

HOUSE BILL REPORT

HB 1243

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to reconsideration of department of labor and industries' industrial insurance orders.

Brief Description: Making technical changes to the statute governing reconsideration of industrial insurance orders.

Sponsors: Representatives King, Heavey, G. Cole, Jones and Veloria.

Brief History:

Reported by House Committee on:
Commerce & Labor, February 4, 1994, DPS.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Conway; King; Springer and Veloria.

Minority Report: Do not pass. Signed by 2 members: Representatives Lisk, Ranking Minority Member; and Horn.

Staff: Chris Cordes (786-7117).

Background: Workers, employers, and other parties aggrieved by Department of Labor and Industries' industrial insurance orders are entitled to request reconsideration of an order before appealing to the Board of Industrial Insurance Appeals. The request must be submitted within the time limit specified for appealing the order to the board, but there are no other time limits governing the request for reconsideration.

If the Department of Labor and Industries acts within certain time limits, the department may, on its own motion, hold an industrial insurance order in abeyance for up to 90 days to reconsider the order. For good cause, the department may extend the time period for an additional 90 days.

If the worker has filed an application to reopen a claim, the department must issue an order denying the application

within 90 days of receiving the application. If the order is not issued within the time period, the application is deemed granted. This 90-day period may be extended 60 days for good cause.

In 1993 the Washington Supreme Court determined that these two time periods operate independently. In the case before the court, the department had issued an order denying an application to reopen a claim and had then placed the order in abeyance. The court held that once the department has issued an order denying a reopening application within the applicable time period, the time limits for making the initial decision on the application are satisfied. The department may then hold the order in abeyance for reconsideration for up to 180 days.

Summary of Substitute Bill: If an employer requests reconsideration of a Department of Labor and Industries' order in favor of an injured worker, the employer has 30 days to submit relevant information to the department. The department may only consider information submitted within the time period, unless the department extends the time period for an additional 30 days for good cause.

A worker must continue to receive temporary disability and medical aid benefits while an order granting the benefits is being reconsidered, subject to recoupment of the benefits.

The Department of Labor and Industries' authority to reconsider an industrial insurance order for up to 180 days after the order is placed in abeyance is modified. If the order concerns an application to reopen a claim, the time period for reconsideration may not exceed 90 days from the date that the application was received. The department may extend this period for an additional 60 days for good cause. Reopening applications that are deemed granted by statute may not be held in abeyance.

Technical changes are also made to clarify and reorganize the statute.

Substitute Bill Compared to Original Bill: The substitute bill adds provisions (1) requiring that a worker must continue to receive temporary disability and medical aid benefits while an order granting the benefits is being reconsidered, subject to recoupment of the benefits; and (2) limiting the time period for reconsideration of a Department of Labor and Industries' order involving an application to reopen a claim. The department may not hold the order in abeyance for more than 90 days after the date the reopening application was filed, or more than 150 days total after the filing date if the reconsideration period is extended for

good cause. The department may not hold an order in abeyance that relates to a reopening application that was deemed granted by statute.

Fiscal Note: Requested January 12, 1994.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Original bill) This bill would require employers to justify filing a request for reconsideration. At the point a protest is filed, the employer already has had up to 60 days to gather the information needed to challenge the Department of Labor and Industries' order. The time limitation should not apply to workers because they have no incentive to delay the department's decision if the decision has denied the claim or denied benefits.

(Amendment incorporated in substitute bill) The Department of Labor and Industries has used its authority to reconsider its decisions to delay a final decision. The reason for the statutory time limits for processing a reopening application was to reduce the possibility of long-term disability resulting from delays. Until the application is processed, the worker receives no income benefits or medical treatment. The department should be able to process the reopening application and review any reasons for reconsideration within the original time limits permitted for application processing.

Testimony Against: (Original bill) This bill will increase litigation at the Board of Industrial Insurance Appeals because information that the Department of Labor and Industries will need to settle the dispute will not be available within 30 days. If time limits for submitting information relevant to the reconsideration are to be imposed, the limits should apply to both workers and employers.

(Amendment incorporated in substitute bill) Decisions on reopening applications are made only by the Department of Labor and Industries. The self-insured employer may not make these determinations. If the department delays its decision, the employer is penalized because the application is deemed granted.

Witnesses: (In favor of original bill) Robby Stern, Washington State Labor Council. (Opposed to original bill) Gary Keehn, Washington Self-Insurers Association. (In favor of amendment) Jeff Johnson, Washington State Labor Council. (Opposed to amendment) Steve Harrington, Washington Self-Insurers Association. (Neutral on amendment) Doug Connell,

Department of Labor and Industries.