

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1953



ENROLLED

HOUSE BILL No. 272

(By Mr. Speaker, Mr. Hanney)



PASSED March 11, 1953

In Effect July 1, 1953 Passage



712

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House Bill No. 272

(By MR. SPEAKER, MR. FLANNERY)

[Passed March 11, 1953; in effect July 1, 1953.]

AN ACT to amend chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting sections one, three, six, eight-f, ten and fifteen, article four thereof, and section three, article five thereof, all relating to workmen's compensation.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting sections one, three, six, eight-f, ten, and fifteen, article four thereof, and section three, article five thereof, to read as follows:

Article 4. Disability and Death Benefits.

Section 1. *To Whom Compensation Fund Disbursed;*

2 *Silicosis and Other Occupational Diseases Included in*

3 *"Injury" and "Personal Injury"; Definition of Silicosis*
4 *and Other Occupational Diseases.*—Subject to the pro-
5 visions and limitations elsewhere in this chapter set forth,
6 the commissioner shall disburse the workmen's compen-
7 sation fund to the employees of such employers as are
8 not delinquent in the payment of premiums for the
9 quarter in which the injury occurs, and in case of catas-
10 trophe, in addition to the employees next above described,
11 to the employees of employers who have elected, under
12 section nine, article two of this chapter, to make pay-
13 ments into the surplus fund as provided in that section,
14 and which employees shall have received personal in-
15 juries in the course of and resulting from their employ-
16 ment in this state, or in temporary employment without
17 the state as provided in section one, article two of this
18 chapter, or to the dependents, if any, of such employees
19 in case death has ensued, according to the provisions
20 hereinafter made; and also for the expenses of the ad-
21 ministration of this chapter, as provided in section two,
22 article one of this chapter.
23 For the purposes of this chapter the terms "injury" and

24 "personal injury" shall be extended to include silicosis
25 and any other occupational disease as hereinafter de-
26 fined, and the commissioner shall likewise disburse the
27 workmen's compensation fund to the employees of such
28 employers as are not delinquent in the payment of premi-
29 ums for the last quarter in which such employees have
30 been exposed to the hazard of silicon dioxide dust or to
31 any other occupational hazard, and have contracted
32 silicosis or other occupational disease, or have suffered
33 a perceptible aggravation of an existing silicosis, in this
34 state in the course of and resulting from their employ-
35 ment, or to the dependents, if any, of such employees,
36 in case death has ensued, according to the provisions
37 hereinafter made: *Provided, however,* That compensation
38 shall not be payable for the disease of silicosis, or death
39 resulting therefrom, unless in the state of West Virginia
40 the employee has been exposed to the hazard of silicon
41 dioxide dust over a continuous period of not less than
42 two years during the ten years immediately preceding
43 the date of his last exposure to such hazards. An appli-
44 cation for benefits on account of silicosis shall set forth

45 the name of the employer or employers and the time
46 worked for each, and the commissioner may allocate to
47 and divide any charges on account of such claim among
48 the employers by whom the claimant was employed for
49 as much as sixty days during the period of two years
50 immediately preceding the filing of the application. The
51 allocation shall be based upon the time and degree of
52 exposure with each employer.

53 For the purpose of this chapter silicosis is defined as
54 an insidious fibrotic disease of the lung or lungs due to
55 the prolonged inhalation and accumulation, sustained in
56 the course of and resulting from employment, of minute
57 particles of dust containing silicon dioxide (SiO_2) over
58 such a period of time and in such amounts as result in
59 the substitution of fibrous tissues for normal lung tissues,
60 whether or not accompanied by tuberculosis of the lungs.

61 Whenever the expression "injurious exposure to sil-
62 icon dioxide dust", or "injurious exposure to silicon di-
63 oxide dust in harmful quantities", or "exposure to the
64 hazard of silicon dioxide dust", or any similar language
65 shall appear in this chapter, such expression shall be

66 construed to mean the exposure of an employee in the
67 course of his employment to a working condition in
68 which the air contains such a concentration of silicon
69 dioxide dust that the breathing of such air by a person
70 over a long period of time would be likely to cause him
71 to contract the disease of silicosis.

