WEST VIRGINIA CODE: §23-4-24

§23-4-24. Permanent total disability awards; retirement age; limitations on eligibility and the introduction of evidence; effects of other types of awards; procedures; requests for awards; jurisdiction.

(a) Notwithstanding any provision of this chapter to the contrary, except as stated below, no claimant shall be awarded permanent total disability benefits arising under §23-4-6(d) or (n) of this code or §23-4-8c of this code who terminates active employment and is receiving full old-age retirement benefits under the Social Security Act, 42 U.S.C. § 401 and 42 U.S.C. § 402. Any claimant shall be evaluated only for the purposes of receiving a permanent partial disability award premised solely upon the claimant's impairments. This subsection is not applicable in any claim in which the claimant has completed the submission of his or her evidence on the issue of permanent total disability prior to the later of the following: Termination of active employment or the initial receipt of full old-age retirement benefits under the Social Security Act. Once the claimant has terminated active employment and has begun to receive full old-age social security retirement benefits, the claimant may not produce additional evidence of permanent total disability nor shall the claim be remanded for the production of the evidence.

(b) The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, has the sole and exclusive jurisdiction to initially hear and decide any claim or request pertaining, in whole or in part, to §23-4-6(d) or (n) of this code. Any claim or request for permanent total disability benefits arising under said subdivisions shall first be presented as part of the initial claim filing or by way of an application for modification or adjustment pursuant to §23-4-16 of this code. The Board of Review may consider a claim only after the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, has entered an appropriate order.

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