

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: H3/10/17 H3/17/17
A Bill

HOUSE BILL 1953

By: Representative Collins

By: Senator J. Hendren

For An Act To Be Entitled

AN ACT TO AMEND CERTAIN PROVISIONS OF THE WORKERS' COMPENSATION LAW THAT RESULTED FROM INITIATED ACT NO. 4 OF 1948; TO AMEND THE DEFINITION OF OBJECTIVE FINDINGS ENACTED BY INITIATED ACT NO. 4 OF 1948; TO REVISE THIRD-PARTY LIABILITY IN THE WORKERS' COMPENSATION LAW; TO AMEND THE LAW REGARDING THE LIABILITY OF AN EMPLOYER FOR MEDICAL COSTS RELATED TO A COMPENSABLE INJURY; TO RESTORE CONSISTENCY IN TEMPORARY TOTAL DISABILITY BENEFIT AND EMPLOYEE MISCONDUCT DETERMINATIONS AFTER TERMINATION UNDER INITIATED ACT NO. 4 OF 1948; TO REGULATE FINAL SETTLEMENTS OF CLAIMS INVOLVING JOINT PETITIONS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND CERTAIN PROVISIONS OF THE WORKERS' COMPENSATION LAW THAT RESULTED FROM INITIATED ACT NO. 4 OF 1948.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative intent.

The purpose and intent of this act is to reverse specifically any case law providing that former employees who are properly terminated for misconduct are entitled to temporary total or temporary partial disability benefits if the employer has work available within the former employee's



restrictions, including without limitation, Tyson Poultry, Inc. v. Narvaiz, 2012 Ark. 118 (2012); and Superior Industries v. Thomaston, 72 Ark. App. 7, 32 S.W.3d 52 (2000).

SECTION 2. Arkansas Code § 11-9-102(16), concerning the definition of "objective findings" under the Workers' Compensation Law, is amended to add an additional subdivision to read as follows:

(C)(1) For muscle spasms to constitute an objective finding of injury, a specific diagnosis of palpable muscle spasms is necessary.

(2) The presence of muscle spasms may not be inferred from diagnosis or treatment that involves a prescription for a type of muscle relaxant in the absence of objective findings.

SECTION 3. Arkansas Code § 11-9-410(a)(2)(D), concerning the rights of an employer in a claim for recovery by an injured employee against a third party, is amended to read as follows:

(D)(i) Any ~~excess~~ amount of a settlement or judgment remaining after the employer or the carrier has been reimbursed the amount paid in workers' compensation benefits arising from an injury or death shall belong to the injured employee or his or her dependents.

(ii) An employer or carrier is entitled to a future credit in the claim for workers' compensation benefits in the amount paid to or on behalf of the injured or deceased employee or his or her dependents from the settlement or judgment in this subdivision (a)(2).

(iii) An employer or carrier is not required to pay additional workers' compensation benefits for the injuries or death arising from an incident involving a third party until the future credit is exhausted.

SECTION 4. Arkansas Code § 11-9-410(b)(2), concerning subrogation in a third-party claim, is amended to read as follows:

(2) After reasonable notice and opportunity to be represented in the action has been given to the compensation beneficiary, the liability of the third party to the compensation beneficiary, to the employer, and to the carrier shall be determined in the action, ~~as well as the third party's~~

~~liability to the employer and carrier.~~

SECTION 5. Arkansas Code § 11-9-410(b)(3)(A), concerning recovery amounts from a third-party liability action, is amended to read as follows:

(3)(A) After recovery shall be had against the third party, by suit or otherwise, the compensation beneficiary ~~shall be~~ is entitled to any amount recovered over and above the amount that the employer and carrier have paid or are liable for in compensation, after deducting reasonable costs of collection except that:

(i) An employer or carrier is entitled to a future credit in a claim for workers' compensation benefits in the amount of a settlement or judgment to be paid to or on behalf of the injured or deceased employee or his or her dependents from a third party after the employer or carrier has been reimbursed the amount paid to or on behalf of the injured or deceased employee or his or her dependents; and

(ii) An employer or carrier is not required to pay additional workers' compensation benefits for the injuries or death arising from an incident involving a third party until the future credit is exhausted.

SECTION 6. Arkansas Code § 11-9-410, concerning third-party liability, is amended to add additional subsections to read as follows:

(d) Waiver or Abrogation of Subrogation.

(1) The right of an employer or carrier to recover in an action in tort from a third party that caused the injury or death of an employee is absolute and may only be waived with the written consent of the employer or carrier.

(2) The written consent of the employer of an injured employee or the carrier of the employer is required in any settlement of an action in tort against a third party outside of this section.

(e) The purpose and intent of this subsection is to prevent any double recovery to the injured employee.

(f) In considering the entitlement of an employer or carrier to an absolute lien in any third party claim, the commission or court shall not consider the "made whole doctrine" or whether the claimant has been made whole by the settlement proceeds.

SECTION 7. Arkansas Code § 11-9-521(a), concerning worker's compensation for scheduled permanent injuries under the Workers' Compensation Law, is amended to read as follows:

~~(a) An employee who sustains a permanent compensable injury scheduled in this section shall receive, in addition to compensation for temporary total and temporary partial benefits during the healing period or until the employee returns to work, whichever occurs first, weekly benefits in the amount of the permanent partial disability rate attributable to the injury, for that period of time set out in the following schedule~~

(a)(1) An employee who sustains a compensable injury scheduled in this section may be entitled to temporary total disability benefits or temporary partial disability benefits, or both, during the healing period if the employer does not offer work within the employee's medical restrictions arising from the injury.

