

INSTRUCTIONS FOR COMPLETING RB-89

TO THE APPLICANT: An *Application for Board Review (Form RB-89)*, or hereafter "the application," must be filed within 30 calendar days after the filing date of the Workers' Compensation Law judge (WCLJ)'s decision. *Form RB-89* is deemed filed with the Board on the date of actual receipt of such application by the Board. In accordance with 12 NYCRR 300.13(b)(3) and the Chair's designation, *Form RB-89* may only be filed with the centralized email address for claims (wcbclaimsfilings@wcb.ny.gov), or via the WCB Web Upload link (<https://wcbdoc.services.conduent.com/>). Unrepresented claimants may alternatively mail *Form RB-89* to the Board at the Board's centralized mailing address (PO Box 5205, Binghamton, NY 13902-5205). *RB-89* forms in workers' compensation discrimination claims must be filed with the Board by mailing the *Form RB-89* to the Board's Discrimination Unit, PO Box 9029, Endicott, NY 13761-9029. *RB-89* forms in claims filed for disability benefits (claims for lost wages due to injuries or illnesses that are not work-related) must be filed with the Board by mailing the application to the Disability Benefits Bureau, PO Box 9029, Endicott, NY 13761-9029. A copy of this application must be served upon all necessary parties of interest in accordance with 12 NYCRR 300.13(b)(2)(iv). *Form RB-89*, unless submitted by an unrepresented claimant, must be in the format prescribed by the Chair, all sections of the application must be completed, and any legal brief attached must comply with 12 NYCRR 300.13(b)(1)(i). Failure to supply all information required by 12 NYCRR 300.13 and these instructions may result in the application being denied.

NOTE: *Applications for Board Review* will not be accepted if hand delivered to a Board office. *RB-89* forms mailed or submitted directly to the Administrative Review Division will be deemed to have not been filed with the Board and will not be considered.

TO ALL OTHER PARTIES: Any *Rebuttal of Application for Board Review (Form RB-89.1)* must be served on the Board within 30 calendar days following the date on which the application was served on the parties, as specified in the Proof of Service section of the *RB-89* form in accordance with 12 NYCRR 300.13(c).

1. **WCB Case Number(s).** Enter the WCB Case Number(s) of the claim(s) being appealed. WCB Case Number(s) includes the case number for workers' compensation, discrimination, disability benefits, paid family leave discrimination, volunteer firefighter and volunteer ambulance worker benefits.
2. **Carrier Case Number(s).** Enter the Carrier Case Number(s) of the claim(s) being appealed. This section/item does not apply to claims for discrimination.
3. **Carrier Code.** Enter the Carrier Code of the carrier for the claim being appealed. This section/item does not apply to claims for discrimination.
4. **Carrier's Name.** Enter the name of the carrier for the claim being appealed. This section/item does not apply to claims for discrimination.
5. **Date of Injury/Leave.** Enter the original date that the injury occurred or the date paid family leave began (if paid family leave was not taken, enter the Discrimination Complaint Date).
6. **Claimant's Name.** Enter the complete name of the employee.
7. **Claimant's Address.** Enter the street address, city, state, and ZIP Code of the employee, and mailing address if different.
8. **Party Requesting the Appeal.** Indicate which party is filing this *Application for Board Review*.
9. **Type of Application.** Indicate whether the application is requesting either 1) review of a WCLJ decision, or 2) rehearing or reopening.
10. **Date of Decision.** Enter the date of the decision that is being appealed.
11. **Specify the Issue(s) for Review.** State the specific issue(s) for review.
12. **Basis of Appeal.** Provide a brief statement of the particular grounds upon which the appeal is based, including the specific findings of fact which are challenged and/or the errors of law which are alleged. General allegations which do not specifically bring to the attention of the Board the issues to be decided are insufficient. As prescribed by 12 NYCRR 300.13(b)(1)(i), an appellant may attach a legal brief of up to eight (8) pages in length, using 12-point font, with one inch margins, on 8.5-inch by 11-inch paper. A brief longer than eight (8) pages will not be considered, unless the appellant specifies in writing, why the basis of the appeal could not have been made within eight (8) pages. A brief longer than fifteen (15) pages will not be considered under any circumstances.

