
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 3139

State of Washington

60th Legislature

2008 Regular Session

By House Appropriations (originally sponsored by Representatives Conway, Wood, Green, Moeller, Simpson, and Ormsby)

READ FIRST TIME 02/11/08.

1 AN ACT Relating to industrial insurance benefits on appeal;
2 amending RCW 51.52.050 and 51.32.240; adding a new section to chapter
3 51.52 RCW; creating a new section; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 51.52.050 and 2004 c 243 s 8 are each amended to read
6 as follows:

7 (1) Whenever the department has made any order, decision, or award,
8 it shall promptly serve the worker, beneficiary, employer, or other
9 person affected thereby, with a copy thereof by mail, which shall be
10 addressed to such person at his or her last known address as shown by
11 the records of the department. The copy, in case the same is a final
12 order, decision, or award, shall bear on the same side of the same page
13 on which is found the amount of the award, a statement, set in black
14 faced type of at least ten point body or size, that such final order,
15 decision, or award shall become final within sixty days from the date
16 the order is communicated to the parties unless a written request for
17 reconsideration is filed with the department of labor and industries,
18 Olympia, or an appeal is filed with the board of industrial insurance
19 appeals, Olympia(~~(:—PROVIDED, That)~~). However, a department order or

1 decision making demand, whether with or without penalty, for repayment
2 of sums paid to a provider of medical, dental, vocational, or other
3 health services rendered to an industrially injured worker, shall state
4 that such order or decision shall become final within twenty days from
5 the date the order or decision is communicated to the parties unless a
6 written request for reconsideration is filed with the department of
7 labor and industries, Olympia, or an appeal is filed with the board of
8 industrial insurance appeals, Olympia.

9 (2)(a) Whenever the department has taken any action or made any
10 decision relating to any phase of the administration of this title the
11 worker, beneficiary, employer, or other person aggrieved thereby may
12 request reconsideration of the department, or may appeal to the board.
13 In an appeal before the board, the appellant shall have the burden of
14 proceeding with the evidence to establish a prima facie case for the
15 relief sought in such appeal(~~(:—PROVIDED, That)~~).

16 (b) An order by the department awarding benefits shall become
17 effective and benefits due on the date issued. Subject to (b)(i) and
18 (ii) of this subsection, if the department order is appealed the order
19 shall not be stayed pending a final decision on the merits unless
20 ordered by the board. Any employer may move for a stay of the order on
21 appeal, in whole or in part. The motion must be filed within fifteen
22 days of the order granting appeal. The board shall conduct an
23 expedited review of the claim file provided by the department as it
24 existed on the date of the department order. The board shall issue a
25 final decision within twenty-five days of the filing of the motion for
26 stay or the order granting appeal, whichever is later. The board's
27 final decision may be appealed to superior court in accordance with RCW
28 51.52.110. The board shall grant a motion to stay if the moving party
29 demonstrates that it is more likely than not to prevail on the facts as
30 they existed at the time of the order on appeal. The board shall not
31 consider the likelihood of recoupment of benefits as a basis to grant
32 or deny a motion to stay.

33 (i) If upon reconsideration requested by a worker or medical
34 provider, the department has ordered an increase in a permanent partial
35 disability award from the amount reflected in an earlier order, the
36 award reflected in the earlier order shall not be stayed pending a
37 final decision on the merits. However, the increase is stayed without
38 further action by the board pending a final decision on the merits.

1 (ii) If any party appeals an order establishing a worker's wages or
2 the compensation rate at which a worker will be paid temporary or
3 permanent total disability or loss of earning power benefits, the
4 worker shall receive payment pending a final decision on the merits
5 based on the following:

6 (A) When the employer is self-insured, the wage calculation or
7 compensation rate the employer most recently submitted to the
8 department; or

9 (B) When the employer is insured through the state fund, the
10 highest wage amount or compensation rate uncontested by the parties.

11 Payment of benefits or consideration of wages at a rate that is
12 higher than that specified in (b)(ii)(A) or (B) of this subsection is
13 stayed without further action by the board pending a final decision on
14 the merits.

