4121-3-34 **Permanent total disability.**

(A) Purpose

The purpose of this rule is to ensure that applications for compensation for permanent total disability are processed and adjudicated in a fair and timely manner. This rule applies to the adjudication of all applications for compensation for permanent and total disability filed on or after the effective date of this rule.

(B) Definitions

The following definitions shall apply to the adjudication of all applications for permanent and total disability:

(1) "Permanent total disability" means the inability to perform sustained remunerative employment due to the allowed conditions in the claim.

The purpose of permanent and total disability benefits is to compensate ~~a~~ ~~claimant~~ an injured worker for impairment of earning capacity.

The term "permanent" as applied to disability under the workers' compensation law does not mean that such disability must necessarily continue for the life of the ~~claimant~~ injured worker but that it will, within reasonable probability, continue for an indefinite period of time without any present indication of recovery therefrom.

(2) Classification of physical demands of work:

(a) "Sedentary work" means exerting up to ten pounds of force occasionally (occasionally: activity or condition exists up to one-third of the time) and/or a negligible amount of force frequently (frequently: activity or condition exists from one-third to two-thirds of the time) to lift, carry, push, pull, or otherwise move objects. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met.

(b) "Light work" means exerting up to twenty pounds of force occasionally, and/or up to ten pounds of force frequently, and/or a negligible amount of force constantly (constantly: activity or condition exists two-thirds or more of the time) to move objects. Physical demand may be only a negligible amount, a job should be rated light work: (1) when it requires walking or standing to a significant degree; or (2) when it requires sitting most of the time but entails pushing and/or pulling or arm or leg controls; and/or (3) when the job requires working at a production rate

pace entailing the constant pushing and/or pulling of materials even though the weight of those materials is negligible.

(c) "Medium work" means exerting twenty to fifty pounds of force occasionally, and/or ten to twenty-five pounds of force frequently, and/or greater than negligible up to ten pounds of force constantly to move objects. Physical demand requirements are in excess of those for light work.

(d) "Heavy work" means exerting fifty to one hundred pounds of force occasionally, and/or twenty to fifty pounds of force frequently and/or ten to twenty pounds of force constantly to move objects. Physical demand requirements are in excess of those for medium work.

(e) "Very heavy work" means exerting in excess of one hundred pounds of force occasionally, and/or in excess of fifty pounds of force frequently, and/or in excess of twenty pounds of force constantly to move objects. Physical demand requirements are in excess of those for heavy work.

(3) Vocational factors:

(a) "Age" shall be determined at time of the adjudication of the application for permanent and total disability. In general, age refers to one's chronological age and the extent to which one's age affects the ability to adapt to a new work situation and to do work in competition with others.

~~(i) Younger person: under fifty years of age.~~

~~(ii) Person of middle age: fifty years of age through fifty-nine years of age.~~

~~(iii) Person closely approaching advanced age: sixty years of age through sixty-nine years of age.~~

~~(iv) Person of advanced age: seventy years of age or older.~~

(b) "Education" is primarily used to mean formal schooling or other training which contributes to the ability to meet vocational requirements. The numerical grade level may not represent one's actual educational abilities. If there is no other evidence to contradict it, the numerical grade level will be used to determine educational abilities.

(i) "Illiteracy" is the inability to read or write. ~~A claimant~~ An injured worker is considered illiterate if the ~~claimant~~ injured worker can not read or write a simple message, such as instructions or an inventory list, even though the person can sign his or her name.

(ii) "Marginal education" means sixth grade level or less. ~~A claimant~~ An injured worker will have ability in reasoning, arithmetic, and language skills which are needed to do simple unskilled types of work. Generally, formal schooling at sixth grade level or less is marginal education.

(iii) "Limited education" means seventh grade level through eleventh grade level. Limited education means ability in reasoning, arithmetic and language skills but not enough to allow ~~a claimant~~ an injured worker with these educational qualifications to do most of the more complex job duties needed in semi-skilled or skilled jobs. Generally, seventh grade through eleventh grade formal education is limited education.

