STATE OF NEW YORK

8708

IN ASSEMBLY

January 11, 2022

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

AN ACT to amend the workers' compensation law, in relation to claims for attorney's fees; and to amend a chapter of the laws of 2021 amending the workers' compensation law relating to attorney's fees, as proposed in legislative bills numbers S. 946-B and A. 1034-B, in relation to the effectiveness thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 24 of the workers' compensation law, as amended by a chapter of the laws of 2021 amending the workers' compensation law relating to attorney's fees as proposed in legislative bills numbers S. 946-B and A. 1034-B, is amended to read as follows:

§ 24. Costs and fees. 1. If the court before which any proceedings for compensation or concerning an award of compensation have been brought, under this chapter, determine that such proceedings have not been so brought upon reasonable ground, it shall assess the cost of the proceedings upon the party who has so brought them.

2. Claims of attorneys and counselors-at-law for legal services in connection with any claim arising under this chapter, and claims for services or treatment rendered or supplies furnished pursuant to subdivision (b) of section thirteen of this article, shall not be enforceable unless approved by the board. **A written fee application on a form prescribed by the board shall be filed for all legal fees in excess of one thousand dollars ($1,000.00.) In the fee application the attorney shall set forth the calculation used to determine the fee and certify that the amount is in accordance with the following provisions. The form prescribed by the board shall not require a description of the services rendered or time records in conjunction with such written application. The attorney shall set forth on the record the same calculation and certification in all oral fee applications of one thousand dollars ($1,000.00) or less.** The board shall approve such **written and submitted fee** application in an amount commensurate with the services rendered and the amount of compensation awarded, having due regard for the financial

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

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state of the claimant in accordance with each applicable provision of the following schedule:

(a) When an award is made directing the continuation of weekly compensation benefits for temporary total or partial disability, the attorney's fee shall be one-third of one week's compensation.

(b) When an award is made that increases the amount of compensation awarded or paid for a previous period or periods of temporary total or **temporary** partial disability, the attorney's fee shall be fifteen percent of the increased compensation.

(c) When an award is made for schedule loss of use or permanent facial disfigurement pursuant to paragraphs a through t of subdivision three of section fifteen of this article, the attorney's fee shall be fifteen percent of the compensation due in excess of the employer or carrier's previous payments.

(d) When an award is made for permanent total disability pursuant to subdivision one of section fifteen of this article or permanent partial disability pursuant to paragraph w of subdivision three of section fifteen of this article, the attorney's fee shall be equivalent to fifteen percent of the compensation due in excess of the employer or carrier's previous payments, plus a sum equivalent to fifteen weeks of compensation at the rate fixed by the board.

(e) When an award is made for death benefits pursuant to section sixteen of this article, the attorney's fee shall be equivalent to fifteen percent of the compensation due in excess of the employer or carrier's previous payments, plus a sum equivalent to fifteen weeks of compensation at the rate fixed by the board.

(f) When an award is made pursuant to section thirty-two of this article, the attorney's fee shall be fifteen percent of [~~any~~] benefits to be paid by the employer or carrier under the **approved** agreement**, except that benefits allocated for future medical expenses shall not be included in the calculation of the fee**. However, if the attorney has previously been awarded a fee pursuant to this subdivision, any un-accrued balance of any attorney fees under the foregoing paragraphs shall be waived.

3. **If a prior attorney has been substituted in a manner prescribed by the board, and has submitted a fee request, the board shall determine the amount of fees allocated to any prior attorney out of the total fees awarded.**

4. When so approved, such claim or claims shall become a lien upon the compensation awarded, and upon any moneys ordered paid under an award by the board into the special funds provided for in subdivision nine of section fifteen and section twenty-five-a of this article, and any other section of this chapter, but shall be paid therefrom only in the manner fixed by the board. Any other person, firm or corporation who shall exact or receive fee or gratuity for any services rendered on behalf of a claimant except in an amount determined by the board, shall be guilty of a misdemeanor. Any person, firm or corporation who shall solicit the business of appearing before the board on behalf of a claimant, or who shall make it a business to solicit employment for a lawyer in connection with any claim for compensation under this chapter shall be guilty of a misdemeanor. In case an award is affirmed upon an appeal to the appellate division, the same shall be payable with interest thereon from the date when said award was made by the board except as provided in section twenty-seven of this article.

§ 2. Section 2 of a chapter of the laws of 2021 amending the workers' compensation law relating to attorney's fees, as proposed in legislative bills numbers S. 946-B and A. 1034-B, is amended to read as follows:

§ 2. This act shall take effect [~~immediately~~] **January 1, 2023**.

§ 3. This act shall take effect immediately; provided, however, that section one of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2021 amending the workers' compensation law relating to attorney's fees, as proposed in legislative bills numbers S. 946-B and A. 1034-B, takes effect.