
SENATE BILL 5728

State of Washington

57th Legislature

2001 Regular Session

By Senators Eide, Winsley, Prentice and Rasmussen

Read first time 02/01/2001. Referred to Committee on Labor, Commerce & Financial Institutions.

1 AN ACT Relating to industrial insurance benefits paid during
2 appeal; amending RCW 51.52.050; reenacting and amending RCW 51.52.060;
3 and declaring an emergency.

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)~~). However, a department order or

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

9 (2) Whenever the department has taken any action or made any
10 decision relating to any phase of the administration of this title, the
11 worker, beneficiary, employer, or other person aggrieved thereby may
12 request reconsideration of the department, or may appeal to the board.
13 If an employer requests reconsideration of a department order in favor
14 of an injured worker, temporary total disability compensation or
15 medical aid benefits granted to the worker by the order under
16 reconsideration shall continue while the reconsideration is pending,
17 subject to the requirements of RCW 51.32.240(4).

18 (3) In an appeal before the board, the appellant shall have the
19 burden of proceeding with the evidence to establish a prima facie case
20 for the relief sought in such appeal(~~(:—PROVIDED, That)~~). However, in
21 an appeal from an order of the department that alleges fraud, the
22 department or self-insured employer shall initially introduce all
23 evidence in its case in chief. (~~(Any such)~~) A person aggrieved by the
24 decision and order of the board may thereafter appeal to the superior
25 court, as prescribed in this chapter.

26 **Sec. 2.** RCW 51.52.060 and 1995 c 253 s 1 and 1995 c 199 s 7 are
27 each reenacted and amended to read as follows:

28 (1)(a) Except as otherwise specifically provided in this section,
29 a worker, beneficiary, employer, health services provider, or other
30 person aggrieved by an order, decision, or award of the department
31 must, before he or she appeals to the courts, file with the board and
32 the director, by mail or personally, within sixty days from the day on
33 which a copy of the order, decision, or award was communicated to such
34 person, a notice of appeal to the board. However, a health services
35 provider or other person aggrieved by a department order or decision
36 making demand, whether with or without penalty, solely for repayment of
37 sums paid to a provider of medical, dental, vocational, or other health
38 services rendered to an industrially injured worker must, before he or

1 she appeals to the courts, file with the board and the director, by
2 mail or personally, within twenty days from the day on which a copy of
3 the order or decision was communicated to the health services provider
4 upon whom the department order or decision was served, a notice of
5 appeal to the board.

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

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

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

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

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

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

38 (ii) Hold an order, decision, or award issued under RCW 51.32.160
39 in abeyance for a period not to exceed ninety days from the date of

1 receipt of an application under RCW 51.32.160. The department may
2 extend the ninety-day time period for an additional sixty days for good
3 cause.

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

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

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

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

17 (6) A provision of this section shall not be deemed to change,
18 alter, or modify the practice or procedure of the department for the
19 payment of awards pending appeal. However, if an employer appeals to
20 the board a department order granting temporary total disability
21 compensation or medical aid benefits to a worker, the worker shall be
22 entitled to the compensation or medical aid benefits while the appeal
23 is pending before the board, subject to the requirements of RCW
24 51.32.240(4).

25 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
26 preservation of the public peace, health, or safety, or support of the
27 state government and its existing public institutions, and takes effect
28 immediately.

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