

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 885 Session of 1991

INTRODUCED BY PICCOLA, MAIALE, FARGO, DEMPSEY, PITTS, GLADECK, SEMMEL, HESS, SERAFINI, FLEAGLE, BARLEY, M. N. WRIGHT, JOHNSON, E. Z. TAYLOR, HECKLER, MARSICO, KENNEY, ALLEN, CORNELL, BUNT, VROON, TRELLO, SCHEETZ, NOYE, FLICK, LEH, GEIST, PHILLIPS AND SAURMAN, APRIL 2, 1991

REFERRED TO COMMITTEE ON LABOR RELATIONS, APRIL 2, 1991

AN ACT

1 Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as
2 reenacted and amended, "An act defining the liability of an
3 employer to pay damages for injuries received by an employe
4 in the course of employment; establishing an elective
5 schedule of compensation; providing procedure for the
6 determination of liability and compensation thereunder; and
7 prescribing penalties," further providing for the standard of
8 review for administrative adjudications; providing for
9 administrative law judges; making repeals; and making an
10 editorial change.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. The act of June 2, 1915 (P.L.736, No.338), known
14 as The Pennsylvania Workmen's Compensation Act, reenacted and
15 amended June 21, 1939 (P.L.520, No.281), is amended by adding
16 sections to read:

17 Section 109. The term "sufficient, competent and substantial
18 evidence," as used in this act, shall mean the aggregate of the
19 terms, "sufficient evidence," "competent evidence" and
20 "substantial evidence." The term "sufficient evidence," as used

1 in this act, shall mean more than a scintilla but somewhat less
2 than a preponderance. The term "competent evidence," as used in
3 this act, shall mean evidence which is legally admissible:
4 Provided, That a technical or scientific opinion given in
5 evidence by an expert must be based upon facts or data of a type
6 reasonably relied upon by experts in the particular field and be
7 logically derived by standard methodological principles. The
8 term "substantial evidence," as used in this act, shall mean
9 such relevant evidence as a reasonable mind might accept to
10 support a decision upon a review of the record as a whole.

11 Section 110. The term "adjudication," as used in this act,
12 shall have the meaning given in 2 Pa.C.S. § 101 (relating to
13 definitions).

14 Section 111. The term "administrative law judge," when used
15 in this act, shall mean a person appointed to the office of
16 administrative law judge, as created under Article VII.

17 Section 112. The term "referee," when used in this act,
18 shall mean an administrative law judge.

19 Section 2. Section 401 of the act, amended February 8, 1972
20 (P.L.25, No.12), is amended to read:

21 Section 401. [The term "referee," when used in this article,
22 shall mean Workmen's Compensation Referee of the Department of
23 Labor and Industry, appointed by and subject to the general
24 supervision of the Secretary of Labor and Industry for the
25 purpose of conducting departmental hearings under this act. The
26 secretary may establish different classes of referees.]

27 The term "board," when used in this article, shall mean the
28 Workmen's Compensation Appeal Board, a departmental
29 administrative board as provided in sections 202, 207, 503 and
30 2208 of the act of April 9, 1929 (P.L.177), known as "The

1 Administrative Code of 1929," exercising its powers and
2 performing its duties as an appellate board independently of the
3 Secretary of Labor and Industry and any other official of the
4 department.

5 The term "fund," when used in this article, shall mean the
6 State Workmen's Insurance Fund of this Commonwealth, the State-
7 operated insurance carrier from which workmen's compensation
8 insurance policies may be purchased by employers to cover all
9 risks of liability under this act including those declined by
10 private carriers.

11 The terms "insurer" and "carrier," when used in this article,
12 shall mean the State Workmen's Insurance Fund or other insurance
13 carrier which has insured the employer's liability under this
14 act, or the employer in cases of self-insurance.

15 The term "employer," when used in this article, shall mean
16 the employer as defined in article one of this act, or his duly
17 authorized agent, or his insurer if such insurer has assumed the
18 employer's liability or the fund if the employer be insured
19 therein.