15 (c) In an appeal from an order of the department that alleges
16 willful misrepresentation, the department or self-insured employer
17 shall initially introduce all evidence in its case in chief. Any such
18 person aggrieved by the decision and order of the board may thereafter
19 appeal to the superior court, as prescribed in this chapter.

20 **Sec. 2.** RCW 51.32.240 and 2004 c 243 s 7 are each amended to read
21 as follows:

22 (1)(a) Whenever any payment of benefits under this title is made
23 because of clerical error, mistake of identity, innocent
24 misrepresentation by or on behalf of the recipient thereof mistakenly
25 acted upon, or any other circumstance of a similar nature, all not
26 induced by willful misrepresentation, the recipient thereof shall repay
27 it and recoupment may be made from any future payments due to the
28 recipient on any claim with the state fund or self-insurer, as the case
29 may be. The department or self-insurer, as the case may be, must make
30 claim for such repayment or recoupment within one year of the making of
31 any such payment or it will be deemed any claim therefor has been
32 waived.

33 (b) Except as provided in subsections (3), (4), and (5) of this
34 section, the department may only assess an overpayment of benefits
35 because of adjudicator error when the order upon which the overpayment
36 is based is not yet final as provided in RCW 51.52.050 and 51.52.060.

1 "Adjudicator error" includes the failure to consider information in the
2 claim file, failure to secure adequate information, or an error in
3 judgment.

4 (c) The director, pursuant to rules adopted in accordance with the
5 procedures provided in the administrative procedure act, chapter 34.05
6 RCW, may exercise his or her discretion to waive, in whole or in part,
7 the amount of any such timely claim where the recovery would be against
8 equity and good conscience.

9 (2) Whenever the department or self-insurer fails to pay benefits
10 because of clerical error, mistake of identity, or innocent
11 misrepresentation, all not induced by recipient willful
12 misrepresentation, the recipient may request an adjustment of benefits
13 to be paid from the state fund or by the self-insurer, as the case may
14 be, subject to the following:

15 (a) The recipient must request an adjustment in benefits within one
16 year from the date of the incorrect payment or it will be deemed any
17 claim therefore has been waived.

18 (b) The recipient may not seek an adjustment of benefits because of
19 adjudicator error. Adjustments due to adjudicator error are addressed
20 by the filing of a written request for reconsideration with the
21 department of labor and industries or an appeal with the board of
22 industrial insurance appeals within sixty days from the date the order
23 is communicated as provided in RCW 51.52.050. "Adjudicator error"
24 includes the failure to consider information in the claim file, failure
25 to secure adequate information, or an error in judgment.

26 (3) Whenever the department issues an order rejecting a claim for
27 benefits paid pursuant to RCW 51.32.190 or 51.32.210, after payment for
28 temporary disability benefits has been paid by a self-insurer pursuant
29 to RCW 51.32.190(3) or by the department pursuant to RCW 51.32.210, the
30 recipient thereof shall repay such benefits and recoupment may be made
31 from any future payments due to the recipient on any claim with the
32 state fund or self-insurer, as the case may be. The director, under
33 rules adopted in accordance with the procedures provided in the
34 administrative procedure act, chapter 34.05 RCW, may exercise
35 discretion to waive, in whole or in part, the amount of any such
36 payments where the recovery would be against equity and good
37 conscience.

1 (4)(a) Whenever any payment of benefits under this title has been
2 made pursuant to an adjudication by the department or by order of the
3 board or any court and timely appeal therefrom has been made where the
4 final decision is that any such payment was made pursuant to an
5 erroneous adjudication, the recipient thereof shall repay it and
6 recoupment may be made from any future payments due to the recipient on
7 any claim (~~with the state fund or self-insurer, as the case may be~~)
8 whether state funded or self-insured.