72 For the purpose of this chapter, occupational disease
73 means a disease incurred in the course of and resulting
74 from employment. No ordinary disease of life to which
75 the general public is exposed outside of the employment
76 shall be compensable except when it follows as an inci-
77 dent of occupational disease as defined in this chapter.
78 Except in the case of silicosis, a disease shall be deemed
79 to have been incurred in the course of or to have resulted
80 from the employment only if it is apparent to the rational
81 mind, upon consideration of all the circumstances (1)
82 that there is a direct causal connection between the con-
83 ditions under which work is performed and the occupa-
84 tional disease, (2) that it can be seen to have followed
85 as a natural incident of the work as a result of the ex-
86 posure occasioned by the nature of the employment, (3)

87 that it can be fairly traced to the employment as the
88 proximate cause, (4) that it does not come from a hazard
89 to which workmen would have been equally exposed
90 outside of the employment, (5) that it is incidental to the
91 character of the business and not independent of the
92 relation of employer and employee, and (6) that it must
93 appear to have had its origin in a risk connected with
94 the employment and to have flowed from that source as
95 a natural consequence, though it need not have been
96 foreseen or expected before its contraction.

97 Except in the case of silicosis, no award shall be made
98 under the provisions of this chapter for any occupational
99 disease contracted prior to the first day of July, one
100 thousand nine hundred forty-nine. An employee shall
101 be deemed to have contracted an occupational disease
102 within the meaning of this paragraph if the disease or
103 condition has developed to such an extent that it can be
104 diagnosed as an occupational disease.

Sec. 3. *Disbursements for Medicine, Hospital Treatment,*
2 *Artificial Limbs and Other Appliances; Contract by Em-*
3 *ployer with Hospital Prohibited.*—Except in case of sili-

4 cosis, the commissioner shall disburse and pay from the
5 fund for such personal injuries to such employees as
6 may be entitled thereto hereunder as follows:

7 (a) Such sums for medicine, medical, surgical, dental
8 and hospital treatment, crutches, artificial limbs and such
9 other and additional approved mechanical appliances and
10 devices as may be reasonably required, but in no case
11 to exceed the sum of sixteen hundred dollars: *Provided,*
12 *however,* That in exceptional cases where the treatment
13 required, in the opinion of competent medical authority,
14 is such as to necessitate an expenditure in excess of such
15 amount, the commissioner may, with the approval of the
16 employer, pay out of any available funds, such addi-
17 tional sum as may be necessary, not to exceed an addi-
18 tional sum of eight hundred dollars, but such additional
19 sum shall not be charged to the account of the employer.

20 (b) Payment for such medicine, medical, surgical, den-
21 tal and hospital treatment, crutches, artificial limbs and
22 such other and additional approved mechanical appli-
23 ances and devices authorized under subdivision (a)
24 hereof may be made to the injured employee, or to the

25 person or persons who have furnished such service, or
26 who have advanced payment for same, as the commis-
27 sioner may deem proper, but no such payments or dis-
28 bursements shall be made or awarded by him unless
29 duly verified statements on forms prescribed by the com-
30 missioner shall be filed with the commissioner within
31 six months after the cessation of such treatment or the
32 delivery of such appliances: *Provided, however, That*
33 no payment hereunder shall be made unless such verified
34 statement shows no other or additional charge for such
35 treatment, appliance or device has been or will be made
36 against any person, firm or corporation. Failure on the
37 part of the doctor or hospital to submit to the commis-
38 sioner within such six months' period bills for services
39 rendered to an injured employee shall preclude collection
40 thereof from the injured employee.

41 (c) No employer shall enter into any contracts with
42 any hospital, its physicians, officers, agents or employees,
43 to render medical, dental or hospital service or to give
44 medical or surgical attention therein to any employee
45 for injury compensable within the purview of his chap-

46 ter, and no employer shall permit or require any em-
47 ployee to contribute, directly or indirectly, to any fund
48 for the payment of such medical, surgical, dental or hos-
49 pital service within such hospital for such compensable
50 injury. Any employer violating this section shall be
51 liable in damages to his or its employees and shall not
52 avail himself of any of the common law defenses men-
53 tioned in section eight, article two of this chapter, and
54 any employer or hospital or agent or employee thereof
55 violating the provisions of this section shall be guilty
56 of a misdemeanor and upon conviction thereof shall be
57 sentenced to pay a fine not exceeding one thousand dol-
58 lars or to undergo imprisonment not exceeding one year,
59 or both.

