STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2638 By: Settle of the House

and

Henry of the Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; amending 85 O.S. 1991, Section 3.6, as last amended by Section 1, Chapter 262, O.S.L. 1997 (85 O.S. Supp. 1999, Section 3.6), which relates to appellate procedures; clarifying references; amending 85 O.S. 1991, Section 5, as last amended by Section 1, Chapter 353, O.S.L. 1998 (85 O.S. Supp. 1999, Section 5), which relates to discharge of an employee; modifying requirements for restoring employees; and providing an effective date.

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

SECTION 1. AMENDATORY 85 O.S. 1991, Section 3.6, as last amended by Section 1, Chapter 262, O.S.L. 1997 (85 O.S. Supp. 1999, Section 3.6), is amended to read as follows:

Section 3.6 A. All the evidence pertaining to each workers' compensation case, except upon agreed orders, shall, insofar as may be possible, be heard by the ~~judge~~ Judge of the Workers' Compensation Court initially assigned to the case. Upon the completion of such hearing or hearings, the judge hearing the ~~cause~~ case shall make such order, decision or award as is proper, just and equitable in the matter. Either party feeling ~~himself~~ aggrieved by such order, decision or award shall, within ten (10) days, have the right to take an appeal from the order, decision or award of the Judge to the Workers' Compensation Court sitting en banc. ~~Such~~ An appeal from an order, decision or award made upon the completion of

the case shall be allowed as a matter of right to either party upon filing with the Administrator of the Workers' Compensation Court a notice of such appeal. Such Court en banc shall consist of three (3) Judges of the Court, none of whom shall have presided over any of the previous hearings on the claim. The Court en banc may reverse or modify the decision only if it determines that such decision was against the clear weight of the evidence or contrary to law. Upon completion of the appeal, the members of the Court sitting en banc shall issue such order, decision or award as is proper, just and equitable. Only those members participating in the hearing on appeal shall participate in the making of the order, decision or award. All orders, decisions or awards shall be approved by a majority of the members of the Court sitting en banc. Provided, there may be more than one Court en banc sitting at the same time for purposes of hearing the appeals provided for herein. Appeals shall be allowed on a question of law or a question of fact, or a mixed question of law and fact, and shall be determined on the record made before the Judge. Provided, when the order of the Judge of the Court making an award to a claimant is appealed by the employer or the insurance carrier, interest shall be allowed on the accrued amounts of the award due from the date the award was filed, if the award is not modified or vacated on appeal.

B. In each case filed in the Court en banc, and at the time of filing same, the appellant shall deposit with the clerk as costs One Hundred Twenty-five Dollars ($125.00) of which no rebate of any part thereof shall be made. The fee collected under this subsection shall be deposited as follows: One Hundred Dollars ($100.00) to the credit of the Administrator of Workers' Compensation Revolving Fund created by Section 95 of this title for the costs of administering the Workers' Compensation Act; and Twenty-five Dollars ($25.00) to the credit of the Administrator of Workers' Compensation Revolving Fund for purposes of implementing the provisions of this act,

including strengthening and providing additional funding for the Attorney General's Workers' Compensation Fraud Unit, providing counseling services pursuant to the workers' compensation counselor program and safety in the workplace.

C. The order, decision or award of the Court shall be final and conclusive upon all questions within its jurisdiction between the parties, unless, within twenty (20) days after a copy of such order, decision or award has been sent by the Administrator to the parties affected, an action is commenced in the Supreme Court of the state, to review such order, decision or award. Any order, decision or award made by a judge of the Court shall be considered as final under the provisions of this section unless appealed to the Workers' Compensation Court sitting en banc as provided for in subsection A of this section. The order, decision or award of a judge of the Court shall be final and conclusive upon all questions within his jurisdiction between the parties unless appealed directly to the Supreme Court or to the Workers' Compensation Court sitting en banc as hereinbefore provided. Any party litigant desiring to appeal directly from such order, decision or award to the Supreme Court, shall, within twenty (20) days after a copy of the order, decision or award has been sent by the Administrator to the parties affected, commence an action in the Supreme Court of the state to review such order, decision or award. The Supreme Court shall have original jurisdiction of such action, and shall prescribe rules for the commencement and trial of the same. Such action shall be commenced by filing with the Clerk of the Supreme Court a certified copy of the order, decision or award of the Workers' Compensation Court sitting en banc or the judge attached to the petition by the complaint wherein the complainant or petitioner shall make his assignments or specifications as to wherein said order, decision or award is erroneous or illegal. Provided, however, no proceeding to reverse, vacate or modify any order, decision or award of the

