

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1718

By: Askins

AS INTRODUCED

An Act relating to workers' compensation; amending 85 O.S. 1991, Section 1.2, as last amended by Section 1, Chapter 349, O.S.L. 1993, 3.4, as amended by Section 3, Chapter 349, O.S.L. 1993, Section 4, Chapter 361, O.S.L. 1997, as amended by Section 4, Chapter 420, O.S.L. 1999 14, as last amended by Section 2, Chapter 248, O.S.L. 2000 and 80 (85 O.S. Supp. 2000, Sections 1.2, 3.4, 3.10 and 14), which relate to contempt powers, prehearing and settlement conferences, mediation and case management; providing Court with authority and procedure to punish direct contempt; authorizing Court to order certain proceedings and providing procedures therefore; authorizing Court to order medical case management and providing procedures therefore; allowing judges of the Workers' Compensation Court to order mediation and providing procedures therefor; clarifying references; providing penalty for failure to comply with a Court order to mediation; and providing an effective date.

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

SECTION 1. AMENDATORY 85 O.S. 1991, Section 1.2, as last amended by Section 1, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 2000, Section 1.2), is amended to read as follows:

Section 1.2 A. There is hereby created the Workers' Compensation Court which shall consist of ten (10) judges. Each judge of the Court shall be appointed to a designated numbered position on the Court. The positions shall be numbered one through ten. The initial terms of the judges by position number shall expire on the following dates:

Position 1 shall expire 7-1-84.

Position 2 shall expire 7-1-84.

Position 3 shall expire 7-1-84.

Position 4 shall expire 7-1-82.

Position 5 shall expire 7-1-82.

Position 6 shall expire 7-1-80.

Position 7 shall expire 7-1-80.

Position 8 shall expire 7-1-88.

Position 9 shall expire 7-1-88.

Position 10 shall expire 7-1-96 after being appointed under the provisions hereinafter set forth effective September 1, 1993.

Thereafter, each position shall be filled by a judge appointed to serve a six-year term.

Provided the judges serving unexpired terms on the State Industrial Court shall serve on the Workers' Compensation Court until their terms expire only as provided herein. The judges of the State Industrial Court whose terms expire March 14, 1979, shall serve in Positions 6 and 7 until that date, and the judge whose term expires March 14, 1981, shall serve in Position 5 until that date. Upon expiration of these terms, the Governor shall appoint judges to serve the remainder of the initial terms designated in this section. When a vacancy on the Court occurs or is certain to occur or for initial appointments to the Court, the Judicial Nominating Commission shall choose and submit to the Governor and the Chief Justice of the Supreme Court the names of three persons, in addition to the name of the incumbent judge, if any, for each appointment, each of whom has previously notified the Commission in writing that he will serve as a judge if appointed. The Governor shall appoint one of the nominees to fill the vacancy, but if he fails to do so within sixty (60) days, the Chief Justice of the Supreme Court shall appoint one of the nominees, the appointment to be certified to the Secretary of State.

B. A judge of the Court shall have been licensed to practice law in this state for a period of not less than five (5) years prior to appointment. Each judge, before entering upon the duties of his

office, shall take and subscribe to an oath of office and file the same with the Secretary of State. Each judge shall continue to serve until his successor shall have been appointed and qualified. A judge shall be eligible for reappointment, provided that he may be removed for cause by the Court on the Judiciary prior to the expiration of his term.

C. Each judge shall receive a salary equal to that paid to a district judge of this state, and shall devote full time to his duties and shall not engage in the private practice of law during the term in office.

D. The Governor shall appoint from among the judges of the Workers' Compensation Court a presiding judge of that Court who shall serve for a two-year term commencing with the initial appointment beginning January 1, 1987. Any judge so appointed shall not serve more than two times in succession. The presiding judge shall preside at all hearings held by the Court, preside at such meetings of the judges of the Court as may be necessary and perform such other supervisory duties as the needs of the Court may require. The presiding judge may designate one of the other judges to act as presiding judge in his place whenever necessary during the disqualification, disability, or absence of the presiding judge. During the disqualification, disability, or absence of the presiding judge, the acting presiding judge shall exercise all of the powers of the presiding judge.

