

Regular Session, 2012

SENATE BILL NO. 602

BY SENATOR APPEL

WORKERS' COMPENSATION. Provides relative to the Workers' Compensation Benefits Review Board. (1/1/13)

1 AN ACT

2 To amend and reenact R.S. 23:1310.5 and to enact R.S. 23:1309, relative to workers'
3 compensation; to provide for the creation of the Workers' Compensation Benefits
4 Review Board; to provide for board membership; to provide for duties of the board;
5 to provide with respect to appeals from the decisions of the board; and to provide for
6 related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 23:1310.5 is hereby amended and reenacted and R.S. 23:1309 is
9 hereby enacted to read as follows:

10 **§1309. Workers' Compensation Benefits Review Board; creation; powers and**
11 **duties**

12 **A. There is hereby created within the Louisiana Workforce**
13 **Commission's Office of Workers' Compensation Administration, the Workers'**
14 **Compensation Benefits Review Board.**

15 **B.(1) The Workers' Compensation Benefits Review Board shall consist**
16 **of three members appointed by the governor for terms beginning on January**
17 **1, 2013 to serve in the following manner:**

1 (a) One member shall serve for an initial term of two years.

2 (b) One member shall serve for an initial term of four years.

3 (c) One member shall serve for an initial term of six years.

4 (d) All terms after the initial terms shall be for a period of six years.

5 (e) In the event of a vacancy on the board, the governor shall appoint a
6 replacement to complete the unexpired term.

7 (2) Each appointment by the governor shall be submitted to the Senate
8 for confirmation.

9 (3) The members of the board shall be attorneys, licensed to practice law
10 in Louisiana with at least ten years of experience, including substantial expertise
11 in workers' compensation matters.

12 (4) The members of the board shall not engage in the private practice
13 of law during their term, but shall devote their full time to the duties as a
14 member of the board.

15 C. The compensation of the members of the Workers' Compensation
16 Benefits Review Board shall be equal to the compensation for judges of the
17 courts of appeal, including any changes in such compensation which may be
18 hereafter implemented, and shall be paid from the office of workers'
19 compensation administrative fund.

20 D. (1) When any member of the Workers' Compensation Benefits
21 Review Board is disqualified for any reason from hearing and participating in
22 the determination of any matter pending before the board, the governor shall
23 appoint a person meeting the qualifications set forth in Subsection (B) of this
24 Section to hear and participate in deciding the particular matter.

25 (2) Any temporary ad hoc member so appointed shall have all authority
26 and responsibility with respect to the particular matter before the board, as if
27 such person were a regular member of the board, but shall have no authority
28 or responsibility with respect to any other matter before the board.

29 (3) The name of the ad hoc member need not be submitted to the Senate

1 for confirmation.

2 (4) A person appointed as an ad hoc member of the Workers'
3 Compensation Benefits Review Board pursuant to the provisions of this
4 Subsection shall be entitled to receive a per diem not to exceed five hundred
5 dollars for each day spent in attending to the duties as an ad hoc member of the
6 board. The compensation shall be paid from any funds of the board which are
7 available for or may legally be used for paying such per diem.

8 E. The Workers' Compensation Benefits Review Board shall have the
9 authority to adopt reasonable rules and regulations, including the rules of
10 procedure pertaining to the board. Such rules shall be adopted in compliance
11 with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

12 F. The Workers' Compensation Benefits Review Board shall have the
13 duty and authority to make decisions and final adjudications regarding
14 workers' compensation claims and disputes after such claims have been heard
15 by a workers' compensation judge and the workers' compensation judge has
16 issued a recommended finding, proposed order, decision, or award.

17 * * *

18 §1310.5. Hearing, final adjudication, and appellate procedures; reported
19 opinions

20 A.(1) Insofar as may be possible, all the evidence pertaining to each case,
21 except as to noncontested matters, shall be heard by the workers' compensation judge
22 initially assigned to the case. Upon the completion of such hearing or hearings, the
23 workers' compensation judge shall make such recommended finding and proposed
24 order, decision, or award as is proper, just, and equitable in the matter.