13. Hearing Dates, Transcripts, Documents, Exhibits, and Other Evidence. Indicate the hearing date(s) on which the issue(s) was raised before the WCLJ, as well as any other relevant hearing dates. Identify by date and/or document ID number(s), the transcripts, documents, reports, exhibits, and other evidence in the Board's file that are relevant to the issues and grounds being raised for review. If minutes are not transcribed, so indicate. Do not include with or attach to an *Application for Board Review* any documents that are present in the Board's file at the time the application is filed. The Board may reject an *Application for Board Review* by an appellant or an appellant's legal representative if they attach documents already in the Board's file at the time of the application, in accordance with 12 NYCRR 300.13(b)(1)(ii). Do not attach or submit transcripts of audio recorded hearings, as the Board will not consider them.

14. New and Additional Evidence. If an appellant seeks to introduce new or additional evidence with the *Application for Board Review* that was not presented before the WCLJ, the appellant must, 1) state on the application whether such evidence is attached to the application, or is in the Board's file, specifying the applicable document ID number, and 2) submit an affirmation setting forth the evidence, and explaining why such evidence could not have been presented before the WCLJ. The Board may or may not exercise its discretion to accept such evidence. If the affirmation is not submitted with the application, such new or additional evidence will not be considered by the Board Panel [see 12 NYCRR 300.13(b)(1)(iii)].

15. Objection or Exception. Specify the objection or exception that was interposed to the ruling, and the date when the objection or exception was interposed as required by 12 NYCRR 300.13(b)(2)(ii). If the objection or exception was interposed at a hearing, the date of the hearing at which the objection or exception was interposed must be stated. If the objection or exception was interposed at a proceeding occurring off-calendar, the date of the off-calendar proceeding must be stated [12 NYCRR 300.13(b)(4)(v)(a), (b), and (c)].

16. Indemnity Payments. When *Form RB-89* is filed by the carrier or self-insured employer, indicate whether indemnity benefits are being paid while the application is pending. If no, indicate the date on which payments were suspended pursuant to WCL § 23. If yes, indicate the rate at which continuing indemnity benefits are being paid. If continuing indemnity benefits are being paid at a rate that is less than the awarded rate, specify the date on which payments were reduced. If payments are stayed, state the issue on appeal that forms the legal basis for staying payments. This item/section does not apply to claims for discrimination.

17. Certification. The preparer must sign and date the form (also providing their name, title, telephone number and address) certifying to the application's good faith basis in law and fact, that it had been instituted with reasonable grounds, and had been served upon the necessary parties of interest in the Proof of Service section.

18. Proof of Service. The application must be served on all necessary parties of interest in accordance with 12 NYCRR 300.13(b)(2)(iv). Failure to properly serve a necessary party shall be deemed defective service and the application may be rejected by the Board. When the *Application for Board Review* is filed by the carrier, self-insured employer, or other payer or potential payer, service shall be upon the claimant, and claimant's legal representative, and other necessary parties of interest. Service is deemed timely if completed by the appellant within thirty (30) days of the filing of the decision by the Board. The affirmation must be completed and must include the method by which, and the date, the application was filed with the Board. The appellant shall only use one method to file the application with the Board. If the appellant files duplicate applications, such duplicate filings may be deemed to be raising or continuing an issue without reasonable grounds, and may subject the appellant to assessments under WCL § 114-a(3). The affirmation completed must specify the papers served, the names of the parties of interest served, the date and method of service for each party of interest, and that service was completed within 30 days from the filing of the decision that is the subject of the application. It is not acceptable to complete the portion of the affirmation where it lists those served and the method with "See attached." If a party is served by email or other electronic means, the affirmation must include a certification that the party so served provided explicit permission to receive service by such means [see 12 NYCRR 300.13(b)(2)(iv)(C)]. The application does not have to be served on each party in the same manner. The affirmation must be dated and signed under penalty of perjury.



