

INSTRUCTIONS FOR COMPLETING RB-89.1

TO THE RESPONDENT: A *Rebuttal of Application for Board Review (Form RB-89.1)*, or hereafter "the rebuttal," must be filed within 30 calendar days after service of the *Application for Board Review (Form RB-89)*, or hereafter "the application," upon the respondent. *Form RB-89.1* is deemed filed with the Board on the date of actual receipt of such rebuttal by the Board. In accordance with 12 NYCRR 300.13(c), which requires all rebuttals to conform to the requirements in 12 NYCRR 300.13(b), *Form RB-89.1* may only be filed at 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 a *Rebuttal of Application for Board Review* to the Board's centralized mailing address (PO Box 5205, Binghamton, NY 13902-5205). *RB-89.1* forms in workers' compensation discrimination claims must be filed with the Board by mailing the rebuttal to the Board's Discrimination Unit, PO Box 9029, Endicott, NY 13761-9029. *RB-89.1* 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 rebuttal to the Disability Benefits Bureau, PO Box 9029, Endicott, NY 13761-9029. A copy of this rebuttal must be served upon all necessary parties of interest in accordance with 12 NYCRR 300.13(b)(1)(iv). *Form RB-89.1*, unless submitted by an unrepresented claimant, must be in the format prescribed by the Chair, all sections of the rebuttal 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 rebuttal not being considered.

NOTE: *Rebuttals of Application for Board Review* will not be accepted if hand delivered to a Board office. *RB-89.1* 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.

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 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.
8. **Party Filing this Rebuttal.** Indicate which party is filing this rebuttal.
9. **Type of Application to which the Rebuttal Responds.** Indicate whether the rebuttal is in response to either a request for 1) review of a Workers' Compensation Law judge (WCLJ) decision, or 2) rehearing or reopening.
10. **Date of Decision.** Enter the date of the decision that is being appealed.
11. **Date of Service.** Enter the date the application was served upon the respondent.
12. **Requested Outcome.** Indicate whether the rebuttal contends that the 1) Application should be denied under 12 NYCRR 300.13(b)(4), 2) WCLJ decision should be administratively corrected and how it should be corrected, 3) WCLJ decision should be affirmed in its entirety, or 4) WCLJ decision should be modified and how it should be modified.
13. **Response to Issues and Grounds.** Provide a brief statement in response to the issues and grounds raised in the application, identifying any alleged misstatements of fact or law. As prescribed by 12 NYCRR 300.13(b)(1)(i) and (c), a respondent 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 respondent 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.

14. **Record.** If the record cited in the application constitutes the full record for review, leave this section blank. If the record cited in the application does not constitute the full record for review, identify by date and/or document ID number(s), the additional hearings, documents, exhibits, other evidence and transcripts in the Board's file that are relevant to the issue(s) and ground(s) raised in the application that were not cited in the application. Do not include with or attach to the *Rebuttal of Application for Board Review* any documents that are present in the Board's file at the time the application was filed or this rebuttal is filed. The Board may reject a rebuttal by a respondent or a respondent's legal representative if they attach documents already in the Board's file at the time of the application or the filing of this rebuttal, in accordance with 12 NYCRR 300.13(b)(1)(ii) and (c). Do not attach or submit transcripts or audio recorded hearings, as the Board will not consider them.

15. **New and Additional Evidence.** If a respondent seeks to introduce new or additional evidence with the *Rebuttal of Application for Board Review* that was not presented before the WCLJ, the respondent must 1) state on the rebuttal whether such evidence is attached to the rebuttal 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 rebuttal, such new or additional evidence will not be considered by the Board Panel [see 12 NYCRR 300.13(b)(2)(v) and 300.17].

16. **Objection or Exception.** If seeking to have the WCLJ decision modified, 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) and (c). 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.

17. **Certification.** The preparer must sign and date the form (also providing their name, title, telephone number and address) certifying to the rebuttal'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 rebuttal must be served on all necessary parties of interest in accordance with 12 NYCRR 300.13(b)(2)(iv) and (c). Failure to properly serve a necessary party of interest shall be deemed defective service and the rebuttal may not be considered by the Board. When the *Rebuttal of 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 respondent within thirty (30) days of the service of the *Application for Board Review*. The affirmation must be completed and must include the method by which, and the date, the rebuttal was filed with the Board. The respondent shall only use one method to file the rebuttal with the Board. If the respondent files duplicate rebuttals, such duplicate filings may be deemed to be raising or continuing an issue without reasonable grounds, and may subject the respondent 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 service of the *Application for Board Review*. 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) and (c)]. The rebuttal does not have to be served on each party in the same manner. The affirmation must be dated and signed under penalty of perjury.



REBUTTAL OF 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 rebuttal is made on behalf of:				
9. This rebuttal is in response to an application for (Check ONLY one): <input type="checkbox"/> Review of WCLJ decision <input type="checkbox"/> Rehearing or Reopening				
10. Filing date of the decision (mm/dd/yyyy):				
11. The application was served upon the respondent on (mm/dd/yyyy):				
12. This rebuttal contends that the: <ul style="list-style-type: none"> <input type="checkbox"/> Application should be denied under 12 NYCRR 300.13(b)(4). <input type="checkbox"/> Decision should be administratively corrected to read: _____ <input type="checkbox"/> Decision should be affirmed in its entirety. <input type="checkbox"/> Decision should be modified as to: _____ 				
13. Response to issues and grounds. This rebuttal responds to each issue raised as follows (If you attach a legal brief, it may be no more than 8 pages, see instructions):				
14. Record. If you do not rest on the record, identify the additional relevant evidence (see instructions for details):				
15. New and additional evidence under 12 NYCRR 300.13(b)(1)(iii) (see instructions for details):				
16. Objection or exception. If the rebuttal contends that the decision should be modified, specify the objection or exception interposed to the ruling and the date when it was interposed as required by 12 NYCRR 300.13(b)(2)(iii) and (c):				

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 *Rebuttal of 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 *Rebuttal of 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 *Rebuttal of 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 *Rebuttal of Application for Board Review*, as set forth above, was completed within thirty days from the service of the *Application for Board Review*.

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

Print Name: _____