

7680

2009-2010 Regular Sessions

I N   A S S E M B L Y

April 21, 2009

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Introduced by M. of A. MENG -- (at request of the Workers Compensation Board) -- read once and referred 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:

1     Section 1. Section 23 of the workers' compensation law, as amended by  
2 chapter 6 of the laws of 2007, is amended to read as follows:  
3     S 23. Appeals. An award or decision of the board shall be final and  
4 conclusive upon all questions within its jurisdiction, as against the  
5 state fund or between the parties, unless reversed or modified on appeal  
6 therefrom as hereinafter provided. Any party may within thirty days  
7 after notice of the filing of an award or decision of a referee, file  
8 with the board an application in writing for a modification or rescis-  
9 sion or review of such award or decision, as provided in this chapter.  
10 The board shall render its decision upon such application in writing and  
11 shall include in such decision a statement of the facts which formed the  
12 basis of its action on the issues raised before it on such application.  
13 Within thirty days after notice of the decision of the board upon such  
14 application has been served upon the parties, or within thirty days  
15 after notice of an administrative redetermination review decision by the  
16 chair pursuant to subdivision five of section fifty-two, section one  
17 hundred thirty-one or section one hundred forty-one-a of this chapter  
18 has been served upon any party in interest, an appeal may be taken ther-  
19 efrom to the appellate division of the supreme court, third department,  
20 by any party in interest, including an employer insured in the state  
21 fund; provided, however, that [if the decision or determination was that  
22 of a panel of the board and there was a dissent from such decision or  
23 determination other than a dissent the sole basis of which is to refer  
24 the case to an impartial specialist,] any party in interest may within

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

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1 thirty days after notice of the filing of the board panel's decision  
2 with the secretary of the board, make application in writing for review  
3 thereof by the full board, [and] RAISING ARGUMENTS RELATIVE TO THE  
4 ALLEGED DEFICIENCIES OF THE BOARD PANEL DECISION. IF THE DECISION OR  
5 DETERMINATION WAS THAT OF A PANEL OF THE BOARD AND THERE WAS A DISSENT  
6 FROM SUCH DECISION OR DETERMINATION OTHER THAN A DISSENT THE SOLE BASIS  
7 OF WHICH IS TO REFER THE CASE TO AN IMPARTIAL SPECIALIST, the full board  
8 shall review and affirm, modify or rescind such decision or determi-  
9 nation in the same manner as herein above provided for an award or deci-  
10 sion of a referee. IF THE DECISION OR DETERMINATION WAS THAT OF A UNAN-  
11 IMOUS PANEL OF THE BOARD, OR THERE WAS A DISSENT FROM SUCH DECISION OR  
12 DETERMINATION THE SOLE BASIS OF WHICH IS TO REFER THE CASE TO AN IMPAR-  
13 TIAL SPECIALIST, THE FULL BOARD MAY IN ITS SOLE DISCRETION REVIEW AND  
14 AFFIRM, MODIFY OR RESCIND SUCH DECISION OR DETERMINATION IN THE SAME  
15 MANNER AS HEREIN ABOVE PROVIDED FOR AN AWARD OR DECISION OF A REFEREE.  
16 Failure to apply for review by the full board shall not bar any party in  
17 interest from taking an appeal directly to the court as above provided.  
18 The board may also, in its discretion certify to such appellate division  
19 of the supreme court, questions of law involved in its decision. Such  
20 appeals and the question so certified shall be heard in a summary manner  
21 and shall have precedence over all other civil cases in such court. The  
22 board shall be deemed a party to every such appeal from its decision  
23 upon such application, and the chair shall be deemed a party to every  
24 such appeal from an administrative redetermination review decision  
25 pursuant to subdivision five of section fifty-two of this chapter. The  
26 attorney general shall represent the board and the chair thereon. An  
27 appeal may also be taken to the court of appeals in the same manner and  
28 subject to the same limitations not inconsistent herewith as is now  
29 provided in the civil practice law and rules. It shall not be necessary  
30 to file exceptions to the rulings of the board. An appeal to the appel-  
31 late division of the supreme court, third department, or to the court of  
32 appeals, shall not operate as a stay of the payment of compensation  
33 required by the terms of the award or of the payment of the cost of such  
34 medical, dental, surgical, optometric or other attendance, treatment,  
35 devices, apparatus or other necessary items the employer is required to  
36 provide pursuant to section thirteen of this article which are found to  
37 be fair and reasonable. Where such award is modified or rescinded upon  
38 appeal, the appellant shall be entitled to reimbursement in a sum equal  
39 to the compensation in dispute paid to the respondent in addition to a  
40 sum equal to the cost of such medical, dental, surgical, optometric or  
41 other attendance, treatment, devices, apparatus or other necessary items  
42 the employer is required to provide pursuant to section thirteen of this  
43 article paid by the appellant pending adjudication of the appeal. Such  
44 reimbursement shall be paid from administration expenses as provided in  
45 section one hundred fifty-one of this chapter upon audit and warrant of  
46 the comptroller upon vouchers approved by the chair. Where such award is  
47 subject to the provisions of section twenty-seven of this article, the  
48 appellant shall pay directly to the claimant all compensation as it  
49 becomes due during the pendency of the appeal, and upon affirmance shall  
50 be entitled to credit for such payments. Neither the chair, the board,  
51 the commissioners of the state insurance fund nor the claimant shall be  
52 required to file a bond upon an appeal to the court of appeals. Upon  
53 final determination of such an appeal, the board or chair, as the case  
54 may be, shall enter an order in accordance therewith. Whenever a notice  
55 of appeal is served or an application made to the board by the employer  
56 or insurance carrier for a modification or rescission or review of an

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

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

19 S 2. The opening paragraph of subdivision 2 of section 142 of the  
20 workers' compensation law, as amended by chapter 608 of the laws of  
21 1989, is amended to read as follows:

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

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