

SENATE BILL REPORT

E2SHB 3139

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, February 28, 2008

Title: An act relating to industrial insurance benefits on appeal.

Brief Description: Providing for stays of industrial insurance orders on appeal.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Conway, Wood, Green, Moeller, Simpson and Ormsby).

Brief History: Passed House: 2/19/08, 62-32.

Committee Activity: Labor, Commerce, Research & Development: 2/26/08, 2/28/08 [DPA, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: Do pass as amended.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin, Murray and Prentice.

Minority Report: Do not pass.

Signed by Senators Holmquist, Ranking Minority Member; King.

Staff: Mac Nicholson (786-7445)

Background: Workers injured in the course of employment may receive various benefits under the Industrial Insurance Act, including payment for medical care directly related to the accident and time loss compensation. Employers must insure with the state fund managed by the Department of Labor and Industries (L&I), or may self-insure if the employer meets certain criteria.

An injured worker, the worker's employer, and the injured worker's doctor may protest or appeal any decision about the claim made by L&I. A protest or appeal must be filed within 60 days from the date the order or decision is communicated to the parties. The protest may be a written request for reconsideration filed with L&I, or an appeal filed with the Board of Industrial Insurance Appeals (BIIA). When the BIIA receives an appeal and determines it has proper jurisdiction, the BIIA will issue an order granting appeal. In appeal before the BIIA, the party appealing the decision has the burden of showing that L&I's decision was incorrect. Any party who disagrees with a BIIA order may appeal the order within 30 days to superior court.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

When an employer insured with the state fund appeals an L&I order, L&I will review the case and determine whether or not to continue paying benefits to the injured worker during the appeal. If L&I's order is reversed, the worker must repay benefits received, and L&I may recoup overpayments from future payments.

Summary of Bill (Recommended Amendments): An L&I order awarding benefits is effective and benefits are due on the date the order is issued. If an order is appealed, benefits will continue to be paid unless the BIIA stays the order. Any employer may ask the BIIA to stay the L&I order within 15 days of the BIIA order granting appeal. The BIIA must grant a motion to stay if the BIIA determines that it is more likely than not that the moving party will prevail on the facts as they existed at the time of the order. The BIIA cannot consider the likelihood of recoupment of benefits as a basis to grant or deny a motion to stay.

When a motion to stay an order on appeal is filed, the BIIA must conduct an expedited review of the claim file and issue a final decision within 25 days. The BIIA's final review may be appealed to superior court.

The BIIA must provide the worker with notice about the potential of an overpayment of benefits and the requirements for interest on unpaid benefits. A worker may request that benefits cease pending appeal by filing a written request with the employer, the BIIA, and L&I.

If a worker or medical provider requests reconsideration of a permanent partial disability award and L&I issues an order to increase that amount, the original amount of the award will not be stayed. If the order granting the increase is appealed, however, the amount of the increase will be stayed pending a final decision on the merits.

If any party appeals an order establishing a worker's wages or the compensation rate at which a worker will be paid temporary or permanent disability or loss of earning power benefits, the worker will receive payment based on the wage or rate not in dispute. Payment of benefits or consideration of wages at any higher rate will be stayed without further action pending a final decision.

L&I must establish procedures to collect information concerning self-insured claim overpayments resulting from decisions of the BIIA or court, and to recoup these overpayments from state fund claims. If recovery is made on behalf of a self-insurer from a worker's state fund claim, the amount recovered must be paid to the self-insurer.

L&I may provide overpayment information to a self-insurer about worker benefits from which the self-insurer can collect overpayments on behalf of L&I or another self-insurer. In such cases, any amounts recovered by the self-insurer must be submitted to L&I, who must credit the amount to the appropriate workers' compensation funds or forward the amount to the appropriate self-insurer.

Health service providers who provided treatment or services authorized by L&I or the self-insurer are not considered recipients of benefits from whom L&I or a self-insurer may recover overpayments resulting from a BIIA or court decision.

L&I or a self-insurer may recover overpayments for health services from any entity that provided health insurance to the worker to the extent that the health insurance entity would

have provided health insurance benefits had the worker not been covered by workers' compensation.

L&I is to study appeals of workers' compensation cases and collect information on the impacts of this legislation on state fund and self-insured workers and employers. Among other issues, the study must consider the frequency and outcomes of appeals, the number and amount of overpayments resulting from decisions of the BIIA or court, and the processes used to recoup overpayments. A preliminary report to the Workers' Compensation Advisory Committee (WCAC) by July 1, 2009, and a final report and recommendations are due December 1, 2011. WCAC must provide recommendations for addressing overpayments resulting from this act, including the need for and ability to fund a permanent method to reimburse employer and state fund overpayment costs.

The legislation applies to orders issued on or after the effective date.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE, RESEARCH & DEVELOPMENT COMMITTEE (Recommended Amendments): The striking amendment adds language requiring the BIIA to provide notice to the worker about the potential for overpayment and allowing the worker to request that benefits cease pending the appeal. The striking amendment also extends the L&I study to 2011 and modifies the scope of the study.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed; except for section 2, relating to rules and procedures to collect information on self-insured claim overpayments, which takes effect July 1, 2009.

Staff Summary of Public Testimony on Engrossed Second Substitute Bill: PRO: This bill safeguards the delivery of benefits while protecting the employer's right to a quick review. There is little impact on the state fund, which pays benefits during appeals. The average costs of overpayments is small. The bill doesn't add new benefits, it just stops the abuse of withholding benefits by filing an appeal. Injured workers should get their benefits.

CON: The bill should have a better recoupment process for employers. The mechanisms for employer recoupment are woefully inadequate. Employers shouldn't have to garnish wages or put liens on employee property to recover overpayments. The average per case cost of an employer appeal is significant.

OTHER: L&I is neutral on the legislation, but agrees with the principle behind the bill. Workers shouldn't be in a financial hardship pending resolution of the appeal. There are many opportunities during the process for issues to be resolved by the parties, and L&I is willing to further work on the issue.

Persons Testifying: PRO: Representative Conway, prime sponsor; Owen Linch, Teamsters; Jane Dickeson; Kevin Rojecki, Washington State Council of Fire Fighters.

CON: Elizabeth McIntyre, City of Puyallup; Kathleen Collins, Washington Self Insurer's Association; Fred Kiga, Boeing.

OTHER: Vickie Kennedy, L&I.