(iv) "High school education or above" means twelfth grade level or above. The G.E.D. is equivalent to high school education. High school education or above means ability in reasoning, arithmetic, and language skills acquired through formal schooling at twelfth grade education or above. Generally an individual with these educational abilities can perform semi-skilled through skilled work.

(c) "Work experience":

(i) "Unskilled work" is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. Jobs are unskilled if the primary work duties are handling, feeding, and off bearing (placing or removing materials from machines which are automatic or operated by others), or machine tending and a person can usually learn to do the job in thirty days and little specific vocational preparation and judgment are needed.

(ii) "Semi-skilled work" is work which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require close attention to watching machine processes or inspecting, testing, or otherwise looking for irregularities or

tending or guarding equipment, property, material, or persons against loss, damage, or injury and other types of activities which are similarly less complex than skilled work but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly in a repetitive task.

(iii) "Skilled work" is work which requires qualifications in which a person uses judgment or involves dealing with people, factors or figures or substantial ideas at a high level of complexity. Skilled work may require qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity to be produced. Skilled work may require laying out work, estimating quality, determine the suitability and needed quantities of materials, making precise measurements, reading blue prints or other specifications, or making necessary computations or mechanical adjustments or control or regulate the work.

(iv) "Transferability of skills" are skills which can be used in other work activities. Transferability will depend upon the similarity of occupational work activities that have been performed by the ~~claimant~~ injured worker. Skills which an individual has obtained through working at past relevant work may qualify individuals for some other type of employment.

(v) "Previous work experience" is to include the ~~claimant's~~ injured worker's usual occupation, other past occupations, and the skills and abilities acquired through past employment which demonstrate the type of work the ~~claimant~~ injured worker may be able to perform. Evidence may show that ~~a claimant~~ an injured worker has the training or past work experience which enables the ~~claimant~~ injured worker to engage in sustained remunerative employment in another occupation. The relevance and transferability of previous work skills are to be addressed by the adjudicator.

(4) "Residual functional capacity" means the maximum degree to which the ~~claimant~~ injured worker has the capacity for sustained performance of the physical-mental requirements of jobs as these relate to the allowed conditions in the claim(s).

(5) "Maximum medical improvement" is a treatment plateau (static or well-stabilized) at which no fundamental functional or physiological change

can be expected within reasonable medical probability in spite of continuing medical or rehabilitative procedures. ~~A claimant~~ An injured worker may need supportive treatment to maintain this level of function.

(C) Processing of applications for permanent total disability

The following procedures shall apply to applications for permanent total disability that are filed on or after the effective date of this rule.

(1) Each application for permanent total disability shall be accompanied by medical evidence from a physician, or a psychologist or a psychiatric specialist in a claim that has been allowed for a psychiatric or psychological condition, that supports an application for permanent and total disability compensation. The medical examination upon which the report is based must be performed within ~~fifteen~~ twenty-four months prior to the date of filing of the application for permanent and total disability compensation. The medical evidence used to support an application for permanent total disability compensation is to provide an opinion that addresses the ~~claimant's inability to work (for example, the claimant will never be able to return to his former position of employment, or will never return to work)~~ injured worker's physical and/or mental limitations resulting from the allowed conditions in the claim(s). Medical evidence which provides an opinion addressing such limitations, but which also contains a conclusion as to whether an injured worker is permanently and totally disabled, may be considered by a hearing officer. A vocational expert's opinion, by itself, is insufficient to support an application for permanent total disability compensation. If the application for permanent total disability is filed without the required medical evidence, it shall be dismissed without hearing.

(2) At the time the application for permanent total disability compensation is filed with the industrial commission, the industrial commission shall serve a copy of the application together with copies of supporting documents to the employer's representative (if the employer is represented), or to the employer (if the employer is not represented) along with a letter acknowledging the receipt of the permanent total disability application.

