

**COMMONWEALTH OF PENNSYLVANIA**



**BOARD OF CLAIMS**

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## **INTRODUCTION**

The Board of Claims was created by the Legislature in 1937 to decide claims arising from contracts with the Commonwealth. The Board's jurisdiction was originally set forth in the Board of Claims' Act [72 P.S. Sections 4651-1 to 10], but since June 2003 has been relocated to the Procurement Code at 62 Pa.C.S. Sections 1721-1726. All matters before the Board are governed by the Pennsylvania Rules of Civil Procedure and by the Rules of Procedure adopted by the Board [61 Pa. Code Sections 899-101 to 801].

Counsel representing parties before the Board should be aware that matters involving procurement contracts may also be governed by other sections of the Procurement Code including 62 Pa.C.S. Section 1712.1.

**BOARD OF CLAIMS ACT**  
62 Pa.C.S. § 1721 et seq.

**§ 1721. Board of Claims**

(a) **Establishment.** – There is hereby established an independent administrative board to be known as the Board of Claims. Administrative services for the board shall be provided by the Department of The Auditor General.

(b) **Composition.** – The board shall consist of three members appointed by the Governor by and with the advice and consent of a majority of the elected members of the Senate. One member shall be an attorney and another shall be a registered civil engineer. The third member of the board shall be a citizen and resident of this Commonwealth. The attorney shall serve as chairman of the board.

(c) **Term.** – A member of the board shall be appointed for a term of eight years. In the event a vacancy shall occur during a term of office, the Governor shall appoint a successor who shall hold office for the remainder of the unexpired term. A member of the board may be removed by the Governor for inefficiency, neglect of duty or malfeasance in office.

(d) **Compensation.** – A member of the board shall receive an annual compensation as fixed by the Executive Board, subject to the annual cost-of-living adjustment provided for in Section 3(e) of the act of September 30, 1983 (P.L. 160, No. 39),<sup>1</sup> known as the Public Official Compensation Law. A member of the board shall be entitled to all necessary travel and other expenses incurred by him in the discharge of his official duties. A member shall hold no other public position to which a salary is attached.

2002, Dec. 3, P.L. 1147, No. 142, § 12.2.

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<sup>1</sup> 65 P.S. § 366.3.

**§ 1722. Powers and duties of board**

The board shall do all of the following:

(1) Employ administrative, professional, clerical and other personnel as is necessary for the orderly administration of the board.

(2) Make, execute and deliver contracts and other instruments as is necessary.

(3) Establish and maintain a principal office in Harrisburg and such other offices within this Commonwealth as are necessary.

(4) Adopt an official seal.

(5) Appoint three separate hearing panels consisting of two individuals. For each hearing panel, one individual shall be an attorney and the other shall be a licensed engineer. The attorney shall serve as chairperson.

(6) Establish, by regulation, rules governing practice before the board consistent, except as may be provided by this part, with the Pennsylvania Rules of Civil Procedure and the Pennsylvania Rules of Evidence.

(7) Arbitrate claims before it in accordance with this subchapter.

(8) Catalog and publish all opinions of the board.

2002, Dec. 3, P.L. 1147, No. 142, § 12.2.

**§ 1723. Employees and hearing panel members**

(a) **Employees.** – Employees of the board shall, for the purposes of 71 Pa.C.S. Pt. XXV<sup>1</sup> (relating to retirement for State employees and officers), be considered a State employee. Employees of the board shall be reimbursed for all necessary travel and other expenses incurred in the discharge of official duties.

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<sup>1</sup> 71 Pa.C.S. § 5101 et seq.

**(b) Hearing panel members.** – Individuals appointed to hearing panels in accordance with section 1722 (relating to powers and duties of board) shall receive a per diem for the time actually devoted to the business of the board. The per diem rate shall be fixed by the Executive Board, but no panel member shall be paid more than \$25,000 per diem compensation in any calendar year.

2002, Dec. 3, P.L. 1147, No. 142, § 12.2.

## **§ 1724. Jurisdiction**

**(a) Exclusive jurisdiction.** – The board shall have exclusive jurisdiction to arbitrate claims arising from all of the following:

(1) A contract entered into by a Commonwealth agency in accordance with this part and filed with the board in accordance with section 1712.1 (relating to contract controversies).

(2) A written agreement executed by a Commonwealth agency and the Office of the Attorney General in which the parties expressly agree to utilize the board to arbitrate disputes arising from the agreement.