APPLICATION FOR BOARD REVIEW

1. WCB Case Number(s)	2. Carrier Case Number(s)	3. Carrier Code	4. Carrier's Name	5. Date of Injury/Leave
6. Claimant's Name		7. Claimant's Address		
8. This application is made on behalf of:				
9. Type of application (Check ONLY one): <input type="checkbox"/> Review of WCLJ decision <input type="checkbox"/> Rehearing or Reopening				
10. Date of decision (mm/dd/yyyy):				
11. Specify the issue(s) for review:				
12. Basis of appeal. This application for review is based on the following grounds (If you attach a legal brief it may be no more than 8 pages, see instructions for details):				
13. Hearing dates, transcripts, documents, exhibits, and other evidence (see instructions for details):				
14. New and additional evidence under 12 NYCRR 300.13(b)(1)(iii) (see instructions for details):				
15. Objection or exception. Specify both the objection or exception interposed to the ruling AND the date when it was interposed as required by 12 NYCRR 300.13(b)(2)(ii):				
16. Are indemnity payments being paid while the application is pending? <input type="checkbox"/> Yes <input type="checkbox"/> No				
If No, date of suspension (mm/dd/yyyy):	If Yes, at what rate?	If reduced, date of reduction (mm/dd/yyyy):		
State the issue on appeal that is the legal basis for staying payments:				

17. Certification: By signing this document in the space provided below, I certify that this application has a good faith basis in law and fact, has been instituted with reasonable grounds, and has been served upon all necessary parties of interest using the method of service, including the actual address where service was transmitted listed in the affirmation of service below. I understand that the Workers' Compensation Law provides for substantial penalties for instituting or continuing proceedings without reasonable grounds and/or for the purpose of delay. I understand that if this application is withdrawn for any reason or if any of the issues raised are resolved by the parties, I must immediately notify the Board and the necessary parties of interest served in writing.

Preparer's Signature: _____ Date Prepared (mm/dd/yyyy): _____

Print Name: _____ Title: _____ Telephone No.: _____

Address: _____

PROOF OF SERVICE

AFFIRMATION

I hereby affirm under penalty of perjury that I have complied with the filing and service requirements as set forth in 12 NYCRR 300.13(b)(2)(iv) and (3) for this *Application for Board Review* in the manner set forth below and I understand that this document may be filed in an action or proceeding in a court of law

A. I filed the *Application for Board Review* with the Board on (date - mm/dd/yyyy) _____ by (pick one method):

- Mail to PO Box 5205, Binghamton, NY 13902 (for unrepresented claimants only)
- Email at wcbclaimsfilings@wcb.ny.gov
- WCB Web Upload link (<https://wcbdoc.services.conduent.com>)
- Workers' Compensation Discrimination Claim:** Mail to Discrimination Unit, PO Box 9029, Endicott, NY 13761-9029
- Disability Benefits:** Mail to Disability Benefits Bureau, PO Box 9029, Endicott, NY 13761-9029

B. I served the *Application for Board Review* on (date - mm/dd/yyyy) _____ upon (attach additional sheets if necessary):

Name: _____ by (method): _____ at (address): _____
Name: _____ by (method): _____ at (address): _____
Name: _____ by (method): _____ at (address): _____
Name: _____ by (method): _____ at (address): _____
Name: _____ by (method): _____ at (address): _____
Name: _____ by (method): _____ at (address): _____
Name: _____ by (method): _____ at (address): _____
Name: _____ by (method): _____ at (address): _____

I certify that any party served by email or other electronic means provided explicit permission to receive service by such means.

I certify that service of this *Application for Board Review*, as set forth above, was completed within thirty days from the filing of the decision that is the subject of this application.

Date (mm/dd/yyyy): _____ Signature: _____

Print Name: _____