S T A T E O F N E W Y O R K

3381

2009-2010 Regular Sessions

I N S E N A T E

March 17, 2009

Introduced by Sens. ONORATO, SAVINO -- (at request of the Workers Compensation Board) -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to setting a time limit for requesting full board review of unanimous board panel decisions

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 23 of the workers' compensation law, as amended by chapter 6 of the laws of 2007, is amended to read as follows:

S 23. Appeals. An award or decision of the board shall be final and conclusive upon all questions within its jurisdiction, as against the state fund or between the parties, unless reversed or modified on appeal therefrom as hereinafter provided. Any party may within thirty days after notice of the filing of an award or decision of a referee, file with the board an application in writing for a modification or rescission or review of such award or decision, as provided in this chapter. The board shall render its decision upon such application in writing and shall include in such decision a statement of the facts which formed the basis of its action on the issues raised before it on such application. Within thirty days after notice of the decision of the board upon such application has been served upon the parties, or within thirty days after notice of an administrative redetermination review decision by the chair pursuant to subdivision five of section fifty-two, section one hundred thirty-one or section one hundred forty-one-a of this chapter has been served upon any party in interest, an appeal may be taken therefrom to the appellate division of the supreme court, third department, by any party in interest, including an employer insured in the state fund; provided, however, that [if the decision or determination was that of a panel of the board and there was a dissent from such decision or determination other than a dissent the sole basis of which is to refer

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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the case to an impartial specialist,] any party in interest may within thirty days after notice of the filing of the board panel's decision with the secretary of the board, make application in writing for review thereof by the full board, [and] RAISING ARGUMENTS RELATIVE TO THE ALLEGED DEFICIENCIES OF THE BOARD PANEL DECISION. IF THE DECISION OR DETERMINATION WAS THAT OF A PANEL OF THE BOARD AND THERE WAS A DISSENT FROM SUCH DECISION OR DETERMINATION OTHER THAN A DISSENT THE SOLE BASIS OF WHICH IS TO REFER THE CASE TO AN IMPARTIAL SPECIALIST, the full board shall review and affirm, modify or rescind such decision or determination in the same manner as herein above provided for an award or decision of a referee. IF THE DECISION OR DETERMINATION WAS THAT OF A UNANIMOUS PANEL OF THE BOARD, OR THERE WAS A DISSENT FROM SUCH DECISION OR DETERMINATION THE SOLE BASIS OF WHICH IS TO REFER THE CASE TO AN IMPARTIAL SPECIALIST, THE FULL BOARD MAY IN ITS SOLE DISCRETION REVIEW AND AFFIRM, MODIFY OR RESCIND SUCH DECISION OR DETERMINATION IN THE SAME MANNER AS HEREIN ABOVE PROVIDED FOR AN AWARD OR DECISION OF A REFEREE. Failure to apply for review by the full board shall not bar any party in interest from taking an appeal directly to the court as above provided. The board may also, in its discretion certify to such appellate division of the supreme court, questions of law involved in its decision. Such appeals and the question so certified shall be heard in a summary manner and shall have precedence over all other civil cases in such court. The board shall be deemed a party to every such appeal from its decision upon such application, and the chair shall be deemed a party to every such appeal from an administrative redetermination review decision pursuant to subdivision five of section fifty-two of this chapter. The attorney general shall represent the board and the chair thereon. An appeal may also be taken to the court of appeals in the same manner and subject to the same limitations not inconsistent herewith as is now provided in the civil practice law and rules. It shall not be necessary to file exceptions to the rulings of the board. An appeal to the appellate division of the supreme court, third department, or to the court of appeals, shall not operate as a stay of the payment of compensation required by the terms of the award or of the payment of the cost of such medical, dental, surgical, optometric or other attendance, treatment, devices, apparatus or other necessary items the employer is required to provide pursuant to section thirteen of this article which are found to be fair and reasonable. Where such award is modified or rescinded upon appeal, the appellant shall be entitled to reimbursement in a sum equal to the compensation in dispute paid to the respondent in addition to a sum equal to the cost of such medical, dental, surgical, optometric or other attendance, treatment, devices, apparatus or other necessary items the employer is required to provide pursuant to section thirteen of this article paid by the appellant pending adjudication of the appeal. Such reimbursement shall be paid from administration expenses as provided in section one hundred fifty-one of this chapter upon audit and warrant of the comptroller upon vouchers approved by the chair. Where such award is subject to the provisions of section twenty-seven of this article, the appellant shall pay directly to the claimant all compensation as it becomes due during the pendency of the appeal, and upon affirmance shall be entitled to credit for such payments. Neither the chair, the board, the commissioners of the state insurance fund nor the claimant shall be required to file a bond upon an appeal to the court of appeals. Upon final determination of such an appeal, the board or chair, as the case may be, shall enter an order in accordance therewith. Whenever a notice of appeal is served or an application made to the board by the employer

or insurance carrier for a modification or rescission or review of an award or decision, and the board shall find that such notice of appeal was served or such application was made for the purpose of delay or upon frivolous grounds, the board shall impose a penalty in the amount of five hundred dollars upon the employer or insurance carrier, which penalty shall be added to the compensation and paid to the claimant. The penalties provided herein shall be collected in like manner as compensation. A party against whom an award of compensation shall be made may appeal from a part of such award. In such a case the payment of such part of the award as is not appealed from shall not prejudice any rights of such party on appeal, nor be taken as an admission against such party. Any appeal by an employer from an administrative redetermination review decision pursuant to subdivision five of section fifty-two of this chapter shall in no way serve to relieve the employer from the obligation to timely pay compensation and benefits otherwise payable in accordance with the provisions of this chapter.

Nothing [herein] contained IN THIS SECTION shall be construed to inhibit the continuing jurisdiction of the board as provided in section one hundred twenty-three of this chapter.

S 2. The opening paragraph of subdivision 2 of section 142 of the workers' compensation law, as amended by chapter 608 of the laws of 1989, is amended to read as follows:

2. Any review, hearing, rehearing, inquiry or investigation required or authorized to be conducted or made by the workers' compensation board may be conducted or made by any panel of the board consisting of not less than three members thereof, and the order, decision or determination of a majority of the members of a panel shall be deemed the order, decision or determination of the board from the date of filing thereof with the secretary of the board, unless the board on its own motion, or on application by a party in interest for a full board review MADE IN ACCORDANCE WITH SECTION TWENTY-THREE OF THIS CHAPTER, shall modify or rescind such order, decision or determination. Four panels shall be constituted at all times, and the chair shall assign the members to the panels upon which they shall serve. At least one member on each panel shall be an attorney and counsellor-at-law, but the absence of an attorney on any panel shall not invalidate the order, decision or determination of a majority of the members of the panel if at least two affirmative votes are cast in favor of such action. The panels shall be constituted so that the members of the board shall alternate in their periods of service together thereon. Whenever a number of proceedings remains pending before the board for a period in excess of thirty days, members of the board shall hold hearings and otherwise act in the discharge of their duties evenings and at other convenient times on all days of the week except Sundays, in addition to the times when they would perform such duties in the ordinary conduct of the business of the board, in order to expedite the disposal thereof. The chair may and shall, when directed by the governor, prescribe the hours and the times for such additional performance of duty by the members of the board and the period or periods for the continuance thereof.

S 3. This act shall take effect immediately and shall apply to all requests for review by the full board from decisions of a panel of a board issued after the ninetieth day after it shall have become a law.