Workers' Compensation Court sitting en banc or judge of the Court wherein compensation has been awarded an injured employee shall be entertained by the Supreme Court unless the Administrator shall take a written undertaking to the claimant executed on the part of the respondent or insurance carrier, or both, with one or more sureties to be approved by the Administrator, to the effect that the appellant will pay the amount of the award rendered therein, together with interest thereon from the date of the award by the judge of the Court and all costs of the proceeding, or on the further order of the Workers' Compensation Court sitting en banc or judge of the Court after the appeal has been decided by the Supreme Court, except that municipalities and other political subdivisions of the State of Oklahoma are exempt from making such written undertakings. Before the Clerk of the Supreme Court shall accept the action for filing, a certificate from the Administrator shall be required, showing that this provision has been complied with. Said proceedings shall be heard in a summary manner and shall have precedence over all other civil cases in the Supreme Court, except preferred Corporation Commission appeals. The Supreme Court shall require the appealing party to file within forty-five (45) days from the date of the filing of an appeal or an order appealed from, a transcript of the record of the proceedings before the Workers' Compensation Court, or upon application and for good cause shown, the Supreme Court may extend the time for filing said transcript of the record for a period of time not to exceed ninety (90) days from said date, and such action shall be subject to the law and practice applicable to other civil actions cognizable in said Supreme Court. The Court whose action was appealed shall enter any order directed by the Supreme Court under the final determination.

D. When the only controverted issue in a death claim is the determination of proper beneficiaries entitled to receive death benefits, and the parties-beneficiary appeal the decision of the

Court, the employer or insurance carrier may pay the proceeds, as they accrue, to the Administrator. The Administrator shall hold the proceeds in trust in an interest-bearing account during the appeal period and shall distribute the proceeds and interest to the proper beneficiaries upon written direction of the Court. The employer or insurance carrier shall not be taxed interest or cost on the order of the death claim if payments have been made to the Administrator as they accrue.

E. An action to reopen any case under the provisions of the Workers' Compensation Act shall be assigned in the same manner as original assignments made hereunder.

F. Benefits for an injury shall be determined by the law in effect at the time of injury; benefits for death shall be determined by the law in effect at the time of death.

G. For purposes of this section, interest shall be computed pursuant to Section 727 of Title 12 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 85 O.S. 1991, Section 5, as last amended by Section 1, Chapter 353, O.S.L. 1998 (85 O.S. Supp. 1999, Section 5), is amended to read as follows:

Section 5. A. No person, firm, partnership, corporation, or other entity may discharge, or, except for nonpayment of premium, terminate any group health insurance of any employee because the employee has in good faith:

1. Filed a claim;

2. Retained a lawyer for representation regarding a claim;

3. Instituted or caused to be instituted any proceeding under the provisions of this title; or

4. Testified or is about to testify in any proceeding under the provisions of this title which relates to the employee's past or present employment.

B. No person, firm, partnership, corporation, or other entity may discharge any employee during a period of temporary total disability ~~solely~~ substantially on the basis of absence from work.

C. ~~No~~ After an employee's period of temporary total disability has ended, no person, firm, partnership, corporation, or other entity shall be required to ~~rehire or retain~~ restore any employee who is determined to be physically unable to perform assigned duties. Provided, a decision regarding restoration of any such employee shall be in compliance with state and federal law. The failure of an employer to ~~rehire or retain~~ restore any such employee shall in no manner be deemed a violation of this section.

D. No person, firm, partnership, corporation, or other entity may discharge any employee because the employee has in good faith elected to participate or not to participate in a certified workplace medical plan as provided in Section 14 of this title.

SECTION 3. This act shall become effective November 1, 2000.

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