

# 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:

1 Section 1. Section 47 of the volunteer firefighters' benefit law is  
2 amended to read as follows:  
3 § 47. Costs and fees. The provisions of section twenty-four of the  
4 [~~workmen's~~ workers' compensation law shall be applicable as fully as if  
5 set forth in this chapter.  
6 § 2. The first undesignated paragraph of section 23 of the workers'  
7 compensation law, as amended by section 3 of subpart A of part NNN of  
8 chapter 59 of the laws of 2017, is amended to read as follows:  
9 An award or decision of the board shall be final and conclusive upon  
10 all questions within its jurisdiction, as against the state fund or  
11 between the parties, unless reversed or modified on appeal therefrom as  
12 hereinafter provided. Any party may within thirty days after notice of  
13 the filing of an award or decision of a referee, file with the board an  
14 application in writing for a modification or rescission or review of  
15 such award or decision, as provided in this chapter. The board shall  
16 render its decision upon such application in writing and shall include  
17 in such decision a statement of the facts which formed the basis of its  
18 action on the issues raised before it on such application. Within thirty  
19 days after notice of the decision of the board upon such application has  
20 been served upon the parties, or within thirty days after notice of an  
21 administrative redetermination review decision by the chair pursuant to  
22 subdivision five of section fifty-two, section one hundred thirty-one or  
23 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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1 party in interest, an appeal may be taken therefrom to the appellate  
2 division of the supreme court, third department, by any party in inter-  
3 est, including an employer insured in the state fund; provided, however,  
4 that any party in interest may within thirty days after notice of the  
5 filing of the board panel's decision with the secretary of the board,  
6 make application in writing for review thereof by the full board. If the  
7 decision or determination was that of a panel of the board and there was  
8 a dissent from such decision or determination other than a dissent the  
9 sole basis of which is to refer the case to an impartial specialist, or  
10 if there was a decision or determination by the panel which reduced the  
11 loss of wage earning capacity finding made by a compensation claims  
12 referee pursuant to subparagraph w of subdivision three of section  
13 fifteen of this article from a percentage at or above the percentage set  
14 forth in subdivision three of section thirty-five of this article where-  
15 by a claimant would be eligible to apply for an extreme hardship rede-  
16 termination to a percentage below the threshold, the full board shall  
17 review and affirm, modify or rescind such decision or determination in  
18 the same manner as herein above provided for an award or decision of a  
19 referee. If the decision or determination was that of a unanimous panel  
20 of the board, or there was a dissent from such decision or determination  
21 the sole basis of which is to refer the case to an impartial specialist,  
22 the board may in its sole discretion review and affirm, modify or  
23 rescind such decision or determination in the same manner as herein  
24 above provided for an award or decision of a referee. Failure to apply  
25 for review by the full board shall not bar any party in interest from  
26 taking an appeal directly to the court as above provided. The board may  
27 also, in its discretion certify to such appellate division of the  
28 supreme court, questions of law involved in its decision. Such appeals  
29 and the question so certified shall be heard in a summary manner and  
30 shall have precedence over all other civil cases in such court. The  
31 board shall be deemed a party to every such appeal from its decision  
32 upon such application, and the chair shall be deemed a party to every  
33 such appeal from an administrative redetermination review decision  
34 pursuant to subdivision five of section fifty-two of this chapter. The  
35 attorney general shall represent the board and the chair thereon. An  
36 appeal may also be taken to the court of appeals in the same manner and  
37 subject to the same limitations not inconsistent herewith as is now  
38 provided in the civil practice law and rules. It shall not be necessary  
39 to file exceptions to the rulings of the board. An appeal to the appel-  
40 late division of the supreme court, third department, or to the court of  
41 appeals, shall not operate as a stay of the payment of compensation  
42 required by the terms of the award or of the payment of the cost of such  
43 medical, dental, surgical, optometric or other attendance, treatment,  
44 devices, apparatus or other necessary items the employer is required to  
45 provide pursuant to section thirteen of this article which are found to  
46 be fair and reasonable. Where such award is modified or rescinded upon  
47 appeal, the appellant shall be entitled to reimbursement in a sum equal  
48 to the compensation in dispute paid to the respondent in addition to a  
49 sum equal to the cost of such medical, dental, surgical, optometric or  
50 other attendance, treatment, devices, apparatus or other necessary items  
51 the employer is required to provide pursuant to section thirteen of this  
52 article paid by the appellant pending adjudication of the appeal. Such  
53 reimbursement shall be paid from administration expenses as provided in  
54 section one hundred fifty-one of this chapter upon audit and warrant of  
55 the comptroller upon vouchers approved by the chair. Where such award is  
56 subject to the provisions of section twenty-seven of this article, the

