

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 778

By: Sykes

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5
6 AS INTRODUCED

7 An Act relating to workers' compensation; amending
8 Sections 68, 71, 78 and 80, Chapter 208, O.S.L. 2013
9 (85A O.S. Supp. 2016, Sections 68, 71, 78 and 80),
10 which relate to the Administrative Workers'
11 Compensation Act; modifying time limit for certain
12 notice; providing consequences for failure to give
13 timely notice; expanding methods of providing certain
14 notice; providing for appointment of administrative
15 law judge to en banc panel under certain
16 circumstances; modifying procedure and requirements
17 for case review by the Workers' Compensation
18 Commission; and providing an effective date.

19 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

20 SECTION 1. AMENDATORY Section 68, Chapter 208, O.S.L.
21 2013 (85A O.S. Supp. 2016, Section 68), is amended to read as
22 follows:

23 Section 68. A. Unless an employee gives oral or written notice
24 to the employer within ~~thirty (30)~~ fifteen (15) days of the date an
injury occurs, the rebuttable presumption shall be that the injury
was not work-related. Such presumption ~~must~~ may be overcome by a
preponderance of the evidence. If the notice of injury is not
timely given but the employee overcomes the presumption, no

1 compensation shall be due for the time period prior to the date
2 notice was given. In no event shall compensation be allowed if
3 notice is not given within one hundred twenty (120) days after the
4 date of the injury.

5 B. Unless an employee gives oral or written notice to the
6 employer within thirty (30) days of the employee's separation from
7 employment, there shall be a rebuttable presumption that an
8 occupational disease or cumulative trauma injury did not arise out
9 of and in the course of employment. Such presumption ~~must~~ may be
10 overcome by a preponderance of the evidence.

11 SECTION 2. AMENDATORY Section 71, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2016, Section 71), is amended to read as
13 follows:

14 Section 71. A. Notice. Within ten (10) days after a claim for
15 compensation has been filed, the Commission shall notify the
16 employer and any other interested person of the filing of the claim.

17 B. Investigation - Hearing.

18 1. The Commission shall assign the claim to an administrative
19 law judge who shall hold a hearing on application of any interested
20 party, or on its own motion.

21 2. An application for a hearing shall clearly set forth the
22 specific issues of fact or law in controversy and the contentions of
23 the party applying for the hearing.

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1 3. If any party is not represented by a lawyer, the
2 administrative law judge shall define the issues to be heard.

3 4. If a hearing on the claim is ordered, the administrative law
4 judge shall give the claimant and other interested parties ten (10)
5 days' notice of the hearing served personally on the claimant and
6 other parties, or by registered mail, facsimile, electronic mail or
7 by other electronic means with confirmation of receipt. The hearing
8 shall be held in Tulsa or Oklahoma County, as determined by the
9 Commission.

10 5. The award, together with the statement of the findings of
11 fact and other matters pertinent to the issues, shall be filed with
12 the record of the proceedings, and a copy of the award shall
13 immediately be sent to the parties in or to counsels of record, if
14 any.

15 C. Evidence and Construction.

16 1. a. At the hearing the claimant and the employer may each
17 present evidence relating to the claim. Evidence may
18 be presented by any person authorized in writing for
19 such purpose. The evidence may include verified
20 medical reports which shall be accorded such weight as
21 may be warranted when considering all evidence in the
22 case.

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1 b. Any determination of the existence or extent of
2 physical impairment shall be supported by objective
3 and measurable physical or mental findings.

4 2. When deciding any issue, administrative law judges and the
5 Commission shall determine, on the basis of the record as a whole,
6 whether the party having the burden of proof on the issue has
7 established it by a preponderance of the evidence.

8 3. Administrative law judges, the Commission, and any reviewing
9 courts shall strictly construe the provisions of this act.

10 4. In determining whether a party has met the burden of proof
11 on an issue, administrative law judges and the Commission shall
12 weigh the evidence impartially and without giving the benefit of the
13 doubt to any party.

14 D. Judgment. The judgment denying the claim or making the
15 award shall be filed in the office of the Commission, and a copy
16 shall be sent by registered mail, facsimile, electronic mail or by
17 other electronic means with confirmation of receipt to the claimant
18 and to the employer or to their attorneys.

19 E. No compensation for disability of an injured employee shall
20 be payable for any period beyond his or her death; provided,
21 however, an award of compensation for disability may be made after
22 the death of the injured employee for the period of disability
23 preceding death.

1 SECTION 3. AMENDATORY Section 78, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 78), is amended to read as
3 follows:

4 Section 78. A. Any party feeling aggrieved by the judgment,
5 decision, or award made by the administrative law judge may, within
6 ten (10) days of issuance, appeal to the Workers' Compensation
7 Commission. After hearing arguments, the Commission may reverse or
8 modify the decision only if it determines that the decision was
9 against the clear weight of the evidence or contrary to law. All
10 such proceedings of the Commission shall be recorded by a court
11 reporter, if requested by any party. Any judgment of the Commission
12 which reverses a decision of the administrative law judge shall
13 contain specific findings relating to the reversal.