~~Each claimant who applies for permanent total disability shall complete a vocational questionnaire. Should a claimant refuse or otherwise fail to complete the vocational questionnaire, the claim for compensation shall be suspended, without hearing, during the pendency of such refusal or failure.~~

(3) A claims examiner shall initially review the application for permanent and total disability.

(a) If it is determined there is a written agreement to award permanent total disability compensation entered into between the ~~claimant~~ injured worker, ~~and~~ the employer, and the administrator in claims involving state fund employers, the application ~~may~~ shall be adjudicated, and an order issued, without a hearing.

(b) If it is determined that the ~~claimant~~ injured worker is requesting a finding of permanent total disability compensation under division (C) of section 4123.58 of the Revised Code (statutory permanent and total disability), the application shall be adjudicated in accordance with paragraph (E) of this rule.

(c) If a motion requesting recognition of additional conditions ~~or other motion~~ is filed on or prior to the date of filing for permanent total disability compensation, such motion(s) shall be processed prior to the processing of the application for permanent total disability compensation. However, if a motion for recognition of an additional condition ~~or other motions are~~ is filed subsequent to the date of filing of the application of permanent total disability, the motions shall be processed subsequent to the determination of the application for permanent total disability compensation.

(4)

(a) The ~~claimant~~ injured worker shall ensure that copies of medical records, information, and reports that the ~~claimant~~ injured worker intends to introduce and rely on that are relevant to the adjudication of the application for permanent total disability compensation from physicians who treated or consulted the ~~claimant~~ injured worker within five years from date of filing of the application for permanent total disability compensation, that may or may not have been previously filed in the workers' compensation claim files, are contained within the file at the time of filing an application for permanent total disability.

(b) The employer shall be provided ~~sixty~~ fourteen days after the date of the industrial commission acknowledgment letter provided for in paragraph (C)(2) of this rule to ~~submit medical evidence relating to the issue of permanent total disability compensation to the commission~~ notify the commission if the employer intends to submit medical evidence relating to the issue of permanent total disability compensation to the commission. Should the employer make such written notification the employer shall submit such medical evidence to the commission within sixty days after the date of the commission acknowledgment letter

unless relief is provided to the employer under paragraph (C)(4)(d) of this rule. Should the employer fail to make such written notification within fourteen days after the date of the commission acknowledgment letter, the employer shall be provided sixty days after the date of the commission acknowledgement letter to submit medical evidence relating to the issue of permanent total disability compensation to the commission, but the scheduling of the injured worker for appropriate medical examinations by physicians selected by the commission under paragraph (C)(5)(a)(iii) of this rule will proceed without delay.

(c) If the ~~claimant~~ injured worker or the employer has made a good faith effort to obtain medical ~~records~~ evidence described in paragraph ~~(B)~~ (C)(4)(a) or ~~(B)~~ (C)(4)(b) of this rule and has been unable to obtain such ~~records~~ evidence, the ~~claimant~~ injured worker or the employer may request that the hearing administrator issue a subpoena to obtain such ~~records~~ evidence. Prior to the issuance of a subpoena, the hearing administrator shall review the evidence submitted by the ~~claimant~~ injured worker or the employer that demonstrates the good faith effort to obtain medical ~~records~~ evidence. Should a subpoena be issued, it shall be served by the party requesting the issuance of a subpoena.

(d) Upon the request of either the ~~claimant~~ injured worker or the employer and upon good cause shown, the hearing administrator may provide an extension of time, ~~not to exceed thirty days,~~ to obtain the ~~records~~ medical evidence described in paragraphs ~~(B)~~ (C)(4)(a) and ~~(B)~~ (C)(4)(b) of this rule. Thereafter, no further medical evidence will be admissible ~~without prior approval by a hearing administrator.~~ other than additional medical evidence approved by a hearing administrator that is found to be newly discovered medical evidence that is relevant to the issue of permanent total disability and which, by due diligence, could not have been obtained under paragraph (C)(4)(a) or (C)(4)(b) of this rule.

