

EXECUTIVE REORGANIZATION ORDER

E.R.O. No. 2011-6

445.2032 Creation of Michigan compensation appellate commission within Michigan administrative hearing system; transfer of powers and duties of certain entities from Michigan administrative hearing system to Michigan compensation appellate commission.

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the state of Michigan in the Governor; and

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch or in the assignment of functions among its units that the Governor considers necessary for efficient administration; and

WHEREAS, Section 8 of Article V of the Michigan Constitution of 1963 provides that each principal department shall be under the supervision of the Governor, unless otherwise provided by the Constitution; and

WHEREAS, there is a continued need to reorganize functions among state departments to ensure efficient administration; and

WHEREAS, the centralization of administrative hearing appellate functions will promote efficient and timely delivery of necessary services;

NOW, THEREFORE, I, Richard D. Snyder, Governor of the state of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. MICHIGAN COMPENSATION APPELLATE COMMISSION

A. The Michigan Compensation Appellate Commission (Commission) is created within the Michigan Administrative Hearing System.

B. All authority, powers, duties, functions, and responsibilities of the following entities transferred to the Michigan Administrative Hearing System pursuant to Executive Order 2011-4 are transferred to the Michigan Compensation Appellate Commission:

1. The Workers' Compensation Appellate Commission and the Chairperson of the Workers' Compensation Appellate Commission created under Executive Order 2003-18, MCL 445.2011, including but not limited to all authority, powers, duties, functions, and responsibilities assigned to the Appellate Commission under the Worker's Disability Compensation Act, 1969 PA 317, MCL 418.101 to 418.941. Any and all statutory references to the Workers' Compensation Appellate Commission not inconsistent with this Order shall be deemed references to the Michigan Compensation Appellate Commission.

2. The Michigan Employment Security Board of Review and the Chairperson of the Michigan Employment Security Board of Review created under the Michigan Employment Security Act, 1936 PA 1, as amended, MCL 421.1 to 421.75, including but not limited to all authority, powers, duties, functions, and responsibilities assigned to the Board of Review under the Michigan Employment Security Act. Any and all statutory references to the Michigan Employment Security Board of Review not inconsistent with this Order shall be deemed references to the Michigan Compensation Appellate Commission.

C. Upon the appointment of nine Appellate Commissions under Section I, D., the Workers' Compensation Appellate Commission and the Michigan Employment Security Board of Review are abolished.

D. The Commission shall consist of nine members appointed by the Governor with the advice and consent of the Senate. Of the nine members initially appointed, three members shall be appointed for a term expiring on July 31, 2013, three members shall be appointed for a term expiring on July 31, 2014, and three members shall be appointed for a term expiring on July 31, 2015.

E. Except as provided in Section I, D., Appellate Commissioners shall be appointed for terms of four years. An Appellate Commissioner may be reappointed. A vacancy caused by the expiration of a term shall be filled in the same manner as the original appointment. An Appellate Commissioner appointed to fill a vacancy created other than by expiration of a term shall be appointed for the balance of the unexpired term.

F. To be eligible for appointment as an Appellate Commissioner a person shall be a member in good standing of the State Bar of Michigan.

G. The Governor shall designate a member of the Commission as its Chairperson, to serve as Chairperson at the pleasure of the Governor.

H. A matter to be heard by the Appellate Commission shall be assigned to a panel of three members of the

Commission. If the Commission is operating with a full contingent of nine members, the Chair shall appoint three panels. A decision reached by a panel shall be the final decision of the Commission, unless six members of the Commission request that the matter be brought for a full review by the entire Commission. The request shall be made within five working days after the decision of the panel.

I. Each Appellate Commissioner shall devote full time to the functions of the Commission and shall perform the functions of the office during the hours generally worked by officers and employees of the executive departments of this state. An Appellate Commissioner shall not participate in a case in which the Commissioner is an interested party.

J. Any matter before the Commission that is a matter of first impression with regard to worker's compensation or unemployment compensation in this state as determined by the Chairperson of the Commission, or any matter that six or more members of the Commission request be reviewed by the entire Commission, shall be reviewed and decided by the entire Commission.

K. In consultation with the Chairperson of the Commission, the Executive Director of the Michigan Administrative Hearing System (Executive Director) shall have general supervisory control of and be in charge of the assignment and scheduling of the work of the Michigan Compensation Appellate Commission. The Executive Director may also establish productivity standards that are to be adhered to by the new Workers' Compensation Appellate Commission, its members, and its panels.

L. In consultation with the Chairperson, the Executive Director shall annually evaluate the performance of each Appellate Commissioner. The evaluation shall be based upon at least the following criteria:

- Productivity including reasonable time deadlines for disposing of cases and adherence to established productivity standards.
- Manner in conducting hearings.
- Knowledge of rules of evidence as demonstrated by transcripts of proceedings in which the Appellate Commissioner participated as an Appellate Commissioner.
- Knowledge of the law.
- Evidence of any demonstrable bias against particular defendants, claimants, or attorneys.
- Written surveys or comments of all interested parties.

M. After completing an evaluation under Section I, L., the Executive Director shall submit a written report, including any supporting documentation, to the Director of the Department of Licensing and Regulatory Affairs regarding that evaluation, which may include but not be limited to recommendations with regard to one or more of the following:

- Retention
- Suspension
- Removal
- Additional training or education

N. An Appellate Commissioner may be removed by the Governor upon recommendation by the Director of the Department of Licensing and Regulatory Affairs, based upon recommendations under Section I. M. or other neglect of duties.

O. The Department of Licensing and Regulatory Affairs shall provide suitable office space for the Commission and its functions.

P. The Michigan Administrative Hearing System shall provide the Commission the staff necessary for the Commission to perform its duties under the Worker's Disability Compensation Act of 1969, the Michigan Employment Security Act, and this Order, which may include legal assistants for the purpose of legal research and otherwise assisting the Commission and the Appellate Commissioners.

Q. Opinions issued by the Commission shall be in writing and shall clearly define the legal principles being applied. The Commission shall provide for public distribution of its opinions regarding workers' compensation, including but not limited to distribution by electronic means such as the internet.

II. MISCELLANEOUS

A. All rules, orders, opinions, contracts, and agreements relating to the functions of the Workers' Compensation Appellate Commission and the Michigan Employment Security Board of Review that are transferred to the Michigan Compensation Appellate Commission under this Order and lawfully adopted prior to the issuance of this Order, shall continue to be effective until revised, amended, or rescinded.

B. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Workers' Compensation Appellate Commission and the Michigan Employment Security Board of Review for the activities, powers, duties, functions, and responsibilities transferred under this Order, are transferred to the new Michigan Compensation Appellate Commission.

C. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order, shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

D. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity

with proper jurisdiction shall be severable from the remaining portions of this Order.

This Executive Order shall become effective on August 1, 2011, consistent with Section 2 of Article V of the Michigan Constitution of 1963.

History: 2011, E.R.O. No. 2011-6, Eff. Aug. 1, 2011

Compiler's Notes: Executive Reorganization Order No. 2011-6 was promulgated May 17, 2011 as Executive Order No. 2011-6, Eff. August 1, 2011. Executive Reorganization Order No. 2011-6 was amended by Executive Reorganization Order No. 2014-2 promulgated March 10, 2014 as Executive Order No. 2014-6, Eff. May 10, 2014.