9 (b) The department shall establish procedures by rule to collect
10 information concerning self-insured claim overpayments resulting from
11 decisions of the board or court, and to recoup such overpayments from
12 state fund claims. If recovery is made in whole or in part on behalf
13 of a self-insurer from a worker's state fund claim, the amount
14 recovered shall be paid to the self-insurer by the department. The
15 department may provide overpayment information to a self-insurer when
16 the worker is entitled to benefits from which the self-insurer can
17 collect the amount due, in whole or in part, on behalf of the
18 department or another self-insurer. In these cases, the self-insurer
19 shall pay directly to the department any amounts recovered. The
20 department shall credit the amounts recovered to the appropriate
21 workers' compensation funds or shall forward any amounts collected on
22 behalf of another self-insurer, as the case may be.

23 (c) For purposes of this subsection, "recipient" does not include
24 health service providers whose treatment or services were authorized by
25 the department or self-insurer.

26 (d) The department or self-insurer may recover overpayments for
27 health services from any entity that provided health insurance to the
28 worker to the extent that the health insurance entity would have
29 provided health insurance benefits but for workers' compensation
30 coverage.

31 (e) The director, pursuant to rules adopted in accordance with the
32 procedures provided in the administrative procedure act, chapter 34.05
33 RCW, may exercise (~~his~~) discretion to waive, in whole or in part, the
34 amount of any such payments where the recovery would be against equity
35 and good conscience.

36 (5)(a) Whenever any payment of benefits under this title has been
37 induced by willful misrepresentation the recipient thereof shall repay
38 any such payment together with a penalty of fifty percent of the total

1 of any such payments and the amount of such total sum may be recouped
2 from any future payments due to the recipient on any claim with the
3 state fund or self-insurer against whom the willful misrepresentation
4 was committed, as the case may be, and the amount of such penalty shall
5 be placed in the supplemental pension fund. Such repayment or
6 recoupment must be demanded or ordered within three years of the
7 discovery of the willful misrepresentation.

8 (b) For purposes of this subsection (5), it is willful
9 misrepresentation for a person to obtain payments or other benefits
10 under this title in an amount greater than that to which the person
11 otherwise would be entitled. Willful misrepresentation includes:

12 (i) Willful false statement; or

13 (ii) Willful misrepresentation, omission, or concealment of any
14 material fact.

15 (c) For purposes of this subsection (5), "willful" means a
16 conscious or deliberate false statement, misrepresentation, omission,
17 or concealment of a material fact with the specific intent of
18 obtaining, continuing, or increasing benefits under this title.

19 (d) For purposes of this subsection (5), failure to disclose a
20 work-type activity must be willful in order for a misrepresentation to
21 have occurred.

22 (e) For purposes of this subsection (5), a material fact is one
23 which would result in additional, increased, or continued benefits,
24 including but not limited to facts about physical restrictions, or
25 work-type activities which either result in wages or income or would be
26 reasonably expected to do so. Wages or income include the receipt of
27 any goods or services. For a work-type activity to be reasonably
28 expected to result in wages or income, a pattern of repeated activity
29 must exist. For those activities that would reasonably be expected to
30 result in wages or produce income, but for which actual wage or income
31 information cannot be reasonably determined, the department shall
32 impute wages pursuant to RCW 51.08.178(4).

33 (6) The worker, beneficiary, or other person affected thereby shall
34 have the right to contest an order assessing an overpayment pursuant to
35 this section in the same manner and to the same extent as provided
36 under RCW 51.52.050 and 51.52.060. In the event such an order becomes
37 final under chapter 51.52 RCW and notwithstanding the provisions of
38 subsections (1) through (5) of this section, the director, director's

1 designee, or self-insurer may file with the clerk in any county within
2 the state a warrant in the amount of the sum representing the unpaid
3 overpayment and/or penalty plus interest accruing from the date the
4 order became final. The clerk of the county in which the warrant is
5 filed shall immediately designate a superior court cause number for
6 such warrant and the clerk shall cause to be entered in the judgment
7 docket under the superior court cause number assigned to the warrant,
8 the name of the worker, beneficiary, or other person mentioned in the
9 warrant, the amount of the unpaid overpayment and/or penalty plus
10 interest accrued, and the date the warrant was filed. The amount of
11 the warrant as docketed shall become a lien upon the title to and
12 interest in all real and personal property of the worker, beneficiary,
13 or other person against whom the warrant is issued, the same as a
14 judgment in a civil case docketed in the office of such clerk. The
15 sheriff shall then proceed in the same manner and with like effect as
16 prescribed by law with respect to execution or other process issued
17 against rights or property upon judgment in the superior court. Such
18 warrant so docketed shall be sufficient to support the issuance of
19 writs of garnishment in favor of the department or self-insurer in the
20 manner provided by law in the case of judgment, wholly or partially
21 unsatisfied. The clerk of the court shall be entitled to a filing fee
22 under RCW 36.18.012(10), which shall be added to the amount of the
23 warrant. A copy of such warrant shall be mailed to the worker,
24 beneficiary, or other person within three days of filing with the
25 clerk.