(3) Unless otherwise provided by law, a contract entered into by a Commonwealth agency involving real property interests in which the Commonwealth agency is the respondent.

**(b) Concurrent jurisdiction.** – The board shall have concurrent jurisdiction to arbitrate claims arising from all of the following:

(1) A contract entered into by a Commonwealth agency in accordance with this part in which the Commonwealth agency is the claimant.

(2) Unless otherwise provided by law, a contract entered into by a Commonwealth agency involving real property interests in which the Commonwealth agency is the claimant.

**(c) Limitations.** – The board shall have no power and exercise no jurisdiction over a claim asserted under subsection (a)(1) unless it is filed

with the board in accordance with section 1712.1. The board shall have no power and exercise no jurisdiction over a claim asserted against a Commonwealth agency under subsection (a)(2) or (3) unless the claim was filed with the board within six months after it accrued. The board shall have no power and exercise no jurisdiction over claims for payment or damages to providers of medical assistance services arising out of the operation of the medical assistance program established by the act of June 13, 1967 (P.L. 31, No. 21),<sup>1</sup> known as the Public Welfare Code.

(d) **Nonmonetary relief.** – Nothing in this section shall preclude a party from seeking nonmonetary relief in another forum as provided by law.

2002, Dec. 3, P.L. 1147, No. 142, § 12.2.

### § 1725. Procedure

(a) **Statement of claim.** – The board shall accept a statement of claim filed in accordance with section 1724 (relating to jurisdiction). The statement of claim shall be signed and verified. Prior to accepting a statement of claim, the board shall require a claimant to prove that the respondent was mailed a copy of the statement of claim. If the respondent is a Commonwealth agency, upon accepting a statement of claim the board shall deliver one copy to the Attorney General.

(b) **Response.** – Within 30 days of a statement of claim being filed, the respondent shall file with the board a response to the averments of the claimant's statement of claim. The response shall be signed and verified. Prior to accepting a response, the board shall require a respondent to prove that the claimant was mailed a copy of the response.

(c) **Listing.-**

(1) After the pleadings are complete, the board shall list the case for hearing before the board at the earliest available date, but not earlier than 30 days after the pleadings are complete. All cases shall, as far as practicable, be listed for hearing in the order of the date of the filing of the respective statements of claim. The board shall provide the parties with 30 days' written notice of the time and place of the hearing.

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<sup>1</sup> 62 P.S. § 101 et seq.

(2) If a decision by the board is unlikely to be made within 60 days from the date of the hearing, the board may refer the case, together with all pleadings, to the hearing panel where the non-Commonwealth party resides. The hearing panel shall list the case for hearing at the earliest available date after receipt of the case from the board. All cases shall, as far as practicable, be listed for hearing in the order of the date of the filing of the respective statements of claim. The hearing panel shall provide the parties with 30 days' written notice of the time and place of the hearing.

**(d) Hearing. –**

(1) The board shall hold the hearing at the place and time determined by the board. All hearings shall be public. All matters before the board shall be governed by rules established by the board. The board shall have power to issue subpoenas requiring the attendance and giving of testimony of witnesses or the production of any book, paper, documentary or other evidence and to order the interpleader or impleader of other parties whenever necessary for a complete determination of any claim or counterclaim.

(2) If the matter was referred to a hearing panel, the hearing panel shall hold the hearing at the place and time determined by the panel. All hearings shall be public. All matters before the hearing panel shall be governed by rules established by the board. The hearing panel shall have power to issue subpoenas requiring the attendance and giving of testimony of witnesses or the production of any book, paper, documentary or other evidence and to order the interpleader or impleader of other parties whenever necessary for a complete determination of any claim or counterclaim.

**(e) Decision. –**

(1) After considering the pleadings and the testimony given at the hearing before it, the board shall file a written opinion either dismissing the claim of the claimant or ordering an award in favor of the claimant. If the board orders an award, the board

shall order an amount which the claimant is legally entitled to receive. The board in dismissing any claim or ordering any award shall dispose of all costs of the proceedings by providing for the payment of costs by the claimant or the respondent or by providing that the costs shall be shared by the parties in proportion as the board in its discretion shall direct. Costs shall include witness fees and expenses. The board shall, under the seal of the board, immediately notify the parties involved of the entry of a final order.

