SENATE FLOOR VERSION
February 27, 2012

SENATE BILL NO. 1520 By: Bingman of the Senate

and

Jordan of the House

An Act relating to workers' compensation benefits; amending 85 O.S. 2011, Sections 333 and 342, which relate to permanent impairment or disability and change of condition; updating statutory references; requiring certain annual affidavit; requiring promulgation of certain form; providing for suspension of certain benefits for failure to file certain affidavit; creating rebuttable presumption; requiring written findings under certain circumstances; authorizing amendment of certain orders under specified circumstances; requiring inclusion of certain statement on certain forms; and providing an effective date.

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

SECTION 1. AMENDATORY 85 O.S. 2011, Section 333, is amended to read as follows:

Section 333. A. The determination of permanent impairment or disability shall be the responsibility of the Workers' Compensation Court. Any claim by an employee for compensation for permanent partial impairment must be supported by competent medical testimony of the treating physician who is a medical doctor or a doctor of

osteopathy or a qualified independent medical examiner which shall be supported by objective medical findings, as defined in ~~this act~~ the Workers' Compensation Code, and which shall include an evaluation by a physician stating his or her opinion of the employee's percentage of permanent partial impairment and whether or not the impairment is job-related and caused by the accidental injury or occupational disease. A physician's opinion of the nature and extent of permanent partial impairment to parts of the body other than scheduled members must be based solely on criteria established by the American Medical Association's "Guides to the Evaluation of Permanent Impairment", Fifth Edition, or any subsequent edition approved by the Administrator after public hearing and review by the Physician Advisory Committee, hereinafter referred to as "Guides". A copy of any written evaluation shall be sent to both parties within seven (7) days of issuance. Medical opinions addressing compensability and permanent impairment must be stated within a reasonable degree of medical certainty. For purposes of this section, "physician" has the same meaning as defined in Section ~~26~~ 326 of this ~~act~~ title and includes a person licensed by another state who would be qualified to be a licensed physician under the laws of this state. Any party may submit the report of an evaluating physician.

B. Permanent partial impairment shall not be allowed to a part of the body for which no medical treatment has been received. A

determination of permanent impairment or disability made by the Court which is not supported by objective medical findings provided by a treating physician who is a medical doctor or doctor of osteopathy or a qualified independent medical examiner shall be considered an abuse of discretion.

C. The Physician Advisory Committee may recommend the adoption of a method or system to evaluate permanent impairment that shall deviate from, be used in place of, or in combination with the Guides. Such recommendation shall be made to the Administrator of the Workers' Compensation Court who may adopt the recommendation in part or in whole. The adopted method or system shall be submitted by the Administrator to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such method or system so submitted shall be subject to disapproval by joint or concurrent resolution of the Legislature during the legislative session in which submitted. If disapproved, the existing method of determining permanent partial impairment shall continue in effect. If the Legislature takes no action on the method or system submitted by the Administrator, the method or system shall become operative ten (10) days following the adjournment of the Legislature.

D. The examining physician shall not deviate from the Guides or any alternative thereto except as may be specifically provided for

in the Guides or modifications to the Guides adopted pursuant to subsection C of this section.

E. In cases of permanent partial impairment, the compensation shall be seventy percent (70%) of the employee's average weekly wages, and shall be paid to the employee for the period prescribed by the following schedule:

Thumb: For the loss of thumb, sixty-six (66) weeks.

First Finger: For the loss of the first finger, commonly called the index finger, thirty-nine (39) weeks.

Second Finger: For the loss of a second finger, thirty-three (33) weeks.

Third Finger: For the loss of a third finger, twenty-two (22) weeks.

Fourth Finger: For the loss of a fourth finger, commonly called the little finger, seventeen (17) weeks.

Phalange of Thumb or Finger: The loss of the first phalange of the thumb or finger shall be considered equal to the loss of one-half (1/2) of such thumb or finger, and compensation shall be one-half (1/2) of the amount above specified; the loss of more than one phalange shall be considered as the loss of the entire thumb or finger; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

Great Toe: For the loss of a great toe, thirty-three (33) weeks.

Other Toes: For the loss of one of the toes other than the great toe, eleven (11) weeks.

Phalange of Toe: The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half (1/2) of such toe, and compensation shall be one-half (1/2) of the amount specified. The loss of more than one phalange shall be considered as the loss of the entire toe.

Hand: For the loss of a hand, two hundred twenty (220) weeks.

Arm: For the loss of an arm, two hundred seventy-five (275) weeks. Provided, that for the purposes of the arm as a scheduled member, the arm shall mean that part of the body that extends from the surgical neck of the humerus and includes the elbow joint.

Foot: For the loss of a foot, two hundred twenty (220) weeks.

Leg: For the loss of a leg, two hundred seventy-five (275) weeks. Provided, that for the purposes of the leg as a scheduled member, the leg shall mean that part of the body that extends from the surgical neck of the femur and includes the knee joint.

Eye: For the loss of an eye, two hundred seventy-five (275) weeks.

Deafness: Deafness from industrial cause, including occupations which are hazardous to hearing, accident or sudden trauma, three hundred thirty (330) weeks, and total deafness of one ear from industrial cause, including occupations which are hazardous to hearing, accident or sudden trauma, one hundred ten (110) weeks.

