

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1520

By: Bingman

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5
6 AS INTRODUCED

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

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

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

23 Section 333. A. The determination of permanent impairment or
24 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

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

22 B. Permanent partial impairment shall not be allowed to a part
23 of the body for which no medical treatment has been received. A
24 determination of permanent impairment or disability made by the

1 Court which is not supported by objective medical findings provided
2 by a treating physician who is a medical doctor or doctor of
3 osteopathy or a qualified independent medical examiner shall be
4 considered an abuse of discretion.

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

22 D. The examining physician shall not deviate from the Guides or
23 any alternative thereto except as may be specifically provided for
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1 in the Guides or modifications to the Guides adopted pursuant to
2 subsection C of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 1. Exceed the sum of Three Hundred Twenty-three Dollars
5 (\$323.00) per week for injuries occurring on or after August 27,
6 2010, through August 26, 2015, or fifty percent (50%) of the state's
7 average weekly wage beginning August 27, 2015;

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

10 G. Previous Disability: The fact that an employee has suffered
11 previous disability or impairment or received compensation therefor
12 shall not preclude the employee from compensation for a later
13 accidental personal injury or occupational disease. In the event
14 there exists a previous impairment, including a previous non-work-
15 related injury or condition which produced permanent disability and
16 the same is aggravated or accelerated by an accidental personal
17 injury or occupational disease, compensation for permanent
18 disability shall be only for such amount as was caused by such
19 accidental personal injury or occupational disease and no additional
20 compensation shall be allowed for the preexisting disability or
21 impairment. The sum of all permanent partial impairment awards,
22 excluding awards against the Multiple Injury Trust Fund, shall not
23 exceed five hundred twenty (520) weeks, except for awards for
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1 amputations and disability to the parts of the body for which
2 surgery was received in the latest injury.

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

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

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

3 Section 342. Within the time prescribed by Section ~~48~~ 318 of
4 this ~~act~~ title, the Workers' Compensation Court may find that the
5 injured employee has suffered a change of condition for the worse or
6 better and amend any prior order involving temporary total
7 disability, additional permanent partial impairment, permanent total
8 disability, and medical benefits. Provided, that any change of
9 condition shall only be found to those body parts adjudicated by the
10 previous award or as a result of a consequential injury and must be
11 proved by objective medical evidence of a change of condition.
12 Additional permanent partial impairment awarded after a change of
13 condition and the permanent partial impairment from the previous
14 award shall not exceed five hundred twenty (520) weeks, except for
15 additional permanent partial impairment resulting from amputation or
16 surgery as a result of the change of condition. The Workers'
17 Compensation Court shall include a statement on all forms for
18 notices and instructions to employers and employees informing
19 employees that they shall promptly comply with the requirements of
20 this section.

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

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