(2) If the hearing was before a hearing panel, the hearing panel shall make its recommendation or recommendations to the board within 30 days of the hearing. After considering the hearing panel's recommendation, the board shall file a written opinion either dismissing the claim of the claimant or ordering an award in favor of the claimant. If the board orders an award, the board shall order an amount which the claimant is legally entitled to receive. The board in dismissing any claim or ordering any award shall dispose of all costs of the proceedings by providing for the payment of costs by the claimant or the respondent or by providing that the costs shall be shared by the parties in proportion as the board in its discretion shall direct. Costs shall include witness fees and expenses. The board shall, under the seal of the board, immediately notify the parties involved of the entry of a final order.

(f) **Appeals.** – Within 30 days of a final order being entered, a party may file an appeal with the Commonwealth Court in accordance with 42 Pa.C.S. § 763 (relating to direct appeals from government agencies).

(g) **Copies.** – The board may not charge the Commonwealth for copies of documents filed with the board or for copies of transcripts and exhibits.

2002, Dec. 3, P.L. 1147, No. 142, § 12.2.

#### **§ 1726. Payment of awards and costs**

If an award against the purchasing agency was ordered, the amount of the award shall be paid to the non-Commonwealth party by the purchasing

agency from funds appropriated against the contract out of which the claim arose, and any costs assessed against the Commonwealth agency shall be paid by the purchasing agency from funds or appropriations to the agency. If an award against the non-Commonwealth party was ordered, the amount of the award shall be deducted from whatever balance may be due the party on the contract out of which the claim arose. An amount in excess of any deduction remaining unsatisfied shall be paid by the non-Commonwealth party to the purchasing agency.

2002, Dec. 3, P.L. 1147, No. 142, § 12.2.

**TITLE 61 REVENUE**

**PART VI. BOARD OF CLAIMS**

**CHAPTER 899. RULES OF PROCEDURE**

<b>Subchap.</b>	<b>Rule</b>
<b>A. PRELIMINARY PROVISIONS.....</b>	<b>899.101</b>
<b>B. PLEADINGS.....</b>	<b>899.201</b>
<b>C. MOTIONS.....</b>	<b>899.301</b>
<b>D. DISCOVERY.....</b>	<b>899.401</b>
<b>E. PREHEARING.....</b>	<b>899.501</b>
<b>F. HEARINGS.....</b>	<b>899.601</b>
<b>G. SETTLEMENT.....</b>	<b>899.701</b>
<b>H. POSTHEARING.....</b>	<b>899.801</b>

**Subchapter A. PRELIMINARY PROVISIONS**

**Rule 899.101. Title and citation of rules.**

This chapter shall be known as the Board of Claims Rules of Procedure and may be cited as BOC R.P.

**Rule 899.102. Scope of rules.**

(a) This chapter and the Pennsylvania Rules of Civil Procedure (Pa.R.C.P.) govern all matters before the Board. If a discrepancy between this chapter and the Pa.R.C.P. arises, this chapter applies.

(b) When circumstances arise in individual cases when the application of any Board rule is impractical or inequitable, the Board, on its own motion or upon the request of a party and after notice to the parties, may prescribe other procedures as may be required by the circumstances in the particular case.

**Rule 899.103. Definitions.**

In addition to the definitions in Pa.R.C.P. No. 76, the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Board*—The Board of Claims of the Commonwealth.

*Claim*—The statement of facts filed by a contractor or Commonwealth agency stating the grounds upon which the contractor or Commonwealth agency asserts a controversy exists.

*Rule*—A rule adopted by the Board.

**Rule 899.104. Principles of interpretation.**

The principles of interpretation and rules of construction embodied in Pa.R.C.P. Nos. 101—153 apply to this chapter.

**Rule 899.105. (Reserved).**

**Rule 899.106. Representation by counsel.**

(a) A person may be represented before the Board by an attorney who is admitted to practice and is in good standing before the Supreme Court of Pennsylvania.

(b) Parties represented by counsel not admitted to practice in this Commonwealth shall associate counsel qualified under subsection (a).

**Rule 899.107. Entry of appearance.**

When counsel for plaintiff files a claim and counsel for defendant files a response, their appearances are deemed entered before the Board. Thereafter, a counsel's appearance for a party may not be withdrawn without leave of the Chief Administrative Judge, unless another lawyer has previously entered or simultaneously enters an appearance for the party.

**Rule 899.108. Service of legal papers.**

Pleadings and other documents filed with the Board shall be served by the filing party upon all other parties to the action by mail. A certificate of service shall be attached to all filings with the Board.

