WEST VIRGINIA CODE: §23-4-1c

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of Insurance Commissioner, private carriers, and self-insured employers to collect payments improperly made.

(a) In any claim for benefits under this chapter, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall determine whether the claimant has sustained a compensable injury within the meaning of §23-4-1 of this code and enter an order giving all parties immediate notice of the decision.

(1) The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may enter an order conditionally approving the claimant's application if it finds that obtaining additional medical evidence or evaluations or other evidence related to the issue of compensability would aid the Insurance Commissioner, private carrier, or self-insured employer in making a correct final decision. Benefits shall be paid during the period of conditional approval; however, if the final decision is one that rejects the claim, the payments shall be considered an overpayment. The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may only recover the amount of the overpayment as provided for in subsection (h) of this section.

(2) In making a determination regarding the compensability of a newly filed claim or upon a filing for the reopening of a prior claim pursuant to the provisions of §23-4-16 of this code based upon an allegation of recurrence, reinjury, aggravation, or progression of the previous compensable injury, or in the case of a filing of a request for any other benefits under the provisions of this chapter, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall consider the date of the filing of the claim for benefits for a determination of the following:

(A) Whether the claimant had a scheduled shutdown beginning within one week of the date of the filing;

(B) Whether the claimant received notice within 60 days of the filing that his or her employment position was to be eliminated, including, but not limited to, the closure of the claimant's worksite, a layoff, or the elimination of the claimant's employment position;

(C) Whether the claimant is receiving unemployment compensation benefits at the time of the filing; or

(D) Whether the claimant has received unemployment compensation benefits within 60 days of the filing.

In the event of an affirmative finding upon any of these four factors, the finding shall be

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given probative weight in the overall determination of the compensability of the claim or of the merits of the reopening request.

(3) Any party may object to the order of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, and obtain an evidentiary hearing as provided in §23-5-1a of this code: *Provided*, That if a private carrier or self-insured employer fails to timely issue a ruling upon any application or motion as provided by law, or if the claimant files a timely protest to the ruling of a private carrier or self-insured employer denying the compensability of the claim, denying temporary total disability benefits, or denying medical authorization, the Board of Review shall provide a hearing on the protest on an expedited basis as determined by rule of the Board of Review.

(b) Where it appears from the employer's report, or from proper medical evidence, that a compensable injury will result in a disability which will last longer than three days as provided in §23-4-5 of this code, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may immediately enter an order commencing the payment of temporary total disability benefits to the claimant in the amounts provided for in §23-4-6 and §23-4-14 of this code, and the payment of the expenses provided for in §23-4-3(a) of this code, relating to the injury, without waiting for the expiration of the 30-day period during which objections may be filed to the findings as provided in §23-5-1a of this code. The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall enter an order commencing the payment of temporary total disability or medical benefits within 15 working days of receipt of either the employee's or employer's report of injury, whichever is received sooner, and also upon receipt of either a proper physician's report or any information necessary for a determination. The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall give the parties immediate notice of any order granting temporary total disability or medical benefits. When an order granting temporary total disability benefits is made, the claimant's return-to-work potential shall be assessed. The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may schedule medical and vocational evaluation of the claimant and assign appropriate personnel to expedite the claimant's return to work as soon as reasonably possible.

(c) The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may enter orders granting temporary total disability benefits upon receipt of medical evidence justifying the payment of the benefits. The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may not enter an order granting prospective temporary total disability benefits for a period of more than 90 days: *Provided*, That when the Insurance Commissioner, private carrier, or self-insured employer determines that the claimant remains disabled beyond the period specified in the prior order granting temporary total disability benefits, the Insurance Commissioner, private carrier, or self-insured employer shall enter an order continuing the payment of temporary total disability benefits for an additional period not to exceed 90 days and shall give immediate notice to all parties of the decision.

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(d) Upon receipt of the first report of injury in a claim, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall request from the employer or employers any wage information necessary for determining the rate of benefits to which the employee is entitled. If an employer does not furnish this information within 15 days from the date the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, received the first report of injury in the case, the employee shall be paid temporary total disability benefits for lost time at the rate the Insurance Commissioner obtains from reports made pursuant to §23-2-2(b) of this code. If no wages have been reported, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall make the payments at the rate the Insurance Commissioner, private carrier, or self-insured employer finds would be justified by the usual rate of pay for the occupation of the injured employee. The rate of benefits shall be adjusted both retroactively and prospectively upon receipt of proper wage information. The Insurance Commissioner shall have access to all wage information in the possession of any state agency.

(e) Subject to the limitations set forth in §23-4-16 of this code, upon a finding of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, that a claimant who has sustained a previous compensable injury which has been closed by order, or by the claimant's return to work, suffers further temporary total disability or requires further medical or hospital treatment resulting from the compensable injury, payment of temporary total disability benefits to the claimant in the amount provided for in §23-4-6 and §23-4-14 of this code, including the expenses provided for in §23-4-3(a) of this code, shall immediately commence relating to the disability, without waiting for the expiration of the 30-day period during which objections may be filed. Immediate notice to the parties of the decision shall be given.

(f) The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall deliver amounts due for temporary total disability benefits directly to the claimant.

(g) Where the employer has elected to carry its own risk under §23-2-9 of this code, and upon the findings aforesaid, the self-insured employer shall immediately pay the amounts due the claimant for temporary total disability benefits. A copy of the notice shall be sent to the claimant.

(h) In the event that an employer files a timely objection to any order of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, with respect to compensability, or any order denying an application for modification with respect to temporary total disability benefits, or with respect to those expenses outlined in §23-4-3(a) of this code, the Insurance Commissioner, private carrier, or self-insured employer shall continue to pay to the claimant such benefits and expenses during the period of such disability. When the employer has protested the compensability or applied for modification of a temporary total disability benefit award or expenses and the final decision in that case determines that the claimant was not entitled to the benefits or expenses, the disputed amount of benefits or expenses is considered an overpayment. The Insurance Commissioner,

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private carrier, or self-insured employer, whichever is applicable, may recover the overpayment by withholding, in whole or in part, future benefits payable to the individual in the same or other claims and credit the amount against the overpayment until it is repaid in full.

(i) In the event that the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, finds that, based upon the employer's report of injury, the claim is not compensable, the Insurance Commissioner, private carrier, or self-insured employer shall provide a copy of the employer's report to the claimant in addition to the order denying the claim.

(j) If a claimant is receiving benefits paid through a wage replacement plan, salary continuation plan, or other benefit plan provided by the employer to which the employee has not contributed, and that plan does not provide an offset for temporary total disability benefits to which the claimant is also entitled under this chapter as a result of the same injury or disease, the employer shall notify the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, of the duplication of the benefits paid to the claimant. Upon receipt of the notice, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall reduce the temporary total disability benefits provided under this chapter by an amount sufficient to ensure that the claimant does not receive monthly benefits in excess of the amount provided by the employer's plan or the temporary total disability benefit, whichever is greater: *Provided*, That this subsection does not apply to benefits being paid under the terms and conditions of a collective bargaining agreement.

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