

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

ORDINANCE #05/15

WORKERS' COMPENSATION APPEALS

Adopted by Resolution #1348/15 of the Fond du Lac Reservation Business Committee on November 18, 2015.

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**CHAPTER 1
AUTHORITY; PURPOSE; SCOPE**

Section 101 Authority

This Ordinance is enacted by the Fond du Lac Reservation Business Committee pursuant to the inherent sovereign authority of the Fond du Lac Band of Lake Superior Chippewa, as reserved under the Treaty of LaPointe, 10 Stat. 1109, and as recognized under Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476; under Article VI of the Revised Constitution of the Minnesota Chippewa Tribe; under Section 302 of the Minnesota Chippewa Tribe Revised Land Ordinance #2; and under the common law of the United States.

Section 102 Purpose

The purpose of this Ordinance is to provide additional due process and an opportunity to appeal for employees protected by the Band's workers' compensation policy.

Section 103 Scope

This Ordinance only applies to appeals involving workers' compensation plans that provide for appeals to the Tribal Court of the Fond du Lac Band of Lake Superior Chippewa.

Section 105 Reservation of Rights

The Reservation Business Committee reserves the right to amend or repeal all or any part of this Ordinance at any time. There shall be no vested private right of any kind created by this Ordinance. All the rights, privileges, or immunities conferred by this Ordinance or by acts done pursuant thereto shall exist subject to the powers of the Fond du Lac Band. Nothing in this Ordinance shall be construed to constitute a waiver of the sovereign immunity of the Fond du Lac Band or a consent to jurisdiction by any government or forum not expressly authorized to exercise jurisdiction under this Ordinance.

CHAPTER 2
TRIBAL COURT APPEALS

Section 201 Tribal Court Appeals

- (a) Right to an Appeal. A decision by a hearing examiner concerning legal issues, whether the result of an evidentiary hearing or no hearing, may be appealed by either party to the Tribal Court of the Fond du Lac Band of Lake Superior Chippewa.
- (b) Filing an Appeal. A Notice of Appeal must be filed with the Tribal Court in writing within 30 business days of the date of the decision. The Notice of Appeal shall specify the order appealed from and the basis for the appeal. A copy of the order appealed from shall be attached to the Notice of Appeal. Prior to filing an appeal with the Tribal Court, the appealing party shall serve copy of the Notice of Appeal and the order appealed from on all other parties. Proof of such service shall be filed with the Tribal Court together with the Notice of Appeal. There shall be a \$25 filing fee for the Notice of Appeal.
- (c) Production of the Record. Within thirty (30) business days following the date a Notice of Appeal is filed, the Band shall transmit to the Tribal Court the entire underlying record before the hearing examiner relating to the decision being appealed. A copy of the record provided to the Tribal Court shall be transmitted by the Band to each party to the appeal. Within five (5) business days of receipt of the record submitted to the Tribal Court, a party may file a written request with the Court identifying additional documents or information which the party believes should be included in the record. If it is shown to the satisfaction of the Tribal Court that the additional documents or information cited by the party were part of the underlying record, the Tribal Court shall order that such documents or information be included in the record to be considered by the Tribal Court.
- (d) Briefing Schedule. After receiving a Notice of Appeal, the Tribal Court shall issue a briefing schedule setting forth the deadlines for filing briefs and the oral argument date, if any. In order to set the brief schedule, the Tribal Court may schedule a conference to deal with matters such as:
- i. Supplementation or shortening of the record;
 - ii. Clarification of the specific issues presented on appeal;
 - iii. Scheduling of briefs or other written argument;
 - iv. Setting the date and time for oral argument;
 - v. Such other deadlines and other matters as may expedite the orderly and prompt resolution of the issues presented by the appeal.

- (e) Scope of Review. The Tribal Court's review will be based upon the record established by the Hearing Examiner. The Tribal Court may not hold an evidentiary hearing or make new factual determinations. In determining whether the hearing examiner made an error of law or an arbitrary and capricious application of the law, the Tribal Court may be guided by State of Minnesota workers' compensation caselaw.
- (f) Decision. After reviewing the briefs and conducting a hearing, if any, the Tribal Court shall issue a decision. The Tribal Court may decide as follows:
 - (i) If the Tribal Court determines that the factual record is inadequate, the Court may remand the matter to the hearing examiner for additional factual determinations.
 - (ii) If the Tribal Court determines that the hearing examiner's decision was based on an error of law, the Tribal Court may reverse the hearing examiner's decision, modify the hearing examiner's decision, or reverse and remand for further proceedings.
 - (iii) If the Tribal Court determines that the hearing examiner's decision was based on an arbitrary and capricious application of the law to the facts, the Tribal Court may reverse the hearing examiner's decision, modify the hearing examiner's decision, or reverse and remand for further proceedings.
 - (iv) If the factual record is adequate, the hearing examiner's decision was not based on an error of law, and the hearing examiner's decision was not arbitrary and capricious, the Tribal Court shall affirm the hearing examiner's decision.
- (g) No Further Appeals. The decision of the Tribal Court judge shall be final and not subject to further appeal.

CHAPTER 3
EFFECTIVE DATE; AMENDMENTS; SEVERABILITY

Section 501 **Effective Date**

The provisions of this Ordinance shall become effective January 1, 2016.

Section 502 **Amendment or Recission**

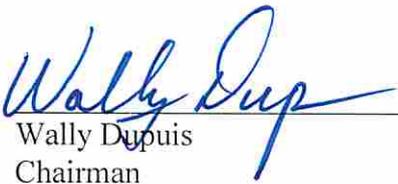
The Reservation Business Committee may amend this Ordinance as it deems necessary to protect the public health, safety and welfare of the Fond du Lac Reservation. The provisions of this Ordinance may be amended by resolution of the Reservation Business Committee.

Section 503 **Severability**

If any section, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance will not be affected thereby.

CERTIFICATION

We do hereby certify that the foregoing Ordinance #05/15 was duly presented and adopted by Resolution #1348/15 by a vote of 2 for, 0 against, 0 silent, with a quorum of 3 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on November 18, 2015, on the Fond du Lac Reservation.


Wally Dupuis
Chairman


Ferdinand Martineau, Jr.
Secretary/Treasurer