Sec. 6. *Classification of Disability Benefits.*—Where
2 compensation is due an employee under the provisions
3 of this chapter for a personal injury other than silicosis,
4 such compensation shall be as provided in the following
5 schedule:

6 (a) If the injury causes temporary total disability, the
7 employee shall receive during the continuance thereof

8 sixty-six and two thirds per cent of his average weekly
9 earnings, not to exceed a maximum of thirty dollars a
10 week nor to be less than a minimum of eighteen dollars
11 a week.

12 (b) Subdivision (a) shall be limited as follows: Ag-
13 gregate award for a single injury causing temporary dis-
14 ability shall be for a period not exceeding two hundred
15 eight weeks.

16 (c) If the injury causes permanent disability, the per-
17 centage of disability to total disability shall be deter-
18 mined and the award computed and allowed as follows:

19 For permanent disability of from one per cent to
20 eighty-four per cent, inclusive, sixty-six and two-thirds
21 per cent of the average weekly earnings for a period to
22 be computed on the basis of four weeks' compensation
23 for each per cent of disability determined.

24 For a disability of eighty-five to one hundred per cent,
25 sixty-six and two-thirds per cent of the average weekly
26 earnings during the remainder of life.

27 (d) If the injury results in the total loss by severance
28 of any of the members named in this subdivision, the per-

29 centage of disability shall be determined in accordance
30 with the following table, and award made as provided
31 in subdivision (c) of this section:

32 The loss of a great toe shall be considered a ten per
33 cent disability.

34 The loss of a great toe (one phalanx) shall be con-
35 sidered a five per cent disability.

36 The loss of other toes shall be considered a four per
37 cent disability.

38 The loss of other toes (one phalanx) shall be con-
39 sidered a two per cent disability.

40 The loss of all toes shall be considered a twenty-five
41 per cent disability.

42 The loss of fore part of foot shall be considered a thirty
43 per cent disability.

44 The loss of foot shall be considered a thirty-five per
45 cent disability.

46 The loss of leg shall be considered a forty-five per cent
47 disability.

48 The loss of thigh shall be considered a fifty per cent
49 disability.

50 The loss of thigh at hip joint shall be considered a
51 sixty per cent disability.

52 The loss of little or fourth finger (one phalanx) shall
53 be considered a three per cent disability.

54 The loss of little or fourth finger shall be considered
55 a five per cent disability.

56 The loss of ring or third finger (one phalanx) shall be
57 considered a three per cent disability.

58 The loss of ring or third finger shall be considered a
59 five per cent disability.

60 The loss of middle or second finger (one phalanx) shall
61 be considered a three per cent disability.

62 The loss of middle or second finger shall be considered
63 a seven per cent disability.

64 The loss of index or first finger (one phalanx) shall be
65 considered a six per cent disability.

66 The loss of index or first finger shall be considered a
67 ten per cent disability.

68 The loss of thumb (one phalanx) shall be considered
69 a twelve per cent disability.

70 The loss of thumb shall be considered a twenty per
71 cent disability.

72 The loss of thumb and index finger shall be considered
73 a thirty-two per cent disability.

74 The loss of index and middle finger shall be considered
75 a twenty per cent disability.

76 The loss of middle and ring finger shall be considered a
77 fifteen per cent disability.

78 The loss of ring and little finger shall be considered a
79 ten per cent disability.

80 The loss of thumb, index, and middle finger shall be
81 considered a forty percent disability.

82 The loss of index, middle and ring finger shall be con-
83 sidered a thirty percent disability.

84 The loss of middle, ring and little finger shall be con-
85 sidered a twenty per cent disability.

86 The loss of four fingers shall be considered a thirty-two
87 per cent disability.

88 The loss of hand shall be considered a fifty per cent
89 disability.

90 The loss of forearm shall be considered a fifty-five per
91 cent disability.

92 The loss of arm shall be considered a sixty per cent
93 disability.

94 The total and irrecoverable loss of the sight of one eye
95 shall be considered a thirty-three per cent disability, and
96 the injured employee shall be entitled to compensation
97 for a period of one hundred and thirty-two weeks.

