
SENATE BILL 5234

State of Washington

57th Legislature

2001 Regular Session

By Senator Swecker

Read first time 01/16/2001. Referred to Committee on Labor, Commerce & Financial Institutions.

1 AN ACT Relating to supplemental medical opinions; amending RCW
2 51.52.050 and 51.52.070; reenacting and amending RCW 51.52.060;
3 and adding a new section to chapter 51.52 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.52
6 RCW to read as follows:

7 In order to provide additional medical evidence to supplement
8 the worker's record in preparation for an appeal of an action of
9 the department to the board, a worker may seek a supplementary
10 medical exam and opinion. If a worker intends to seek an opinion,
11 the worker must file with the department and with the board within
12 sixty days from the day on which a copy of the order, decision, or
13 award was communicated to the worker, a notice that the worker
14 will be seeking a supplementary opinion. The filing of this notice
15 entitles the worker to an additional sixty days in which to file a
16 notice of appeal, and must contain a submission of the names of
17 two licensed physicians. The department must select one of the two
18 physicians to perform the exam and issue the medical opinion. If

1 the department has not indicated to the worker the department's
2 selection of physician within twenty days of receiving the
3 submission, the worker may seek a medical exam and opinion from
4 either of the two physicians. The worker must submit a complete
5 copy of the medical opinion together with his or her notice of
6 appeal to the department and to the board within the time for
7 appeals specified in RCW 51.52.060, and the opinion must be made
8 part of the worker's record on appeal. The cost of the supplemental
9 medical exam will be paid by the department.

10 **Sec. 2.** RCW 51.52.050 and 1987 c 151 s 1 are each amended to read
11 as follows:

12 Whenever the department has made any order, decision, or award,
13 it shall promptly serve the worker, beneficiary, employer, or
14 other person affected thereby, with a copy thereof by mail, which
15 shall be addressed to such person at his or her last known address
16 as shown by the records of the department. The copy, in case the
17 same is a final order, decision, or award, shall bear on the same
18 side of the same page on which is found the amount of the award, a
19 statement, set in black faced type of at least ten point body or
20 size, that such final order, decision, or award shall become final
21 within sixty days from the date the order is communicated to the
22 parties unless a written request for reconsideration is filed with
23 the department of labor and industries, Olympia, or an appeal is
24 filed with the board of industrial insurance appeals, Olympia(~~+~~
25 ~~PROVIDED, That~~)). In addition, the order must include a statement
26 informing the worker of his or her rights under section 1 of this
27 act. A department order or decision making demand, whether with or
28 without penalty, for repayment of sums paid to a provider of
29 medical, dental, vocational, or other health services rendered to
30 an industrially injured worker, shall state that such order or
31 decision shall become final within twenty days from the date the
32 order or decision is communicated to the parties unless a written
33 request for reconsideration is filed with the department of labor
34 and industries, Olympia, or an appeal is filed with the board of
35 industrial insurance appeals, Olympia.

36 Whenever the department has taken any action or made any
37 decision relating to any phase of the administration of this title

1 the worker, beneficiary, employer, or other person aggrieved
2 thereby may request reconsideration of the department, or may
3 appeal to the board. In an appeal before the board, the appellant
4 shall have the burden of proceeding with the evidence to establish
5 a prima facie case for the relief sought in such appeal: PROVIDED,
6 That in an appeal from an order of the department that alleges
7 fraud, the department or self-insured employer shall initially
8 introduce all evidence in its case in chief. Any such person
9 aggrieved by the decision and order of the board may thereafter
10 appeal to the superior court, as prescribed in this chapter.

11 **Sec. 3.** RCW 51.52.060 and 1995 c 253 s 1 and 1995 c 199 s 7 are
12 each reenacted and amended to read as follows:

13 (1)(a) Except as otherwise specifically provided in this
14 section, a worker, beneficiary, employer, health services
15 provider, or other person aggrieved by an order, decision, or
16 award of the department must, before he or she appeals to the
17 courts, file with the board and the director, by mail or
18 personally, within sixty days from the day on which a copy of the
19 order, decision, or award was communicated to such person, a
20 notice of appeal to the board. However, a worker who files a notice
21 with the department and the board indicating that he or she
22 intends to seek a supplementary medical opinion has one hundred
23 twenty days from the day on which a copy of the order, decision,
24 or award was communicated to the worker to file a notice of appeal
25 to the board. Upon filing the notice of appeal, the worker must
26 submit a complete copy of the supplemental medical opinion. If the
27 worker does not include the supplemental medical opinion with the
28 appeal, and more than one hundred twenty days have passed since
29 the order, decision, or award was communicated to the worker, the
30 appeal will be dismissed. A health services provider or other
31 person aggrieved by a department order or decision making demand,
32 whether with or without penalty, solely for repayment of sums paid
33 to a provider of medical, dental, vocational, or other health
34 services rendered to an industrially injured worker must, before
35 he or she appeals to the courts, file with the board and the
36 director, by mail or personally, within twenty days from the day

1 on which a copy of the order or decision was communicated to the
2 health services provider upon whom the department order or
3 decision was served, a notice of appeal to the board.

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

7 (2) Within ten days of the date on which an appeal has been
8 granted by the board, the board shall notify the other interested
9 parties to the appeal of the receipt of the appeal and shall
10 forward a copy of the notice of appeal to the other interested
11 parties. Within twenty days of the receipt of such notice of the
12 board, the worker or the employer may file with the board a cross-
13 appeal from the order of the department from which the original
14 appeal was taken.

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

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

31 (a) Modify, reverse, or change any order, decision, or award;
32 or

33 (b)(i) Except as provided in (b)(ii) of this subsection, hold
34 an order, decision, or award in abeyance for a period of ninety
35 days which time period may be extended by the department for good
36 cause stated in writing to all interested parties for an
37 additional ninety days pending further investigation in light of
38 the allegations of the notice of appeal; or

1 (ii) Hold an order, decision, or award issued under RCW
2 51.32.160 in abeyance for a period not to exceed ninety days from
3 the date of receipt of an application under RCW 51.32.160. The
4 department may extend the ninety-day time period for an additional
5 sixty days for good cause.

6 For purposes of this subsection, good cause includes delay that
7 results from conduct of the claimant that is subject to sanction
8 under RCW 51.32.110.

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

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

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

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

22 **Sec. 4.** RCW 51.52.070 and 1977 ex.s. c 350 s 77 are each amended
23 to read as follows:

24 The notice of appeal to the board shall set forth in full
25 detail the grounds upon which the person appealing considers such
26 order, decision, or award is unjust or unlawful, and shall include
27 every issue to be considered by the board, and it must contain a
28 detailed statement of facts upon which such worker, beneficiary,
29 employer, or other person relies in support thereof. If a worker
30 has filed a notice indicating his or her intent to seek a
31 supplementary medical opinion, the complete opinion must be
32 included with the notice of appeal filed with the department and
33 with the board. The worker, beneficiary, employer, or other
34 person shall be deemed to have waived all objections or
35 irregularities concerning the matter on which such appeal is taken
36 other than those specifically set forth in such notice of appeal
37 or appearing in the records of the department. The department shall

1 promptly transmit its original record, or a legible copy thereof
2 produced by mechanical, photographic, or electronic means, in such
3 matter to the board.

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