E. The Court shall have the authority to adopt reasonable rules within its respective areas of responsibility including the rules of procedure for the Court en banc, after notice and public hearing, for effecting the purposes of the Workers' Compensation Act. All of the judges of the Court shall be present at all meetings wherein rules are adopted or amended. All rules, upon adoption, shall be submitted to the Supreme Court, which shall either approve or disapprove them within thirty (30) days. All rules, upon approval

by the Supreme Court, shall be published and be made available to the public and, if not inconsistent with the law, shall be binding in the administration of the Workers' Compensation Act.

F. The Court is hereby designated and confirmed as a court of record, with respect to any matter within the limits of its jurisdiction, and within such limits the judges thereof shall possess the powers and prerogatives of the judges of the other courts of record of this state, including the power to punish for civil contempt those persons who disobey a subpoena, refuse to be sworn or to answer as a witness, or refuse to participate in mediation or refuse to comply with an order of the Court, when lawfully ordered to do so.

G. The principal office of the Court shall be situated in the City of Oklahoma City in quarters assigned by the Department of Central Services. The Court may hold hearings in any city of this state.

H. All county commissioners and presiding district judges of this state shall make quarters available for the conducting of hearings by a judge of the Court upon request by the Court.

I. The judges of the Court shall determine the qualifications necessary for the job of Administrator. Said qualifications shall be submitted to the Chief Justice of the Supreme Court for approval, disapproval or modification.

J. Judges of the Workers' Compensation Court may punish for direct contempt pursuant to Sections 565, 565.1 and 566 of Title 21 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 85 O.S. 1991, Section 3.4, as amended by Section 3, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 2000, Section 3.4), is amended to read as follows:

Section 3.4 A. 1. 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. 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.

2. 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 settlement conferences, and

hearing cases. 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.

3. The Court may, upon its own motion or on the request of any of the parties, set a prehearing conference to address any controverted issue which, after a good faith effort by the parties, cannot be resolved without the assistance of the Court. The prehearing conference shall be held before the assigned judge no later than forty-five (45) days after the request for prehearing conference.

4. The Court may, upon its own motion or on the request of any of the parties, set a settlement conference at any practicable time. The conference shall be held before any Workers' Compensation Court Judge or an Active Retired Judge sitting by special designation for that purpose, other than the judge assigned to the case. The purpose of the settlement conference is to permit an informal discussion between the parties, attorneys, and the settlement judge on every aspect of the case bearing on its settlement value in an effort to resolve the matter before trial.

5. 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. 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 3. AMENDATORY Section 4, Chapter 361, O.S.L. 1997, as amended by Section 4, Chapter 420, O.S.L. 1999 (85 O.S. Supp. 2000, Section 3.10), is amended to read as follows:

Section 3.10 A. Mediation shall be available to any party to a claim arising pursuant to the provisions of the Workers' Compensation Act, subject to the limitation provisions of Section 14.3 of this title and except for claims against the Multiple Injury Trust Fund.

B. Mediation ~~shall~~ may be voluntary, ~~and shall not be conducted without the consent of both parties~~ or may be ordered by the Workers' Compensation Court, at the discretion of the judge to whom the case is assigned.

1. ~~Mediation~~ Voluntary mediation is not a prerequisite to the commencement of a claim for benefits, pursuant to the provisions of the Workers' Compensation Act.

2. A request for mediation or consent to mediate does not invoke the jurisdiction of the Workers' Compensation Court.

C. No sanction or penalty may be imposed by the Administrator of the Workers' Compensation Court or any judge of the Court if a party refuses to ~~mediate~~ enter into voluntary mediation. Failure to comply with an Order to Mediate, by either failing to enter into mediation, or by failing to mediate in good faith, shall constitute contempt of court, and shall subject the noncomplying party to the contempt powers of the Court.