98 For the partial loss of vision in one, or both eyes, the
99 percentage of disability shall be determined by the com-
100 missioner, using as a basis the total loss of one eye.

101 (e) Should a claimant to whom has been made a perma-
102 nent partial award of from one per cent to eighty-four per
103 cent, both inclusive, die from sickness or noncompensable
104 injury, the unpaid balance of such award shall be paid to
105 claimant's dependents as defined in this chapter, if any;
106 such payment to be in the same installments that would
107 have been paid to claimant if living; *Provided, however,*
108 That no payment shall be made to any widow of such
109 claimant after her remarriage, and that this liability shall
110 not accrue to the estate of such claimant and shall not be

111 subject to any debts of, or charges against, such estate.

112 (f) The award for permanent disabilities intermediate
113 to those fixed by the foregoing schedule and permanent
114 disability of from one per cent to eighty-four per cent
115 shall be in the same proportion and shall be computed
116 and allowed by the commissioner.

117 (g) The percentage of all permanent disabilities other
118 than those enumerated in subdivisions (c), (d), (e) and
119 (f) of this section shall be determined by the commission-
120 er, and award made in accordance with the provisions of
121 subdivision (c).

122 (h) Compensation payable under any subdivision of
123 this section shall be limited as follows: Not to exceed a
124 maximum of thirty dollars a week, nor to be less than
125 a minimum of eighteen dollars a week.

126 (i) Where an injury results in temporary total disability
127 for which compensation is awarded under subdivision (a)
128 of this section and such injury is later determined perma-
129 nent partial disability under subdivision (c), the amount
130 of compensation so paid shall be considered as payment of
131 the compensation payable for such injury in accordance

132 with the schedule in subdivision (c). Compensation, either
133 total temporary or permanent partial, under this section
134 shall be payable only to the injured employee and the
135 right thereto shall not vest in his or her estate, except that
136 any unpaid compensation which would have been paid or
137 payable to the employee up to the time of his death, if he
138 had lived, shall be paid to the dependents of such injured
139 employee if there be such dependents at the time of death.

140 (j) The following permanent disabilities shall be con-
141 clusively presumed to be total in character:

142 Loss of both eyes or the sight thereof.

143 Loss of both hands or the use thereof.

144 Loss of both feet or the use thereof.

145 Loss of one hand and one foot or the use thereof.

146 In all other cases permanent disability shall be de-
147 termined by the commissioner in accordance with the
148 facts in the case, and award made in accordance with the
149 provisions of subdivision (c).

*Sec. 8-f. Occupational Diseases Medical Board; Reports
2 and Distribution Thereof; Findings Required of Board;
3 Objection to Findings; Procedure Thereon.—The occupa-*

4 tional diseases medical board, as soon as practicable, after
5 it has completed its investigation, shall make its written
6 report, to the commissioner, of its findings and conclu-
7 sions on every medical question in controversy, and the
8 commissioner shall send one copy thereof to the employee
9 or claimant and one copy to the employer, and the board
10 shall also return to and file with the commissioner all the
11 evidence, as well as all statements under oath, if any, of
12 the persons who appeared before it or before any exam-
13 iner appointed by it on behalf of the employee or claim-
14 ant, or employer, and also all medical reports and X-ray
15 examinations produced by or on behalf of the employee
16 or claimant, or the employer.

17 The findings and conclusions of the board shall set
18 forth, among other things, the following:

19 (a) Does the claimant suffer from a disease or infec-
20 tion? If so, what?

21 (b) When was such disease or infection, if any, con-
22 tracted and approximately how long has claimant suf-
23 fered therefrom?

24 (c) Is such disease or infection, if any, incidental to

25 the industrial process, trade or occupation in which claim-
26 ant has been last employed?

27 (d) Was such disease or infection, if any, incurred in
28 the course of and did it result from the claimant's regular
29 employment in such industrial process, trade or occupa-
30 tion?

31 (e) Is such disease, if any, disabling to the claimant?

32 (f) If so, to what degree is claimant disabled by such
33 occupational disease?

34 (g) Any other matter deemed pertinent by the board.