20 Section 3. Section 422 of the act, amended February 8, 1972
21 (P.L.25, No.12) and March 29, 1972 (P.L.159, No.61), is amended
22 to read:

23 Section 422. Neither the board nor any of its members nor
24 any referee shall be bound by the common law or statutory rules
25 of evidence in conducting any hearing or investigation, but all
26 findings of fact shall be based upon sufficient, competent and
27 substantial evidence to justify same. The justification for each
28 disputed finding shall be reasonably explained, and the
29 explanation shall include a cogent statement of the reasons for
30 acceptance and rejection of evidence.

1 If any party or witness resides outside of the Commonwealth,
2 or through illness or other cause is unable to testify before
3 the board or a referee, his or her testimony or deposition may
4 be taken, within or without this Commonwealth, in such manner
5 and in such form as the department may, by special order or
6 general rule, prescribe. The records kept by a hospital of the
7 medical or surgical treatment given to an employe in such
8 hospital shall be admissible as evidence of the medical and
9 surgical matters stated therein.

10 Where any claim for compensation at issue before a referee
11 involves twenty-five weeks or less of disability, either the
12 employe or the employer may submit a certificate by any
13 qualified physician as to the history, examination, treatment,
14 diagnosis and cause of the condition, and sworn reports by other
15 witnesses as to any other facts and such statements shall be
16 admissible as evidence of medical and surgical or other matters
17 therein stated and findings of fact may be based upon such
18 certificates or such reports.

19 Where an employer shall have furnished surgical and medical
20 services or hospitalization in accordance with the provisions of
21 subsection (f) of section 306, or where the employe has himself
22 procured them, the employer or employe shall, upon request, in
23 any pending proceeding, be furnished with, or have made
24 available, a true and complete record of the medical and
25 surgical services and hospital treatment, including X rays,
26 laboratory tests, and all other medical and surgical data in the
27 possession or under the control of the party requested to
28 furnish or make available such data.

29 The department may adopt rules and regulations governing the
30 conduct of all hearings held pursuant to any provisions of this

1 act, and hearings shall be conducted in accordance therewith,
2 and in such manner as best to ascertain the substantial rights
3 of the parties.

4 Section 4. Section 423 of the act, amended March 29, 1972
5 (P.L.159, No.61), is amended to read:

6 Section 423. Any party in interest may, within twenty days
7 after notice of a referee's [award or disallowance of
8 compensation] adjudication shall have been served upon him, take
9 an appeal to the board on the ground: (1) that the [award or
10 disallowance of compensation] adjudication is not in conformity
11 with the terms of this act, or that the referee committed any
12 other error of law; (2) that the findings of fact and [award or
13 disallowance of compensation] adjudication was unwarranted by
14 sufficient, competent and substantial evidence or was procured
15 by fraud, coercion, or other improper conduct of any party in
16 interest. The board may, upon cause shown, extend the time
17 provided in this article for taking such appeal or for the
18 filing of an answer or other pleading.

19 In any such appeal the board may disregard the findings of
20 fact of the referee if not supported by sufficient, competent
21 and substantial evidence and if it deem proper may hear other
22 evidence, and may substitute for the findings of the referee
23 such findings of fact as the sufficient, competent and
24 substantial evidence taken before the referee and the board, as
25 hereinbefore provided, may, in the judgment of the board,
26 require, and may make such [disallowance or award of
27 compensation or other order] adjudication as the facts so
28 [founded] found by it may require.

29 Section 5. The act is amended by adding an article to read:

30 ARTICLE VII

1 Administrative Law Judges

2 Section 701. (a) There is created within the department an
3 office to be known as the Office of Administrative Law Judge.

4 (b) The Secretary of Labor and Industry shall appoint as
5 many qualified and competent administrative law judges as
6 necessary to conduct matters under this act. If the department
7 is occasionally and temporarily understaffed of administrative
8 law judges, the secretary may appoint qualified and competent
9 individuals who meet the minimum standards established by this
10 article to serve temporarily as administrative law judges, who
11 shall serve at the pleasure of the secretary and shall receive
12 compensation as the secretary may establish.

13 (c) Administrative law judges shall devote full time to
14 their official duties and shall perform no duties inconsistent
15 with their duties as administrative law judges.

16 (d) Administrative law judges shall be afforded employment
17 security as provided by the act of August 5, 1941 (P.L.752,
18 No.286), known as the "Civil Service Act."