Any examining physician shall only evaluate deafness or hearing impairment in accordance with the latest publication of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time of the injury or alternative method provided for under provisions of ~~this act~~ the Workers' Compensation Code.

Loss of Use: Permanent loss of use of a thumb, finger, toe, arm, hand, foot, leg or eye shall be considered as the equivalent of the loss of such thumb, finger, toe, hand, arm, foot, leg or eye.

For the permanent partial loss of use of a member, loss of hearing or sight of an eye, seventy percent (70%) of the employee's average weekly wage during that portion of the number of weeks in the foregoing schedule provided for the loss of such member or sight of an eye which the partial loss of use thereof bears to the total loss of use of such member, loss of hearing or sight of an eye.

Amputations: Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand. Amputation between the knee and the ankle shall be considered as the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm. Amputation at or above the knee shall be considered as the loss of a leg.

Hernia: In case of an injury resulting in the first or second hernia in the same area of the body, there shall be no award of permanent partial impairment. Payment of benefits in such cases

shall be limited to temporary total disability compensation for six (6) weeks, and all necessary medical costs including, but not limited to, the cost of surgery. A claimant who has had surgery for a hernia may petition the Workers' Compensation Court for one extension of temporary total disability compensation and the Court may order such an extension, not to exceed six (6) additional weeks, if the treating physician indicates such an extension is appropriate, or as agreed to by all parties. An award for temporary total disability or permanent partial impairment may be entered by the Court if an injury results in a third hernia, or more, in the same area of the body.

Other cases: In cases in which the Court finds an injury to a part of the body not specifically covered by the foregoing provisions of this section, the employee may be entitled to compensation for permanent partial impairment. The compensation ordered paid shall be seventy percent (70%) of the employee's average weekly wage for the number of weeks which the partial disability of the employee bears to five hundred (500) weeks. No permanent disability shall be awarded unless there is objective medical evidence of a permanent anatomical abnormality. In determining the existence of such an abnormality, the Court may consider if there is credible medical evidence that the ability of the employee to earn wages at the same level as before the injury has been permanently impaired.

F. The compensation payments under the provisions of the Workers' Compensation Code for permanent partial impairment shall not:

1. Exceed the sum of Three Hundred Twenty-three Dollars ($323.00) per week for injuries occurring on or after August 27, 2010, through August 26, 2015, or fifty percent (50%) of the state's average weekly wage beginning August 27, 2015;

2. At any time be less than One Hundred Fifty Dollars ($150.00) per week for injuries occurring on or after August 27, 2010.

G. Previous Disability: The fact that an employee has suffered previous disability or impairment or received compensation therefor shall not preclude the employee from compensation for a later accidental personal injury or occupational disease. In the event there exists a previous impairment, including a previous non-work-related injury or condition which produced permanent disability and the same is aggravated or accelerated by an accidental personal injury or occupational disease, compensation for permanent disability shall be only for such amount as was caused by such accidental personal injury or occupational disease and no additional compensation shall be allowed for the preexisting disability or impairment. The sum of all permanent partial impairment awards, excluding awards against the Multiple Injury Trust Fund, shall not exceed five hundred twenty (520) weeks, except for awards for

amputations and disability to the parts of the body for which surgery was received in the latest injury.

H. No payments on any permanent partial impairment order shall begin until payments on any preexisting permanent partial impairment orders have been completed.

I. Any person receiving disability benefits from an employer or the employer's insurance carrier, regardless of whether proceedings have been initiated by the filing of a Form 3, shall file with the Workers' Compensation Court, twelve (12) months after receipt of the first benefit and every year thereafter, an affidavit under penalty of perjury stating that he or she has not been gainfully employed and is not capable of gainful employment, and stating that there has been no change in income from any source during the previous twelve (12) months. Such affidavit shall be on a form promulgated by the Workers' Compensation Court. Failure to file the affidavit shall result in the suspension of benefits and shall create a rebuttable presumption for the termination of benefits until the person shows by a preponderance of the evidence that he or she is not employed or capable of employment and there has been no change in income. Failure to file an affidavit as required by this subsection shall be recorded on the permanent record of the person's case for suspension of benefits, and the Workers' Compensation Court shall make written findings of fact as to the evidence considered in rebutting the presumption against the suspension or termination of benefits.

SECTION 2. AMENDATORY 85 O.S. 2011, Section 342, is amended to read as follows:

Section 342. Within the time prescribed by Section ~~18~~ 318 of this ~~act~~ title, the Workers' Compensation Court may find that the injured employee has suffered a change of condition for the worse or better and amend any prior order involving temporary total disability, additional permanent partial impairment, permanent total disability, and medical benefits. Provided, that any change of condition shall only be found to those body parts adjudicated by the previous award or as a result of a consequential injury and must be proved by objective medical evidence of a change of condition. Additional permanent partial impairment awarded after a change of condition and the permanent partial impairment from the previous award shall not exceed five hundred twenty (520) weeks, except for additional permanent partial impairment resulting from amputation or surgery as a result of the change of condition. The Workers' Compensation Court shall include a statement on all forms for notices and instructions to employers and employees informing employees that they shall promptly comply with the requirements of this section.

SECTION 3. This act shall become effective November 1, 2012.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-21-12 - DO PASS, As Coauthored.