25 ~~(2) Either party feeling aggrieved by such order, decision, or award shall,~~
26 ~~after receipt by certified mail of the order, decision, or award, have the right to take~~
27 ~~an appeal to the circuit court of appeal for the judicial district elected by the claimant~~
28 ~~upon the filing of the petition. The motion and order for appeal shall be filed with the~~
29 ~~district office assigned to handle the claim, which shall be responsible for~~

1 preparation of the record for the appellate court. (a) If the parties accept the
2 recommended findings and proposed order, decision, or award of the workers'
3 compensation judge, and if neither party objects to the same as provided herein,
4 the parties shall be conclusively presumed to have accepted the
5 recommendation of the workers' compensation judge and shall be bound
6 thereby.

7 (b) Within thirty days of receipt by certified mail of the recommended
8 findings and proposed order, decision, or award of the workers' compensation
9 judge, either party feeling aggrieved by the recommendations shall file with the
10 district office assigned to handle the claim, a notification of objection of the
11 party to the recommendations. The district office shall be responsible for
12 preparation of the record for the Workers' Compensation Benefits Review
13 Board.

14 B. The decision of the workers' compensation judge shall be final unless an
15 appeal is made to the appropriate circuit court of appeal. An appeal which suspends
16 the effect or execution of an appealable judgment or order must be filed within thirty
17 days. An appeal which does not suspend the effect or execution of an appealable
18 judgment or order must be filed within sixty days. The delay for filing an appeal
19 commences to run on the day after the judgment was signed or on the day after the
20 district office has mailed the notice of judgment as required by Louisiana Code of
21 Civil Procedure Article 1913, whichever is later. Motions for new trial shall be
22 entertained in disputes filed under this Chapter. The delay for filing an appeal when
23 a motion for new trial has been filed shall be governed by the Louisiana Code of
24 Civil Procedure. The Workers' Compensation Benefits Review Board shall
25 perform a de novo review of the record and the recommendation of the
26 workers' compensation judge shall not be entitled to any presumption of
27 correctness as to findings of law or fact.

28 C.(1) Notice of the decision of the Workers' Compensation Review
29 Board shall be served upon the parties by certified mail. The decision of the

1 board shall be final unless an appeal is made to the circuit court of appeal for
2 the judicial district wherein the claimant resides at the time the petition is filed.
3 Either party feeling aggrieved by the decision of the board and wishing to
4 appeal shall file a motion and order for appeal with the board, which shall be
5 responsible for preparation of the record for the appellate court.

6 (2) An appeal which suspends the effect or execution of an appealable
7 judgment or order shall be filed within thirty days of receipt by certified mail
8 by the party seeking the appeal. An appeal which does not suspend the effect
9 or execution of an appealable judgment or order shall be filed within sixty days
10 of receipt by certified mail by the party seeking the appeal.

11 (3) In the absence of fraud, the findings of fact made by the Workers'
12 Compensation Benefits Review Board within its power shall be conclusive and
13 binding upon the court of review. The circuit court of appeal shall review only
14 questions of law and may modify, reverse, remand for rehearing, or set aside
15 the order or award only upon the following grounds:

16 (a) The Workers' Compensation Benefits Review Board acted without
17 or in excess of its power and authority.

18 (b) The order or award was procured by fraud.

19 (c) The order or award violated the Louisiana Workers' Compensation
20 Law or other applicable law.

21 (4) When there has been an award of benefits by the ~~workers' compensation~~
22 judge ~~Workers' Compensation Benefits Review Board~~, no appeal by an employer
23 shall be entertained by the appellate court unless the employer secures a bond with
24 one or more sureties to be approved by the ~~workers' compensation judge~~ **board**,
25 guaranteeing that the employer will pay the amount of the award rendered therein
26 together with interest thereon as otherwise provided by law, and all costs of the
27 proceeding. The time limits for perfecting the bond shall be as provided in the Code
28 of Civil Procedure, but shall not commence to run against the appellant until the
29 appellant is notified by the ~~workers' compensation judge~~ **Workers' Compensation**

1 **Benefits Review Board** as to the amount of the bond fixed in accordance with law.