D. 1. A request for voluntary mediation shall be made in writing to the Administrator.

2. The party requesting voluntary mediation shall inform the Administrator of the issues in dispute, and the name, address, and telephone number of the opposing party or insurance company, if known. If the claim involves a certified workplace medical plan, the requesting party shall provide the name and phone number of the contact person for the plan.

3. A party may request, in writing, to the Court that the Court order mediation at any time, regardless of whether a request for voluntary mediation was ever made. A request that the Court order mediation shall be made on a form to be provided by the Administrator. The opposing party shall be allowed to respond to the request that the Court order mediation, in writing, on a form to be provided by the Administrator, and by a schedule to be determined by the Administrator.

E. Once a request for voluntary mediation has been made, the Administrator shall contact the opposing party. If the opposing party does not wish to participate in voluntary mediation, the requesting party shall be notified of the refusal.

F. If both parties agree to voluntary mediation, they shall enter into a written consent to mediate on a form provided by the Administrator. The form shall contain a statement informing the parties of their rights and obligations and of the confidentiality of the proceedings. This written consent shall be signed by both parties to the claim and shall be submitted to the Administrator before the selection of a mediator is made.

G. Mediation is confidential and no part of the proceeding shall be considered a matter of public record. Recommendations of the mediator are not binding unless the parties enter into a settlement agreement. If an agreement is not reached, the results

and statements made during the mediation are not admissible in any following proceeding.

~~H. Upon receipt of the consent form, the Administrator shall provide the parties with a list of certified mediators. Both~~

1. In the event of voluntary mediation, both parties shall agree to a mediator. The Administrator shall provide the parties with a list of mediators. If the parties are unable to agree, voluntary mediation shall not occur.

2. If the Court orders the parties to complete mediation, the Court shall select the mediator.

~~I. The Supreme Court of the State of Oklahoma shall be responsible for certifying those persons who are eligible and qualified to serve as mediators. An individual may be certified as a mediator if:~~

~~1. The applicant is certified pursuant to the Dispute Resolution Act, Section 1801 et seq. of Title 12 of the Oklahoma Statutes;~~

~~2. The applicant has such additional qualifications as required by the Court; and~~

The Administrator shall be authorized to hire, employ and retain persons as necessary to ensure timely completion of court-ordered mediation.

~~3. The applicant~~ J. Any mediation performed pursuant to this section shall be performed by a mediator who has signed an agreement to be bound by the ethical confidentiality standards set forth in Chapter 37, Appendix A of Title 12 of the Oklahoma Statutes, "Code of Professional Conduct for Mediators" "Confidentiality of Proceedings".

~~J. Each certified mediator shall remain on the list for five (5) years, unless removed. Mediators shall be required to complete at least six (6) hours of continuing education per two-year period in the areas of mediation and workers' compensation. Proof of~~

~~compliance with this requirement shall be submitted to the Administrator. This continuing education requirement shall be in addition to any other such general requirement which may be required by the Oklahoma State Bar Association. Cost of continuing education is to be borne by the applicant.~~

K. Notwithstanding the Rules and Procedures for the Dispute Resolution Act, mediators shall be compensated at the rate or fee as determined by the mediator; provided however, the rate or fee shall not exceed a maximum rate to be established by the Administrator by rule. The cost of voluntary mediation shall be paid by the respondent or its insurance carrier.

L. If the mediated claim is voluntarily agreed to by both parties and resolved, any final settlement of the action shall include a consent to mediation form and shall be completed upon the filing of a Joint Petition or an Agreement Between Employer and Employee as to Fact with Relation to an Injury and Payment of Compensation. If mediation is ordered by the Court, and results in resolution of the mediated claim, any final settlement of the action shall be completed upon the filing of a Joint Petition or an Agreement Between Employer and Employee as to Fact with Relation to an Injury and Payment of Compensation.