35 If the claim be for death benefits under the provisions
36 of this chapter, the medical board shall find on each of
37 the above questions as of a date immediately preceding
38 the employee's death, and in addition shall find the cause
39 of death.

40 If either party objects to the whole or any part of such
41 findings and conclusions of the board, he shall file with
42 the commissioner, within fifteen days of the mailing of
43 such copy to him, unless for good cause shown the com-
44 missioner extends such time, his objections thereto in
45 writing, specifying the particular statements of the

46 board's findings and conclusions to which he objects.
47 After the time has expired for the filing of objections to
48 the findings and conclusions of the board, the commis-
49 sioner shall proceed to act as provided in this chapter.
50 If after the time has expired for the filing of objections
51 to the findings and conclusions of the board no objections
52 have been filed, the report of a majority of the board of
53 its findings and conclusions on any medical question shall
54 be taken to be plenary and conclusive evidence of the
55 findings and conclusions therein stated. If objection has
56 been filed to the findings and conclusions of the board,
57 notice thereof shall be given to the board, and the mem-
58 bers thereof who joined in such findings and conclusions,
59 and any examiner who filed a report in the case, shall
60 appear at the time fixed by the commissioner for the
61 hearing to submit to examination and cross-examination
62 in respect to such findings and conclusions. At such hear-
63 ing evidence to support or controvert the findings and
64 conclusions of the board shall be heard.

Sec. 10. *Classification of Death Benefits; "Dependent"*

2 *Defined.*—In case a personal injury other than silicosis

3 or other occupational disease, suffered by an employee in
4 the course of and resulting from his employment, causes
5 death within the period of six years and disability is con-
6 tinuous from date of such injury until date of death, or
7 if death results from determined third stage silicosis or
8 from any other occupational disease within six years from
9 the date of the last exposure to the hazard of silicon diox-
10 ide dust or to the other particular occupational hazard in-
11 volved, as the case may be, the benefits shall be in the
12 amounts and to the persons as follows:

13 (a) If there be no dependents, the disbursements shall
14 be limited to the expense provided for in sections three
15 and four of this article.

16 (b) If the deceased employee leaves a dependent wid-
17 ow or invalid widower, the payment shall be sixty dol-
18 lars a month until death or remarriage of such widow or
19 widower, and in addition fifteen dollars a month for each
20 child under eighteen years of age, to be paid until such
21 child reaches such age, or, if an invalid child, twenty dol-
22 lars a month, to continue as long as such child remains
23 an invalid: *Provided, however, That if such widow or*

24 invalid widower shall remarry within ten years from the
25 date of the death of such employee, such widow or wid-
26 ower shall be paid at the time of remarriage twenty per
27 cent of the amount that would be due for the period re-
28 maining between the date of such remarriage and the end
29 of ten years from the date of death of such employee, and
30 such widow or widower shall be advised in writing by,
31 the commissioner of his or her rights under this proviso
32 at the time of making the original award: *Provided*
33 *further*, That if upon investigation and hearing, as pro-
34 vided in article five of this chapter, it shall be ascertained
35 that such widow or widower is living with a man or wom-
36 an, as the case may be, as man and wife and not married,
37 or that the widow is living a life of prostitution, the com-
38 missioner shall stop the payments of the benefits herein
39 provided to such widow or widower.

40 If the deceased employee be a widow or widower and
41 leaves a child or children under the age of eighteen years,
42 the payments shall be twenty dollars a month to each
43 child until he or she reaches the age of eighteen years.

44 In all awards of compensation to children, unless other-

45 wise provided herein, the award shall be until they reach
46 the age of eighteen years or until their death prior
47 thereto.

48 (c) If the deceased employee leaves no dependent
49 widow or widower and leaves a wholly dependent father
50 or mother, he or she shall be paid the sum of fifty dollars
51 a month, payments to continue until death, and if there
52 be no widow or widower and both the father and mother
53 are wholly dependent, then a joint award shall be made
54 to the father and mother in the sum of fifty dollars a
55 month until death. Upon the death of either the father
56 or mother in any case in which a joint award has been
57 made to them, the full award of fifty dollars a month shall
58 be paid to the survivor until his or her death.

