

1 **ESB 5613 - H AMD 807 ADOPTED 4/13/95**

2 By Representative Lisk

3 Strike everything after the enacting clause and insert the  
4 following:

5 "Sec. 1. RCW 51.52.060 and 1986 c 200 s 11 are each amended  
6 to read as follows:

7 ~~((Any))~~ (1)(a) A worker, beneficiary, employer, or other  
8 person aggrieved by an order, decision, or award of the department  
9 must, before he or she appeals to the courts, file with the board  
10 and the director, by mail or personally, within sixty days from the  
11 day on which ~~((such))~~ a copy of ~~((such))~~ the order, decision, or  
12 award was communicated to such person, a notice of appeal to the  
13 board~~((:—PROVIDED, That))~~. However, a health services provider or  
14 other person aggrieved by a department order or decision making  
15 demand, whether with or without penalty, for repayment of sums paid  
16 to a provider of medical, dental, vocational, or other health  
17 services rendered to an industrially injured worker must, before he  
18 or she appeals to the courts, file with the board and the director,  
19 by mail or personally, within twenty days from the day on which  
20 ~~((such))~~ a copy of ~~((such))~~ the order or decision was communicated  
21 to the health services provider upon whom the department order or  
22 decision was served, a notice of appeal to the board.

23 (b) Failure to file a notice of appeal with both the board and  
24 the department shall not be grounds for denying the appeal if the  
25 notice of appeal is filed with either the board or the department.

26 (2) Within ten days of the date on which an appeal has been  
27 granted by the board, the board shall notify the other interested  
28 parties ~~((thereto))~~ to the appeal of the receipt ~~((thereof))~~ of the  
29 appeal and shall forward a copy of ~~((said))~~ the notice of appeal to  
30 ~~((such))~~ the other interested parties. Within twenty days of the  
31 receipt of such notice of the board, the worker or the employer may

1 file with the board a cross-appeal from the order of the department  
2 from which the original appeal was taken(~~(:—PROVIDED, That nothing~~  
3 ~~contained in this section shall be deemed to change, alter or~~  
4 ~~modify the practice or procedure of the department for the payment~~  
5 ~~of awards pending appeal:— AND PROVIDED, That failure to file~~  
6 ~~notice of appeal with both the board and the department shall not~~  
7 ~~be ground for denying the appeal if the notice of appeal is filed~~  
8 ~~with either the board or the department:— AND PROVIDED, That,)~~).

9 (3) If within the time limited for filing a notice of appeal  
10 to the board from an order, decision, or award of the department,  
11 the department (~~shall~~) directs the submission of further evidence  
12 or the investigation of any further fact, the time for filing  
13 (~~such~~) the notice of appeal shall not commence to run until  
14 (~~such~~) the person (~~shall have~~) has been advised in writing of  
15 the final decision of the department in the matter(~~(:—PROVIDED,~~  
16 ~~FURTHER, That)~~). In the event the department (~~shall~~) directs the  
17 submission of further evidence or the investigation of any further  
18 fact, as (~~above~~) provided in this section, the department shall  
19 render a final order, decision, or award within ninety days from  
20 the date (~~such~~) further submission of evidence or investigation  
21 of further fact is ordered which time period may be extended by the  
22 department for good cause stated in writing to all interested  
23 parties for an additional ninety days(~~(:—PROVIDED, FURTHER,~~  
24 ~~That)~~).

25 (4) The department, either within the time limited for appeal,  
26 or within thirty days after receiving a notice of appeal, may:

27 (a) Modify, reverse, or change any order, decision, or  
28 award(~~, or may~~); or

29 (b)(i) Except as provided in (b)(ii) of this subsection, hold  
30 (~~any such~~) an order, decision, or award in abeyance for a period  
31 of ninety days which time period may be extended by the department  
32 for good cause stated in writing to all interested parties for an

1 additional ninety days pending further investigation in light of  
2 the allegations of the notice of appeal(~~(, and)~~); or

3 (ii) Hold an order, decision, or award issued under RCW  
4 51.32.160 in abeyance for a period not to exceed ninety days from  
5 the date of receipt of an application under RCW 51.32.160. The  
6 department may extend the ninety-day time period for an additional  
7 sixty days for good cause.

8 The board shall (~~thereupon~~) deny the appeal upon the  
9 issuance of an order under (b) (i) or (ii) of this subsection  
10 holding an earlier order, decision, or award in abeyance, without  
11 prejudice to the appellant's right to appeal from any subsequent  
12 determinative order issued by the department.

13 This subsection (4)(b) does not apply to applications deemed  
14 granted under RCW 51.32.160.

15 (5) An employer shall have the right to appeal an application  
16 deemed granted under RCW 51.32.160 on the same basis as any other  
17 application adjudicated pursuant to that section.

18 (6) A provision of this section shall not be deemed to change,  
19 alter, or modify the practice or procedure of the department for  
20 the payment of awards pending appeal.

21  
22 **Sec. 2.** RCW 51.32.160 and 1988 c 161 ú 11 are each amended to  
23 read as follows:

24 (1)(a) If aggravation, diminution, or termination of  
25 disability takes place, the director may, upon the application of  
26 the beneficiary, made within seven years from the date the first  
27 closing order becomes final, or at any time upon his or her own  
28 motion, readjust the rate of compensation in accordance with the  
29 rules in this section provided for the same, or in a proper case  
30 terminate the payment: PROVIDED, That the director may, upon  
31 application of the worker made at any time, provide proper and  
32 necessary medical and surgical services as authorized under RCW  
33 51.36.010. The department shall promptly mail a copy of the

1 application to the employer at the employer's last known address as  
2 shown by the records of the department.

3 (b) "Closing order" as used in this section means an order  
4 based on factors which include medical recommendation, advice, or  
5 examination.

6 (c) Applications for benefits where the claim has been closed  
7 without medical recommendation, advice, or examination are not  
8 subject to the seven year limitation of this section. The  
9 preceding sentence shall not apply to any closing order issued  
10 prior to July 1, 1981. First closing orders issued between July 1,  
11 1981, and July 1, 1985, shall, for the purposes of this section  
12 only, be deemed issued on July 1, 1985. The time limitation of  
13 this section shall be ten years in claims involving loss of vision  
14 or function of the eyes.

15 (d) If an order denying an application to reopen filed on or  
16 after July 1, 1988, is not issued within ninety days of receipt of  
17 such application by the self-insured employer or the department,  
18 such application shall be deemed granted. However, for good cause,  
19 the department may extend the time for making the final  
20 determination on the application for an additional sixty days.

21 (2) If a worker receiving a pension for total disability  
22 returns to gainful employment for wages, the director may suspend  
23 or terminate the rate of compensation established for the  
24 disability without producing medical evidence that shows that a  
25 diminution of the disability has occurred.

26 (3) No act done or ordered to be done by the director, or the  
27 department prior to the signing and filing in the matter of a  
28 written order for such readjustment shall be grounds for such  
29 readjustment."

30  
31 Correct the title.

**EFFECT:** The striking amendment deletes a provision that delayed the start of the time period for reconsidering a reopening application until the self-insurer or retrospective rating plan employer received notice of the application.

Instead, the amendment requires the Department of Labor and Industries to forward a copy of a reopening application to the employer and clarifies that the employer's right to appeal a reopening application that has been deemed granted is on the same basis as appeals of any other adjudicated reopening application.