STATE OF NEW YORK

5867

2023-2024 Regular Sessions

IN SENATE

March 20, 2023

Introduced by Sen. RAMOS -- 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 the parties' rights to a hearing upon application to the workers' compensation board and requiring a stenographic record of all hearings held

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

Section 1. Subdivisions 1, 2 and 3 of section 20 of the workers' compensation law are renumbered subdivisions 2, 3 and 4 and a new subdivision 1 is added to read as follows:

1. The board shall index a claim for workers' compensation immediately upon the receipt of a medical report in addition to either a claim filed by the injured worker or an employer's report of injury or illness.

§ 2. Subdivision 2 of section 20 of the workers' compensation law, as added by chapter 635 of the laws of 1996 and as renumbered by section one of this act, is amended to read as follows:

2. [~~At any time after the expiration of the first seven days of disability on the part of an injured employee, or at any time after the employee's death, a claim for compensation may be presented to the employer or to the chair. The~~] **Within sixty days after a claim for compensation has been indexed, the** board shall **hold an initial hearing for each claim and shall** have full power and authority to determine all questions in relation to the payment of claims presented to it for compensation under the provisions of this chapter. The chair or board shall **thereafter** make or cause to be made such investigation as it deems necessary, and upon application of either party **or an attorney representing either party**, shall order a hearing **before a referee to take place within forty-five calendar days of the application from either party**, and within thirty days after a claim for compensation is submitted under this section, or such hearing closed, shall make or deny an award, determining such claim for compensation, and file the same in the

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

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office of the chair. **No application for a hearing made by a party or an attorney pursuant to this section shall be subject to limitations, prerequisites, or penalties imposed by the board.** Immediately after such filing the chair shall send to the parties a copy of the decision. Upon a hearing pursuant to this section either party may present evidence and be represented by counsel. The decision of the board shall be final as to all questions of fact, and, except as provided in section twenty-three of this article, as to all questions of law. Except as provided in section twenty-seven of this article, all awards of the board shall draw simple interest from thirty days after the making thereof at the rate provided in section five thousand four of the civil practice law and rules. Whenever a hearing or proceeding for the determination of a claim for compensation is begun before a referee, pursuant to the provisions of this chapter, such hearing or proceeding or any adjourned hearing thereon shall continue before the same referee until a final determination awarding or denying compensation, except in the absence, inability or disqualification to act of such referee, or for other good cause, in which event such hearing or proceeding may be continued before another referee by order of the chair or board.

§ 3. Paragraph (c) of subdivision 3 of section 25 of the workers' compensation law, as amended by chapter 61 of the laws of 1986, is amended to read as follows:

(c) The board shall keep an accurate **stenographic** record **and transcript recorded by a verbatim reporter in the employ of the board** of all hearings held **and provide the minutes, at no cost, to the injured worker and their representative in the native language of the injured worker. All decisions shall be issued to the injured worker in their native language**. Whenever a hearing must be continued or adjourned because the carrier or employer has engaged in dilatory tactics or exhibited unjustified lack of preparedness, the board shall impose a penalty of twenty-five dollars to be paid to the fund created by subdivision two of section one hundred fifty-one of this chapter and shall in addition make an award of seventy-five dollars payable to the injured worker or his or her dependants. Dilatory tactics may include but shall not be limited to: failing to subpoena medical witnesses or to secure an order to show cause as directed by the referee, failing to bring proper files, failing to appear, failing to produce witnesses or documents after they have been requested by the referee or examiner or as directed by the hearing notice, unnecessarily protracting the production of evidence, or engaging in a pattern of delay which unduly delays resolution, except that no penalty shall be imposed nor award made under this subdivision if the carrier or employer produces evidence sufficient to excuse its conduct to the satisfaction of the referee.

§ 4. This act shall take effect immediately.