59 (d) If the deceased employee leaves no dependent
60 widow or widower or wholly dependent father or mother
61 but there are other wholly dependent persons, as defined
62 in paragraph (f) of this section, the payment shall be
63 fifty dollars a month, to continue for six years after the
64 death of the deceased, except as otherwise provided
65 herein.

66 (e) If the deceased employee leaves no dependent
67 widow or widower, child under eighteen years of age, or
68 wholly dependent person, but there are partially depend-
69 ent persons at the time of death, the payment shall be
70 twenty dollars a month, to continue for such portion of
71 the period of six years after the death, as the commission-
72 er may determine, but no such partially dependent person
73 shall receive compensation payments as a result of the
74 death of more than one employee.

75 Compensation under subdivisions (b), (c), (d) and
76 (e) hereof shall, except as may be specifically provided
77 to the contrary therein, cease upon the death of the de-
78 pendent, and the right thereto shall not vest in his or
79 her estate.

80 (f) Dependent, as used in this chapter, shall mean a
81 widow, invalid widower, child under eighteen years of
82 age, invalid child or a posthumous child, who, at the time
83 of the injury causing death, is dependent in whole or in
84 part for his or her support upon the earnings of the em-
85 ployee; also the following persons who are and continue
86 to be residents of the United States or its territorial pos-

87 sessions: Stepchild under eighteen years of age, child
88 under eighteen years of age legally adopted prior to the
89 injury causing death, father, mother, grandfather or
90 grandmother, who, at the time of the injury causing
91 death, is dependent in whole or in part for his or her
92 support upon the earnings of the employee; an invalid
93 brother or sister wholly dependent for his or her support
94 upon the earnings of the employee at the time of the in-
95 jury causing death.

Sec. 15. *Application for Benefits; Report of Injuries by*
2 *Employer.*—To entitle any employee or dependent of a
3 deceased employee to compensation under this chapter,
4 other than for silicosis, the application therefor must be
5 made on the form or forms prescribed by the commis-
6 sioner and filed in the office of the commissioner within
7 one year from and after the injury or death, as the case
8 may be, and all proofs of dependency in fatal cases must
9 likewise be filed with the commissioner within one year
10 from and after the death. In case the employee is men-
11 tally or physically incapable of filing such application,
12 it may be filed by his attorney or by a member of his

13 family. It shall be the duty of every employer to report
14 to the commissioner every injury sustained by any per-
15 son in his employ. Such report shall be on forms pre-
16 scribed by the commissioner and shall be made within
17 sixty days from the date the employer first receives
18 knowledge of such injury.

19 To entitle any employee to compensation for silicosis
20 under the provisions hereof, the application therefor must
21 be made on the form or forms prescribed by the commis-
22 sioner and filed in the office of the commissioner within
23 two years from and after the last day of the last continu-
24 ous period of sixty days or more during which the em-
25 ployee was exposed to the hazard of silicon dioxide dust
26 or to the other particular occupational hazard involved,
27 as the case may be, or, in the case of death, the application
28 shall be filed as aforesaid by the dependent of such em-
29 ployee within one year from and after such employee's
30 death.

Sec. 15-b. *Nonmedical Questions Determined by the*
2 *Commissioner in Silicosis Cases; Hearing.*—If a claim for
3 silicosis benefits be filed by an employee, the commis-

4 sioner shall determine whether the claimant's appli-
5 cation was filed within two years from and after the
6 last day of the the last continuous period of sixty days
7 or more during which the claimant was exposed to the
8 hazard of silicon dioxide dust, and whether in the state
9 of West Virginia the claimant was exposed to such
10 hazard over a continuous period of not less than two
11 years during the ten years immediately preceding the
12 date of his last exposure thereto. If a claim for silicosis
13 benefits be filed by a dependent of a deceased employee,
14 the commissioner shall determine whether the deceased
15 employee's death occurred within six years from the
16 last day of the last continuous period of sixty days or
17 more during which the employee was exposed to the
18 hazard of silicon dioxide dust, and whether in the state
19 of West Virginia the deceased employee was exposed
20 to such hazard over a continuous period of not less than
21 two years during the ten years immediately preceding
22 the date of his last exposure thereto. The commissioner
23 shall also determine such other nonmedical facts as

24 may in his opinion be pertinent to a decision on the
25 vailidity of the claim.

