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SENATE BILL 5140

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State of Washington

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1999 Regular Session

By Senators B. Sheldon, Franklin and Kline

Read first time 01/14/1999. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to appeal of decisions of the department of labor  
2 and industries; amending RCW 51.52.050; and reenacting and amending RCW  
3 51.32.095.

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

5 **Sec. 1.** RCW 51.52.050 and 1987 c 151 s 1 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)~~), as provided in subsection (2) of

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

10 (2) Whenever the department has taken any action or made any  
11 decision relating to any phase of the administration of this title, the  
12 worker, beneficiary, employer, or other person aggrieved thereby may  
13 request reconsideration of the department, or may appeal to the board,  
14 except as provided in RCW 51.32.095. In an appeal before the board,  
15 the appellant shall have the burden of proceeding with the evidence to  
16 establish a prima facie case for the relief sought in such appeal:  
17 PROVIDED, That in an appeal from an order of the department that  
18 alleges fraud, the department or self-insured employer shall initially  
19 introduce all evidence in its case in chief. Any ((such)) person  
20 aggrieved by the decision and order of the board may thereafter appeal  
21 to the superior court, as prescribed in this chapter.

22 **Sec. 2.** RCW 51.32.095 and 1996 c 151 s 1 and 1996 c 59 s 1 are  
23 each reenacted and amended to read as follows:

24 (1) One of the primary purposes of this title is to enable the  
25 injured worker to become employable at gainful employment. To this  
26 end, the department or self-insurers shall utilize the services of  
27 individuals and organizations, public or private, whose experience,  
28 training, and interests in vocational rehabilitation and retraining  
29 qualify them to lend expert assistance to the supervisor of industrial  
30 insurance in such programs of vocational rehabilitation as may be  
31 reasonable to make the worker employable consistent with his or her  
32 physical and mental status. Where, after evaluation and recommendation  
33 by such individuals or organizations and prior to final evaluation of  
34 the worker's permanent disability and in the sole opinion of the  
35 supervisor or supervisor's designee, whether or not medical treatment  
36 has been concluded, vocational rehabilitation is both necessary and  
37 likely to enable the injured worker to become employable at gainful  
38 employment, the supervisor or supervisor's designee may, in his or her

1 sole discretion, pay or, if the employer is a self-insurer, direct the  
2 self-insurer to pay the cost as provided in subsection (3) of this  
3 section.

4 (2) When in the sole discretion of the supervisor or the  
5 supervisor's designee vocational rehabilitation is both necessary and  
6 likely to make the worker employable at gainful employment, then the  
7 following order of priorities shall be used:

8 (a) Return to the previous job with the same employer;

9 (b) Modification of the previous job with the same employer  
10 including transitional return to work;

11 (c) A new job with the same employer in keeping with any  
12 limitations or restrictions;

13 (d) Modification of a new job with the same employer including  
14 transitional return to work;

15 (e) Modification of the previous job with a new employer;

16 (f) A new job with a new employer or self-employment based upon  
17 transferable skills;

18 (g) Modification of a new job with a new employer;

19 (h) A new job with a new employer or self-employment involving on-  
20 the-job training;

21 (i) Short-term retraining and job placement.

22 (3) Costs for vocational rehabilitation benefits allowed by the  
23 supervisor or supervisor's designee under subsection (1) of this  
24 section may include the cost of books, tuition, fees, supplies,  
25 equipment, transportation, child or dependent care, and other necessary  
26 expenses for any such worker in an amount not to exceed three thousand  
27 dollars in any fifty-two week period except as authorized by RCW  
28 51.60.060, and the cost of continuing the temporary total disability  
29 compensation under RCW 51.32.090 while the worker is actively and  
30 successfully undergoing a formal program of vocational rehabilitation.  
31 Such expenses may include training fees for on-the-job training and the  
32 cost of furnishing tools and other equipment necessary for self-  
33 employment or reemployment: PROVIDED, That such compensation or  
34 payment of retraining with job placement expenses may not be authorized  
35 for a period of more than fifty-two weeks: PROVIDED FURTHER, That such  
36 period may, in the sole discretion of the supervisor after his or her  
37 review, be extended for an additional fifty-two weeks or portion  
38 thereof by written order of the supervisor.

1 In cases where the worker is required to reside away from his or  
2 her customary residence, the reasonable cost of board and lodging shall  
3 also be paid. Said costs shall be chargeable to the employer's cost  
4 experience or shall be paid by the self-insurer as the case may be.

5 (4) In addition to the vocational rehabilitation expenditures  
6 provided for under subsection (3) of this section, an additional five  
7 thousand dollars may, upon authorization of the supervisor or the  
8 supervisor's designee, be expended for: (a) Accommodations for an  
9 injured worker that are medically necessary for the worker to  
10 participate in an approved retraining plan; and (b) accommodations  
11 necessary to perform the essential functions of an occupation in which  
12 an injured worker is seeking employment, consistent with the retraining  
13 plan or the recommendations of a vocational evaluation. The injured  
14 worker's attending physician must verify the necessity of the  
15 modifications or accommodations. The total expenditures authorized in  
16 this subsection and the expenditures authorized under RCW 51.32.250  
17 shall not exceed five thousand dollars.

18 (5) The department shall establish criteria to monitor the quality  
19 and effectiveness of rehabilitation services provided by the  
20 individuals and organizations used under subsection (1) of this  
21 section. The state fund shall make referrals for vocational  
22 rehabilitation services based on these performance criteria. Vendors  
23 of vocational rehabilitation services may not appeal to the board of  
24 industrial insurance appeals those decisions or actions the department  
25 takes regarding such referrals for services.

26 (6) The department shall engage in, where feasible and cost-  
27 effective, a cooperative program with the state employment security  
28 department to provide job placement services under this section.

29 (7) The benefits in this section shall be provided for the injured  
30 workers of self-insured employers. Self-insurers shall report both  
31 benefits provided and benefits denied under this section in the manner  
32 prescribed by the department by rule adopted under chapter 34.05 RCW.  
33 The director may, in his or her sole discretion and upon his or her own  
34 initiative or at any time that a dispute arises under this section,  
35 promptly make such inquiries as circumstances require and take such  
36 other action as he or she considers will properly determine the matter  
37 and protect the rights of the parties.

38 (8) The benefits provided for in this section are available to any  
39 otherwise eligible worker regardless of the date of industrial injury.

1 However, claims shall not be reopened solely for vocational  
2 rehabilitation purposes.

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