26 The director, director's designee, or self-insurer may issue to any
27 person, firm, corporation, municipal corporation, political subdivision
28 of the state, public corporation, or agency of the state, a notice to
29 withhold and deliver property of any kind if there is reason to believe
30 that there is in the possession of such person, firm, corporation,
31 municipal corporation, political subdivision of the state, public
32 corporation, or agency of the state, property that is due, owing, or
33 belonging to any worker, beneficiary, or other person upon whom a
34 warrant has been served for payments due the department or self-
35 insurer. The notice and order to withhold and deliver shall be served
36 by certified mail accompanied by an affidavit of service by mailing or
37 served by the sheriff of the county, or by the sheriff's deputy, or by
38 any authorized representative of the director, director's designee, or

1 self-insurer. Any person, firm, corporation, municipal corporation,
2 political subdivision of the state, public corporation, or agency of
3 the state upon whom service has been made shall answer the notice
4 within twenty days exclusive of the day of service, under oath and in
5 writing, and shall make true answers to the matters inquired or in the
6 notice and order to withhold and deliver. In the event there is in the
7 possession of the party named and served with such notice and order,
8 any property that may be subject to the claim of the department or
9 self-insurer, such property shall be delivered forthwith to the
10 director, the director's authorized representative, or self-insurer
11 upon demand. If the party served and named in the notice and order
12 fails to answer the notice and order within the time prescribed in this
13 section, the court may, after the time to answer such order has
14 expired, render judgment by default against the party named in the
15 notice for the full amount, plus costs, claimed by the director,
16 director's designee, or self-insurer in the notice. In the event that
17 a notice to withhold and deliver is served upon an employer and the
18 property found to be subject thereto is wages, the employer may assert
19 in the answer all exemptions provided for by chapter 6.27 RCW to which
20 the wage earner may be entitled.

21 This subsection shall only apply to orders assessing an overpayment
22 which are issued on or after July 28, 1991: PROVIDED, That this
23 subsection shall apply retroactively to all orders assessing an
24 overpayment resulting from fraud, civil or criminal.

25 (7) Orders assessing an overpayment which are issued on or after
26 July 28, 1991, shall include a conspicuous notice of the collection
27 methods available to the department or self-insurer.

28 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.52 RCW
29 to read as follows:

30 (1) The department shall study appeals of workers' compensation
31 cases and collect information on the impacts of this act on state fund
32 and self-insured workers and employers. The study shall consider the
33 types of benefits that may be paid pending an appeal, and shall
34 include, but not be limited to:

35 (a) The frequency and outcomes of appeals;

36 (b) The number of and amount of overpayments resulting from
37 decisions of the board or court; and

1 (c) The processes used and efforts made to recoup overpayments and
2 the results of those efforts.

3 (2) State fund and self-insured employers shall provide the
4 information requested by the department to conduct the study.

5 (3) The department shall report to the workers' compensation
6 advisory committee by July 1, 2009, on the preliminary results of the
7 study. By December 1, 2009, the department shall report to the
8 workers' compensation advisory committee and the appropriate committees
9 of the legislature on the results of the study and any recommendations,
10 including but not limited to recommendations, if necessary, for
11 addressing unrecoverable overpayments.

12 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect July 1,
13 2009.

14 NEW SECTION. **Sec. 5.** This act applies to orders issued on or
15 after the effective date of this section.

--- END ---