1 appellant shall pay directly to the claimant all compensation as it  
2 becomes due during the pendency of the appeal, and upon affirmance shall  
3 be entitled to credit for such payments. Neither the chair, the board,  
4 the commissioners of the state insurance fund nor the claimant shall be  
5 required to file a bond upon an appeal to the court of appeals. Upon  
6 final determination of such an appeal, the board or chair, as the case  
7 may be, shall enter an order in accordance therewith. Whenever a notice  
8 of appeal is served or an application is made to the board by the  
9 employer or insurance carrier for a modification, rescission or review  
10 of an award or decision, such notice of appeal or application shall not  
11 permit an employer or carrier from not paying the compensation to the  
12 claimant as provided in this chapter. Whenever a notice of appeal is  
13 served or an application made to the board by the employer or insurance  
14 carrier for a modification or rescission or review of an award or deci-  
15 sion, and the board shall find that such notice of appeal was served or  
16 such application was made for the purpose of delay or upon frivolous  
17 grounds, the board shall impose a penalty in the amount of five hundred  
18 dollars upon the employer or insurance carrier, which penalty shall be  
19 added to the compensation and paid to the claimant. The penalties  
20 provided herein shall be collected in like manner as compensation. A  
21 party against whom an award of compensation shall be made may appeal  
22 from a part of such award. In such a case the payment of such part of  
23 the award as is not appealed from shall not prejudice any rights of such  
24 party on appeal, nor be taken as an admission against such party. Any  
25 appeal by an employer from an administrative redetermination review  
26 decision pursuant to subdivision five of section fifty-two of this chap-  
27 ter shall in no way serve to relieve the employer from the obligation to  
28 timely pay compensation and benefits otherwise payable in accordance  
29 with the provisions of this chapter.

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

33 (c) The board shall keep an accurate record of all hearings held.  
34 Whenever a hearing must be continued or adjourned because the carrier or  
35 employer has engaged in dilatory tactics or exhibited unjustified lack  
36 of preparedness, the board shall impose a penalty of [~~twenty-five~~]  
37 seventy dollars to be paid to the fund created by subdivision two of  
38 section one hundred fifty-one of this chapter and shall in addition make  
39 an award of [~~seventy-five~~] two hundred dollars payable to the injured  
40 worker or his or her dependants. Dilatory tactics may include but shall  
41 not be limited to: failing to subpoena medical witnesses or to secure  
42 an order to show cause as directed by the referee, failing to bring  
43 proper files, failing to appear, failing to produce witnesses or docu-  
44 ments after they have been requested by the referee or examiner or as  
45 directed by the hearing notice, unnecessarily protracting the production  
46 of evidence, [~~or~~] engaging in a pattern of delay which unduly delays  
47 resolution, or a request for a modification, rescission or review of an  
48 award or decision deemed by the board to be made for the purpose of  
49 delay or upon frivolous grounds, except that no penalty shall be imposed  
50 nor award made under this subdivision if the carrier or employer produc-  
51 es evidence sufficient to excuse its conduct to the satisfaction of the  
52 referee.

53 § 4. This act shall take effect on the one hundred twentieth day after  
54 it shall have become a law.