(5)

(a) ~~During the sixty days following~~ Following the date of filing of the permanent and total disability application, the claims examiner shall perform the following activities:

(i) Obtain all the claim files identified by the ~~claimant~~ injured worker on the permanent total disability application and any additional claim files involving the same body part(s) as those claims identified on the permanent total disability application.

(ii) Copy all ~~pertinent~~ documents including medical and hospital reports pertinent to the issue of permanent ~~and~~ total disability including relevant evidence provided under division (C)(4) of this rule and submit the same to an examining physician to be selected by the claims examiner.

(iii) Schedule appropriate medical examination(s) by physician(s) to be selected by the ~~industrial~~ commission provided that the scheduling of said exams shall not be delayed where the employer fails to notify the commission within fourteen days after the date of the commission acknowledgment letter that it intends to submit medical evidence to the commission relating to the issue of permanent total disability compensation.

(iv) Prepare a statement of facts. A copy of the statement of facts shall be mailed to the parties and their representatives by the commission.

(6)

(a) After the reports of the commission medical examinations have been received, the hearing administrator may refer the claim to an adjudicator to consider the issuance of a tentative order, without a hearing.

(i) Within ~~thirty~~ fourteen days of the receipt of the tentative order adjudicating the merits of an application for compensation for permanent and total disability, a party may file a written objection to the order. Unless the party notifies the ~~industrial~~ commission in writing of the objection to the tentative order within ~~thirty~~ fourteen days after the date of receipt of notice of the findings of the tentative order, the tentative order shall become final.

(ii) In the event a party makes written notification to the industrial commission of an objection within ~~thirty~~ fourteen days of the date of the receipt of the notice of findings of the tentative order, the application for compensation for permanent and total disability shall be set for hearing and adjudicated on its merits.

(b) If the hearing administrator determines that the case should not be referred for consideration of issuance of a tentative order by an adjudicator, the hearing administrator shall ~~ensure that the appropriate evidence within~~

~~the file is obtained for review, opinion, and report from a vocational expert to be selected by the industrial commission.~~ notify the parties to the claim that a party has fourteen days from the date that copies of reports of the commission medical examinations are submitted to the parties within which to make written notification to the commission of a party's intent to submit additional vocational information to the commission that is relevant to the adjudication of the application for permanent total disability compensation.

(i) Unless a party notifies the commission within the aforementioned fourteen-day period of the party's intent to submit additional vocational information to the commission, a party will be deemed to have waived its ability to submit additional vocational information to the commission that is relevant to the adjudication of the application for permanent total disability.

(ii) Should a party provide timely notification to the commission of its intent to submit additional vocational information, the additional vocational information shall be submitted to the commission within forty-five days from the date the copies of the reports of commission medical examinations are submitted to the parties. Upon expiration of the forty-five day period no further vocational information will be accepted without prior approval from the hearing administrator.

~~(c) At the time that the claim file documents are referred to a vocational expert to be selected by the industrial commission, the hearing administrator shall notify the parties to a claim that they have forty-five days within which to submit additional vocational information to the commission, request a pre-hearing conference, or notify the commission of the desire to settle the claim. Upon expiration of the forty-five day period, no further vocational information or evidence will be accepted without prior approval from a hearing administrator. Payment of fee bills for the reports of vocational experts selected by the industrial commission shall be charged to the employer's experience claims where the employer contributes to the state insurance fund. For claims of a self-insuring employer, the fee bill of the vocational expert shall be sent to the self-insuring employer for payment within thirty days of the employer's receipt of the fee bill.~~

(7) If the employer or the ~~claimant~~ injured worker request, for good cause shown, that a pre-hearing conference be scheduled, ~~the request shall be decided by the hearing administrator~~ a pre-hearing conference shall be set. The request for a pre-hearing conference shall include the identification of the issues that the requesting party desires to be considered at the pre-hearing conference.

