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

2768

2015-2016 Regular Sessions

I N S E N A T E

January 29, 2015

Introduced by Sen. SAVINO -- 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 establishing statutory guidelines for return to work by partially disabled workers

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

Section 1. Subdivisions 5-a and 5-b of section 15 of the workers' compensation law, subdivision 5-a as amended by chapter 113 of the laws of 1946 and subdivision 5-b as added by chapter 778 of the laws of 1945, are amended to read as follows:

5-a. Determination of wage earning capacity IN CASE OF ACTUAL EARNINGS. The wage earning capacity of an injured employee in cases of partial disability shall be determined by his actual earnings, [provided, however, that if he has no such actual earnings the board may in the interest of justice fix such wage earning capacity as shall be reasonable, but not in excess of seventy-five per centum of his former full time actual earnings, having due regard to the nature of his injury and his physical impairment] IF ANY.

5-b. DETERMINATION OF WAGE EARNING CAPACITY IN ABSENCE OF ACTUAL EARNINGS. THE WAGE EARNING CAPACITY OF AN INJURED EMPLOYEE IN CASES OF PARTIAL DISABILITY SHALL, IN THE ABSENCE OF ACTUAL EARNINGS, BE DETERMINED BY THE BOARD. THE BOARD SHALL IN THE INTEREST OF JUSTICE FIX SUCH WAGE EARNING CAPACITY AS MAY BE REASONABLE, BUT NOT IN EXCESS OF SEVENTY-FIVE PER CENTUM OF THE INJURED EMPLOYEE'S FORMER FULL TIME ACTUAL EARNINGS, HAVING DUE REGARD TO THE NATURE OF THE INJURY, PHYSICAL IMPAIRMENT, AND OTHER RELEVANT FACTORS. THE BOARD SHALL AWARD COMPENSATION BASED ON THE INJURED EMPLOYEE'S LOSS OF WAGE EARNING CAPACITY.

(A) VOLUNTARY WITHDRAWAL FROM THE LABOR MARKET. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, THE BOARD MAY DECLINE TO AWARD COMPENSATION IF IT FINDS THAT THE INJURED EMPLOYEE HAS VOLUNTARILY WITHDRAWN FROM THE

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

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LABOR MARKET. VOLUNTARY WITHDRAWAL FROM THE LABOR MARKET IS DEFINED AS SEPARATION FROM EMPLOYMENT FOR REASONS UNRELATED TO THE COMPENSABLE INJURY, INCLUDING BUT NOT LIMITED TO: TERMINATION FOR CAUSE; LAYOFF; VOLUNTARY RESIGNATION OF EMPLOYMENT; RETIREMENT DUE SOLELY TO AGE OR YEARS OF SERVICE; OR UNJUSTIFIED REFUSAL OF WORK OFFERED BY THE EMPLOYER WHICH IS CONSISTENT WITH THE CLAIMANT'S MEDICAL RESTRICTIONS.

(B) AWARD AFTER VOLUNTARY WITHDRAWAL FROM THE LABOR MARKET. IF IT FINDS A VOLUNTARY WITHDRAWAL FROM THE LABOR MARKET, THE BOARD SHALL AWARD BENEFITS IF THE CLAIMANT IS SUBSEQUENTLY ATTACHED TO THE LABOR MARKET THROUGH PARTICIPATION IN: (I) ONE OF NEW YORK STATE'S DEPARTMENT OF LABOR'S REEMPLOYMENT SERVICES, (II) THE SERVICES OFFERED BY A ONE-STOP CAREER CENTER, (III) A RETRAINING PROGRAM, (IV) A REHABILITATION PROGRAM BY VESID OR OTHER BOARD APPROVED REHABILITATION PROGRAM, (V) A JOB SERVICE COMMONLY UTILIZED TO SECURE WORK WITHIN A SPECIFIC INDUSTRY, (VI) ENROLLMENT AND FULL TIME ATTENDANCE IN AN ACCREDITED EDUCATIONAL INSTITUTION TO PURSUE EMPLOYMENT WITHIN THE WORK RESTRICTIONS, OR (VII) RETURN TO WORK.

5-C. Non-schedule adjustments. Notwithstanding any other provision of this chapter, in any case coming within the provisions of subdivisions three or five of this section, in which the right to compensation has been established and compensation has been paid for not less than three months, in which the continuance of disability and of future earning capacity cannot be ascertained with reasonable certainty, the board may, in the interest of justice, approve a non-schedule adjustment agreed to between the claimant and the employer or his insurance carrier. The board shall require, before approving any such agreement, that there be an examination of the claimant in accordance with section nineteen of this [chapter] ARTICLE, and such approval shall only be given when it is found that the adjustment is fair and in the best interest of the claimant. The board may, in such case, order all future compensation to be paid in one or more lump sums or periodically, and any such adjustment shall be regarded as a closing of the claim unless the board find upon proof that there has been a change in condition or in the degree of disability of claimant not found in the medical evidence and, therefore, not contemplated at the time of the adjustment.

S 2. This act shall take effect immediately.