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SENATE BILL 6008

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State of Washington

61st Legislature

2009 Regular Session

By Senators Holmquist and Honeyford

Read first time 02/13/09. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to actions by the department of labor and  
2 industries that affect worker benefits; and amending RCW 51.52.050.

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

4 **Sec. 1.** RCW 51.52.050 and 2008 c 280 s 1 are each amended to read  
5 as follows:

6 (1) Whenever the department has made any order, decision, or award,  
7 it shall promptly serve the worker, beneficiary, employer, or other  
8 person affected thereby, with a copy thereof by mail, which shall be  
9 addressed to such person at his or her last known address as shown by  
10 the records of the department. The copy, in case the same is a final  
11 order, decision, or award, shall bear on the same side of the same page  
12 on which is found the amount of the award, a statement, set in black  
13 faced type of at least ten point body or size, that such final order,  
14 decision, or award shall become final within sixty days from the date  
15 the order is communicated to the parties unless a written request for  
16 reconsideration is filed with the department of labor and industries,  
17 Olympia, or an appeal is filed with the board of industrial insurance  
18 appeals, Olympia. However, a department order or decision making  
19 demand, whether with or without penalty, for repayment of sums paid to

1 a provider of medical, dental, vocational, or other health services  
2 rendered to an industrially injured worker, shall state that such order  
3 or decision shall become final within twenty days from the date the  
4 order or decision is communicated to the parties unless a written  
5 request for reconsideration is filed with the department of labor and  
6 industries, Olympia, or an appeal is filed with the board of industrial  
7 insurance appeals, Olympia.

8 (2)(a) Whenever the department has taken any action or made any  
9 decision relating to any phase of the administration of this title the  
10 worker, beneficiary, employer, or other person aggrieved thereby may  
11 request reconsideration of the department, or may appeal to the board.  
12 In an appeal before the board, the appellant shall have the burden of  
13 proceeding with the evidence to establish a prima facie case for the  
14 relief sought in such appeal.

15 (b) An order by the department awarding benefits shall become  
16 effective and benefits due (~~on the date issued.~~) within fourteen days  
17 of the date the order becomes final under subsection (1) of this  
18 section. If the department has considered correspondence, medical or  
19 vocational reports, or other information not previously submitted by  
20 the employer, it shall send copies of that information to the employer  
21 with the employer's copy of the department's order. If a written  
22 request for reconsideration of the order is filed under subsection (1)  
23 of this section, or if the department directs submission of further  
24 evidence under RCW 51.52.060(3), or takes further action under RCW  
25 51.52.060(4), the payment of benefits shall be stayed pending issuance  
26 of a further order by the department. Otherwise, subject to (b)(i) and  
27 (ii) of this subsection, if the department order is appealed to the  
28 board of industrial insurance appeals the order shall not be stayed  
29 pending a final decision on the merits unless ordered by the board.  
30 Upon issuance of the order granting the appeal, the board will provide  
31 the worker with notice concerning the potential of an overpayment of  
32 benefits paid pending the outcome of the appeal and the requirements  
33 for interest on unpaid benefits pursuant to RCW 51.52.135. A worker  
34 may request that benefits cease pending appeal at any time following  
35 the employer's motion for stay or the board's order granting appeal.  
36 The request must be submitted in writing to the employer, the board,  
37 (~~and~~) or the department. Any employer may move for a stay of the  
38 order on appeal, in whole or in part. The motion must be filed within

1 fifteen days (~~of the order granting appeal.~~) from the date the  
2 board's order granting appeal is communicated to the employer. If no  
3 timely motion for stay is filed, any benefits awarded by the order are  
4 then due. If a motion for stay is timely filed, the board shall  
5 conduct an expedited review of the claim file provided by the  
6 department as it existed on the date of the department order on appeal.  
7 The board shall issue a (~~final~~) decision within twenty-five days of  
8 the filing of the motion for stay or the order granting appeal,  
9 whichever is later. The board's (~~final~~) decision may be appealed to  
10 superior court for a nonjury trial in accordance with RCW 51.52.110.  
11 The board shall grant a motion to stay if the moving party demonstrates  
12 that it is more likely than not to prevail on the facts as they existed  
13 at the time of the order on appeal. The board shall not consider the  
14 likelihood of recoupment of benefits as a basis to grant or deny a  
15 motion to stay. If the motion for stay is denied, any benefits awarded  
16 by the department order on appeal shall become due fifteen days from  
17 the date the board's decision becomes final pursuant to RCW 51.52.110.  
18 If a self-insured employer prevails on the merits, any benefits paid  
19 may be recouped pursuant to RCW 51.32.240.

20 (i) If upon reconsideration requested by a worker or medical  
21 provider, the department has ordered an increase in a permanent partial  
22 disability award from the amount reflected in an earlier order, the  
23 award reflected in the earlier order shall not be stayed pending a  
24 final decision on the merits. However, the increase is stayed without  
25 further action by the board pending a final decision on the merits.

26 (ii) If any party appeals an order establishing a worker's wages or  
27 the compensation rate at which a worker will be paid temporary or  
28 permanent total disability or loss of earning power benefits, the  
29 worker shall receive payment pending a final decision on the merits  
30 based on the following:

31 (A) When the employer is self-insured, the wage calculation or  
32 compensation rate the employer most recently submitted to the  
33 department; or

34 (B) When the employer is insured through the state fund, the  
35 highest wage amount or compensation rate uncontested by the parties.

36 Payment of benefits or consideration of wages at a rate that is  
37 higher than that specified in (b)(ii)(A) or (B) of this subsection is

1 stayed without further action by the board pending a final decision on  
2 the merits.

3 (c) In an appeal from an order of the department that alleges  
4 willful misrepresentation, the department or self-insured employer  
5 shall initially introduce all evidence in its case in chief. Any such  
6 person aggrieved by the decision and order of the board may thereafter  
7 appeal to the superior court, as prescribed in this chapter.

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