SECTION 4. AMENDATORY 85 O.S. 1991, Section 14, as last amended by Section 2, Chapter 248, O.S.L. 2000 (85 O.S. Supp. 2000, Section 14), is amended to read as follows:

Section 14. A. 1. The employer shall promptly provide for an injured employee such medical, surgical or other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus as may be necessary after the injury. The attending physician shall supply the injured employee and the employer with a full examining report of injuries found at the time of examination and proposed treatment, this report to be supplied within seven (7) days after the examination; also, at the conclusion of the treatment

the attending physician shall supply a full report of his treatment to the employer of the injured employee.

2. The attending physician who renders treatment to the employee at any time shall promptly notify the employee and employer or the employer's insurer in writing after the employee has reached maximum medical improvement and is released from active medical care. If the employee is capable of returning to modified light duty work, the attending physician shall promptly notify the employee and the employer or the employer's insurer thereof in writing and shall also specify what restrictions, if any, must be followed by the employer in order to return the employee to work. In the event the attending physician provides such notification to the employer's insurer, the insurer shall promptly notify the employer.

B. The employer's selected physician shall have the right to examine the injured employee. A report of such examination shall be furnished the injured employee within seven (7) days after such examination.

C. If the employer fails or neglects to provide medical treatment within three (3) days after knowledge of the injury, the injured employee, during the period of such neglect or failure, may do so at the expense of the employer; provided, however, that the injured employee, or another in the employee's behalf, may obtain emergency treatment at the expense of the employer where such emergency treatment is not provided by the employer. Unless a self-insured employer, group self-insurance association plan, or an employer's workers' compensation insurance carrier has previously contracted with a certified workplace medical plan, the employee may select a physician of the employee's choice to render necessary medical treatment, at the expense of the employer. The attending physician so selected by the employee shall notify the employer and the insurance carrier within seven (7) days after examination or

treatment was first rendered. If a self-insured employer, group self-insurance association plan, an employer's workers' compensation insurance carrier or an insured, which shall include any member of an approved group self-insured association, policyholder or public entity, regardless of whether such entity is insured by the State Insurance Fund, has previously contracted with a certified workplace medical plan, the employee shall have two choices:

1. a. The employee shall have the right, for each work-related injury, to select any physician from a list of physicians provided by the employee at the time of making an election not to participate in the certified workplace medical plan. The list shall consist only of physicians who have:

(1) maintained the employee's medical records prior to an injury and have a documented history of treatment with the employee prior to an injury, or

(2) maintained the medical records of an immediate family member of the employee prior to an injury and have a documented history of treatment with an immediate family member of the employee prior to an injury. For purposes of this division, immediate family member means the employee's spouse, children, parents, stepchildren, and stepparents.

b. An attending physician selected under this paragraph must agree to comply with all the rules, terms, and conditions of the certified workplace medical plan. An attending physician selected under this paragraph may refer the employee to a physician outside the certified workplace medical plan only if the physician to whom the employee is referred agrees to comply with

all the rules, terms, and conditions of the certified workplace medical plan; or

2. The employee shall elect to participate in the certified workplace medical plan.

D. The term "physician" as used in this section shall mean any person licensed in this state as a medical doctor, chiropractor, podiatrist, dentist, osteopathic physician or optometrist. The Court may accept testimony from a psychologist if the testimony is made under the direction of a medical doctor. If an injured employee should die, whether or not the employee has filed a claim, that fact shall not affect liability for medical attention previously rendered, and any person entitled to such benefits may enforce charges therefor as though the employee had survived.

E. 1. Whoever renders medical, surgical, or other attendance or treatment, nurse and hospital service, medicine, crutches and apparatus, or emergency treatment, may submit such charges and duration of treatment to the Administrator of the Court for review in accordance with the rules of the Administrator.

2. Such charges and duration of treatment shall be limited to the usual, customary and reasonable charges and duration of treatment as prescribed and limited by a schedule of fees and treatment for all medical providers to be adopted, after notice and public hearing, by the Administrator. Said fee and treatment schedule shall be based on the usual, customary and reasonable medical charges of health care providers in the same trade area for comparable treatment of a person with similar injuries and the duration of treatment prevailing in this state for persons with similar injuries. The fee and treatment schedule shall be reviewed biennially by the Administrator and, after such review, and notice and public hearing, the Administrator shall be empowered to amend or alter said fee and treatment schedule to ensure its adequacy. The Administrator shall not increase the overall medical costs in an

amount exceeding the cumulative percentage of change of the Consumer Price Index - Urban (CPI-U) for medical costs since the last biennial review.