14 B. The chair of the Commission shall have the authority to
15 appoint an administrative law judge to the en banc panel when any
16 Commissioner of the Commission is disqualified for any reason, to
17 fill a vacancy, or in the absence of a Commissioner; provided, the
18 appointed administrative law judge shall not have presided over any
19 of the previous hearings on the claim.

20 C. The appellant shall pay a filing fee of One Hundred Seventy-
21 five Dollars (\$175.00) to the Commission at the time of filing his
22 or her appeal. The fee shall be deposited in the Workers'
23 Compensation Fund.

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1 ~~C.~~ D. The judgment, decision or award of the Commission shall
2 be final and conclusive on all questions within its jurisdiction
3 between the parties unless an action is commenced in the Supreme
4 Court of this state to review the judgment, decision or award within
5 twenty (20) days of being sent to the parties. Any judgment,
6 decision or award made by an administrative law judge shall be
7 stayed until all appeal rights have been waived or exhausted. The
8 Supreme Court may modify, reverse, remand for rehearing, or set
9 aside the judgment or award only if it was:

- 10 1. In violation of constitutional provisions;
- 11 2. In excess of the statutory authority or jurisdiction of the
12 Commission;
- 13 3. Made on unlawful procedure;
- 14 4. Affected by other error of law;
- 15 5. Clearly erroneous in view of the reliable, material,
16 probative and substantial competent evidence;
- 17 6. Arbitrary or capricious;
- 18 7. Procured by fraud; or
- 19 8. Missing findings of fact on issues essential to the
20 decision.

21 This action shall be commenced by filing with the Clerk of the
22 Supreme Court a certified copy of the judgment, decision or award of
23 the Commission attached to the petition by the complaint which shall
24 specify why the judgment, decision or award is erroneous or illegal.

1 The proceedings shall be heard in a summary manner and shall have
2 precedence over all other civil cases in the Supreme Court, except
3 preferred Corporation Commission appeals. The Supreme Court shall
4 require the appealing party to file within forty-five (45) days from
5 the date of the filing of an appeal or a judgment appealed from, a
6 transcript of the record of the proceedings before the Commission,
7 or such later time as may be granted by the Supreme Court on
8 application and for good cause shown. The action shall be subject
9 to the law and practice applicable to other civil actions cognizable
10 in the Supreme Court.

11 ~~D.~~ E. A fee of One Hundred Dollars (\$100.00) per appeal to the
12 Supreme Court shall be paid to the Commission and deposited in the
13 Workers' Compensation Fund as costs for preparing, assembling,
14 indexing and transmitting the record for appellate review. This fee
15 shall be paid by the party taking the appeal. If more than one
16 party to the action files an appeal from the same judgment, decision
17 or award, the fee shall be paid by the party whose petition in error
18 commences the principal appeal.

19 SECTION 4. AMENDATORY Section 80, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2016, Section 80), is amended to read as
21 follows:

22 Section 80. A. Except ~~where~~ when a joint petition settlement
23 has been approved, the Commission may reopen for review any
24 compensation judgment, award, or decision. Such review based on a

1 change of physical condition may be done at any time within six (6)
2 ~~months of termination of the compensation period fixed in the~~
3 ~~original compensation judgment or award~~ from the date of the last
4 order in which monetary benefits or active medical treatment was
5 provided, on the Commission's own motion or on the application of
6 any party in interest, ~~on the ground of a change in physical~~
7 ~~condition or on proof of erroneous wage rate~~ and unless filed within
8 such period of time, shall be forever barred. On review, the
9 Commission may make a judgment or award terminating, continuing,
10 decreasing, or increasing for the future the compensation previously
11 awarded, subject to the maximum limits provided for in this ~~act~~
12 title. An order denying an application to reopen a claim shall not
13 extend the period of time set out in this title for reopening the
14 case. A failure to comply with a medical treatment plan ordered by
15 the Commission shall bar reopening of a claim.

16 B. The review and subsequent judgment or award shall be made in
17 accordance with the procedure prescribed in Sections 69 through 78
18 of this ~~act~~ title. No review shall affect any compensation paid
19 under a prior order, judgment or award.

20 C. The Commission may correct any clerical error in any
21 compensation judgment or award within one (1) year from the date of
22 its issuance.

23 D. Aging and the effects of aging on a compensable injury are
24 not to be considered in determining whether there has been a change

1 in physical condition. Aging or the effect of aging on a
2 compensable injury shall not be considered in determining permanent
3 disability under this section or any other section in this ~~act~~
4 title.

5 SECTION 5. This act shall become effective November 1, 2017.

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