**Rule 899.109. Copy fees.**

Charges for copying, certifying or otherwise producing documents requested from the Board will be as established by the Board in its Right-to-Know Law Policy which is posted at the Board's office and on its web site in accordance with the Right-to-Know Law (65 P.S. §§ 67.101 - 67.3104).

**Subchapter B. PLEADINGS**

**Rule 899.201. Statement of claim.**

(a) A plaintiff shall prepare a concise and specific written statement of the claim, signed and verified by the plaintiff. The caption of the claim shall contain the full names of all parties to the claim. Each claim shall contain the name, address, telephone number and Supreme Court Identification Number of counsel for the plaintiff.

(b) The plaintiff shall file an original and three copies of the claim with the Board, accompanied by a \$50 check made payable to the Commonwealth of Pennsylvania.

(c) The Board will deliver to the Attorney General a copy of the claims, counterclaims or cross-claims made against the Commonwealth, and any amendments thereto.

**Rule 899.202. Copies of written contracts.**

When the contract on which the claim is based is in writing, in whole, or in part, the plaintiff shall attach copies of the contract or relevant portions of the contract as an exhibit to all copies of the claim, unless one of the following exists:

- (1) The plaintiff avers in the claim that all copies of the contract are in the possession of the defendant.
- (2) The Chief Administrative Judge directs that the contract or relevant portions not be attached.

**Rule 899.203. Oral contracts.**

When the contract on which the claim is based is oral, in whole or in part, the plaintiff shall plead the terms and details of the contract with particularity, and shall identify all agents who are alleged to have contracted on behalf of the defendant.

**Rule 899.204. Response to claim.**

Within 30 days of service of the claim, the defendant shall file an original and two copies of its answer or other response with the Board. The answer, or other response, shall contain the name, address, telephone number and Supreme Court Identification Number of counsel for the defendant. The defendant or its counsel shall sign and verify the answer or other response.

**Rule 899.205. Preliminary Objections.**

(a) Preliminary objections shall be filed with the Board and served upon the adverse parties or their counsel. Preliminary objections shall be accompanied by a supporting brief. Failure to file a brief may result in automatic dismissal of the preliminary objections.

(b) Within 30 days after service of the preliminary objections, the adverse parties or their counsel shall file a response and a responsive brief with the Board and serve it upon the opposing parties or counsel.

**Rule 899.206. Amendment of pleadings.**

(a) *Form of amended pleading.* An amended pleading, whether filed under Pa.R.C.P., by the agreement of the parties or by leave of the Board, shall be entirely restated and comply with the form of the original pleading, except an amendment allowed in the course of a hearing.

(b) *Allowance by the Board.*

(1) If the amended pleading requires leave of the Board before a hearing, the party seeking the amendment shall give 5 days' notice to all parties of the intended application, enclosing a copy of the proposed amended pleading. The Board may allow the amendment or order the issue for argument.

(2) If the request for an amendment to a pleading is made at the hearing, the Board will dispose of the request at its discretion. If a continuance is granted by the Board, the party in whose favor the amendment is allowed shall file the amended pleading within 20 days after allowance by the Board, unless otherwise ordered.

**Subchapter C. MOTIONS**

**Rule 899.301. Motions and petitions.**

(a) Each motion or petition shall be deemed contested unless certified to the contrary by the moving party. Except as provided in subsection (c) and Rule 899.402(b) (relating to discovery motions), a brief shall accompany each motion or petition. A motion or petition not accompanied by a brief may be dismissed by the Board.

(b) Each answering party shall file its response with the Board within 30 days of the date of service of the moving party's motion or petition. A response shall be accompanied by a supporting brief.

(c) If the moving party certifies that the motion or petition is uncontested, no brief is required.

**Rule 899.302. Form of briefs.**

A brief shall contain a statement of the pertinent facts of the case, the questions involved and the argument. The statement of questions involved shall be drawn so that the Board may quickly determine all the legal questions requiring determination. The argument shall be divided into as many parts as there are questions involved.

**Subchapter D. DISCOVERY**

**Rule 899.401. Discovery**

(a) Except when required under subsection (c) or (d), discovery material may not be filed with the Board. The party serving the discovery material or taking the deposition shall retain the original and be custodian of it.

(b) If a part of discovery material is used as evidence in connection with a motion, the relevant part shall be set forth, verbatim, in the motion or response. If discovery material is used as evidence at the hearing, the party offering it shall read it into the record or, if directed to do so by the Board, offer it as an exhibit.

