birth certificate, or divorce decree;
- (7) a funeral bill or stipulation as to payment of the funeral benefit;
- (8) a Form 30D Award Approving Agreement for Compensation for Death; and
- (9) an affidavit or itemized statement in support of an award of attorney's fees if an attorney is seeking fees for representation of one or more beneficiaries.

(f) If the parties seek a written Opinion and Award from the Commission regarding the payment of death benefits in lieu of submitting a Form 30 Agreement for Compensation for Death, the parties shall file, in accordance with Rule .0108 of this Subchapter, a proposed Opinion and Award with the following:

- (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 stipulation as to average weekly wage;
- (4) any affidavits regarding dependents;
- (5) the employee's death certificate;
- (6) a Form 29 Supplemental Report for Fatal Accidents;
- (7) a Form 42 Application for Appointment of Guardian ad Litem, 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;
- (11) a funeral bill or stipulation as to payment of the funeral benefit; and
- (12) an affidavit or itemized statement in support of an award of attorney's fees if an attorney is seeking fees for representation of one or more beneficiaries.

(g) If an issue exists as to whether a person is a beneficiary pursuant to G.S. 97-38 or if any other disputed issue exists in an accepted claim, the employer, carrier, administrator, potential beneficiary, or any person asserting a claim for benefits may request a hearing by filing a Form 33 Request that Claim be Assigned for Hearing in accordance with Rule .0602 of this Subchapter.

(h) Upon approval by the Commission of a Form 30 Agreement for Compensation for Death or upon 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's fees shall be paid directly to the attorney; and
- (2) benefits due to a minor or incompetent.

(i) In all cases involving minors and incompetent persons who are potential beneficiaries, a guardian ad litem shall be appointed pursuant to Rule .0604 of this Subchapter.

(j) Any benefits due to a minor pursuant to G.S. 97-38 shall be paid directly to the minor's parent, legal guardian, or legal custodian, if the minor remains in the physical custody of such person, or another person if ordered by the Commission for good cause shown. The benefits shall be for the exclusive use and benefit of the minor. When a beneficiary reaches the age of 18, any remaining benefits shall be paid directly to the beneficiary.

(k) The Commission shall order that the benefits for an incompetent beneficiary shall be paid to the person or entity authorized to receive funds on behalf of the beneficiary pursuant to a federal or state court order, or to the Clerk of Court in the county in which the beneficiary resides, for the beneficiary's exclusive use and benefit.

(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 person to direct payment to another party on behalf of the minor or incompetent person.

(m) In the case of benefits commuted to present value, only those sums that have not accrued at the time of the approval of a Form 30 Agreement for Compensation for Death or entry of a final order of the Commission directing payment of death benefits pursuant to G.S. 97-38 are subject to commutation pursuant to Rule .0406 of this Subchapter.

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