

4123-3-15.1**Dismissal of an application for the determination of percentage of permanent partial disability.**

(A) This paragraph of this rule applies to any employee's application for a determination of the percentage of permanent partial disability or for an increase of permanent partial disability filed on or after September 29, 2017.

(1) If an employee who files an application for a determination of percentage of permanent partial disability or for an increase of permanent partial disability fails to respond to the bureau's attempt to schedule a medical examination, or fails to attend a medical examination scheduled under section 4123.57 of the Revised Code without notice or explanation, the bureau shall dismiss the application without prejudice. The employee, the employer, or their representative may object to the bureau's tentative order dismissing the application within twenty days after receipt of the notice as provided in section 4123.57 of the Revised Code, and if the employee, the employer, or their representative timely notify the bureau of an objection, the bureau shall refer the matter to a district hearing officer for a hearing.

(a) The bureau shall contact the employee to schedule the employee for an examination on an application for a determination of percentage of permanent partial disability or for an increase of permanent partial disability. The bureau may use a variety of communication methods to contact the employee, such as by telephone, mail, or other methods, but the bureau shall not limit the contact to one method or one attempt if the bureau is not able to contact the employee on the first attempt. If the bureau is unable to contact the employee and the employee is represented, the bureau shall contact the employee's representative for assistance in scheduling the examination. The bureau shall document its contacts in the claim file. If the bureau attempts to contact the employee by mail and the mail is returned undeliverable, the bureau shall attempt to find a correct address for the employee and shall document the attempt in the claim file. If the employee fails to respond to the bureau's attempts to contact the employee to schedule the examination, the bureau shall dismiss the application.

(b) If the bureau schedules the employee for an examination on the employee's application for a determination of the percentage of permanent partial disability or for an increase of permanent partial disability and the employee fails to attend the examination, the bureau shall contact the employee for an explanation why the employee did not attend the examination. If the employee is represented, the bureau shall contact the employee's representative. If the employee provides an explanation for

missing the examination, the bureau shall reschedule the employee for an examination. If the employee fails to respond or fails to provide an explanation, the bureau shall dismiss the application.

(2) If the bureau dismisses an employee's application for a determination of percentage of permanent partial disability or for an increase of permanent partial disability under this rule, the employee may refile an application as provided in paragraph (B) of rule 4123-3-15 of the Administrative Code. The employee shall file the application subject to the continuing jurisdiction limitations of section 4123.52 of the Revised Code. A dismissed application does not toll the continuing jurisdiction of the bureau or the industrial commission under section 4123.52 of the Revised Code.

(B) This paragraph of this rule applies to an employee's application for a determination of the percentage of the employee's permanent partial disability or for an increase of permanent partial disability filed under section 4123.57 of the Revised Code that has been suspended pursuant to division (C) of section 4123.53 of the Revised Code as of September 29, 2017.

(1) For an employee's application for a determination of the percentage of the employee's permanent partial disability or for an increase of permanent partial disability filed under section 4123.57 of the Revised Code that has been suspended pursuant to division (C) of section 4123.53 of the Revised Code as of September 29, 2017, the bureau shall send a notice to the employee's last known address informing the employee that the bureau may dismiss the application unless the employee schedules a medical examination with the bureau within thirty days after receiving the notice.

(a) If the employee does not schedule a medical examination with the bureau within thirty days after receiving the notice provided in paragraph (B) (1) of this rule, the bureau may dismiss the application. The employee, the employer, or their representative may object to the bureau's tentative order dismissing the application within twenty days after receipt of the notice as provided in section 4123.57 of the Revised Code, and if the employee, the employer, or their representative timely notify the bureau of an objection, the bureau shall refer the matter to a district hearing officer for a hearing.

(b) For an employee whose application has been suspended who schedules an examination but fails to appear for the examination, the bureau shall follow the same procedure as provided in paragraph (A)(1)(b) of this rule.

- (2) If the bureau dismisses an employee's application for a determination of percentage of permanent partial disability or for an increase of permanent partial disability under this rule, the employee may refile the application as provided in paragraph (B) of rule 4123-3-15 of the Administrative Code. The employee shall file the application subject to the continuing jurisdiction limitations of section 4123.52 of the Revised Code. A dismissed application does not toll the continuing jurisdiction of the bureau or the industrial commission under section 4123.52 of the Revised Code.

Effective: 6/18/2018

Five Year Review (FYR) Dates: 01/01/2019

CERTIFIED ELECTRONICALLY

Certification

06/07/2018

Date

Promulgated Under: 119.03
Statutory Authority: 4121.12, 4121.121, 4121.30, 4121.31, 4123.05
Rule Amplifies: 4121.121, 4123.57, 4123.65