(2)(A) When an employee is terminated for misconduct and the employer has work available within the former employee's medical restrictions from the workers' compensation injury, the former employee is not entitled to temporary total or temporary partial disability benefits during the healing period in which the misconduct occurred.

(B) For purposes of subdivision (a)(2)(A) of this section, the employer has the burden of proof by a preponderance of the evidence.

(3) An employee who sustains a permanent compensable injury scheduled in this section is entitled to weekly benefits in the amount of the permanent partial disability rate attributable to the injury for the time set out in the following schedule:

~~(1)(A)~~ Arm amputated at the elbow, or between the elbow and shoulder, two hundred forty-four (244) weeks;

~~(2)(B)~~ Arm amputated between the elbow and wrist, one hundred eighty-three (183) weeks;

~~(3)(C)~~ Leg amputated at the knee, or between the knee and the hip, one hundred eighty-four (184) weeks;

~~(4)(D)~~ Leg amputated between the knee and the ankle, one hundred thirty-one (131) weeks;

~~(5)(E)~~ Hand amputated, one hundred eighty-three (183) weeks;

~~(6)(F)~~ Thumb amputated, seventy-three (73) weeks;
~~(7)(G)~~ First finger amputated, forty-three (43) weeks;
~~(8)(H)~~ Second finger amputated, thirty-seven (37) weeks;
~~(9)(I)~~ Third finger amputated, twenty-four (24) weeks;
~~(10)(J)~~ Fourth finger amputated, nineteen (19) weeks;
~~(11)(K)~~ Foot amputated, one hundred thirty-one (131) weeks;
~~(12)(L)~~ Great toe amputated, thirty-two (32) weeks;
~~(13)(M)~~ Toe other than great toe amputated, eleven (11) weeks;
~~(14)(N)~~ Eye enucleated, in which there was useful vision, one hundred five (105) weeks;
~~(15)(O)~~ Loss of hearing of one (1) ear, forty-two (42) weeks;
~~(16)(P)~~ Loss of hearing of both ears, one hundred fifty-eight (158) weeks; and
~~(17)(Q)~~ Loss of one (1) testicle, fifty-three (53) weeks; loss of both testicles, one hundred fifty-eight (158) weeks.

SECTION 8. Arkansas Code § 11-9-526 is amended to read as follows:

11-9-526. Compensation for disability – Refusal of employee to accept employment – Termination for misconduct.

~~(a) If any injured employee refuses employment suitable to his or her capacity offered to or procured for him or her, he or she shall not be entitled to any compensation during the continuance of the refusal, unless in the opinion of the Workers' Compensation Commission, the refusal is justifiable~~ If an injured employee refuses employment suitable to his or her capacity offered to or procured for him or her, the injured employee is not entitled to compensation during the continuance of the refusal unless, in the opinion of the Workers' Compensation Commission, the refusal is justifiable.

(b)(1) When an employee is terminated for misconduct and the employer has work available within the former employee's medical restrictions from the workers' compensation injury, the former employee is not entitled to temporary total or temporary partial disability benefits.

(2) For purposes of subdivision (b)(1) of this section, the employer has the burden of proof by a preponderance of the evidence.

SECTION 9. Arkansas Code § 11-9-805 is amended to read as follows:

11-9-805. Joint petition for final settlement.

(a)(1) ~~Upon~~ Except as provided in subdivision (a)(2) of this section, upon petition filed by the employer or carrier and the injured employee requesting that a final settlement be had between the parties, the Workers' Compensation Commission shall hear the petition and take testimony and make investigations as may be necessary to determine whether a final settlement should be had.

(2)(A) If a claimant has been determined to be Medicare eligible, the parties may petition the commission for a partial settlement of all issues other than future medical treatment.

(B) A partial settlement under subdivision (a)(2) of this section is final concerning all issues except future medical treatment.

(b)(1)(A) If the commission decides ~~it is for~~ that a final settlement award is in the best interests of the ~~claimant that a final award be made, it~~ parties, the commission may order an award that shall be final ~~as to~~ concerning the rights of all ~~the~~ parties to the ~~joint~~ petition.

(B) After the commission enters an order with regard to any full settlement, the commission shall not have jurisdiction over any claim for the same injury or any results arising from it.

(2)(A) ~~Thereafter, the commission shall not have jurisdiction over any claim for the same injury or any results arising from it~~ If the commission decides that a partial settlement award is in the best interests of the parties, the commission may order an award that shall be final concerning the partial settlement of the rights of all the parties to the ~~joint~~ petition.

(B) After the commission enters an order with regard to any partial settlement, the commission shall not have jurisdiction over any claim for the same injury or any results arising from it other than claims for future medical expenses.

(c) If an employee has returned to work or agreed to return to work, the commission shall not approve a joint petition which has allotted moneys for vocational rehabilitation or any indemnity benefits in excess of that payable as an anatomical impairment as established by objective and measurable findings.

(d) If the commission denies the petition, the denial shall be without prejudice to either party.

(e) ~~No~~ An appeal shall not lie from an order or award denying or approving a joint petition.

/s/Collins