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

440

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. JOHN -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to non-recoverable benefits

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

Section 1. Paragraph (c) of subdivision 1 of section 538 of the labor law, as amended by chapter 831 of the laws of 1981, is amended to read as follows:

(c) Claims of representatives for services rendered to a claimant in connection with any claim arising under this article shall not be enforceable unless approved by the appeal board and shall in no event exceed the benefit allowed, INCLUDING BENEFITS THAT ARE NON-RECOVERABLE PURSUANT TO SUBDIVISION FOUR OF SECTION FIVE HUNDRED NINETY-SEVEN OF THIS ARTICLE, except as provided in paragraph (d) of this subdivision. In approving any fee requested by a representative pursuant to this section, the appeal board shall consider the following factors: (i) the total benefit allowed; (ii) the time spent in providing representation; (iii) the legal and factual complexities involved; and (iv) such other factors as the appeal board may deem relevant.

S 2. Subdivision 4 of section 597 of the labor law, as amended by chapter 61 of the laws of 1998, is amended to read as follows:

4. Effect of review. Whenever a new determination in accordance with [the preceding] subdivision THREE OF THIS SECTION or a decision by a referee, the appeal board, or a court results in a decrease or denial of benefits previously allowed, such new determination or decision, unless it shall be based upon a retroactive payment of remuneration, shall not affect the rights to any benefits already paid under the authority of the prior determination or decision provided they were accepted by the claimant in good faith and the claimant did not make any false statement or representation and did not wilfully conceal any pertinent fact in

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

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connection with his or her claim for benefits. NON-RECOVERABLE BENEFITS PURSUANT TO THIS SECTION SHALL BE CONSIDERED TO HAVE BEEN ALLOWED BENEFITS FOR PURPOSES OF SECTION FIVE HUNDRED THIRTY-EIGHT OF THIS ARTICLE.

S 3. This act shall take effect immediately.