
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; creating a new section; and
3 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 party 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 a self-insured employer appeals an order setting the
2 claimant's time loss rate, the claimant shall receive any time loss or
3 pension benefits based upon the rate calculation that the employer most
4 recently submitted to the department and payment of benefits at this
5 rate shall not be stayed pending a final decision on the merits.
6 However, payment of time loss or pension benefits at the increased rate
7 in the order on appeal is stayed without further action by the board
8 pending a final decision on the merits.

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

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

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

27 (b) Except as provided in subsections (3), (4), and (5) of this
28 section, the department may only assess an overpayment of benefits
29 because of adjudicator error when the order upon which the overpayment
30 is based is not yet final as provided in RCW 51.52.050 and 51.52.060.
31 "Adjudicator error" includes the failure to consider information in the
32 claim file, failure to secure adequate information, or an error in
33 judgment.

34 (c) The director, pursuant to rules adopted in accordance with the
35 procedures provided in the administrative procedure act, chapter 34.05
36 RCW, may exercise his or her discretion to waive, in whole or in part,

1 the amount of any such timely claim where the recovery would be against
2 equity and good conscience.

3 (2) Whenever the department or self-insurer fails to pay benefits
4 because of clerical error, mistake of identity, or innocent
5 misrepresentation, all not induced by recipient willful
6 misrepresentation, the recipient may request an adjustment of benefits
7 to be paid from the state fund or by the self-insurer, as the case may
8 be, subject to the following:

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

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

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

32 (4)(a) Whenever any payment of benefits under this title has been
33 made pursuant to an adjudication by the department or by order of the
34 board or any court and timely appeal therefrom has been made where the
35 final decision is that any such payment was made pursuant to an
36 erroneous adjudication, the recipient thereof shall repay it and
37 recoupment may be made from any future payments due to the recipient on

1 any claim (~~with the state fund or self-insurer, as the case may be~~)
2 whether state funded or self-insured.

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

17 (c) For purposes of this subsection, "recipient" does not include
18 health service providers whose treatment or services were authorized by
19 the department or self-insurer. The department or self-insurer may
20 recover overpayments for health services from any entity providing
21 health insurance to the extent that the health insurance entity would
22 have provided insurance benefits in the absence of workers'
23 compensation coverage.

24 (d) The director, pursuant to rules adopted in accordance with the
25 procedures provided in the administrative procedure act, chapter 34.05
26 RCW, may exercise (~~his~~) discretion to waive, in whole or in part, the
27 amount of any such payments where the recovery would be against equity
28 and good conscience.

29 (5)(a) Whenever any payment of benefits under this title has been
30 induced by willful misrepresentation the recipient thereof shall repay
31 any such payment together with a penalty of fifty percent of the total
32 of any such payments and the amount of such total sum may be recouped
33 from any future payments due to the recipient on any claim with the
34 state fund or self-insurer against whom the willful misrepresentation
35 was committed, as the case may be, and the amount of such penalty shall
36 be placed in the supplemental pension fund. Such repayment or
37 recoupment must be demanded or ordered within three years of the
38 discovery of the willful misrepresentation.

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

5 (i) Willful false statement; or

6 (ii) Willful misrepresentation, omission, or concealment of any
7 material fact.

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

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

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

26 (6) The worker, beneficiary, or other person affected thereby shall
27 have the right to contest an order assessing an overpayment pursuant to
28 this section in the same manner and to the same extent as provided
29 under RCW 51.52.050 and 51.52.060. In the event such an order becomes
30 final under chapter 51.52 RCW and notwithstanding the provisions of
31 subsections (1) through (5) of this section, the director, director's
32 designee, or self-insurer may file with the clerk in any county within
33 the state a warrant in the amount of the sum representing the unpaid
34 overpayment and/or penalty plus interest accruing from the date the
35 order became final. The clerk of the county in which the warrant is
36 filed shall immediately designate a superior court cause number for
37 such warrant and the clerk shall cause to be entered in the judgment
38 docket under the superior court cause number assigned to the warrant,

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

19 The director, director's designee, or self-insurer may issue to any
20 person, firm, corporation, municipal corporation, political subdivision
21 of the state, public corporation, or agency of the state, a notice to
22 withhold and deliver property of any kind if there is reason to believe
23 that there is in the possession of such person, firm, corporation,
24 municipal corporation, political subdivision of the state, public
25 corporation, or agency of the state, property that is due, owing, or
26 belonging to any worker, beneficiary, or other person upon whom a
27 warrant has been served for payments due the department or self-
28 insurer. The notice and order to withhold and deliver shall be served
29 by certified mail accompanied by an affidavit of service by mailing or
30 served by the sheriff of the county, or by the sheriff's deputy, or by
31 any authorized representative of the director, director's designee, or
32 self-insurer. Any person, firm, corporation, municipal corporation,
33 political subdivision of the state, public corporation, or agency of
34 the state upon whom service has been made shall answer the notice
35 within twenty days exclusive of the day of service, under oath and in
36 writing, and shall make true answers to the matters inquired or in the
37 notice and order to withhold and deliver. In the event there is in the
38 possession of the party named and served with such notice and order,

1 any property that may be subject to the claim of the department or
2 self-insurer, such property shall be delivered forthwith to the
3 director, the director's authorized representative, or self-insurer
4 upon demand. If the party served and named in the notice and order
5 fails to answer the notice and order within the time prescribed in this
6 section, the court may, after the time to answer such order has
7 expired, render judgment by default against the party named in the
8 notice for the full amount, plus costs, claimed by the director,
9 director's designee, or self-insurer in the notice. In the event that
10 a notice to withhold and deliver is served upon an employer and the
11 property found to be subject thereto is wages, the employer may assert
12 in the answer all exemptions provided for by chapter 6.27 RCW to which
13 the wage earner may be entitled.

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

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

21 NEW SECTION. **Sec. 3.** Section 2 of this act takes effect July 1,
22 2009.

23 NEW SECTION. **Sec. 4.** This act applies to orders issued on or
24 after the effective date of this section.

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