
ENGROSSED HOUSE BILL 1894

State of Washington

56th Legislature

1999 Regular Session

By Representative Conway

Read first time 02/09/1999. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to industrial insurance benefit errors; and
2 amending RCW 51.32.240.

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

4 **Sec. 1.** RCW 51.32.240 and 1991 c 88 s 1 are each amended to read
5 as follows:

6 (1) Whenever any payment of benefits under this title is made
7 because of clerical error, mistake of identity, innocent
8 misrepresentation by or on behalf of the recipient thereof mistakenly
9 acted upon, or any other circumstance of a similar nature, all not
10 induced by fraud, the recipient thereof shall repay it and recoupment
11 may be made from any future payments due to the recipient on any claim
12 with the state fund or self-insurer, as the case may be. The
13 department or self-insurer, as the case may be, must make claim for
14 such repayment or recoupment within one year of the making of any such
15 payment or it will be deemed any claim therefor has been waived. The
16 director, pursuant to rules adopted in accordance with the procedures
17 provided in the administrative procedure act, chapter 34.05 RCW, may
18 exercise his discretion to waive, in whole or in part, the amount of

1 any such timely claim where the recovery would be against equity and
2 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 fraud, the recipient
6 may request an adjustment of benefits to be paid from the state fund or
7 by the self-insurer, as the case may be, subject to the following:

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

11 (b) The recipient may not seek an adjustment of benefits because of
12 adjudicator error. "Adjudicator error" includes the failure to
13 consider information in the claim file, failure to secure adequate
14 information, or an error in judgment.

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

27 ~~((+3+))~~ (4) Whenever any payment of benefits under this title has
28 been made pursuant to an adjudication by the department or by order of
29 the board or any court and timely appeal therefrom has been made where
30 the final decision is that any such payment was made pursuant to an
31 erroneous adjudication, the recipient thereof shall repay it and
32 recoupment may be made from any future payments due to the recipient on
33 any claim with the state fund or self-insurer, as the case may be. The
34 director, pursuant to rules adopted in accordance with the procedures
35 provided in the administrative procedure act, chapter 34.05 RCW, may
36 exercise his discretion to waive, in whole or in part, the amount of
37 any such payments where the recovery would be against equity and good
38 conscience.

1 (~~(4)~~) (5) Whenever any payment of benefits under this title has
2 been induced by fraud the recipient thereof shall repay any such
3 payment together with a penalty of fifty percent of the total of any
4 such payments and the amount of such total sum may be recouped from any
5 future payments due to the recipient on any claim with the state fund
6 or self-insurer against whom the fraud was committed, as the case may
7 be, and the amount of such penalty shall be placed in the supplemental
8 pension fund. Such repayment or recoupment must be demanded or ordered
9 within one year of the discovery of the fraud.

10 (~~(5)~~) (6) The worker, beneficiary, or other person affected
11 thereby shall have the right to contest an order assessing an
12 overpayment pursuant to this section in the same manner and to the same
13 extent as provided under RCW 51.52.050 and 51.52.060. In the event
14 such an order becomes final under chapter 51.52 RCW and notwithstanding
15 the provisions of subsections (1) through (~~(4)~~) (5) of this section,
16 the director, director's designee, or self-insurer may file with the
17 clerk in any county within the state a warrant in the amount of the sum
18 representing the unpaid overpayment and/or penalty plus interest
19 accruing from the date the order became final. The clerk of the county
20 in which the warrant is filed shall immediately designate a superior
21 court cause number for such warrant and the clerk shall cause to be
22 entered in the judgment docket under the superior court cause number
23 assigned to the warrant, the name of the worker, beneficiary, or other
24 person mentioned in the warrant, the amount of the unpaid overpayment
25 and/or penalty plus interest accrued, and the date the warrant was
26 filed. The amount of the warrant as docketed shall become a lien upon
27 the title to and interest in all real and personal property of the
28 worker, beneficiary, or other person against whom the warrant is
29 issued, the same as a judgment in a civil case docketed in the office
30 of such clerk. The sheriff shall then proceed in the same manner and
31 with like effect as prescribed by law with respect to execution or
32 other process issued against rights or property upon judgment in the
33 superior court. Such warrant so docketed shall be sufficient to
34 support the issuance of writs of garnishment in favor of the department
35 or self-insurer in the manner provided by law in the case of judgment,
36 wholly or partially unsatisfied. The clerk of the court shall be
37 entitled to a filing fee of five dollars, which shall be added to the
38 amount of the warrant. A copy of such warrant shall be mailed to the

1 worker, beneficiary, or other person within three days of filing with
2 the clerk.

3 The director, director's designee, or self-insurer may issue to any
4 person, firm, corporation, municipal corporation, political subdivision
5 of the state, public corporation, or agency of the state, a notice to
6 withhold and deliver property of any kind if there is reason to believe
7 that there is in the possession of such person, firm, corporation,
8 municipal corporation, political subdivision of the state, public
9 corporation, or agency of the state, property that is due, owing, or
10 belonging to any worker, beneficiary, or other person upon whom a
11 warrant has been served for payments due the department or self-
12 insurer. The notice and order to withhold and deliver shall be served
13 by certified mail accompanied by an affidavit of service by mailing or
14 served by the sheriff of the county, or by the sheriff's deputy, or by
15 any authorized representative of the director, director's designee, or
16 self-insurer. Any person, firm, corporation, municipal corporation,
17 political subdivision of the state, public corporation, or agency of
18 the state upon whom service has been made shall answer the notice
19 within twenty days exclusive of the day of service, under oath and in
20 writing, and shall make true answers to the matters inquired or in the
21 notice and order to withhold and deliver. In the event there is in the
22 possession of the party named and served with such notice and order,
23 any property that may be subject to the claim of the department or
24 self-insurer, such property shall be delivered forthwith to the
25 director, the director's authorized representative, or self-insurer
26 upon demand. If the party served and named in the notice and order
27 fails to answer the notice and order within the time prescribed in this
28 section, the court may, after the time to answer such order has
29 expired, render judgment by default against the party named in the
30 notice for the full amount, plus costs, claimed by the director,
31 director's designee, or self-insurer in the notice. In the event that
32 a notice to withhold and deliver is served upon an employer and the
33 property found to be subject thereto is wages, the employer may assert
34 in the answer all exemptions provided for by chapter 6.27 RCW to which
35 the wage earner may be entitled.

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

1 (~~(6)~~) (7) Orders assessing an overpayment which are issued on or
2 after July 28, 1991, shall include a conspicuous notice of the
3 collection methods available to the department or self-insurer.

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