3. The Administrator shall adopt a new fee and treatment schedule to be effective not later than January 1, 1998, which establishes maximum allowable reimbursement levels for preparation for or testimony at a deposition or court appearance which shall not exceed Two Hundred Dollars (\$200.00) per hour and for work related or medical disability evaluation services.

4. The Administrator's review of medical and treatment charges pursuant to this section shall be conducted pursuant to the fee and treatment schedule in existence at the time the medical care or treatment was provided. The order of the Administrator approving medical and treatment charges pursuant to this section shall be enforceable by the Court in the same manner as provided in the Workers' Compensation Act for the enforcement of other compensation payments. Any party feeling aggrieved by the order, decision or award of the Administrator shall, within ten (10) days, have the right to request a hearing on such medical and treatment charges by a judge of the Workers' Compensation Court. The judge of the Court may affirm the decision of the Administrator, or reverse or modify said decision only if it is found to be contrary to the fee and treatment schedule existing at the time the said medical care or treatment was provided. The order of the judge shall be subject to the same appellate procedure set forth in Section 3.6 of this title for all other orders of the Court. The right to recover charges for every type of medical care for personal injuries arising out of and in the course of covered employment as herein defined, shall lie solely with the Workers' Compensation Court, and all jurisdiction of the other trial courts of this state over such action is hereby abolished. The foregoing provision, relating to approval and enforcement of such charges and duration of treatment, shall not

apply where a written contract exists between the employer or insurance carrier and the person who renders such medical, surgical or other attendance or treatment, nurse and hospital service, or furnishes medicine, crutches or apparatus. When a medical care provider has brought a claim in the Workers' Compensation Court to obtain payment for services, a party who prevails in full on the claim shall be entitled to a reasonable attorney's fee.

F. The Court or Administrator shall have authority on application of employee or employer or its insurance carrier to order a change of physicians at the expense of the employer when, in its judgment, such change is desirable or necessary; provided, the employer shall not be liable to make any of the payments provided for in this section, in case of contest of liability, where the Court shall decide that the injury does not come within the provisions of the Workers' Compensation Act.

G. If the employee chooses a physician for treatment and subsequently changes physicians without the prior approval of the Court or Administrator except when prior approval is waived for good cause shown, or without agreement of the parties, the maximum liability of the employer for the aggregate expenses of all such subsequent physicians shall be Five Hundred Dollars (\$500.00). Provided, the limitations shall not apply to referrals by the treating physician for treatment or diagnostic procedures.

H. The court may, on its own motion or on the request of any of the parties, appoint a medical case manager to monitor, evaluate and coordinate the delivery of quality, cost effective medical treatment and other health care services to an injured employee to assist the employee in reaching maximum medical improvement, and to promote an appropriate, prompt return to work. The reasonable and customary charges of the medical case manager shall be borne by the respondent.

SECTION 5. AMENDATORY 85 O.S. 1991, Section 80, is amended to read as follows:

Section 80. In case of disobedience of any person to comply with the order of the ~~Commission~~ Workers' Compensation Court, or a subpoena issued by it, ~~or one of its members,~~ by an officer thereof, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, ~~or refuse to permit an inspection as aforesaid, the judge of the district court of the county in which the person resides, or of the county in which such hearing is being conducted, on application of any member of the board, or any inspector or examiner appointed by it, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of requirements of subpoena issued from such court on a refusal to testify therein~~ the Court may compel obedience by attachment proceedings as for civil contempt, pursuant to Sections 392 through 396 of Title 12 of the Oklahoma Statutes.

SECTION 6. This act shall become effective November 1, 2001.

48-1-5308 SK 6/12/15