The hearing administrator may also schedule a pre-hearing conference when deemed necessary on any matter concerning the processing of an application for permanent and total disability, including but not limited to, motions that are filed subsequent to the filing of the application for permanent and total disability.

~~If the hearing administrator decides that a pre-hearing conference is warranted, notice~~ Notice of ~~the~~ a pre-hearing conference is to be provided to the parties and their representatives no less than fourteen days prior to the pre-hearing conference. The pre-hearing conference may be by telephone conference call, or in-person at the discretion of the hearing administrator and is to be conducted by a hearing administrator.

(8) Should a pre-hearing conference be held, the hearing administrator is not limited to the consideration of the issues set forth in paragraphs (C)(8)(a) through (C)(8)(i) of this rule, but may also address any other matter concerning the processing of an application for permanent total disability. ~~Should~~ At a pre-hearing conference ~~be held,~~ the parties should be prepared to discuss the following issues:

(a) Evidence of retirement issues.

(b) Evidence of refusal to work or evidence of refusal or failure to respond to written job offers of sustained remunerative employment.

(c) Evidence of job description.

(d) Evidence of rehabilitation efforts.

(e) Exchange of accurate medical history, including surgical history.

(f) Agreement as to allowed condition(s) in the claim.

(g) Scheduling of additional medical examinations, if necessary.

(h) Ensure that deposition requests that have been granted pursuant to industrial commission rules are completed and transcripts submitted.

(i) Settlement status.

(9) At the conclusion of the pre-hearing conference, a date for hearing before a staff

hearing officer ~~will~~ shall be scheduled ~~that will be~~ no earlier than fourteen days subsequent to the date of a pre-hearing conference. After the pre-hearing conference, unless authorized by the hearing administrator, no additional evidence on the issue of permanent and total disability shall be submitted to the claim file. If the parties attempt to submit additional evidence on the issue of permanent and total disability, the evidence will not be admissible on the adjudication of permanent total disability compensation.

(10) The time frames established herein in paragraph (C) of this rule can be waived by mutual agreement of the parties by motion to a hearing administrator, except where otherwise specified.

(11) The applicant may dismiss the application for permanent and total disability any time up to the determination of the hearing on the merits of the application. Should a party dismiss an application prior to its adjudication, the commission's medical evidence obtained will be valid ~~fifteen~~ twenty-four months from the date of dismissal.

(D) Guidelines for adjudication of applications for permanent total disability

The following guidelines shall be followed by the adjudicator in the sequential evaluation of applications for permanent total disability compensation:

(1)

(a) If the adjudicator finds that the ~~claimant~~ injured worker meets the definition of statutory permanent and total disability pursuant to division (C) of section 4123.58 of the Revised Code, due to the loss or loss of use of both hands or both arms, or both feet or both legs, or both eyes, or any two thereof, the ~~claimant~~ injured worker shall be found permanently and totally disabled, and a tentative order shall be issued.

Should an objection be filed from a tentative order, a hearing shall be scheduled. (Reference paragraph (E) of this rule).

(b) If, after hearing, the adjudicator finds that the ~~claimant~~ injured worker is engaged in sustained remunerative employment, the ~~claimant's~~ injured worker's application for permanent and total disability shall be denied, unless ~~a claimant~~ an injured worker qualifies for an award under division (C) of section 4123.58 of the Revised Code.

(c) If, after hearing, the adjudicator finds that the ~~claimant~~ injured worker is medically able to return to the former position of employment, the

~~claimant~~ injured worker shall be found not to be permanently and totally disabled.

(d) If, after hearing, the adjudicator finds that the ~~claimant~~ injured worker voluntarily removed himself from the work force, the ~~claimant~~ injured worker shall be found not to be permanently and totally disabled. If evidence of voluntary removal or retirement is brought into issue, the adjudicator shall consider evidence that is submitted of the ~~claimant's~~ injured worker's medical condition at or near the time of removal/retirement.

