

SENATE BILL REPORT

ESSB 5515

AS PASSED SENATE, MARCH 17, 1993

Brief Description: Changing provisions relating to industrial insurance claims.

SPONSORS: Senate Committee on Labor & Commerce (originally sponsored by Senators Prentice and Sutherland)

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5515 be substituted therefor, and the substitute bill do pass.

Signed by Senators Moore, Chairman; Prentice, Vice Chairman; Fraser, Pelz, Sutherland, Vognild, and Wojahn.

Minority Report: Do not pass.

Signed by Senators Amondson, Barr, Cantu, Newhouse, and Prince.

Staff: David Cheal (786-7576)

Hearing Dates: February 19, 1993; March 2, 1993

BACKGROUND:

The rules regarding attorney's fees in cases involving appeals from the Board of Industrial Insurance Appeals to the courts have some inequitable features. A claimant could prevail at the board and also prevail in superior court and not be entitled to attorney's fees for the superior court appeal. However, if the worker loses at the board level and wins in superior court, the worker would be entitled to attorney's fees. These rules, such as they are, only apply to the superior court level. In the case of appeals to a higher level, each party apparently must bear his or her own costs.

A claimant is entitled to attorney's fees in court appeals only if time loss is the issue. A claimant might prevail on the issue of being entitled to medical benefits, and would not be entitled to attorney's fees.

Claimants and claimant's attorneys have reported difficulty in obtaining a full copy of the employee's claim file from self-insurers, and of having to pay very high copying costs for the portions of the file that are provided.

There is no time limit within which self-insurers must request allowance or denial of a claim so long as they pay provisional benefits during the pendency of their decision.

SUMMARY:

The rules regarding attorney's fees in appeals from a decision of the Board of Industrial Insurance Appeals either to superior court or the court of appeals are made consistent with the principle that if the worker prevails, the worker is entitled to attorney's fees. An employer with 25 or fewer employees who successfully defends an appeal to Superior Court when the defendant does not appear is entitled to attorney's fees. The worker is also entitled to other litigation costs if he or she prevails. If a worker loses at any of these levels, he or she is not entitled to attorney's fees or costs.

Self-insurers are required to provide a copy of the entire contents of a claim file upon request of an employee or employee's representative, without charge. If the request is for a portion of the file then they only need provide that portion. If a self-insurer determines that disclosure of a portion of the file would be harmful to the claimant, they may withhold that material, if they obtain the department's approval. A self-insurer must notify the department of any protest or appeal of a claims administration decision within five working days of the time they receive the protest or appeal.

A self-insurer must request allowance or denial of a claim within 60 days from the date the claim is filed, or the department is required to promptly adjudicate the claim.

Failure to comply with these requirements can subject a self-insurer to a penalty which is paid to the employee.

Appropriation: none

Revenue: none

Fiscal Note: requested

TESTIMONY FOR:

A claimant can prevail in a dispute with the employer over a worker's compensation issue through an appeal to the Board of Industrial Insurance Appeals and still have to pay his or her own attorney's fees. This huge expense when they are successful and unwilling litigants is unfair.

Claimants are sometimes charged unfairly high amounts to get a copy of their claim.

Self-insurers should either allow a claim or reject a claim within a reasonable time, or demonstrate why they need more time.

TESTIMONY AGAINST:

Using formal discovery procedures in industrial insurance appeals will needlessly increase the cost. Sometimes the defense will call the attending physician as a witness, and

need to meet with them in private to prepare them. The Supreme Court has approved this practice and we should have a chance to see how it works. Self-insurers should be able to make a reasonable charge for files, especially second or subsequent requests (original bill).

Self-insurers often need more than 60 to 90 days to evaluate a claim.

The department might not be able to administer the claim properly as to issues not on appeal, if they cannot communicate freely with the claimants' doctors (original bill).

TESTIFIED: PRO: Wayne Lieb; Dennis Martin; David Westberg; Bob Dilger; CON: Gary Kelin; Kathryn Fewell; Clif Finch; Jody Moran; Mike Watson