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HOUSE BILL 1611

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State of Washington

58th Legislature

2003 Regular Session

By Representatives Conway, Wood and Kenney

Read first time 02/03/2003. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to requiring payment of industrial insurance  
2 benefits during reconsideration or appeal; amending RCW 51.52.050;  
3 reenacting and amending RCW 51.52.060; 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(~~(7)~~) or may appeal to the  
13 board. If an employer requests reconsideration of a department order  
14 in favor of an injured worker, temporary total disability compensation  
15 or 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

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

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

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

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

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

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

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

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

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

9 The board shall deny the appeal upon the issuance of an order under  
10 (b)(i) or (ii) of this subsection holding an earlier order, decision,  
11 or award in abeyance, without prejudice to the appellant's right to  
12 appeal from any subsequent determinative order issued by the  
13 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 the  
21 payment of awards pending appeal. However, if an employer appeals to  
22 the board a department order granting temporary total disability  
23 compensation or medical aid benefits to a worker, the worker shall be  
24 entitled to the compensation or medical aid benefits while the appeal  
25 is pending before the board, subject to the requirements of RCW  
26 51.32.240(4).

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

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