WEST VIRGINIA CODE: §23-4-16

§23-4-16. Jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses; reopening cases involving permanent total disability; promulgation of rules.

(a) The power and jurisdiction of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, over each case is continuing and the Insurance Commissioner, private carrier, or self-insured employer may, in accordance with the provisions of this section and after due notice to the employer, make modifications or changes with respect to former findings or orders that are justified. The period in which a claimant may request a modification, change, or reopening of a prior award shall be determined by the following subdivisions of this subsection. Any request that is made beyond that period shall be refused.

(1) Except as provided in §23-4-22 of this code, in any claim which was closed without the entry of an order regarding the degree, if any, of permanent disability that a claimant has suffered, or in any case in which no award has been made, any request must be made within five years of the closure. During that time period, only two requests may be filed.

(2) Except as stated below, in any claim in which an award of permanent disability was made, any request must be made within five years of the date of the initial award. During that time period, only two requests may be filed. With regard to those occupational diseases, including occupational pneumoconiosis, which are medically recognized as progressive in nature, if any such request is granted by the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, a new five-year period begins upon the date of the subsequent award.

(3) No further award may be made in fatal cases except within two years after the death of the employee.

(4) With the exception of the items set forth in §23-4-3(d) of this code, in any claim in which medical or any type of rehabilitation service has not been rendered or durable medical goods or other supplies have not been received for a period of five years, no request for additional medical or any type of rehabilitation benefits shall be granted nor shall any medical or any type of rehabilitation benefits or any type of goods or supplies be paid for by the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, if they were provided without a prior request. For the exclusive purposes of this subdivision, medical services and rehabilitation services shall not include any encounter in which significant treatment was not performed.

(b) In any claim in which an injured employee makes application for a further period of temporary total disability, if the application is in writing and filed within the applicable time limit stated above, the Insurance Commissioner, private carrier, or self-insured employer,

WV Legislature

whichever is applicable, shall pass upon the request within 30 days of the receipt of the request. If the decision is to grant the request, the order shall provide for the receipt of temporary total disability benefits. In any case in which an injured employee makes application for a further award of permanent partial disability benefits or for an award of permanent total disability benefits, if the application is in writing and filed within the applicable time limit as stated above, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall pass upon the request within 30 days of its receipt and, if the Insurance Commissioner, private carrier, or self-insured employer determines that the claimant may be entitled to an award, the Insurance Commissioner, private carrier, or self-insured employer shall refer the claimant for further examinations that are necessary.

(c) If the application is based on a report of any medical examination made of the claimant and submitted by the claimant to the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, in support of his or her application and the claim is opened for further consideration and additional award is later made, the claimant shall be reimbursed for the expenses of the examination. The reimbursement shall be made by the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, to the claimant, in addition to all other benefits awarded, upon due proof of the amount thereof being furnished by the claimant, but shall in no case exceed the sum fixed pursuant to the applicable schedule of maximum reasonable fees.

(d) The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, has continuing power and jurisdiction over claims in which permanent total disability awards have been made after April 8, 1993.

(1) The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall continuously monitor permanent total disability awards and may, from time to time, after due notice to the claimant, reopen a claim for reevaluation of the continuing nature of the disability and possible modification of the award. At such times as the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may determine, the Insurance Commissioner, private carrier, or self-insured employer may require the claimant to provide documents and other information, including, but not limited to, tax returns, financial records, and affidavits demonstrating level of income, recreational activities, work activities, medications used, and physicians or other medical or rehabilitation providers treating or prescribing medication or other services for the claimant; require the claimant to appear under oath and answer questions; and suspend or terminate any benefits of a claimant who willfully fails to provide the information or appear as required. The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may reopen a claim for reevaluation when, in its sole discretion, it concludes that there exists good cause to believe that the claimant no longer meets the eligibility requirements under §23-4-6(n) of this code. The eligibility requirements, including any vocational standards, shall be applied as those requirements are stated at the time of a claim’s reopening.

WV Legislature

(2) Upon reopening a claim under this subsection, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may take evidence, have the claimant evaluated, make findings of fact and conclusions of law, and shall vacate, modify, or affirm the original permanent total disability award as the record requires. In the event the claimant retains his or her award following the reevaluation, the claimant's reasonable attorneys' fees incurred in defending the award shall be paid by the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable. In addition, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall reimburse a prevailing claimant for his or her costs in obtaining one evaluation on each issue during the course of the reevaluation.

(3) This subsection shall not be applied to awards made under the provisions of §23-4-6(m) of this code. The claimant may seek review of the final order as otherwise provided in §23-5-1 *et seq*. of this code for review of orders granting or denying permanent disability awards.

(4) The Insurance Commissioner shall establish by rule criteria for review, reopening, and reevaluating a claim under this subsection.

(e) A claimant may have only one active request for a permanent disability award pending in a claim at any one time. Any new request that is made while another is pending shall be consolidated into the former request.

WV Legislature