(c) The Board will resolve a dispute concerning the accuracy of a quotation of discovery material used as provided in subsection (b) and may require production of the original paper or transcript.

(d) The Board, on its own motion, on the motion of a party or on an application by a nonparty, may require the filing of original discovery material. The parties may provide for the filing by stipulation.

(e) A party serving a request for discovery including depositions by oral examination, and a party filing written responses thereto shall file with the Board and serve upon all other parties or their counsel a notice of service substantially in the form prescribed in subsection (f). A party which files a motion or petition under Rule 899.301 or Rule 899.402 (relating to motions and petitions; and discovery motions) in response to a discovery request or a discovery response is not required to file and serve a notice of service in addition thereto.

(f) The notice of service required by subsection (e) shall be substantially in the following form:

(CAPTION)  
*Notice of Service*

You are hereby notified that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (identify discovery request or response) was served upon the following parties or their counsel via United States Mail, first class, postage prepaid, and addressed as follows:

(names and addresses to whom discovery request or response were directed)

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Name  
Supreme Court I.D. No.  
Address  
Phone  
Attorneys for

**Rule 899.402. Discovery motions.**

(a) A discovery motion shall be prepared in accordance with Rule 899.301 (relating to motions and petitions).

(b) A moving party filing a motion to compel answers to interrogatories or production of documents need not file a brief with the motion, if the motion avers only that a response or objection has not been timely served. The Pa.R.C.P. which are relied upon shall be cited in the motion. The Board may grant or deny the motion without waiting for a response.

**Rule 899.403. Limitation on discovery.**

(a) During the pendency of an action, a party may not serve on another party more than 60 interrogatories, including all subparts and requests for admission.

(b) If the party files a motion showing good cause, the Chief Administrative Judge may allow a party to exceed the limit in subsection (a). The motion shall be prepared in accordance with Rule 899.301 (relating to motions and petitions).

## Subchapter E. PREHEARING

### Rule 899.501. Pre-hearing procedure.

(a) *Status conference.*

(1) At the discretion of the Chief Administrative Judge, a status conference may be held within 120 days after the filing of the claim. The conference may be by telephone or in person. Matters to be considered at the conference include:

(i) Jurisdictional defects.

(ii) Prospects of amicable settlement.

(iii) Establishing a schedule for remaining prehearing proceedings including discovery deadlines and prehearing memoranda filings.

(2) A scheduling order will be issued as soon as practical after the conference.

(b) *Prehearing memoranda.* Prehearing memoranda shall be filed and served as directed by the Chief Administrative Judge in the scheduling order. Unless the scheduling order directs otherwise, the prehearing memorandum of each party shall include:

(1) A statement of the issues in the case.

(2) The identification and numbering of exhibits.

(3) A stipulation of facts not in dispute to be prepared jointly by the parties, which may include qualification of expert witnesses and admission of exhibits.

(4) Identification of witnesses who will appear at the hearing and a short summary of the testimony expected from each witness.

(5) Copies of expert witnesses' final reports.

(c) *Prehearing conferences and settlement conferences.*

(1) The Chief Administrative Judge will determine the necessity for the scheduling of, and the procedures for, a prehearing or settlement conference. Notice of a conference will be given to counsel or unrepresented parties.

(2) The Chief Administrative Judge may dismiss the case, or enter judgment against a party for failing to participate in a prehearing conference or failing to provide the required memorandum.

(3) The Board may refuse to allow a party to call witnesses or offer evidence not disclosed at the prehearing conference or in the prehearing memorandum.

#### **Subchapter F. HEARINGS**

##### **Rule 899.601. Place of hearings.**

Unless the Board directs another location, proceedings before the Board and its panels will be held in Harrisburg.

#### **Subchapter G. SETTLEMENT**

##### **Rule 899.701. Notice of proposed settlement.**

If during the pendency of an action before the Board the parties agree upon a proposed settlement, the parties shall immediately notify the Board.

##### **Rule 899.702. Termination of case by settlement.**

Within 10 days after the conclusion of the settlement, the parties shall notify the Board in writing. The Board will mark its record of the case “settled.”

## **Subchapter H. POSTHEARING**

### **Rule 899.801. No posthearing motions**

After hearing and the issuance by the Board of its findings of fact, conclusions of law, opinion and order, posthearing motions may not be filed. The findings of fact, conclusions of law, opinion and order are a final appealable order.