

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 1998

By: Fields

AS INTRODUCED

An Act relating to workers' compensation; amending 85 O.S. 1991, Section 3.4, as amended by Section 3, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1996, Section 3.4), which relates to the Workers' Compensation Act; requiring a benefit review conference for claims; requiring certain rules to be adopted; stating the purpose of a benefit review conference; requiring benefit review officers to conduct a benefit review conference; stating the qualifications of a benefit review officer; requiring certain training; providing procedures to be followed for benefit review conferences; stating the powers and duties of a benefit review officer; exempting a benefit review conference from certain laws; requiring a benefit review conference to proceed under certain circumstances; providing penalties for failure to attend; providing for written agreements or settlements under certain circumstances; providing for the approval and effective date of a settlement; stating the effect of a written agreement on certain parties; requiring a report under certain circumstances; requiring benefit payments under certain circumstances; providing for reimbursement of

benefits under certain circumstances; authorizing apportionment of liability among multiple insurance carriers; providing for reimbursement of benefits under certain circumstances; requiring the filing of certain documents; requiring the adoption of certain rules; requiring dissemination of the report to certain persons; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 85 O.S. 1991, Section 3.4, as amended by Section 3, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1996, Section 3.4), is amended to read as follows:

Section 3.4 A. All claims for any compensation or benefits under the Workers' Compensation Act shall be commenced with the filing of a notice of injury with the Administrator. All claims filed for workers' compensation benefits shall contain a statement that all matters stated therein are true and accurate, and shall be signed by the claimant and his agent, if any. Any person who signs this statement or causes another to sign this statement knowing the statement to be false shall be guilty of perjury. An individual who signs on behalf of a claimant may be presumed to have the authorization of the claimant and to be acting at his direction.

B. Except as otherwise provided by law or Court rule, the parties to a disputed compensation claim are not entitled to a contested case hearing or a prehearing conference on the claim unless a benefit review conference is conducted as provided by this act. The Court by rule shall adopt guidelines relating to claims

that do not require a benefit review conference and may proceed directly to a contested case hearing or a prehearing conference.

C. All answers and defenses to claims or other documents filed on behalf of a respondent or the respondent's insurer in a workers' compensation case shall contain a statement that all matters stated therein are true and accurate, and shall be signed by the respondent, the insurer, or their respective agents, if any. Any person who signs such a statement or causes another to sign such a statement, knowing the statement to be false, shall be guilty of perjury. An individual who signs on behalf of a respondent, its insurer, or its agent may be presumed to have the authorization of the respondent, its insurer and agent to be acting at their direction.

D. All matters pertaining to such claims shall be presented to the Administrator until such time as the Administrator is notified in writing by a party that there is a controverted issue that cannot be resolved by the parties or that the parties have received an agreed final order from the Court. The Administrator shall, within seven (7) days of the receipt of such notification, set the matter for hearing at the earliest available time to be heard by the Court in the appropriate judicial district as provided in Section 3.5 of this title. The Administrator shall assign a member of the Court to hear a docket in each judicial district of the state at least once each calendar month when there has been a request for a hearing in the judicial district. The Administrator shall assign Judges to the state judicial districts on a rotating basis for the purpose of holding prehearing conferences and hearing cases.

E. At the request of either party, a prehearing conference shall be held before the member of the Court assigned to the case within forty-five (45) days of the filing of a claimant's request for a hearing. The purpose of the prehearing conference shall be to

mediate and encourage settlement of the case or determine issues in dispute.

F. The Court shall be vested with jurisdiction over all claims filed pursuant to the Workers' Compensation Act. The Court shall determine the lawfulness of any claim for compensation under the Workers' Compensation Act based on the weight of evidence; provided, however, any claim, and subsequent disability, that has as its source a physical condition resulting from incremental damage or injury or a gradual deterioration of physical health, which is caused by a condition arising out of and in the course of employment, must be proven by a preponderance of the evidence presented to the Court.

~~B.~~ G. All claims so filed shall be heard by the Judge sitting without a jury. All petitions for final orders or awards filed pursuant to the provisions of Section 84 of this title must be approved by the Court having jurisdiction before a final order or award may be entered. All matters relating to a claim for benefits under the Workers' Compensation Act shall be filed with the Administrator.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 31 of Title 85, unless there is created a duplication in numbering, reads as follows:

A benefit review conference is a nonadversarial, informal dispute resolution proceeding designed to:

1. Explain, orally and in writing, the rights of the respective parties to a workers' compensation claim and the procedures necessary to protect those rights;

2. Discuss the facts of the claim, review available information in order to evaluate the claim and delineate the disputed issues; and

3. Mediate and resolve disputed issues by agreement of the parties in accordance with this act and the policies of the Court.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 31.1 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. A benefit review officer shall conduct a benefit review conference.

