

O.C.G.A. 34-9-105 [Effective July 1, 2023] When award deemed final; appeal to superior court; grounds for setting aside decisions; appeal to Court of Appeals.

(a) Any award of the administrative law judge provided for in Code Section 34-9-102 for which no timely application for review has been filed or any award of the members of the board upon such review as provided in Code Section 34-9-103 shall, in either event, as the case may be, and subject to the other provisions of this chapter, be a final award and shall be conclusive and binding as to all questions of fact.

(b) Either party to the dispute may, within 20 days from the date of any such final award or within 20 days from the date of any other final order or judgment of the members of the board, but not thereafter, appeal from the decision in such final award or from any other final decision of the board to the superior court of the county in which the injury occurred or, if the injury occurred outside the state, to the superior court of the county in which the original hearing was held, in the manner and upon the grounds provided in Chapter 3 of Title 5, except to the extent any such provision is in conflict with any provision of this Code section. A copy of the petition for review shall be served on the clerk for the board. In the event of an appeal, the board shall, within 30 days of such service, transmit certified copies of all documents and papers in its file together with a transcript of the testimony taken and its findings of fact and decision to the clerk of the superior court to which the case is appealable, as provided in this subsection. The case so appealed may then be brought by either party upon ten days' written notice to the other before the superior court for a hearing upon such record, subject to an assignment of the case for hearing by the court; provided, however, that, if the court does not hear the case within 60 days of the date of docketing in the superior court, the decision of the board shall be considered affirmed by operation of law unless a hearing originally scheduled to be heard within the 60 days has been continued to a date certain by order of the court. In the event a hearing is held later than 60 days after the date of docketing in the superior court because same has been continued to a date certain by order of the court, the decision of the board shall be considered affirmed by operation of law if no order of the court disposing of the issues on appeal has been entered within 20 days after the date of the continued hearing. If a case is heard within 60 days from the date of docketing in the superior court, the decision of the board shall be considered affirmed by operation of law if no order of the court disposing of the issues on appeal has been entered within 20 days of the date of the hearing.

(c) The findings made by the members within their powers shall, in the absence of fraud, be conclusive; but upon such hearing the court shall set aside the decision if it is found that:

- (1) The members acted without or in excess of their powers;
- (2) The decision was procured by fraud;
- (3) The facts found by the members do not support the decision;
- (4) There is not sufficient competent evidence in the record to warrant the members making the decision; or
- (5) The decision is contrary to law.

(d) No decision of the board shall be set aside by the court upon any grounds other than one or more of the grounds stated in subsection (c) of this Code section. In the event a hearing is not held and a decision is not rendered by the superior court within the time provided in subsection (b) of this Code section, the decision of the board shall, by operation of law, be affirmed. The date of entry of judgment for purposes of appeal pursuant to Code Section 5-6-35 of a decision affirmed by operation of law without action of the superior court shall be the last date on which the superior court could have taken action under subsection (b) of this Code section. Upon the setting aside of any such decision of the board, the court may recommit the controversy to the board for further hearing or proceedings in conformity with the judgment and opinion of the court; or such court may enter the proper judgment upon the findings, as the nature of the case may demand. Such decree of the court shall have the same effect and all proceedings in relation thereto shall, subject to the other provisions of this chapter, thereafter be the same as though rendered in an action heard and determined by the court.

(e) Any party in interest who is aggrieved by a judgment entered by the superior court upon an appeal from a decision of the board to the superior court may have such judgment reviewed by the Court of Appeals within the time and in the manner provided by law. In case of an appeal from the decision of the board, the appeal shall operate as a supersedeas if the employer has complied with the provisions of this chapter respecting insurance; and no such employer shall be required to make payment of the award involved in the questions made in the case so appealed until such questions at issue therein shall have been fully determined in accordance with this chapter.