19 (e) Compensation for administrative law judges shall be
20 established by the Executive Board.

21 (f) The secretary may adopt rules to establish standards and
22 procedures for the evaluation, training, promotion and
23 discipline of administrative law judges.

24 Section 702. (a) The Secretary of Labor and Industry shall
25 appoint one of the administrative law judges as chief
26 administrative law judge. The position of chief administrative
27 law judge may not be withdrawn from an individual, nor may the
28 individual's salary be diminished, except for good cause shown.

29 (b) The chief administrative law judge shall be responsible
30 for assigning an administrative law judge to every matter which

1 may require the utilization of an administrative law judge. The
2 chief administrative law judge shall also have other
3 responsibilities as the secretary may, by regulation, prescribe.

4 (c) The chief administrative law judge shall receive
5 remuneration above that of any other administrative law judge.

6 Section 703. Administrative law judges must meet the
7 following minimum requirements:

8 (1) Be an attorney in good standing before the Supreme
9 Court.

10 (2) Have three years of practice before administrative
11 agencies, or equivalent experience.

12 (3) Conform to other requirements as established by the
13 Secretary of Labor and Industry.

14 Section 704. (a) An administrative law judge shall conform
15 to the following code of ethics:

16 (1) Avoid impropriety and the appearance of impropriety in
17 all activities.

18 (2) Perform duties impartially and diligently.

19 (3) Avoid ex parte communications in any contested, on-the-
20 record matter pending before the department.

21 (4) Abstain from expressing publicly, except in
22 administrative disposition or adjudication, personal views on
23 the merits of a matter pending before the department and require
24 similar abstention on the part of department personnel subject
25 to the administrative law judge's direction and control.

26 (5) Require staff and personnel subject to the
27 administrative law judge's direction and control to observe the
28 standards of fidelity and diligence that apply to an
29 administrative law judge.

30 (6) Initiate appropriate disciplinary measures against

department personnel subject to the administrative law judge's direction and control for unethical conduct.

(7) Disqualify himself from proceedings in which impartiality may be reasonably questioned.

(8) Keep informed about the personal and fiduciary interests of himself and his immediate family.

(9) Regulate outside activities to minimize the risk of conflict with official duties. An administrative law judge may speak, write or lecture; and reimburse expenses, honorariums, royalties or other money received in connection therewith shall be disclosed annually. A disclosure statement shall be filed with the secretary and the State Ethics Commission and shall be open to inspection by the public during the normal business hours of the department and the commission during the tenure of the administrative law judge.

(10) Refrain from direct or indirect solicitation of funds for political, educational, religious, charitable, fraternal or civic purposes. An administrative law judge may be an officer, director or trustee of such organizations.

(11) Refrain from financial or business dealings which would tend to reflect adversely on impartiality. An administrative law judge may hold and manage investments which are not incompatible with the duties of office.

(12) Conform to additional regulations as the secretary may prescribe.

(b) Any administrative law judge who violates the provisions of subsection (a) shall be removed from office in accordance with the provisions of the act of August 5, 1941 (P.L.752, No.286), known as the "Civil Service Act."

Section 705. The Secretary of Labor and Industry shall

1 provide sufficient staff, facilities and administrative support
2 so that the duties of administrative law judges may be
3 performed.

4 Section 706. (a) The position of workmen's compensation
5 referee, as so designated, is abolished.

6 (b) Individuals who are currently serving as workmen's
7 compensation referees shall be appointed as administrative law
8 judges if they meet the minimum requirements set forth in this
9 article. The secretary may waive certain of the minimum
10 requirements for reappointment as administrative law judge on
11 the basis of demonstrated competency and performance for an
12 individual who has been serving in the capacity of referee for
13 at least three years immediately prior to the enactment of this
14 act.

15 Section 6. (a) Section 2213 of the act of April 9, 1929
16 (P.L.177, No.175), known as The Administrative Code of 1929, is
17 repealed.

18 (b) Section 2208(a) of the act of April 9, 1929 (P.L.177,
19 No.175), known as The Administrative Code of 1929, is repealed
20 insofar as it is inconsistent with this act.

21 Section 7. This act shall take effect in 60 days.