(e) If, after hearing, the adjudicator finds that the ~~claimant~~ injured worker is offered and refuses and/or fails to accept a bona fide offer of sustained remunerative employment that is made prior to the pre-hearing conference described in paragraph (C)(9) of this rule where there is a written job offer detailing the specific physical/mental requirements and duties of the job that are within the physical/mental capabilities of the ~~claimant~~ injured worker, the ~~claimant~~ injured worker shall be found not to be permanently and totally disabled.

(f) If, after hearing, the adjudicator finds that the ~~claimant's~~ injured worker's allowed medical condition(s) is temporary and has not reached maximum medical improvement, the ~~claimant~~ injured worker shall be found not to be permanently and totally disabled because the condition remains temporary. In claims involving state fund employers, the claim shall be referred to the administrator to consider the issuance of an order on the question of entitlement to temporary total disability compensation. In claims involving self-insured employers, the self-insured employer shall be notified to consider the question of the ~~claimant's~~ injured worker's entitlement to temporary total disability compensation.

(g) If, after hearing, the adjudicator determines that there is appropriate evidence which indicates the ~~claimant's~~ injured worker's ~~advanced~~ age is the sole cause or primary obstacle which serves as a significant impediment to reemployment, permanent total disability compensation shall be denied. However, a decision based upon age must always involve a case-by-case analysis. The ~~claimant's~~ injured worker's age should also be considered in conjunction with other relevant and appropriate aspects of the ~~claimant's~~ injured worker's nonmedical profile.

(h) If, after hearing, the adjudicator finds that the allowed condition(s) is the proximate cause of the ~~claimant's~~ injured worker's inability to perform

sustained remunerative employment, the adjudicator is to proceed in the sequential evaluation of the application for permanent and total disability compensation in accordance with the provisions of paragraph (D) of this rule. However, should the adjudicator finds that non-allowed conditions are the proximate cause of the ~~claimant's~~ injured worker's inability to perform sustained remunerative employment, the ~~claimant~~ injured worker shall be found not to be permanently and totally disabled.

(i) If, after hearing, the adjudicator finds that ~~claimant's~~ injured worker's inability to perform sustained remunerative employment is the result of a pre-existing condition(s) allowed by aggravation, the adjudicator is to continue in the sequential evaluation of the application for permanent total disability compensation in accordance with the provisions of paragraph (D) of this rule. However, should the adjudicator find that the non-allowed pre-existing condition(s) are the proximate cause of the ~~claimant's~~ injured worker's inability to perform sustained remunerative employment, the ~~claimant~~ injured worker shall be found not to be permanently and totally disabled.

(2)

(a) If, after hearing, the adjudicator finds that the medical impairment resulting from the allowed condition(s) in the claim(s) prohibits the ~~claimant's~~ injured worker's return to ~~his~~ the former position of employment as well as prohibits the ~~claimant~~ injured worker from performing any sustained remunerative employment, the ~~claimant~~ injured worker shall be found to be permanently and totally disabled, without reference to the vocational factors listed in paragraph (B)(3) of this rule.

(b) If, after hearing, the adjudicator finds that the ~~claimant~~ injured worker, based on the medical impairment resulting from the allowed conditions is unable to return to the former position of employment but may be able to engage in sustained remunerative employment, the non-medical factors ~~need~~ shall be considered by the adjudicator.

The non-medical factors that are to be reviewed are the ~~claimant's~~ injured worker's age, education, work record, and all other factors, such as physical, psychological, and sociological, that are contained within the record that might be important to the determination as to whether the ~~claimant~~ injured worker may return to the job market by using past employment skills or those skills which may be reasonably developed. (Vocational factors are defined in paragraph (B) of this rule).

(c) If, after hearing and review of relevant vocational evidence and non-medical disability factors, as described in paragraph (D)(2)(b) of this rule the adjudicator finds that the ~~claimant~~ injured worker can return to sustained remunerative employment by using past employment skills or those skills which may be reasonably developed through retraining or through rehabilitation, the ~~claimant~~ injured worker shall be found not to be permanently and totally disabled.