2 D. **(1)** When the only controverted issue in a death claim is the determination
3 of proper beneficiaries entitled to receive death benefits, and the competing
4 beneficiaries appeal the decision of the workers' compensation judge, the employer
5 or insurance carrier may pay the proceeds, as they accrue, to the director.

6 **(2)** The director shall hold the proceeds in trust in an interest-bearing account
7 during the appellate period and shall distribute the proceeds and interest to the
8 beneficiaries designated in final award or judgment.

9 **(3)** The employer or insurance carrier shall not be taxed interest or cost on the
10 order of the death claim if payments have been made to the director as they accrue.

11 E.(1) An order for physical therapy or a work hardening program shall not
12 be suspended during the pendency of any appeal.

13 (2) Regardless of whether the judgment rendered by the workers'
14 compensation judge is in favor of the employer or the employee, when the workers'
15 compensation judge has made a specific finding that further delay for surgery would,
16 more likely than not, result in death, permanent disability, or irreparable injury to the
17 claimant, any appeal of the judgment shall be entitled to preference and priority and
18 handled on an expedited basis. In such cases, the record shall be prepared and filed
19 within fifteen days of the granting of the order of appeal. The **Workers'**
20 **Compensation Benefits Review Board or** court of appeal shall hear the case within
21 thirty days after the filing of the appellee's brief.

22 F. All workers' compensation decisions of the **Workers' Compensation**
23 **Benefits Review Board and of** circuit courts of appeal shall be published opinions.
24 The published opinions in any reporter shall identify the office of workers'
25 compensation district from which the appeal was taken and the identity of the
26 workers' compensation judge who rendered the judgment or award that is the subject
27 of appeal.

28 Section 2. This Act shall become effective on January 1, 2013.

29

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Mary Dozier O'Brien.

DIGEST

Proposed law creates the Workers' Compensation Benefits Review Board, comprised of three appointees of the governor who shall be attorneys licensed to practice in Louisiana with at least 10 years of experience and expertise in workers' compensation matters.

Proposed law provides that the names of the governor's appointees shall be submitted to the Senate for confirmation and these appointees shall serve initial terms of 2, 4, and 6 years. Thereafter all terms shall be for 6 years and the governor shall appoint a replacement for any vacancy that occurs on the board.

Proposed law provides that members of the board shall not engage in a private law practice during their term on the board and shall be compensated at the same level as court of appeal judges.

Proposed law provides that if a member is disqualified for any reason from hearing and participating in the determination of a matter pending before the board, the governor shall appoint a person in the member's stead. Provides that the name of the ad hoc member need not be submitted to the Senate for confirmation.

Proposed law provides that the board shall have the authority to adopt rules as to its procedures and that the board shall have the duty and authority to make decisions and final adjudications regarding workers' compensation matters properly before the board, including final adjudications of matters in which a workers' compensation judge has issued a recommended finding, proposed order, decision, or award.

Present law provides that in contested workers' compensation matters, the issue is heard by a workers' compensation judge who issues an order, decision, or award on the matter.

Proposed law provides that the decision of the workers' compensation judge is merely a recommended finding or proposed order, decision, or award.

Present law provides that decisions of the workers' compensation judge may be appealed by any aggrieved party to the circuit court of appeal for the judicial district chosen by the claimant upon filing the petition.

Proposed law provides that appeals to the board of a workers' compensation judge's recommended finding or proposed order, decision, or award will be heard de novo and no presumption of correctness as to findings of law or fact shall be accorded.

Proposed law provides for deadlines for the filing of an objection to the workers' compensation judge's recommendations and the preparation of the record to be delivered to the Workers' Compensation Benefits Review Board.

Proposed law provides that in the absence of fraud, the findings of fact by the board shall be conclusive and binding on a court of review, restricting the inquiry of the circuit court of appeal to issues of law.

Present law provides that all workers' compensation decisions of the circuit courts of appeal be published.

Proposed law retains present law and further provides that decisions of the Workers' Compensation Benefits Review Board shall be published opinions.

Effective January 1, 2013.

(Amends R.S. 23:1310.5; adds R.S. 23:1309)