B. A benefit review officer must be:

1. An employee of the Court; and
2. Trained in the principles of dispute mediation.

C. The Court shall institute and maintain an education and training benefit program for benefit review officers and shall consult or contract with the Federal Mediation and Conciliation Service or other appropriate organizations for this purpose.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 31.2 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. The Court by rule shall prescribe the time within which the benefit review conference must be scheduled.

B. The Court shall send written notice of the benefit review conference to the parties to the claim and the employer.

C. The Court by rule shall provide for expedited proceedings in cases in which compensability or liability for essential medical treatment is in dispute.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 31.3 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. A benefit review officer shall:

1. Mediate disputes between the parties and assist in the adjustment of the claim consistent with this act and the policies of the Court;

2. Thoroughly inform all parties of their rights and responsibilities under the Workers' Compensation Act, especially in

a case in which the employee is not represented by an attorney or other representative; and

3. Ensure that all documents and information relating to the employee's wages, medical condition, and any other information pertinent to the resolution of disputed issues are contained in the claim file at the conference, especially in a case in which the employee is not represented by an attorney or other representative.

B. A benefit review officer may reschedule a benefit review conference if the benefit review officer determines that any available information pertinent to the resolution of disputed issues is not produced at the benefit review conference.

C. A benefit review officer may not take testimony but may direct questions to an employee, an employer, or a representative of an insurance carrier to supplement or clarify information in a claim file.

D. A benefit review officer may not make a formal record.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 31.4 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. The Court shall adopt rules for conducting benefit review conferences.

B. A benefit review conference is not subject to common law or statutory rules of evidence or procedure.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 31.5 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. A scheduled benefit review conference shall be conducted even though a party fails to attend unless the benefit review officer determines that good cause exists to reschedule the conference.

B. A party commits a violation if the party fails to attend a benefit review conference without good cause as determined by the

benefit review officer. A violation under this section may subject the violating party to fines and penalties assessed by the Court.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 31.6 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. A dispute may be resolved either in whole or in part at a benefit review conference.

B. If the conference results in the resolution of some disputed issues by agreement or in a settlement, the benefit review officer shall reduce the agreement or the settlement to writing. The benefit review officer and each party or the designated representative of the party shall sign the agreement or settlement.

C. A settlement takes effect on the date it is approved by the Court. Such agreement or settlement shall be approved by the Court only when the terms conform to the provisions of the Workers' Compensation Act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 31.7 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. An agreement signed in accordance with Section 8 of this act is binding on the insurance carrier through the conclusion of all matters relating to the claim, unless the Court, on a finding of fraud, newly discovered evidence, or other good and sufficient cause, relieves the insurance carrier of the effect of the agreement.

B. The agreement is binding on the claimant, if represented by an attorney, to the same extent as on the insurance carrier. If the claimant is not represented by an attorney, the agreement is binding on the claimant through the conclusion of all matters relating to the claim while the claim is pending before the Court, unless the Court for good cause relieves the claimant of the effect of the agreement.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 31.8 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. If a dispute resolution is not entirely resolved at a benefit review conference, the benefit review officer shall prepare a written report that details each issue that is not settled at the conference.

B. The report must also include:

1. A statement of each resolved issue;
2. A statement of each issue raised but not resolved;
3. A statement of the position of the parties regarding each unresolved issue;
4. The officer's recommendation regarding each unresolved issue;
5. The officer's recommendations regarding the payment or denial of benefits;
6. A statement of any interlocutory orders entered under Sections 11 and 12 of this act; and
7. A statement of the procedures required to request a contested case hearing or prehearing conference and a complete explanation of the differences in those proceedings and the rights of the parties to subsequent review of the determinations made in those proceedings.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 31.9 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. If a benefit review officer recommends that benefits be paid or not paid, the benefit review officer may issue an interlocutory order to pay or not pay the benefits.

B. The subsequent injury fund shall reimburse an insurance carrier for any overpayments of benefits made under an order entered under this section if that order is reversed or modified at a

contested case hearing or a prehearing conference. The Court shall adopt rules to provide for a periodic reimbursement schedule, providing for reimbursement at least annually.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 31.10 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. If there is a dispute as to which of two or more insurance carriers is liable for compensation for one or more compensable injuries, the benefit review officer may issue an interlocutory order directing each insurance carrier to pay a proportionate share of benefits due pending a final decision on liability. The proportionate share is computed by dividing the compensation due by the number of insurance carriers involved.

B. On final determination of liability, an insurance carrier determined to be not liable for the payment of benefits is entitled to reimbursement for the share paid by the insurance carrier determined to be liable.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 31.11 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. The benefit review officer shall file the signed agreement and the report with the Administrator.

B. The Court by rule shall prescribe the times within which the agreement and report must be filed.

C. The Administrator shall furnish a copy of the file-stamped report to:

1. The claimant;
2. The employer; and
3. The insurance carrier.

SECTION 14. This act shall become effective November 1, 1997.

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