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SB 790

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

SENATE BILL NO. 790

(By Senator Kessler, et al)

PASSED March 9, 2006

In Effect From Passage

FILED

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Senate Bill No. 790

(BY SENATORS KESSLER, DEMPSEY, FANNING, FOSTER,
HUNTER, JENKINS, MINARD, OLIVERIO, BARNES, CARUTH,
DEEM, HARRISON, LANHAM, MCKENZIE AND WEEKS)

[Passed March 9, 2006; in effect from passage.]

AN ACT to amend and reenact §23-5-12 of the Code of West Virginia, 1931, as amended, relating to filing appeals of workers' compensation decisions to the board of review.

Be it enacted by the Legislature of West Virginia:

That §23-5-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. REVIEW.

§23-5-12. Appeal to board; procedure; remand and supplemental hearing.

1 (a) Any employer, employee, claimant or dependent who
2 shall feel aggrieved at any final action of the administra-
3 tive law judge taken after a hearing held in accordance
4 with the provisions of section nine of this article shall have
5 the right to appeal to the board created in section eleven

6 of this article for a review of such action. The Workers'
7 Compensation Commission, the successor to the commis-
8 sion, other private insurance carriers and self-insured
9 employers, whichever is applicable, shall likewise have the
10 right to appeal to the board any final action taken by the
11 administrative law judge. The aggrieved party shall file a
12 written notice of appeal with the board of review, with a
13 copy to the office of judges, within thirty days after receipt
14 of notice of the action complained of or, in any event,
15 regardless of notice, within sixty days after the date of the
16 action complained of, and unless the notice of appeal is
17 filed within the time specified, no appeal shall be allowed,
18 the time limitation is a condition of the right to appeal and
19 hence jurisdictional. The board shall notify the other
20 parties immediately upon the filing of a notice of appeal.
21 The notice of appeal shall state the ground for review and
22 whether oral argument is requested. The office of judges,
23 after receiving a copy of the notice of appeal, shall forth-
24 with make up a transcript of the proceedings before the
25 office of judges and certify and transmit it to the board.
26 The certificate shall incorporate a brief recital of the
27 proceedings in the case and recite each order entered and
28 the date thereof.

29 (b) The board shall set a time and place for the hearing
30 of arguments on each claim and shall notify the interested
31 parties thereof. The review by the board shall be based
32 upon the record submitted to it and such oral argument as
33 may be requested and received. The board may affirm,
34 reverse, modify or supplement the decision of the adminis-
35 trative law judge and make such disposition of the case as
36 it determines to be appropriate. Briefs may be filed by the
37 interested parties in accordance with the rules of proce-
38 dure prescribed by the board. The board may affirm the
39 order or decision of the administrative law judge or
40 remand the case for further proceedings. It shall reverse,
41 vacate or modify the order or decision of the administra-
42 tive law judge if the substantial rights of the petitioner or

43 petitioners have been prejudiced because the administra-
44 tive law judge's findings are:

45 (1) In violation of statutory provisions; or

46 (2) In excess of the statutory authority or jurisdiction of
47 the administrative law judge; or

48 (3) Made upon unlawful procedures; or

49 (4) Affected by other error of law; or

50 (5) Clearly wrong in view of the reliable, probative and
51 substantial evidence on the whole record; or

52 (6) Arbitrary or capricious or characterized by abuse of
53 discretion or clearly unwarranted exercise of discretion.

54 (c) After a review of the case, the board shall issue a
55 written decision and send a copy by mail to the parties.

56 (1) All decisions, findings of fact and conclusions of law
57 of the board of review shall be in writing and state with
58 specificity the laws and facts relied upon to sustain,
59 reverse or modify the administrative law judge's decision.

60 (2) Decisions of the board of review shall be made by a
61 majority vote of the board of review.

62 (3) A decision of the board of review is binding upon the
63 executive director and the commission and the successor
64 to the commission, other private insurance carriers and
65 self-insured employers, whichever is applicable, with
66 respect to the parties involved in the particular appeal.
67 The executive director, the successor to the commission,
68 other private insurance carriers and self-insured employ-
69 ers, whichever is applicable, shall have the right to seek
70 judicial review of a board of review decision irrespective
71 of whether or not he or she appeared or participated in the
72 appeal to the board of review.

73 (d) Instead of affirming, reversing or modifying the
74 decision of the administrative law judge, the board may,

75 upon motion of any party or upon its own motion, for good
76 cause shown, to be set forth in the order of the board,
77 remand the case to the chief administrative law judge for
78 the taking of such new, additional or further evidence as
79 in the opinion of the board may be necessary for a full and
80 complete development of the facts of the case. In the event
81 the board shall remand the case to the chief administrative
82 law judge for the taking of further evidence, the adminis-
83 trative law judge shall proceed to take new, additional or
84 further evidence in accordance with any instruction given
85 by the board within thirty days after receipt of the order
86 remanding the case. The chief administrative law judge
87 shall give to the interested parties at least ten days'
88 written notice of the supplemental hearing, unless the
89 taking of evidence is postponed by agreement of parties, or
90 by the administrative law judge for good cause. After the
91 completion of a supplemental hearing, the administrative
92 law judge shall, within sixty days, render his or her
93 decision affirming, reversing or modifying the former
94 action of the administrative law judge. The decision shall
95 be appealable to and proceeded with by the board of
96 review in the same manner as other appeals. In addition,
97 upon a finding of good cause, the board may remand the
98 case to the Workers' Compensation Commission, the
99 successor to the commission, other private insurance
100 carriers and self-insured employers, whichever is applica-
101 ble, for further development. Any decision made by the
102 commission, the successor to the commission, other private
103 insurance carriers and self-insured employers, whichever
104 applicable, following a remand shall be subject to objec-
105 tion to the office of judges and not to the board. The board
106 may remand any case as often as in its opinion is necessary
107 for a full development and just decision of the case.

108 (e) All appeals from the action of the administrative law
109 judge shall be decided by the board at the same session at
110 which they are heard, unless good cause for delay thereof
111 be shown and entered of record.

112 (f) In all proceedings before the board, any party may be
113 represented by counsel.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chandelewhite
.....
Chairman Senate Committee

W. Berry
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Daniel E. Holmes
.....
Clerk of the Senate

Gregory M. Bond
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

Robert L. Williams
.....
Speaker House of Delegates

The within *is approved* this the *4th*
Day of *April*, 2006.

Paul M. Hancock
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 30 2006

Time 12:15 pm