# STATE OF NEW YORK

7025

2023-2024 Regular Sessions

# IN SENATE

May 16, 2023

Introduced by Sen. MANNION -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the volunteer firefighters' benefit law, in relation to making technical changes regarding compensation; and to amend the workers' compensation law, in relation to requiring employers to pay compensation awards even if an appeal of such award has been filed

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

Section 1. Section 47 of the volunteer firefighters' benefit law is amended to read as follows:

§ 47. Costs and fees. The provisions of section twenty-four of the [~~workmen's~~] **workers'** compensation law shall be applicable as fully as if set forth in this chapter.

§ 2. The first undesignated paragraph of section 23 of the workers' compensation law, as amended by section 3 of subpart A of part NNN of chapter 59 of the laws of 2017, is amended to read as follows:

An award or decision of the board shall be final and conclusive upon all questions within its jurisdiction, as against the state fund or between the parties, unless reversed or modified on appeal therefrom as hereinafter provided. Any party may within thirty days after notice of the filing of an award or decision of a referee, file with the board an application in writing for a modification or rescission or review of such award or decision, as provided in this chapter. The board shall render its decision upon such application in writing and shall include in such decision a statement of the facts which formed the basis of its action on the issues raised before it on such application. Within thirty days after notice of the decision of the board upon such application has been served upon the parties, or within thirty days after notice of an administrative redetermination review decision by the chair pursuant to subdivision five of section fifty-two, section one hundred thirty-one or section one hundred forty-one-a of this chapter has been served upon any

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

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party in interest, an appeal may be taken therefrom to the appellate division of the supreme court, third department, by any party in interest, including an employer insured in the state fund; provided, however, that any party in interest may within thirty days after notice of the filing of the board panel's decision with the secretary of the board, make application in writing for review thereof by the full board. If the decision or determination was that of a panel of the board and there was a dissent from such decision or determination other than a dissent the sole basis of which is to refer the case to an impartial specialist, or if there was a decision or determination by the panel which reduced the loss of wage earning capacity finding made by a compensation claims referee pursuant to subparagraph w of subdivision three of section fifteen of this article from a percentage at or above the percentage set forth in subdivision three of section thirty-five of this article whereby a claimant would be eligible to apply for an extreme hardship redetermination to a percentage below the threshold, the full board shall review and affirm, modify or rescind such decision or determination in the same manner as herein above provided for an award or decision of a referee. If the decision or determination was that of a unanimous panel of the board, or there was a dissent from such decision or determination the sole basis of which is to refer the case to an impartial specialist, the board may in its sole discretion review and affirm, modify or rescind such decision or determination in the same manner as herein above provided for an award or decision of a referee. Failure to apply for review by the full board shall not bar any party in interest from taking an appeal directly to the court as above provided. The board may also, in its discretion certify to such appellate division of the supreme court, questions of law involved in its decision. Such appeals and the question so certified shall be heard in a summary manner and shall have precedence over all other civil cases in such court. The board shall be deemed a party to every such appeal from its decision upon such application, and the chair shall be deemed a party to every such appeal from an administrative redetermination review decision pursuant to subdivision five of section fifty-two of this chapter. The attorney general shall represent the board and the chair thereon. An appeal may also be taken to the court of appeals in the same manner and subject to the same limitations not inconsistent herewith as is now provided in the civil practice law and rules. It shall not be necessary to file exceptions to the rulings of the board. An appeal to the appellate division of the supreme court, third department, or to the court of appeals, shall not operate as a stay of the payment of compensation required by the terms of the award or of the payment of the cost of such medical, dental, surgical, optometric or other attendance, treatment, devices, apparatus or other necessary items the employer is required to provide pursuant to section thirteen of this article which are found to be fair and reasonable. Where such award is modified or rescinded upon appeal, the appellant shall be entitled to reimbursement in a sum equal to the compensation in dispute paid to the respondent in addition to a sum equal to the cost of such medical, dental, surgical, optometric or other attendance, treatment, devices, apparatus or other necessary items the employer is required to provide pursuant to section thirteen of this article paid by the appellant pending adjudication of the appeal. Such reimbursement shall be paid from administration expenses as provided in section one hundred fifty-one of this chapter upon audit and warrant of the comptroller upon vouchers approved by the chair. Where such award is subject to the provisions of section twenty-seven of this article, the

appellant shall pay directly to the claimant all compensation as it becomes due during the pendency of the appeal, and upon affirmance shall be entitled to credit for such payments. Neither the chair, the board, the commissioners of the state insurance fund nor the claimant shall be required to file a bond upon an appeal to the court of appeals. Upon final determination of such an appeal, the board or chair, as the case may be, shall enter an order in accordance therewith. **Whenever a notice of appeal is served or an application is made to the board by the employer or insurance carrier for a modification, rescission or review of an award or decision, such notice of appeal or application shall not permit an employer or carrier from not paying the compensation to the claimant as provided in this chapter.** Whenever a notice of appeal is served or an application made to the board by the employer or insurance carrier for a modification or rescission or review of an award or decision, and the board shall find that such notice of appeal was served or such application was made for the purpose of delay or upon frivolous grounds, the board shall impose a penalty in the amount of five hundred dollars upon the employer or insurance carrier, which penalty shall be added to the compensation and paid to the claimant. The penalties provided herein shall be collected in like manner as compensation. A party against whom an award of compensation shall be made may appeal from a part of such award. In such a case the payment of such part of the award as is not appealed from shall not prejudice any rights of such party on appeal, nor be taken as an admission against such party. Any appeal by an employer from an administrative redetermination review decision pursuant to subdivision five of section fifty-two of this chapter shall in no way serve to relieve the employer from the obligation to timely pay compensation and benefits otherwise payable in accordance with the provisions of this chapter.

§ 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 record of all hearings held. 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~~] **seventy** 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~~] **two hundred** 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**, or a request for a modification, rescission or review of an award or decision deemed by the board to be made for the purpose of delay or upon frivolous grounds**, 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 on the one hundred twentieth day after it shall have become a law.