26 The commissioner shall give each interested party
27 notice in writing of his findings with respect to all such
28 nonmedical facts and such findings shall be subject to
29 objection and hearing as provided in section one, article
30 five of this chapter.

Article 5. Review.

Sec. 3. *Appeal to Board; Procedure.*—Any employer,
2 employee, claimant, or dependent, who shall feel ag-
3 grieved at any final action of the commissioner taken
4 after a hearing held in accordance with the provisions
5 of section one of this article, and any claimant or em-
6 ployer who shall feel aggrieved at any action of the
7 commissioner in refusing to reopen a claim under the
8 provisions of sections one-b and one-d of this article,
9 shall have the right to appeal to the board created in
10 section two of this article for a review of such action.
11 The aggrieved party shall file a written notice of appeal
12 with the compensation commissioner, directed to such
13 board, within thirty days after receipt of notice of the

14 action complained of, or in any event, regardless of
15 notice, within sixty days after the date of the action
16 complained of, and the commissioner shall notify the
17 other party immediately upon the filing of a notice of
18 appeal. The commissioner shall forthwith make up a
19 transcript of the proceedings before him and certify and
20 transmit the same to the board. In such certificate, he
21 shall incorporate a brief recital of the proceedings there-
22 in had and recite each order entered and the date there-
23 of. The board shall review the action of the commis-
24 sioner complained of at its next meeting after the filing
25 of notice of appeal, provided such notice of appeal shall
26 have been filed thirty days before such meeting of the
27 board, unless such review be postponed by agreement
28 of parties or by the board for good cause. The board shall
29 set a time and place for the hearing of arguments on
30 each claim and shall notify the interested parties thereof,
31 and briefs may be filed by the interested parties in ac-
32 cordance with the rules of procedure prescribed by the
33 board. And thereupon, after a review of the case, the
34 board shall sustain the finding of the commissioner or

35 enter such order or make such award as the commis-
36 sioner should have made, stating in writing its reasons
37 therefor, and shall thereupon certify the same to the
38 commissioner, who shall proceed in accordance there-
39 with. Or, instead of affirming or reversing the com-
40 missioner as aforesaid, the board may, upon motion of
41 either party or upon its own motion, for good cause
42 shown, to be set forth in the order of the board, remand
43 the case to the commissioner for the taking of such new,
44 additional or further evidence as in the opinion of the
45 board may be necessary for a full and complete de-
46 velopment of the facts of the case. In the event the
47 board shall remand the case to the commissioner for
48 the taking of further evidence therein, the commissioner
49 shall proceed to take such new, additional or further
50 evidence in accordance with any instructions given by
51 the board, and shall take the same within thirty days
52 after receipt of the order remanding the case, giving
53 to the interested parties at least ten days' written notice
54 of such supplemental hearing, unless the taking of
55 evidence shall be postponed by agreement of parties, or

56 by the commissioner for good cause. After the com-
57 pletion of such supplemental hearing, the commissioner
58 shall, within sixty days, render his decision affirming,
59 reversing or modifying his former action, which decision
60 shall be appealable to, and proceeded with by the ap-
61 peal board in like manner as in the first instance. The
62 board may remand any case as often as in its opinion is
63 necessary for a full development and just decision of the
64 case. The board may take evidence or consider ex parte
65 statements furnished in support of any motion to remand
66 the case to the commissioner. All evidence taken by or
67 filed with the board shall become a part of the record.
68 All appeals from the action of the commissioner shall be
69 decided by the board at the same session at which they
70 are heard, unless good cause for delay thereof be shown
71 and entered of record. In all proceedings before the
72 board, either party may be represented by counsel.

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

Wm G Kinley
Chairman Senate Committee

C H Cumber
Chairman House Committee

Originated in the House of Delegates

Takes effect *July 1, 1953* passage.

J Proussier Meyer
Clerk of the Senate

J Ashp
Clerk of the House of Delegates

Ralph Bean
President of the Senate

W E Hanner
Speaker House of Delegates

The within *approved* this the *20th*
day of *March*, 1953.

William C. Marland
Governor



FILED IN THE OFFICE OF THE SECRETARY OF STATE

of West Virginia **MAR 20 1953**

D. PITT O'BRIEN,
SECRETARY OF STATE