(3) Factors considered in the adjudication of all applications for permanent and total disability:

(a) The burden of proof shall be on the ~~claimant~~ injured worker to establish a case of permanent and total disability. The burden of proof is by preponderance of the evidence. The ~~claimant~~ injured worker must establish that the disability is permanent and that the inability to work is causally related to the allowed conditions.

(b) In adjudicating an application for permanent and total disability, the adjudicator must determine that the disability is permanent, the inability to work is due to the allowed conditions in the claim, and the ~~claimant~~ injured worker is not capable of sustained remunerative employment.

(c) The industrial commission has the exclusive authority to determine disputed facts, the weight of the evidence, and credibility.

(d) All medical evidence of impairment shall be based on objective findings reasonably demonstrable and medical reports that are submitted shall be in conformity with the industrial commission medical examination manual.

(e) If the adjudicator concludes from evidence that there is no proximate causal relationship between the industrial injury and the inability to work, the order shall clearly explain the reasoning and basis for the decision.

(f) The adjudicator shall not consider the ~~claimant's~~ injured worker's percentage of permanent partial impairment as the sole basis for adjudicating an application for permanent and total disability.

(g) The adjudicator is to review all relevant factors in the record that may affect the ~~claimant's~~ injured worker's ability to work.

(h) The adjudicator shall prepare orders on a case by case basis which are fact specific and which contain the reasons explaining the decision. The orders must specifically state what evidence has been relied upon in reaching the conclusion and explain the basis for the decision. In orders that are issued under paragraphs (D)(2)(b) and (D)(2)(c) of this rule the adjudicator is to specifically list the non-medical disability factors within the order and state how such factors interact with the medical impairment resulting from the allowed injuries in the claim in reaching the decision.

(i) In claims in which a psychiatric condition has been allowed and the injured worker retains the physical ability to engage in some sustained remunerative employment, the adjudicator shall consider whether the allowed psychiatric condition in combination with the allowed physical condition prevents the injured worker from engaging in sustained remunerative employment.

(E) Statutory permanent total disability

Division (C) of section 4123.58 of the Revised Code provides that the loss or loss of use of both hands or both arms, or both feet or both legs, or both eyes, or any two thereof, constitutes total and permanent disability.

(1) In all claims where the evidence on file clearly demonstrates actual physical loss, or the permanent and total loss of use occurring at the time of injury secondary to a traumatic spinal cord injury or head injury, of both hands or both arms, or both feet or both legs, or both eyes, or any two thereof, the claim shall be referred to be reviewed by a staff hearing officer of the commission. Subsequent to review, the staff hearing officer shall, without hearing, enter a tentative order finding the ~~claimant~~ injured worker to be entitled to compensation for permanent and total disability under division (C) of section 4123.58 of the Revised Code. If an objection is made, the claim shall be scheduled for hearing.

(a) Within thirty days of the receipt of the tentative order adjudicating the merits of an application for compensation for permanent and total disability, a party may file a written objection to the order. Unless the party notifies the industrial commission in writing of the objection to the tentative order within thirty days after the date of receipt of notice of the findings of the tentative order, the tentative order shall become final.

(b) In the event a party makes written notification to the industrial

commission of an objection within thirty days of the date of the receipt of the notice of findings of the tentative order, the application for compensation for permanent and total disability shall be set for hearing and adjudicated on its merits.

(2) In all other cases filed under division (C) of section 4123.58 of the Revised Code, if the staff hearing officer finds that the ~~claimant~~ injured worker meets the definition of statutory permanent and total disability pursuant to division (C) of section 4123.58 of the Revised Code, due to the loss of use of both hands or both arms, or both feet or both legs, or both eyes, or any two thereof, the staff hearing officer, without a hearing, is to issue a tentative order finding the ~~claimant~~ injured worker to be permanently and totally disabled under division (C) of section 4123.58 of the Revised Code. An objection to the tentative order may be made pursuant to paragraphs (E)(1)(a) and (E)(1)(b) of this rule.

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